


EFTA SURVEILLANCE AUTHORITY

Doc 94-14496 I
Dec. No.: 120/94/COL
Ref.No. SAM 030.94.034

EFTA SURVEILLANCE AUTHORITY DECISION

OF 13 OCTOBER 1994

ON THE AID SCHEME FOR TRADITIONAL LOWER AUSTRIAN INNS (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 7 September 1994, received by the EFTA Surveillance Authority on 8 September 1994 (Ref. 94-13331 A) and a second time with identical contents on 13 September 1994 (Ref. 94-13514 A), the Austrian Government notified, in accordance with Article 1 (3) of Protocol 3 to the Surveillance and Court Agreement, a plan to grant aid to traditional Lower Austrian Inns (*Niederösterreichische Wirtshaus-Förderungsaktion*). Additional information on the aid intensities was received on 5 October 1994 (Ref. 94-14835 A).

2. The contents of the proposed guidelines

The "Niederösterreichische Wirtshaus-Förderungsaktion" is a top-up scheme of the Austrian *Land* Lower Austria to three existing federal schemes (aid scheme under the Business Structure Improvement Act - case 93-232; Bürges Small Business Credit Scheme - case 93-251 and Young Entrepreneurs Programme - case 93-259). The annual budget of the scheme will be 3 million ATS. The scheme is limited until 31 December 1999.

¹ Hereinafter referred to as the EEA Agreement.

² Hereinafter referred to as the Surveillance and Court Agreement.

It foresees investment aid in the form of grants to traditional local inns with up to 50 employees, an annual turnover of up to 5 million ECU or a balance sheet total of up to 2 million ECU. The maximum foreseen aid intensity under the scheme will be 6,2% on top of the Bürges Business Structure Scheme, doubling the maximum intensity of that scheme to 12,4%; 5,6% on top of the Bürges Small Business Scheme, doubling the maximum intensity of that scheme to 11,2%; 6,8% on top of a grant under the Young Entrepreneurs Scheme, doubling the maximum intensity of that scheme to 13,6%; and 8% on top of a guarantee under the Young Entrepreneurs Scheme, bringing the maximum intensity up to 8,2% (all aid intensities expressed in gross terms).

II. APPRECIATION

In procedural terms, the scheme qualifies for the accelerated clearance procedure, as stipulated in chapter 11 of the State Aid Guidelines, as it is a new scheme limited to small enterprises, it has specific investment objectives and the aid intensity in gross terms does not exceed 15% of the investment cost. Moreover, cumulation is only possible within the stipulated maximum gross intensity and restricted to three existing aid schemes referred to in the notification. The possibility of the aid being granted to exports or in the form of an operating aid is excluded. Therefore, the scheme is dealt with under the accelerated clearance procedure.

In substance, the guidelines foresee aid awards in the form of grants in favour of certain undertakings. The measures are granted on a discretionary basis by decision of the local government of *Niederösterreich*. The grants are funded through the budget of the *Land*. Thus, the aid will be granted by the State through State resources.³ 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.

The aid scheme is restricted to gastronomic enterprises. Investment in lodging facilities is explicitly excluded. Contrary to hotels, pensions and other enterprises which offer lodging facilities, which are competing with each other on an European level, competition between gastronomic enterprises is restricted to the region in which they are located. Aid to such enterprises may have direct effects on trade between Contracting Parties only, if it would be disbursed in a region bordering to EU Member States or other EFTA States parties to the EEA-Agreement. However, such aid may have indirect trade effects, i.e. a generally increased attractiveness of a region caused by aid to gastronomic enterprises.

Therefore, the proposed 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).

³ See ECJ, 14 October 1987, Case 248/84, *Germany/Commission* (1987) ECR 4013 with regard to Article 92 of the EC Treaty.

The scheme foresees investment aid for clearly defined purposes. It aims at helping small enterprises, the definition for which is in conformity with the EEA provisions on State aid as stipulated in chapter 10 of the State Aid Guidelines, to invest in modernisation, quality improvement, specialisation, enlargement or foundation of traditional local inns.

Given the clearly defined scope of the aid scheme and its restriction to small enterprises, 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 of up to 13,6%, also in cases of cumulation with other aid schemes, 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 aid to traditional Lower Austrian Inns (*Niederösterreichische Wirtshaus-Förderungsaktion*) qualify for exemption under Article 61(3)(c) of the EEA Agreement by facilitating the development of certain economic activities.

HAS ADOPTED THIS DECISION:


The EFTA Surveillance Authority has decided not to raise objections to the aid scheme for traditional Lower Austrian Inns of the *Land* Niederösterreich (*Niederösterreichische Wirtshaus-Förderungsaktion*) as notified in letters dated 7 September and 5 October 1994 (Ref. 94-13331 A and 13835 A).

Done at Brussels, 13 October 1994

For the EFTA Surveillance Authority



Heinz Zourek
College Member



Grete Ek Ulland
Executive Secretary