


EFTA SURVEILLANCE AUTHORITY

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Dec. No. 38/94/COL
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EFTA SURVEILLANCE AUTHORITY DECISION
of 11 May 1994
on the map of assisted areas (Austria)

THE EFTA SURVEILLANCE AUTHORITY,

Having regard to the Agreement on the European Economic Area¹, in particular to Articles 61 to 63,

Having regard to the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice², in particular Article 1 of Protocol 3 thereof,

WHEREAS:

I. FACTS

1. The notification

By fax dated 16 February 1994, received by the EFTA Surveillance Authority on that day (ref. 94-2719 A), the Austrian Government notified, in accordance with Article 1 (3) of Protocol 3 to the Surveillance and Court Agreement, a plan for "*regional aid according to EU/EEA-competition rules - proposed list of eligible areas in Austria (January 1994)*", including the information on statistics and socio-economic indicators for the assessment of regional aid as requested by the State aid and

¹ Hereinafter referred to as the EEA Agreement.

² Hereinafter referred to as the Surveillance and Court Agreement.

Monopolies Directorate of the EFTA Surveillance Authority by letter dated 10 January 1994 (ref. 94-670 D).

The EFTA Surveillance Authority, by letter dated 23 March 1994 (ref. 94-5170 D), requested additional information from the Austrian Government which was provided by the Austrian Government by faxes on 8 April 1994 (ref. 94-5852 A) and on 4 May 1994 (ref. 94-7011 A). Together with the requested additional information, the Austrian authorities amended the original notification ("*regional aid according to EU/EEA-competition rules - proposed list of eligible areas in Austria (1994, revised version*" - see Annex 1 to this decision).

2. The contents of the proposed map

The map of assisted areas consists of a list of regions proposed to be eligible for regional state aid under Article 61 (3) (a) and (c) of the EEA Agreement (section 6 of the notification). A maximum aid intensity, expressed in net grant equivalent (NGE), is allocated to each region.

In principle, the delimitation of the proposed assisted areas is based on the administrative breakdown of the Austrian territory into nine *Länder* and 99 districts (*politische Bezirke*). In order to arrive at areas comparable in terms of population with areas in EU Member States, the *Länder* are, for statistical purposes, designated as NUTS II areas³, whereas, depending on the population and the geographical situation, districts or combinations of two or more districts are designated as NUTS III areas. In total, Austria arrives at a number of 35 NUTS III areas. On the level of NUTS I, two to four *Länder* are combined so that Austria consists of three NUTS I areas (*Ostösterreich*, i.e. *Wien*, *Niederösterreich* and *Burgenland*; *Südösterreich*, i.e. *Steiermark* and *Kärnten*; *Westösterreich*, i.e. *Oberösterreich*, *Salzburg*, *Tirol* and *Vorarlberg* - see section 1 of the notification).

On this basis, and backed up by regional GDP and unemployment data (see sections 2-5 of the notification), the Austrian authorities propose *Burgenland* (NUTS level II) to be eligible for regional aid under Article 61 (3) (a) and a list of 18 other regions, based on NUTS level III with some readjustments, to be eligible for regional aid under Article 61 (3) (c). The population coverage of the proposed (a)-region is 3,47% and of the proposed (c)-regions 31,69%. In total, 35,16% of the Austrian population lives in areas proposed to be eligible for regional aid.

For further details (regional GDP and unemployment data of the proposed regions, readjustments, number of inhabitants, population coverage, maximum aid intensities) see the list attached as Annex 1 to this Decision.

³ NUTS = nomenclature des unités territoriales statistiques; bilaterally agreed between EUROSTAT and the EU Member State concerned for statistical purposes.

3. The foreseen implementation of the proposed map

Austria communicated to the EFTA Surveillance Authority that the map of assisted areas as well as the maximum aid intensities for regional aid refer in principle to all aid schemes in Austria which indicate regional aid as a primary objective (see fax, ref. 94-7011 A).

As a first step, the Austrian authorities propose to link the map of assisted areas with 9 schemes on the federal level, which already now apply the regional delimitation as defined in the ÖROK⁴-proposal, as far as regional investment aid is concerned. The schemes in question are listed in Annex 2 to this decision.

