


EFTA SURVEILLANCE AUTHORITY

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EFTA SURVEILLANCE AUTHORITY DECISION

OF 23 NOVEMBER 1994

TO PROPOSE APPROPRIATE MEASURES TO SWEDEN
WITH REGARD TO THE AID SCHEME
'DEVELOPMENT CAPITAL' (Aid No. 93-132)

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(1) of Protocol 3 thereof,

WHEREAS:

I. FACTS

1. Introduction

Article 1(1) of Protocol 3 to the Surveillance and Court Agreement provides that "the EFTA Surveillance Authority shall, in cooperation with the EFTA States, keep under constant review all systems of aid existing in those States. It shall propose to the latter any appropriate measures required by the progressive development or by the functioning of the EEA Agreement."

By letter of 4 January 1994 the EFTA Surveillance Authority requested the submission of information on existing State aid in Sweden, i.a. by reference to the above provision of Protocol 3 to the Surveillance and Court Agreement. By letter of 2 February 1994 (Doc. no. 94-3732A) the Swedish authorities transmitted their notifications of existing State aid. These included a notification of the scheme 'Development Capital' (Aid No. 93-132).

¹ Hereinafter referred to as the EEA Agreement.

² Hereinafter referred to as the Surveillance and Court Agreement.

An initial examination of the scheme indicated that the legal provisions were not altogether compatible with the relevant State aid rules as laid down in the Surveillance Authority's Procedural and Substantive Rules in the Field of State Aid³. For this reason the matter was taken up at a meeting between officials of the Swedish Ministry of Industry and Commerce and the Surveillance Authority in Stockholm on 20 May 1994 and again at a meeting in Stockholm on 12 October 1994.

2. Relevant provisions of the scheme

The legal foundation for the scheme is the Government ordinance SFS 1994:1100 on State financing through regional development companies ('Förordning om statlig finansiering genom regionala utvecklingsbolag').

The overall objective of the regional development companies, as defined in Art. 1 of the ordinance, is to provide financing to promote the establishment and development of small and medium-sized enterprises. According to Art. 4 financing shall predominantly be directed towards enterprises which have no more than 200 employees and which are not owned by companies having more than 200 employees.

The regional development companies can offer five different forms of financing, one of which is the so-called development capital. Specific provisions on development capital are found in Art. 23 - 25 of the ordinance.

Development capital can be awarded to support development and marketing of new products or for other projects with the aim of developing the company. Development capital is awarded in the form of conditional repayment loans or grants subject to conditional repayment provisions. [Art. 23].

For conditional loans the repayment obligation can be fully or partly waived, if the recipient demonstrates that the results of the project cannot be put to commercial use. [Art. 24, para. 1].

Grants are awarded under the condition that the recipient is obliged to pay a compensation to the mother-company in the form of a one-off payment or as royalty or other running fee. Further conditions are decided in view of the risks involved and expected economic benefit of the project. [Art. 24]

The scheme may finance up to 50%, or if there are special reasons up to 65% of the project costs. No collateral is required for development capital.[Art. 25]

Art. 7 provides that financing under the ordinance can be combined with State financing from other sources and that four out of the five different aid forms under the ordinance, including development capital, can be combined with each other.

³Procedural and Substantive Rules in the Field of State Aid. Guidelines on the application and interpretation of Articles 61 and 62 of the EEA Agreement and Article 1 of Protocol 3 to the Surveillance and Court Agreement (OJ No L 231, 3.9.94). Hereinafter referred to as the State Aid Guidelines.

