


EFTA SURVEILLANCE AUTHORITY

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EFTA SURVEILLANCE AUTHORITY DECISION

OF 20 JULY 1994

ON THE LOCATION OF ENTERPRISES IMPULSE PROGRAMME OF OBERÖSTERREICH
(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 letter dated 20 June 1994, received by the EFTA Surveillance Authority on 21 June 1994 (Ref. 94-9296 A), the Austrian Government notified, in accordance with Article 1 (3) of Protocol 3 to the Surveillance and Court Agreement, a plan to replace the current "Location of Enterprises Impulse Programme" of the Land Oberösterreich (*Betriebsansiedlungs-Impuls-Programm - BIP*) by a new programme. The currently applied guidelines were notified by the Austrian Government as existing aid³.

¹ Hereinafter referred to as the EEA Agreement.

² Hereinafter referred to as the Surveillance and Court Agreement.

³ See letter dated 3 March 1994, received on 4 March 1994; Ref. 94-3878 A; code number OÖ 1 of the submitted register of existing aid - registered as case 93-276 in SACH.

2. The contents of the proposed guidelines

The new *BIP*-guidelines foresee aid for the following business activities (see point 3 of the guidelines) of enterprises located or to be located in Oberösterreich:

- a) location (foundation) of enterprises of regional importance
- b) enterprise zones
- c) establishment and extension of "departments for liaison" ("Ausseninstitute") of universities
- d) relocation of enterprises in cases of prevailing public interest
- e) infrastructure costs as precondition for the realisation of projects of regional importance (only in connection with projects under (a) or (d) above), and
- f) enlargement of plants in connection with innovative investment (only in assisted areas as defined in EFTA Surveillance Authority Decision 38/94/COL of 11 May 1994).

The aid will be given in the form of interest subsidies of 3% in assisted areas as defined in EFTA Surveillance Authority Decision 38/94/COL of 11 May 1994, and of 2% in other areas of Oberösterreich. The foreseen aid intensities outside assisted areas may not exceed

- 50.000 ECU per enterprise within a period of three years for all enterprises regardless of their size,
- 7.5% gross for medium-sized enterprises and
- 15% gross for small enterprises (see point 4.2. of the guidelines).

The loans will be awarded by *Kommunalkredit AG* at commercial terms, whereas the interest subsidies will be funded through the budget of the *Land* Oberösterreich. The budget foreseen for this purpose is 100 million ATS for the whole duration (1994-1996), including the remaining time-span of five years for which interest subsidises are still awarded in respect to pending loans.

Aid awards to enterprises in the synthetic fibres, motor vehicle, steel and transport industries will be subject to individual scrutiny and assent by the EFTA Surveillance Authority (see point 2 of the guidelines).

In addition, the Land Oberösterreich undertakes to submit an annual report in accordance with Annex IV of the Guidelines on the application and interpretation of Article 61 and 62 of the EEA Agreement and Article 1 of Protocol 3 to the Surveillance and Court Agreement⁴ to the EFTA Surveillance Authority (see point 1.3. of the guidelines).

The guidelines shall apply until 31 December 1996 (see point 9 of the guidelines).

⁴ Henceforth referred to as State Aid Guidelines.

II. APPRECIATION

The *BIP*-guidelines foresee aid awards in the form of interest subsidies in favour of certain undertakings. The measures are granted on a discretionary basis by decision of the local government of Oberösterreich. By relieving the undertakings concerned of some of their costs, which they normally would have to bear themselves, such aid gives financial advantages and improves their competitive situation. Since the production of the favoured undertakings may be in competition with that of undertakings in other States participating in the EEA, such aid is liable to distort intra-EEA trade. The interest subsidies are funded through the budget of the *Land* Oberösterreich. Thus, the aid will be granted by the State through State resources.⁵ For those reasons, the foreseen measures constitute aid in the meaning of Article 61 (1) of the EEA Agreement.

Consequently, the EFTA Surveillance Authority is obliged to assess whether any of the exemption clauses under Article 61 (2) and (3) are applicable in order to exempt the aid measure from the general prohibition of aid under Article 61 (1).

The scheme foresees investment aid for clearly defined purposes. Its objective is twofold: on the one hand, it aims at helping small and medium-sized enterprises to invest, on the other hand, it encourages enterprises regardless of their size to invest in regions which are recognised as assisted areas.

As the regional component of the scheme refers explicitly to the map of assisted areas as authorised by the EFTA Surveillance Authority Decision 38/94/COL of 11 May 1994, it may be concluded that both the delimitation of the areas and the cumulated maximum intensities apply in each case of application of the scheme.

Regarding the SME component, it shall be noted that the definition of SMEs stated in the guidelines is compatible with the EEA provisions on State aid, as stated in chapter 10 of the State Aid Guidelines, adopted by the EFTA Surveillance Authority on 19 January 1994.

Given the clearly defined scope of the aid scheme (see point 3 of the guidelines and the summary under point 2 of the Facts above), its restriction to assisted areas and - outside assisted areas - to SMEs or *de minimis* aid in accordance with the relevant definition in chapter 12 of the State Aid Guidelines, it may be held that the measures foreseen under the scheme in question promote objectives which are covered by the exemption clause under Article 61(3)(c) of the EEA Agreement. Furthermore, the foreseen maximum aid intensities, which remain within the limits stipulated, regarding SMEs, in the State Aid Guidelines, and, regarding regional aid, in the EFTA Surveillance Authority Decision 38/94/COL of 11 May 1994, ensure that the aid does not adversely affect trading conditions to an extent contrary to the common interest.

Therefore it is concluded that the guidelines for the "Location of Enterprises Impulse Programme" of the Land Oberösterreich (*Betriebsansiedlungs-Impuls-Programm* -

⁵ See ECJ, 14 October 1987, Case 248/84, *Germany/Commission* (1987) ECR 4013 with regard to Article 92 of the EC Treaty.

BIP) qualify for exemption under Article 61(3)(c) of the EEA Agreement by facilitating the development of certain economic activities (with regard to the promotion of SMEs) and economic areas (with regard to the regional aid component).

HAS ADOPTED THIS DECISION:

1. The EFTA Surveillance Authority has decided not to raise objections to the "Location of Enterprises Impulse Programme" of the Land Oberösterreich (*Betriebsansiedlungs-Impuls-Programm - BIP*) as notified in letter dated 20 June 1994 (ref. 94-9296 A).

2. The Austrian Government is obliged to submit a simplified annual report (in accordance with chapter 30 of and Annex IV to the Procedural and Substantive Rules in the Field of State Aid) on the application of the law to the EFTA Surveillance Authority.

Done at Brussels, 20 July 1994

For the EFTA Surveillance Authority



Knut Almestad,
President of the EFTA Surveillance Authority



Heinz Zourek
College Member