The Austrian authorities indicated that the list of aid schemes to which the map of assisted areas applies should be considered as "open" list, meaning that the list will be extended to other aid schemes on proposal by the Austrian authorities.

Furthermore, the Austrian authorities propose the map to be valid over a period of five to six years.

II. APPRECIATION

1. General remarks to the concept of the map

The proposed map of assisted areas establishes the general framework for regional aid awards in Austria on the federal and the *Länder* level. No budget is allocated to the map of assisted areas and no individual awards of aid are possible solely on the basis of the map. Therefore, the map itself does not constitute aid in the meaning of Article 61 (1) of the EEA Agreement. Nevertheless, it serves, supported by the submitted regional GDP and unemployment data, as anticipated justification of aid awards under Austrian aid schemes, which are made in order to promote or facilitate the development of certain economic areas.

In order to define the scope of application of the map in a clear-cut manner, the Austrian authorities propose to apply the map, in a first step, to 9 aid schemes on the federal level. Due to this link, the authorisation of the map will confirm the current practice of individual investment aid awards under the schemes contained in the list, which are, according to the information on existing aid submitted by the Austrian authorities, restricted to the areas and intensities contained in the ÖROK-proposal. Therefore it is established that the "second layer" of the notified map, i.e. the schemes attached to the *proposed list of eligible areas in Austria*, constitutes aid in the meaning of Article 61 (1) of the EEA Agreement.

Consequently, it has to be established by the EFTA Surveillance Authority whether the regions, which are proposed to be eligible for regional aid, qualify for exemption from the general prohibition of aid under Article 61 (1) in accordance with Article 61

⁴ Österreichische Raumordnungskonferenz (Austrian Conference on Regional Planning).

(3) (a) or (c) of the EEA Agreement. The necessary assessment to that effect will be carried out under II.2 and II.3.

2. Assessment of the proposed delimitation

2.1. General remarks to the chosen NUTS-breakdown

The population of the nine Austrian *Länder* (NUTS level II) varies between 270.335 in *Burgenland* and 1,543.940 in *Wien*. If one divides the number of the Austrian population of 7,804.246 by the number of the *Länder*, the average population on the NUTS level II is 867.138. Four *Länder* (*Wien, Niederösterreich, Oberösterreich* and *Steiermark*) have more than 1 million inhabitants.

The average population of the 35 NUTS level III areas in Austria is 222.978 and varies between 20.696 (the district of Lungau in the Land Salzburg) as smallest and 517.196 (central region of Linz-Wels in Oberösterreich) as largest area. Four of these areas have a population below 50.000, another four have a population between 50.000 and 100.000 inhabitants.

Compared to the EC average, the chosen breakdown, which has been accepted by EUROSTAT according to the information available to the EFTA Surveillance Authority, is rather small. On the EC side, the territory of the Member States is broken down into 64 regions on NUTS level I, 167 on NUTS level II with an average population of approximately 2 million and 824 on NUTS level III with an average population of 400.000 (all figures without the former GDR). It has to be noted that the variations are very high. On NUTS level II, population varies between 0,1 and 10,1 million inhabitants. This broad spectrum results from the fact that the statistical breakdown agreed between EUROSTAT and the Member State concerned is always based on the existing administrative borders of a State.

On NUTS level III, a comparison between Austria (7,8 million inhabitants) and Belgium (9,9 million inhabitants), which has the tiniest breakdown on this level within the European Communities, shows that the Austrian breakdown is in line with the accepted margins on the EC side. Belgium consists of 43 NUTS level III areas, which means that the average population of such an area is approximately 229.500.

On the basis of this comparison and supported by specific geographical situations in Austria, esp. with regard to certain inner-alpine regions, the chosen breakdown into NUTS II and III areas seems to be acceptable as a basis for the definition of assisted areas.

2.2. Areas eligible for regional aid under Article 61 (3) (a)

The Austrian authorities propose *Burgenland*, which is located in eastern Austria along the Hungarian border, to be eligible for regional aid under Article 61 (3) (a). Its GDP/PPS per capita arrives at only 69% of the EEA average (according to

calculations undertaken by the State aid and Monopolies Directorate) or 65% of the EC average (according to data submitted by Austria).

