


EFTA SURVEILLANCE AUTHORITY

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EFTA SURVEILLANCE AUTHORITY DECISION

OF 7 DECEMBER 1994

TO PROPOSE APPROPRIATE MEASURES TO AUSTRIA
ON THE AID GRANTED UNDER THE MINING ASSISTANCE ACT
(BERGBAUFÖRDERUNGSGESETZ- EXISTING AID 93-269)

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. Introduction

Article 1(1) of Protocol 3 to the Surveillance and Court Agreement provides that the EFTA Surveillance Authority shall, in co-operation 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 dated 4 January 1994 (Ref. 94-466 D) the EFTA Surveillance Authority requested information on all existing aid measures in Austria. By letter dated 3 March 1994 (Ref. 94-3878 A) the Austrian authorities provided information on such measures, including the Mining Assistance Act (*Bergbauförderungsgesetz 1979*)³ and

¹Hereinafter referred to as the EEA Agreement.

²Hereinafter referred to as the Surveillance and Court Agreement.

³ Bundesgesetz vom 7. März 1979, BGBl. 137, zur Förderung des Aufsuchens mineralischer Rohstoffe und zur Sicherung des Bestandes von Bergbauen (*Bergbauförderungsgesetz 1979*) in der

information on aid awards thereunder. The case has been registered as existing aid scheme (case 93-269). As agreed in meetings held between officials from the State aid and Monopolies Directorate of the EFTA Surveillance Authority and Austrian authorities in Vienna on 23 and 24 June 1994, additional information on the criteria to award aid under the Mining Assistance Act, in particular the "Guidelines for aid awards under the Mining Assistance Act" (*Richtlinien für die Gewährung von Beihilfen nach dem Bergbauförderungsgesetz 1979, BGBl. Nr. 137, in der Fassung der Bundesgesetze BGBl. Nr. 636/1982, 605/1988 und 32/1994*),⁴ was submitted to the Authority by letter dated 10 August 1994, received on 29 August 1994 (Ref. 94-12665 A).

An initial examination of the Mining Assistance Act indicated that the legal provisions were not altogether compatible with the rules on State aid under the EEA Agreement. For this reason the matter was taken up at the meeting between officials from the Austrian Federal Government and the EFTA Surveillance Authority in Vienna on 8 November 1994.

2. Relevant provisions of the scheme

The Mining Assistance Act foresees awards of aid for three categories of expenditure of enterprises in the mining sector. These categories are (1) exploration activities, (2) measures to secure the continued existence of enterprises in the sector, i.e. rationalisation, investment, exploration, environment protection measures and measures to bridge technical emergency cases, and (3) expenditure for closures (§§ 2 and 3 Mining Assistance Act). Aid may be awarded in the form of grants, soft loans and interest subsidies (§ 8 Mining Assistance Act).

More precise criteria for aid awards are stipulated in §§ 5-7 of the Act and in the Mining Guidelines, which have been issued by the Federal Minister of Economic Affairs as internal instructions to the administration on the application of the Mining Assistance Act.

Maximum aid intensities are laid down only in these guidelines, whereas the Act itself lacks any such limitations. Rules on cumulation with aid from other public sources are neither contained in the law nor in the guidelines.

According to the information on existing aid provided by the Austrian authorities, the Austrian mining industry exploits lignite (two mines with a total of 800 employees), iron ore (two mines with a total of 450 employees), non-ferrous metal ores (in liquidation), ores for steel refinement (temporarily closed), other "free for mining mineral raw materials" (*bergfreie mineralische Rohstoffe*) like gypsum, anhydrite, graphite, talcum and kaolin (18 mines with a total of 750 employees), and "landowner's raw materials" (*grundeigene mineralische Rohstoffe*) like magnesite, dolomite and quartz (about 300 enterprises with a total of 5500 employees). About three quarters of

Fassung der Bundesgesetze BGBl. 1982/636, 1988/608 und 1994/32 - hereinafter referred to as Mining Assistance Act.

⁴ Hereinafter referred to as Mining Guidelines.

the annual budget (estimate 1994: 220 million ATS) go to lignite (mostly aid for closures) and iron ore mining.

II. APPRECIATION

1. Product coverage of the EEA Agreement

Article 8(3)(a) of the EEA Agreement stipulates that, unless otherwise specified, the provisions of this Agreement shall apply only to products falling within Chapters 25 - 97 of the Harmonised Commodity Description and Coding System (HS). The products referred to above fall within Chapters 25 - 27 HS and thus fall within the scope of application of the EEA Agreement with the only exception of iron ore, for which, in accordance with the first sentence of Article 2 of Protocol 14 to the EEA Agreement, the bilateral Free Trade Agreement ECSC-Austria⁵ remains applicable. Consequently, the decision at hand only covers mining activities regarding products other than iron ore, the latter being listed under item 26.01 in Annex 1 to the FTA.

