


EFTA SURVEILLANCE AUTHORITY

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Dec. No. 216/94/COL

EFTA SURVEILLANCE AUTHORITY DECISION

OF 1 DECEMBER 1994

TO PROPOSE APPROPRIATE MEASURES TO SWEDEN
WITH REGARD TO THE AID SCHEMES

'LOCALISATION GRANT' (Aid No. 93-023),
'LOCALISATION LOAN' (Aid No. 93-024),
'DEVELOPMENT GRANT' (Aid No. 93-025)
AND
'LOANS TO PRIVATE INVESTMENT COMPANIES' (93-027)

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 - procedural situation

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."

¹ Hereinafter referred to as the EEA Agreement.

² Hereinafter referred to as the Surveillance and Court Agreement.

By letter of 4 January 1994 (1994/ 470D) 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 notifications of the schemes 'Localisation grant' (Aid No. 93-023), 'Localisation loan' (Aid No. 93-024), 'Development grant' (Aid No. 93-025) and 'Loans to private investment companies' (93-027).

By letter of 10 January 1994 (1994/674D) the Surveillance Authority requested submission of statistical and other information necessary for the application of the rules on regional aid. The Swedish authorities responded to this request by letter of 10 February 1994.

An initial examination of the aid schemes under consideration indicated that the legal provisions were not altogether compatible with the rules on regional aid and other 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 on review of existing aid between officials of the Swedish Ministry of Labour and the Surveillance Authority in Stockholm on 19 May 1994 and at a meeting in Stockholm on 26 May 1994 between the minister responsible for regional policy on the one hand and the college member responsible for State aid and the director of the State Aid and Monopolies Directorate on the other. The matter was further discussed at meetings in Brussels on 30 August and 30 September 1994, as well as at a meeting in Stockholm on 12 October 1994.

On 13 June 1994 the Swedish authorities notified to the Surveillance Authority their plans to amend 6 regional aid schemes, including all the schemes under consideration except for the scheme 'Loans to private investment companies' (93-027).

For the schemes under consideration the proposed amendments involved mostly changes in budgets and some small changes in the aid awarding criteria. The Authority explained, however, that in general assessment of planned amendments to existing State aid schemes, which had not been previously authorised or reviewed by the Authority, would inevitably involve assessment of all aspects of the relevant schemes, in order to ensure their compatibility with the EEA Agreement, and not only those aspects affected by the amendments. The Authority would therefore i.a. assess the geographical coverage of the schemes, the aid intensities applied in each case and the discretion left to the national authorities to deviate from the main rules on these and other aspects of the schemes.

On 7 July 1994 the Swedish authorities notified their plans, pursuant to the Government Bill to Parliament 'Proposition 1993/94:140', to amend the existing regional aid areas. This notification included a draft ordinance on amendment of the

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.

ordinance (1990:642) on regional aid to enterprises ('Förordning om ändring i förordningen (1990:642) om regionalpolitiskt företagsstöd').

By letter of 8 July 1994 (Doc. No. 94-9894D) additional information was requested on these notifications, i.a. statistical and other information which would explain the gravity of regional problems in the different aid areas and provide adequate justification for the geographical coverage of the aid schemes, the relatively high aid intensities which they allow in many regions, the possibility to allow even higher levels of aid in special cases and to authorize aid outside the designated aid areas.

The Swedish authorities responded to the above request by telefax letter dated 5 August 1994, received and registered by the Surveillance Authority on 8 August 1994 (Doc. No. 94-11914A). In addition to addressing the questions posed in the Authority's letter of 8 July 1994, the Swedish authorities briefly explain their negotiations on regional aid with the EU Commission, in the context of EU membership negotiations and propose a new map for assisted areas based on the expected conclusion of their negotiations with the EU Commission. According to the proposal the designation of this map shall partly be based on a criterion of low population density.

By letter of 6 September 1994 (Doc. No. 94-13303D) the Surveillance Authority has asked for additional information relating to all notified proposals for amendments of the Swedish regional aid schemes. In this letter the Surveillance Authority expresses its understanding, based on clarification given by the Swedish authorities at the above mentioned meeting in Brussels on 30 August 1994, that the notification on amendments of Swedish regional aid areas received on 7 July 1994 concerns only amendments of the aid areas applicable to schemes falling under the government ordinance on regional aid to enterprises (SFS 1990:642) and shall not be regarded as a proposal for an overall map applicable to all regional aid schemes in Sweden. Consequently, this notification constituted a modification of the notifications of 13 June 1994 on amendments of the existing regional aid schemes. The Surveillance Authority would therefore assess the changes of aid areas as proposed in the notification of 7 July 1994 jointly with other amendments of the aid schemes.

