


EFTA SURVEILLANCE AUTHORITY

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EFTA SURVEILLANCE AUTHORITY DECISION

OF 26 OCTOBER 1994

TOURISM 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. 94-9298 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 "Tourism Impulse Programme" of the Land Oberösterreich (*Tourismusimpuls-Programm - TIP*) by a new programme. The notification was modified by letter dated 14 July 1994, received by the EFTA Surveillance Authority on 15 July 1994 (Ref. 94-10825 A) in reply to a request of additional information dated 14 July 1994 (Ref. 94-10771 D). Further additional information and amendments to the draft guidelines were submitted by fax dated 2 September 1994, received the same day (Ref. 94-12938 A).

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 2 of the submitted register of existing aid - registered as case 93-277 in SACH.

2. The contents of the proposed guidelines

The new *TIP*-guidelines foresee aid for investment projects for the following business activities (see points 1.1. and 3 of the *TIP*-guidelines) of enterprises located or to be located in Oberösterreich:

- a) hotels and pensions, restaurants and catering (new establishments or quality improvements of existing facilities)
- b) indoor sports and recreation facilities connected with businesses under a) and
- c) supplementary and auxiliary investment like outdoor sports and recreation facilities, lodging for employees, connection to computerised information and reservation systems, waste avoidance and energy saving.

The eligible costs are defined as the sum of all estimated or actual investment costs excluding VAT for an investment project falling under the business activities referred to above.

The *TIP*-scheme is a "top-up"-scheme of the local Government of Oberösterreich to certain federal aid schemes, which are referred to under point 1.2. of the *TIP*-guidelines. An investment project may be funded on the basis of the scheme if its eligible costs are between 0.5 and 20 million ATS.

For projects with eligible costs up to 2 million ATS the aid may be awarded in the form of grants or interest subsidies up to gross intensities of 15% for small and 7,5% for medium-sized enterprises outside assisted areas and up to the prevailing regional aid ceiling authorized by the EFTA Surveillance Authority Decision 38/94/COL of 11 May 1994 for all enterprises located in assisted areas as defined in the decision referred to above. These intensities must also be observed in cases of cumulation of aid from all other public sources (see point 4.2. of the *TIP*-guidelines in the amended version dated 2 September 1994).

For projects with eligible costs between 2 and 20 million ATS the aid may be given in the form of interest subsidies to loans awarded by *Kommunalkredit AG* at commercial terms. The combined interest subsidies from federal and regional resources shall lead to a fixed interest rate of at most 6% p.a. In all cases of application exceeding the de minimis threshold of ECU 50.000 per enterprise during a three years period, the same maximum intensities as for projects with eligible costs up to 2 million ATS have to be observed (see preceding paragraph and point 4.3. of the *TIP*-guidelines in the amended version dated 2 September 1994).

Aid awards are, in principle, restricted to SMEs as defined under point 2 of the *TIP*-guidelines. Big enterprises may be eligible for aid, if the project is of supraregional importance and located in an assisted area as defined in EFTA Surveillance Authority Decision 38/94/COL of 11 May 1994.

The subsidies will be funded through the budget of the *Land* Oberösterreich. The budget foreseen for this purpose is 90 million ATS for the whole duration (1994-

1996), including the remaining time-span of five years for which interest subsidises are still paid in respect to loans awarded during the duration of the scheme.

In addition, the Land Oberösterreich undertakes to submit an annual report to the EFTA Surveillance Authority in accordance with Annex IV of the the EFTA Surveillance Authority's Procedural and Substantive Rules in the Field of State Aid⁴ (see point 1.4. of the guidelines).

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

II. APPRECIATION

The *TIP*-guidelines foresee aid awards in the form of grants or 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 aid will be funded through the budget of the *Land* Oberösterreich. Thus, it 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 in the tourism sector. Its objective is to improve the quality of supply in the tourism sector. Regarding the SME component, it shall be noted that the definition of SMEs stated in the *TIP*-guidelines is in conformity with the EEA provisions on State aid, as stipulated in chapter 10 of the State Aid Guidelines. As the regional component of the scheme explicitly refers to the map of assisted areas as authorised by the EFTA Surveillance Authority Decision 38/94/COL of 11 May 1994, it is ensured that both the delimitation of the areas (*Mühlviertel*, *Innviertel* and *Steyr-Kirchdorf*) and the cumulated maximum intensities (20% net with regard to *Mühlviertel* and *Innviertel* and 15% net with regard to *Steyr-Kirchdorf*) apply in each case of application of the scheme.

Given the clearly defined scope of the aid scheme, 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

⁴ Henceforth referred to as State Aid Guidelines.

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

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 "Tourism Impulse Programme" of the Land Oberösterreich (*Tourismusimpuls-Programm - TIP*) qualify for exemption under Article 61(3)(c) of the EEA Agreement by facilitating the development of certain economic activities.

HAS ADOPTED THIS DECISION:

1. The EFTA Surveillance Authority has decided not to raise objections to the "Tourism Impulse Programme" of the Land Oberösterreich (*Tourismusimpuls-Programm - TIP*) as notified in letters dated 20 June 1994 (Ref. 94-9298 A), 14 July 1994 (Ref. 94-10825 A) and 2 September 1994 (Ref. 94-12938 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, 26 October 1994

For the EFTA Surveillance Authority



Knut Almestad

President of the EFTA Surveillance Authority



Heinz Zourek

College Member