In accordance with the established practice on the Community side, a NUTS level II region is eligible for regional aid under Article 61 (3) (a) if its GDP/PPS is 75% or lower compared to the EEA average. This practice is reflected in part VI of the Procedural and Substantive Rules in the Field of State Aid, adopted by the EFTA Surveillance Authority on 19 January 1994⁵. As both the Austrian data and the calculations of the State aid and Monopolies Directorate show that this criteria is fulfilled, Burgenland may be regarded as eligible for regional aid under Article 61 (3) (a).

2.3. Areas eligible for regional aid under Article 61 (3) (c)

The Austrian authorities base all other proposals for eligibility for regional aid on Article 61 (3) (c). In accordance with the established practice on the Community side, the delimitation of these regions is made in principle on the basis of areas comparable to the NUTS level III.

In accordance with the criteria established on the Community side, which are reflected in part VI of the State Aid Guidelines, the minimum requirement for eligibility of a region for regional state aid is a regional GDP/GVA of at least 15 % below the average of the EFTA State concerned (i.e. 85%) or structural unemployment of at least 10 % above the average of the EFTA State concerned (i.e. 110 %). For countries with a more favourable level of development compared to the EEA average, the required minimum regional disparity in a national context is adjusted according to the formula stipulated in point 28.2.2. of the State Aid Guidelines. The applicable modified threshold for Austria in this context is, in accordance with Decision No. 35/94/COL of the EFTA Surveillance Authority of 4 May 1994, 79 % for GDP/GVA and 145 % for structural unemployment.

According to calculations carried out by the State aid and Monopolies Directorate on NUTS level III, all proposed regions qualify for exemption under the above mentioned criteria. Therefore, it is established that all proposed regions which are identical to NUTS III areas or which exclude certain municipalities within a NUTS III area from eligibility for regional aid, are eligible for exemption under Article 61 (3) (c). This includes the regions of *Steyr-Kirchdorf (Oberösterreich)*, for which the Austrian authorities, by taking account of the exclusion of 6 municipalities, arrived at a regional GDP index of 82%, and *Wien-Umland Nord (Niederösterreich)*, which would be eligible as a whole, but for which the Austrian authorities wish to include only 13 municipalities.

In four regions, the Austrian authorities propose to include neighbouring municipalities taken from regions which, according to both the data provided by the Austrian authorities and calculations carried out by the State aid and Monopolies Directorate, are not eligible for regional aid. The population coverage of the included

⁵ Hereinafter referred to as State Aid Guidelines.

municipalities amounts to 0,51% (see regions no. 4, 9, 10 and 18 of the list attached as Annex to the decision). The reasons brought forward by the Austrian authorities (see letter dated 8 April 1994, ref. 94-5852 A) justify the proposed readjustments.

Therefore it is concluded that all proposed regions fulfil the criteria for eligibility for regional aid under Article 61 (3) (c).

3. Assessment of the proposed maximum aid intensities

The proposed maximum aid intensities for *Burgenland* are 30% NGE for the northern part and 40% NGE for the middle and southern part of the country. Thus, the maximum aid intensities foreseen remain well below the theoretical maximum of 75% for Article 61 (3) (a) regions. Moreover, they take account of the regional disparities within the NUTS level II on the basis of NUTS level III delimitations.

The proposed maximum aid intensities for (c)-regions range from 25% NGE for *Obersteiermark-Ost* (2,27% of the Austrian population), 20% NGE for regions listed under no. 3-16 of the attached list (26,43% of the Austrian population) and 15% NGE for regions listed under 17-19 of the attached list (2,99% of the Austrian population).

Although the proposed 25% NGE for *Obersteiermark-Ost*, which implies that SMEs might receive aid up to 30% NGE, is on the upper limit for intensities in Article 61 (3) (c) areas, the arguments brought forward by the Austrian authorities and the limitation of this high intensity to a rather small area (2,27% of the Austrian population) justify the proposal. This is especially true with regard to the high and still increasing level of unemployment in this area, which is, according to data provided by the Austrian authorities, 64% above the national average (1990-1992), and, according to calculations carried out by the State aid and Monopolies Directorate, 54% above the national average (1992).