In the letter of 6 September 1994 the Surveillance Authority also expresses as its understanding that the proposal, contained in the Swedish authorities' letter of 5 August 1994, for the designation of regional aid areas on the basis of the new criterion of low population density, constitutes a proposal for an overall map which will apply to all regional aid schemes, although not replacing the maps for individual aid schemes, which fall within this new overall map. However, the Surveillance Authority found this proposal incomplete and asked for the necessary details of the proposed new map. In the same letter the Authority also asks for additional information relating to the proposed amendments of the existing regional aid schemes. In particular it was explained that whereas the aid ceilings of the existing regional aid schemes in Sweden were expressed in gross terms, i.e. without taking account of tax effects, the rules on regional aid, as laid down in the State Aid Guidelines, stipulate that ceilings of aid intensity shall be assessed in terms of net grant equivalents (NGEs). The Swedish authorities were therefore requested to provide calculations of the aid ceilings in the existing regional aid schemes in NGE terms.

The Authority's letter of 6 September 1994 furthermore request additional information relating to the provisions of the aid schemes which allow, in certain situations, aid to be awarded with aid intensity above the ceilings stipulated as the main rules and for the possibility to award aid to enterprises located in areas outside the designated aid areas.

By letter of 26 September 1994 the Swedish authorities notified amendments of Swedish structural aid areas and aid intensity in parts of Aid area 2. In the Authority's letter of 28 September 1994 (94-14467D) acknowledging the receipt of this notification, it was stated that the notification constitutes an amendment to the notification of 7 July 1994 (Notification of amendments of Swedish regional aid areas), and would be assessed jointly with that notification, together with other proposed amendments to the existing regional aid schemes, as notified by the Swedish authorities' letter of 13 June 1994. It was also pointed out that by the letter of 6 September 1994, referred to above, the Authority had requested additional information on the proposed amendments. The Surveillance Authority would define its position on the proposals within 2 months starting from the date on which complete notifications would be received.

The Authority's letter of 6 September 1994, referred to above, requested the additional information within 20 working days of the date on which the Swedish authorities had received the letter. However, the Authority has yet received no response to this letter and has therefore been unable to define its position on the proposals.

2. Relevant provisions of the aid schemes

The legal provisions defining the aid awarding criteria for the schemes are laid down in the Government ordinance SFS 1990:642 on regional aid to enterprises ('Förordning om regionalpolitiskt företagsstöd') and in two ordinances amending that ordinance, namely SFS 1991:18 and SFS 1992:662.⁴

While Art. 16 and 18 lay down the principles for designating the geographical areas eligible for aid by [Art. 16] defining two different aid areas (Aid area 1 and 2) and [Art. 18] authorizing the Government under certain conditions to designate structural aid areas, Art. 19 contains a derogation from these principles. It authorizes the Government, in a situation when in a particular locality outside the designated aid areas considerable employment difficulties are foreseen or have arisen, as a consequence of industrial closures or similar reasons, to award localisation aid and development grants within that locality. By reference to Art. 2 of the ordinance this authorization is restricted to certain types of activities including however i.a. all industrial activities ('industriell eller industriliknande verksamhet').

The first three paragraphs of Art. 23 lay down general rules on aid ceilings for the 'Localisation grant'. On the other hand the fourth paragraph of the same article

⁴References to the provisions of the ordinance (SFS 1990:642) shall henceforth be understood to mean the provisions of the ordinance (SFS 1990:642) as amended by the ordinances SFS 1991:18 and SFS 1992:662.

constitutes a derogation from the main rules. It provides that if there are special reasons the Government or the National Board for Industrial and Technical Development (NUTEK) can award localisation grants above the ceilings stipulated in Art. 23, up to a maximum of 50% of the investment costs.

Art. 2 lists 10 sectors of economic activity which in principle may be eligible for regional aid under the ordinance, and Art. 3 - 7 contain further provisions on some of these. In the specific provisions on the individual aid schemes (forms of aid) under the ordinance the sectoral coverage of the ordinance is then to a certain extent narrowed down by excluding one or more of the 10 sectors from individual aid schemes. Nevertheless, all the aid schemes under consideration are applicable to a wide spectrum of economic activity, including all industrial (manufacturing) activity ('industriell eller industriliknande verksamhet').

