


EFTA SURVEILLANCE AUTHORITY

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EFTA SURVEILLANCE AUTHORITY DECISION

OF 23 NOVEMBER 1994

ON ENERGY GRANTS (FINLAND)

THE EFTA SURVEILLANCE AUTHORITY,

Having regard to the Agreement on the European Economic Area¹, in particular to Protocol 26 and to Articles 61 to 63 of the Agreement,

Having regard to the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice², in particular to Article 24 and Article 1 of Protocol 3 thereof,

WHEREAS:

I. FACTS

1. Review of existing aid schemes

According to Article 1(1) of Protocol 3 to the Surveillance and Court Agreement, the EFTA Surveillance Authority shall, in cooperation with the EFTA States, keep under constant review all systems of aid existing in those States, with a view to ensuring their compatibility with Article 61 of the EEA Agreement. It is designed to enable the EFTA Surveillance Authority to secure the abolition or adaptation of existing aid that is incompatible with the functioning of the EEA Agreement.

By letter dated 4 January 1994 (ref. 94-467D) the EFTA Surveillance Authority requested the Finnish Government to submit information on all existing State aid. By letters dated 18 February (ref. 94-3057A) and 3 March 1994 (ref. 94-3941A), the Finnish authorities submitted their notifications on existing State aid, including information on the energy grants (Case No. 93-137).

¹ Hereinafter referred to as the EEA Agreement.

² Hereinafter referred to as the Surveillance and Court Agreement.

After having carried out a preliminary assessment of the scheme on energy grants, further information and clarifications, in particular as regards the purpose for which aid is granted under the scheme, were needed. For this reason the scheme was discussed with the national authorities during the first round discussion on Finnish existing aid in Helsinki in May 1994. A detailed discussion on the scheme took place in Helsinki on 10 October 1994.

2. Relevant provisions of the scheme

The act on energy grants³ lays down several objectives which are being pursued by the scheme. The scheme has, therefore, several purposes for which aid can be granted. Eligible for aid are the following:

- investments and equipment improving the efficiency of energy generation and use
- investments in increasingly safe or more diversified supply of energy
- investments to reduce environmental hazards associated with energy generation and use
- investments and equipment involving new energy technologies
- investments promoting the use of indigenous energy sources
- investments promoting the use of natural gas and other gaseous fuels
- studies concerning energy technology, in so far as they serve the energy supply, environmental protection or the transfer of energy technologies.

Aid is given to organisations such as municipalities and federations of municipalities. Typically they have received aid, *inter alia*, for setting up district heating plants.

Aid is granted also to enterprises. In this context privately owned enterprises and those run and owned by municipalities are treated on equal terms. Aid to enterprises have covered, among other things, costs relating to projects establishing power stations.

The eligible costs, as set by the Ministry of Trade and Industry⁴, can cover investments, equipment and studies relating to energy technologies. Investments may involve the creation or alteration of buildings, plants, facilities, processes, software or individual machines. An equipment may be a short-lived and usually low-priced item or material not covered by investments, as defined above. Studies may involve e.g. the evaluation of the technological level and environmental impact of investments and equipment acquisitions.

The maximum aid intensity for energy investments is 30 % of the eligible costs, except for investments in which new technologies are involved whereby the maximum intensity is 50 %. For energy equipment the aid can go up to 50 % of the

³ Laki energia-avustuksista 1607/91, as amended by 1051/92 and 1086/93.

⁴ Kauppa- ja teollisuusministeriön päätös energia-avustusten ehdoista, No. 746, 10.8.1994.

eligible costs. For studies relating to energy technology, the maximum aid intensity is up to 80% of the eligible costs. However, only projects regarded as of exceptional importance within the national energy policy can be assisted in excess of 50 % of the eligible costs.

II. APPRECIATION

Within the framework of the scheme on energy grants aid is given to several different purposes. Aid is given, *inter alia*, to energy conservation, renewable energy and non-renewable energy. Aid is also granted in order to reduce environmental hazards and to promote the introduction and use of new energy technologies. As aid is being awarded to municipalities or federations of municipalities, not all aid granted under the scheme constitutes State aid in the meaning of Article 61(1) of the EEA Agreement.

The EFTA Surveillance Authority treats aid for energy conservation and aid for renewable energy, as far as investment is concerned, like aid for environmental purposes⁵. Aid for non-renewable energy must be assessed according to the investment aid rules, i.e. under the regional aid rules⁶ and the rules on aid to SMEs⁷. Aid to pilot or demonstration plants, if any, should be examined according to the rules on aid for R&D.

The purposes for which aid is given under the scheme are formulated in the legislation in a very general manner. Some of the purposes may involve both energy conservation and renewable energy. To the extent that aid is awarded to enterprises for the purposes of energy conservation, renewable energy, non-renewable energy and R&D, the aid intensities, ranging from 30 % to 50 % for investments and equipment acquisitions as stated in part I.2 of this decision, are too high. Only in cases which fall under the environmental aid rules can aid, up to the level of 30 % gross of the eligible costs, be given to projects which result in reaching a significantly higher level of environmental protection than provided in mandatory standards or when no mandatory standards exist. For projects involving the adaptation to new mandatory standards aid can be granted only up to 15 % gross of the eligible costs.

The R&D aid rules stipulate that aid can be granted to development up to 25 % of the eligible costs. Aid given to projects easing the introduction of new energy technologies on the market, involving potentially pilot or demonstration plants, can, therefore, not go beyond the limit of 25 %. This is contrary to the existing rules of the scheme which allow aid up to 50 % of the eligible costs.