II. APPRECIATION

Objectives of the aid scheme

It is not entirely clear what kinds of activities can be supported under the scheme. Product development is clearly a major objective, which implies that the rules on aid for research and development (R&D), as laid down in Chapter 14 of the State Aid Guidelines, are applicable. But the scheme can also support activities falling outside the scope of the R&D rules, in particular "marketing of new products or other projects with the aim of developing the company" [Art. 23]. The nature of such eligible marketing activities or other development projects is however not defined in the ordinance. To the extent that they constitute outside consultancy help, training and dissemination of knowledge the provisions of section 10.4.3 (on so-called soft aid) of the State Aid Guidelines may be applicable. On the other hand it shall be recalled that ongoing marketing and export operations do not qualify for aid at all under the State aid rules. Thus, as the scheme can support two different types of activities, which are subject to different State aid rules, it is appropriate if not necessary that the ordinance makes a clear distinction between the two and stipulates differentiated aid ceilings.

Aid for R&D

With regard to aid for R&D, it is clear that the scheme primarily supports development and applied research, but not basic industrial research. According to Chapter 14 of the State Aid Guidelines the level of aid for basic industrial research should, as a general rule, 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 does not accept aid levels above 25% for applied research and development. If aid is awarded not in the form of grants but of conditional repayment credits, which can be written off only if the project is proved to be a failure, such financing may cover up to 40% of project costs for applied research and development. The above ceilings can then be increased by 10 percentage points, when the aid is explicitly restricted to small and medium-sized enterprises (SMEs).

According to Art. 25 of the ordinance the aid scheme may finance up to 50%, or if there are special reasons, up to 65% of the project costs. The latter ceiling is clearly inconsistent with the above rules on aid for R&D. A ceiling of 50% for applied research or development may only be accepted, provided that the aid is awarded in the form of credits subject to sufficiently stringent repayment conditions and that the aid is explicitly restricted to SMEs. Neither of these two conditions are adequately met by the present scheme. Although Art. 4 of the ordinance stipulates that financing shall predominantly be directed to SMEs, bigger companies are not excluded from support under the scheme. As concerns the conditional repayment loans and grants the repayment conditions for these instruments, especially the grants, are not spelled out strictly enough and in sufficient detail in order that they may qualify for the higher ceiling of 40% (50% for SMEs).

One of the prerequisites for the Surveillance Authority to be able to assess aid for R&D and ensure that it respects the rules for such aid is that the scheme clearly identifies the different categories of costs, which the aid is designed to reduce. However, the ordinance provides no definition of the R&D expenditures, which shall be eligible for support under the scheme.

Soft aid for consultancy help, training and dissemination of knowledge

Soft aid measures have certain general features which justify favourable treatment compared to aid for investment, in particular because such aid measures are targeted at the special difficulties frequently faced by SMEs.

As indicated in point 10.4.3. of the State Aid Guidelines, for help and advice by outside consultants or training provided to new or established small or medium-sized businesses and their staff, in management, financial matters, new technology, pollution control, protection of intellectual property rights or similar fields or in assessing the feasibility of new ventures, aid up to 50 per cent gross is generally accepted. However, each scheme is judged on its own merits with particular reference to the distance to the marketplace, any cash limits on aid per firm, possibilities of cumulation, and other relevant factors. Aid for other justified means of SME promotion such as encouraging co-operation may be granted up to the same limit.

It must therefore be ensured that soft aid under the scheme is confined to SMEs defined in conformity with the definition provided in section 10.2 of the State Aid Guidelines. It must also be ensured that the cost categories under the notion of soft aid are of a one-off nature and in line with the general principles indicated in the preceding paragraph. Aid to services provided on a routine basis or which are bought because they are compulsory are considered to be operating aid, to which the Authority has reservations in principle. Export aid, which is not of a one-off character, must also be excluded.

To the extent that the scheme shall cover soft aid to finance business services for SMEs, an aid intensity of 50% can be accepted, but such activities need to be defined and distinguished from the R&D activities financed by the scheme. Eligible costs must be defined in conformity with the above principles and in such a way that ongoing marketing and export operations are excluded from aid.

Art. 25 of the ordinance provides that the scheme may finance up to 50% or, when there are special reasons, up to 65% of project costs. Given that the ordinance gives no indication of what would qualify as 'special reasons' in this context and considering that those provisions of section 10.4.3 of the State Aid Guidelines, which in certain exceptional circumstances allow for aid of more than 50%, do not appear to be relevant in this case, this derogation in Art. 25 of the ordinance is deemed to be incompatible with the State aid rules.