Art. 7 provides that aid to investment companies can only be awarded by the government in the form of loans. The investment company can, with the help of the loan, only participate in activities which are eligible for regional aid under the ordinance SFS 1990:642 and which are mainly carried on within the designated aid areas. The terms of the loan are determined by the government in each case.

II. APPRECIATION

Regional aid outside designated aid areas

Article 61(3) of the EEA Agreement provides two distinct possibilities where the EFTA Surveillance Authority may, despite the general prohibition of State aid in Article 61(1), consider regional aid compatible with the functioning of the Agreement. These are Articles 61(3)(a) and (c) which apply to different degrees of regional disadvantage.

While the Surveillance Authority's rules on regional aid, as contained in Part VI of the State Aid Guidelines, acknowledge that regional aid, when judiciously applied, can be instrumental in promoting a balanced regional development, they also underline the risk that such aid may distort competition and trade between countries to an extent incompatible with the functioning of the EEA Agreement. For these reasons the rules emphasize that in order to qualify for exemption under Article 61(3)(a) or (c) regional aid must be applied in a co-ordinated manner and observe a discipline, prohibiting regional aid in the most developed regions and permitting aid in less developed regions according to the gravity of the problems. Regional aid must not be allowed to cover the whole territory of a country. On the contrary aid schemes must clearly specify the regions eligible for aid. Regional aid should not be granted in a pin-point manner to individual regions.

As explained above Article 19 of the ordinance on regional aid to enterprises (SFS 1990:642) authorizes the Government under certain circumstances to award localisation aid and development grants to enterprises located outside the designated aid areas. Such wide discretionary powers of the national authorities are deemed to

contravene the above principles of co-ordinated application of regional aid, and therefore cannot be maintained in the present form.

Increased aid ceiling of up to 50%.

The aid ceilings foreseen as the absolute maxima in the regional aid rules are 75% for areas qualifying for regional aid under Article 61(3)(a) and 30% for Article 61(3)(c) areas (sections 28.1.4 and 28.2.5, respectively, of the State Aid Guidelines). In practice, however, the ceilings approved by the Surveillance Authority are typically significantly lower than these maxima. In both cases the rules foresee that the aid ceilings shall be assessed in net terms, after taking account of the effects of taxation, as so-called net grant equivalents (NGEs).

As explained above the fourth paragraph of Article 23 of the ordinance on regional aid to enterprises (SFS 1990:642) provides for the possibility to award aid to levels above the ceilings stipulated in the ordinance as the main rule, up to 50% of investment costs. This ceiling is however expressed in gross terms, not taking account of the effects of taxation.

The Surveillance Authority has not received a response from Sweden to its request for calculation of the scheme's aid intensities in NGE terms. Some information on this matter has been communicated informally, which the Authority however considers unsatisfactory in substance. It follows that the Authority is not in a position to make a definitive assessment of the tax effects. Nevertheless, it considers it beyond doubt that for an aid ceiling of 50% in gross terms, the corresponding net ceiling will be above, and probably rather far above, the absolute maximum ceiling of 30% NGE for Article 61(3)(c) areas. Hence, an aid ceiling of 50% gross, as is found in the fourth paragraph of Article 23 of the ordinance under consideration, could only be authorized under Article 61(3)(a) of the EEA Agreement.

On the basis of the statistical and other information submitted by Sweden, relating to the gravity of regional aid problems and the application of the rules on regional aid, and by applying the method prescribed in section 28.1 of the State Aid Guidelines, the Surveillance Authority has assessed the eligibility of Swedish regions for regional aid under Article 61(3)(a). As stipulated in section 28.1.1 of the State Aid Guidelines the geographical units chosen for this purpose shall correspond to the so-called NUTS⁵ level II regions in the European Union. The Surveillance Authority considers the Swedish counties ('län') to be too small to correspond to the NUTS level II regions. Nevertheless, even when assessed on the county basis, the region which has the lowest GDP per head, Älvsborgs län, has a GDP/PPS per capita index⁶ of 82 as compared to the EEA average of 100. For the counties which presently partly fall under the highest priority area (Aid area 1) of the aid schemes the corresponding indices, based on data for 1990-92, are: Norrbottens län = 108, Västerbottens län = 102, Jämtlands län = 103. The indices are in other words in no case equal to or lower than 75, which

⁵Nomenclature of Statistical Territorial Units in the European Communities.