As regards aid for non-renewable energy, this must be assessed under other investment aid rules. The aid intensities stipulated in the present legislation on energy grants are higher than those allowed for SMEs outside the assisted areas, namely 15 % gross for small companies and 7,5 % for medium-sized enterprises. The same applies to aid

⁵ See chapter 15 of the Procedural and Substantive Rules in the Field of State Aid, adopted by the Surveillance Authority on 19 January 1994, hereinafter referred to as the State Aid Guidelines.

⁶ See chapter 28 of the State Aid Guidelines.

⁷ See chapter 10 of the State Aid Guidelines.

granted in Article 61(3)(c) areas whereby aid cannot exceed the aid ceiling to be authorised by the EFTA Surveillance Authority. Aid for projects carried out in such areas can go up only to the applicable maximum aid intensities foreseen for each development area.⁸

HAS ADOPTED THIS DECISION:

1. The EFTA Surveillance Authority proposes to Finland, on the basis of Article 1(1) of Protocol 3 to the Surveillance and Court Agreement, the following appropriate measures with regard to the scheme on energy grants (93-137):

- (i) To the extent that aid is given to enterprises for purposes of energy conservation, renewable energy, R&D and to non-renewable energy, the aid award criteria shall be amended in such a way that aid for these purposes can clearly be identified and separated from other types of aid granted under the scheme.
- (ii) The aid award criteria shall be amended in such a way that the conditions on which aid is given to energy conservation, insofar as it aims at and achieves significant benefits for the environment and the aid is necessary, having regard to the cost savings obtained by the investor, take account of the rules on environmental protection, as laid down in Annex I to this decision.
- (iii) The aid award criteria shall be amended in such a way that the conditions on which aid is given to renewable energy, insofar as aid for investment is concerned, take account of the rules on environmental protection, as laid down in Annex I to this decision.
- (iv) The aid award criteria shall be amended in such a way that the conditions on which aid is given to research and development comply with the policy of the EFTA Surveillance Authority on maximum aid intensities for the different types of R&D activities as defined below:

As a general rule the level of aid for basic industrial research should not exceed 50% of the gross costs of the project. As the activity being aided gets nearer to the market place aid levels should be progressively lower. Thus the EFTA Surveillance Authority generally accepts 25% as the maximum aid intensity for applied research and development. If relevant these ceilings can be enhanced by a 10% top-up for small and medium-sized enterprises (SMEs), provided that the enhancement is restricted to SMEs and the legislation defines SMEs in a manner which complies with the SME definition of the State Aid Guidelines (Chapter 10).

⁸ Following a notification submitted by the Finnish authorities by letter dated 31 October 1994 (ref. 94-16114A), the EFTA Surveillance Authority shall decide upon the areas eligible for regional aid in Finland and the aid ceilings applicable therein.

Basic industrial research is defined as original theoretical or experimental work whose objective is to achieve new or better understanding of the laws of science and engineering as they might apply to an industrial sector or the activities of a particular enterprise.

Applied research. The EFTA Surveillance Authority considers that the former covers investigation or experimental work based on the results of basic industrial research to acquire new knowledge to facilitate the attainment of specific practical objectives such as the creation of new products, production processes or services. It could normally be said to end with the creation of a first prototype.

Development is considered to cover work based on applied research aimed at establishing new or substantially improved products, production processes or services, normally including pilot and demonstration projects. Any aid given for commercial exploitation or industrial application of production processes fall outside the scope of the R&D aid rules.

- (v) The aid award criteria shall be amended in such a way that the conditions on which aid is given to non-renewable energy comply with the following maximum aid intensities:

In assisted areas qualifying the exemption for regional aid laid down in Article (61)(3)(c) of the EEA Agreement, investment for non-renewable energy can be aided up to the aid ceilings to be decided by the Authority. In such areas SMEs can be granted 10 percentage points higher aid, insofar as the aid does not exceed 30% net grant equivalent.


Investment aid for non-renewable energy is allowed outside assisted areas up to levels of 15 % gross for small companies and 7,5 % gross for medium-sized enterprises.

- (vi) As the scheme may be applied in various industrial sectors, the Finnish authorities shall take account of the rules on aid to sensitive sectors (currently synthetic fibres, motor vehicles and steel). Therefore, they should commit themselves to comply with the specific notification obligations with regard to these sectors, as laid down in Part V of the State Aid Guidelines and in the Act referred to in point 1 a of Annex XV to the EEA Agreement establishing Community rules for aid to the steel industry (Commission Decision No. 3855/91/ECSC). Alternatively, these sectors can be excluded from the application of the scheme.
- (vii) The aid granting authorities shall, when awarding aid, take account of the conditions in points (i) to (vi) above as soon as possible and not later than 1 March 1995.
- (viii) The legislation governing the energy grants shall be amended in view of the State aid rules referred to above as soon as possible and not later than 1 January 1996.

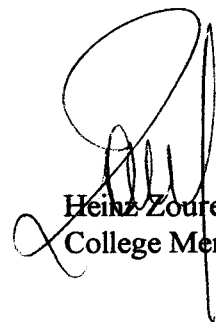
- (ix) The Finnish authorities shall inform the EFTA Surveillance Authority of the amendments to be made to the legislation pertaining to the scheme before these are put into effect by means of submitting a notification on the whole scope of the scheme.
- (x) The Finnish authorities shall signify their agreement to the above proposal or otherwise submit their observations by 20 December 1994.

Done at Brussels, 23 November 1994

For the EFTA Surveillance Authority



Knut Almestad
President



Heinz Zourek
College Member