Control of cumulation of aid from different sources

According to Art. 7 financing under the ordinance can be combined with State financing from other sources. However, no provisions are found in the ordinance which oblige the aid granting bodies to take account of aid awarded under other aid schemes and thus to ensure that the stipulated ceilings on aid intensities are not exceeded by such cumulation of aid from different sources.

HAS ADOPTED THIS DECISION:

1. The EFTA Surveillance Authority proposes to Sweden, on the basis of Article 1(1) of Protocol 3 to the Surveillance and Court Agreement, the following appropriate measures with regard to the aid scheme 'Development Capital' (93-132):

(i) The provisions of the ordinance relating to development capital [Art. 23 - 25] shall be adjusted in such a way that the objectives, eligible activities and eligible costs emerge clearly and that a distinction is made between development (and, if relevant, applied research) on the one hand and marketing and other eligible activities on the other hand.

(ii) As concerns development or other activities covered by the rules on aid for R&D the scheme shall be adjusted to comply with the following policy of the EFTA Surveillance Authority on maximum aid intensities for R&D activities:

The EFTA Surveillance Authority generally accepts 25% as the maximum aid intensity for applied research and development. If aid is given not in the form of grants but of conditional repayment credits, which can be written off only if the project is proved to be a failure, such credits may cover up to 40% of eligible costs. 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 that the scheme defines SMEs in a manner which is compatible with the SME definition of the State Aid Guidelines (Chapter 10).


(iii) A definition of R&D costs eligible for support under the scheme shall be introduced into the ordinance. It shall be within the limits determined by the following definition in Section 14.5 of the State Aid Guidelines:

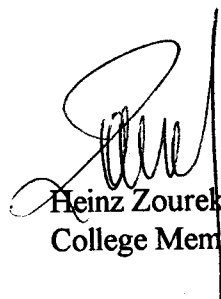
- personnel costs (researchers, technicians, other supporting staff) calculated as a sum of the total amount needed to carry out the project;
- other running costs calculated in the same way (costs of materials, supplies, etc.);
- instruments and equipment, land and buildings. These costs may be taken into consideration only in so far as the assets are used exclusively for R&D. Where necessary, the costs must be assessed *pro rata* between these and other projects or activities for which the assets may be used;
- consultancy and equivalent services including bought-in research, technical knowledge, patents, etc.;
- additional overhead costs incurred directly as a result of the R&D project or programme being promoted.

- (iv) As concerns support for marketing of new products or other support under the scheme, which falls outside the scope of the rules on aid for R&D, the eligible activity and the respective cost categories shall be more clearly defined and in such a way that only such cost categories can be supported which meet one-off requirements for transfer of knowledge, information, advice or other business support. Ongoing marketing and export operations and other operating expenses shall be excluded from support under the scheme. The aid intensity shall not exceed 50%. This type of aid shall be restricted to SMEs.
- (v) Sweden shall ensure that the aid granting authorities are obliged, when deciding on aid under the scheme, to take account of aid from other sources and to ensure that when combined with other aid the cumulated aid amounts will not exceed the ceilings of the present scheme.
- (vi) The legislation governing the scheme shall be adjusted in view of the State aid rules referred to above as soon as possible and not later than 31 March 1995.
- (vii) The aid granting authorities shall, when awarding aid, take account of the conditions in points (i) to (iv) above as soon as possible, and as from 1 January 1995 at the latest.
- (viii) The Swedish authorities shall inform the EFTA Surveillance Authority of the adjustments to be made to the legislation and to the application of the scheme before these are put into effect.
- (ix) Sweden shall signify its agreement to the above proposal or otherwise submit its observations by 20 December 1994.

Done at Brussels, 23 November 1994

For the EFTA Surveillance Authority


Knut Almestad
President


Heinz Zourek
College Member