⁶As explained in section 28.1 of the State Aid Guidelines the indicator used in this context is an index of GDP per capita measured in purchasing power standards (PPS), a measure based on a comparison of the prices in the EEA States for the same sample of products and services.

however is required for a region to be considered eligible for aid under Article 61(3)(a)⁷.

The result of this assessment is therefore that no region in Sweden qualifies for regional aid under Article 61(3)(a). It may therefore be concluded that the provision of the fourth paragraph of Article 23 of the ordinance on regional aid to enterprises (SFS 1990:642) is incompatible with Article 61 of the EEA Agreement.

Regional aid to sectors subject to specific notification obligations

According to the rules on regional aid, in particular section 26.4 of the State Aid Guidelines, maximum attention should be devoted to possible adverse sectoral repercussions of regional aid, in particular as concerns industries where the effects of aid on competition and trade are likely to be appreciable. It should also be recalled that due to their sensitive nature certain industrial sectors are, according to Part V of the State Aid Guidelines and the act referred to in point 1a of Annex XV to the EEA Agreement, subject to special notification obligations, requiring prior notification of individual aid awards. The sectors currently subject to special notification obligations are the synthetic fibres industry, the motor vehicle industry and the steel industry.

As explained above all the aid schemes under consideration are, according to the ordinance SFS 1990:642, applicable without restriction to a wide spectrum of economic activity, including all industrial (manufacturing) activity ('industriell eller industriliknande verksamhet'). The Surveillance Authority does not possess of information on other means, by which Sweden may ensure fulfilment of the above special notification obligations.

Loans to private investment companies

This loan facility, which is based exclusively on Art. 7 of the ordinance SFS 1990:642, is notified by Sweden as an existing aid scheme. The provisions of Art. 7 are however fairly brief and do not provide a full and transparent description of the aid involved. As an example Art. 7 states that the terms of the loans are decided by the Government in individual cases. Hence, due to the absence of clear aid awarding criteria, the Surveillance Authority is not in a position to assess the aid as an aid scheme and is therefore obliged to require prior notification of individual aid awards under Art. 7 of the ordinance.

⁷As the energy sector is particularly capital intensive it leads to exceptionally high GDP per capita in some municipalities. However, even when excluding the energy sector, the GDP indices are considerably above 75. As an example the index for Norbotten län, excluding the energy sector, is 98.

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 schemes 'Localisation grant' (Aid No. 93-023), 'Localisation loan' (Aid No. 93-024), 'Development grant' (Aid No. 93-025) and 'Loans to private investment companies' (93-027):

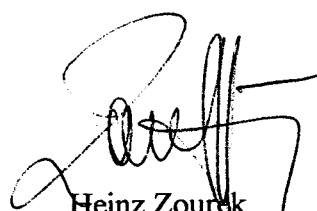
- (i) Article 19 of the ordinance SFS 1990:642 shall either be deleted or its provisions adjusted in such a way that all aid awards to enterprises located outside the designated aid areas are made subject to the prior notification obligation of Article 1(3) of Protocol 3 to the Surveillance and Court Agreement and to the approval by the competent surveillance authority as defined by Art. 62 of the EEA Agreement.
- (ii) The fourth paragraph of Article 23 of the ordinance SFS 1990:642 shall be deleted.
- (iii) It shall be ensured, either by adjustment of the ordinance SFS 1990:642 or by other means, that when applying the aid schemes the special notification obligations applicable to the synthetic fibres industry, the motor vehicle industry and the steel industries are respected.
- (iv) The provisions of Article 7 of the ordinance SFS 1990:642 shall be adjusted in such a way that the granting of loans to investment companies shall, when involving State aid, be made subject to the prior notification obligation of Article 1(3) of Protocol 3 to the Surveillance and Court Agreement and to the approval by the competent surveillance authority as defined by Art. 62 of the EEA Agreement.
- (v) The legislation governing the schemes shall be adjusted in view of the State aid rules referred to above as soon as possible and not later than 30 June 1995.
- (vi) The aid granting authority 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.
- (vii) The Swedish authorities shall inform the EFTA Surveillance Authority of the adjustments to be made to the legislation and to the application of the schemes before these are put into effect.

- (viii) Sweden shall signify its agreement to the above proposal or otherwise submit its observations by 20 December 1994. In the absence of a satisfactory response the EFTA Surveillance Authority will be obliged to open the formal investigation procedure provided for in Article 1(2) of Protocol 3 to the Surveillance and Court Agreement.

Done at Brussels, 1 December 1994

For the EFTA Surveillance Authority


Knut Almestad
President


Heinz Zourek
College Member