For the other regions, the proposed intensities as well as the population coverage is broadly in line with the practice of granting regional aid in comparable EU Member States. The practice as accepted by the EC Commission allows a wide margin of flexibility, as can be shown e.g. with regard to Belgium, France and the United Kingdom. In these countries, the maximum aid intensities are set with 15% NGE (11,3% population coverage) and 20% NGE (21,8% population coverage) for Belgium, 15,38 + 4% NGE (32,1% population coverage) and 22,62 + 4% NGE (10,6% population coverage) for France and 20% NGE (19,48% population coverage) and 30% NGE (15,86% population coverage) for the United Kingdom.

On the basis of this comparison, it may be concluded that the maximum intensities as proposed by the Austrian government do not distort the level playing field for competition in the EEA and, consequently, do not adversely affect trading conditions to an extent contrary to the common market.

Therefore it is concluded that the proposed maximum intensities may be accepted under the exemption clauses of Article 61 (3) (a) and (c) respectively.

4. The scope of application of the map

Regarding the scope of application of the map of assisted areas in Austria, it should firstly be pointed out that any new plans to grant or alter aid with regional objectives, which are based on the delimitation and maximum intensities of the map, will need no further justification regarding its regional aspects. This does not relieve the Austrian authorities from their obligation to notify such plans in accordance with Article 1 (3) of Protocol 3 to the Surveillance and Court Agreement.

Secondly, the map will apply to investment aid awards under 9 existing aid schemes as listed and explained in the amendment to the notification (ref. 94-7011 A). That means that investment aid awarded under the schemes is restricted to assisted areas, except investment aid to SMEs, R&D and environment protection as well as aid to restructuring awarded under those schemes. The inclusion of an existing aid scheme in the list does not prevent the EFTA Surveillance Authority to review the schemes in question in accordance with Article 1 (1) of Protocol 3 to the Surveillance and Court Agreement.

In a next step, the scope of the map could be extended by adding other existing or new aid schemes to the list on proposal by the Austrian authorities. With regard to existing aid schemes, this might require amendments which have to be notified to the EFTA Surveillance Authority in accordance with Article 1 (3) of Protocol 3 to the Surveillance and Court Agreement. The scope of the map could also be extended on the basis of a review procedure carried out by the EFTA Surveillance Authority under Article 1 (1) of Protocol 3 to the Surveillance and Court Agreement

All specific notification obligations with regard to certain sensitive sectors (currently steel, synthetic fibres and motor vehicles as defined in the State Aid Guidelines and Decision 3855/91/ECSC of 27 November 1991) remain unaffected by this Decision.

Finally, the Austrian authorities indicated that they consider a period of validity of five or six years as appropriate. On the Community side, the established practice shows that maps of assisted areas are in general revised every three to five years. Considering this practice and the time frame indicated by the Austrian authorities, the map is considered to be applicable until 31 December 1998. This does not, however, restrict the obligation of the EFTA Surveillance Authority to review the map, in accordance with Article 1 (1) of Protocol 3 to the Surveillance and Court Agreement, before that date, if required by the socio-economic development in certain areas which now qualify for regional aid or by the socio-economic development of Austria in relation to other EEA States.

HAS ADOPTED THIS DECISION:

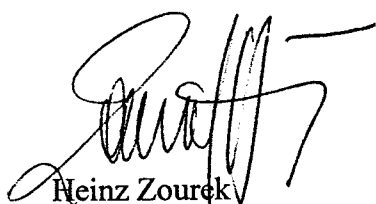
1. The EFTA Surveillance Authority has decided not to raise objections to the *regional aid according to EU/EEA-competition rules - proposed list of eligible areas in Austria (1994, revised version)* as notified in letters dated 16 February 1994 (ref. 94-2719 A), 8 April 1994 (ref. 94-5852 A) and 4 May 1994 (ref. 94-7011 A).
2. Without prejudice to Article 1 (1) of Protocol 3 to the Surveillance and Court Agreement, the map of assisted areas shall be applicable until 31 December 1998.

Done at Brussels, 11 May 1994

For the EFTA Surveillance Authority



Knut Almestad,
President of the EFTA Surveillance Authority



Heinz Zourek
College Member