2. Aid intensities

The Mining Assistance Act lacks provisions on aid intensities. The Mining Guidelines contain such provisions, but their legal status is that of an internal instruction of the competent Federal Minister to the administration of the scheme, which by no means excludes that aid awards under the Act are disbursed without the criteria set out in the Mining Guidelines being met. Consequently, the scheme at hand, consisting of the Mining Assistance Act and the Mining Guidelines, does not foresee any binding limits with regard to maximum aid intensities.

It is a general principle of State aid control that aid shall be or shall be made measurable.⁶ Schemes under which the possible aid intensity is, if only theoretically, unlimited, do not fulfil this criterion and thus do not enable the EFTA Surveillance Authority to assess the impact of aid disbursed to enterprises on competition and trade. Consequently, such schemes cannot be considered compatible with the functioning of the EEA Agreement.

However, the (non-binding) Mining Guidelines foresee maximum aid intensities, which are differentiated according to supported activities. The intensities foreseen thereunder range from 8-10% gross for certain investment up to 100% gross for closures of mines. The EFTA Surveillance Authority considers that, in a first attempt to adjust aid granted under the Mining Assistance Act to the requirements of the EEA Agreement, it suffices to ensure that the maximum intensities stipulated in the Mining Guidelines are respected in all cases of application of the Act. By doing so, it is ensured that aid disbursed under the Act is made measurable. Given the complexity of the mining sector and the relatively low cross-border trade with regard to most of the products covered

⁵ BGBl. 1972/467; hereinafter referred to as FTA.

⁶ See, with regard to regional aid, Chapter 26.2. (Transparency) of the Guidelines on the application and interpretation of Article 61 and 62 of the EEA Agreement and Article 1 of Protocol 3 to the Surveillance and Court Agreement, OJ 1994 L 231; hereinafter referred to as State Aid Guidelines.

by the Austrian Mining Assistance Act, it appears to be, at present, not necessary to assess whether the maximum aid intensities are entirely in line with Article 61 of the EEA Agreement. This does not, however, preclude an assessment and review to that effect under Article 1 (1) of Protocol 3 to the Surveillance and Court Agreement at a later stage.

3. Control of cumulation of aid from different sources

Neither the Mining Assistance Act nor the Mining Guidelines contain provisions limiting cumulation. As a consequence, aid awarded under the Act can be combined with State financing from other sources without any limitation. However, it has to be ensured that the aid granting bodies take account of aid awarded under other aid schemes or on *ad hoc* basis for purposes or projects which are already aided by the scheme at hand. Also in these cases, the Austrian authorities are to ensure that the ceilings on aid intensities stipulated in the Mining Guidelines are not exceeded by such cumulation of aid from different sources.

4. Annual reporting

For each authorised aid scheme, the EFTA Surveillance Authority requests, as a general rule, the EFTA States to furnish certain basic data in the form of annual reports in order to keep it under constant review.⁷ The data will enable the EFTA Surveillance Authority to monitor more effectively whether the implementation of the aid scheme fulfils or continues to fulfil the conditions necessary for the application of one of the exemption clauses contained in Article 61(2) and (3) of the EEA Agreement.

In order to enable the EFTA Surveillance Authority to fulfil its review obligation under Article 1(1) of Protocol 3 to the Surveillance and Court Agreement in the same manner also with regard to "pre-EEA" aid in the meaning of para. 7.2. of the State Aid Guidelines, this reporting obligation equally should apply to existing schemes.

HAS ADOPTED THIS DECISION:

1. The EFTA Surveillance Authority proposes to Austria, on the basis of Article 1(1) of Protocol 3 to the Surveillance and Court Agreement, the following appropriate measures with regard to the Mining Assistance Act (*Bundesgesetz vom 7. März 1979, BGBl. 137, zur Förderung des Aufsuchens mineralischer Rohstoffe und zur Sicherung des Bestandes von Bergbauen (Bergbauförderungsgesetz 1979) in der Fassung der Bundesgesetze BGBl. 1982/636, 1988/608 und 1994/32*):

- (i) The maximum aid intensities laid down in the Guidelines for aid awards under the Mining Assistance Act (*Richtlinien für die Gewährung von Beihilfen nach dem Bergbauförderungsgesetz 1979, BGBl. Nr. 137, in der Fassung der Bundesgesetze BGBl. Nr. 636/1982, 605/1988 und 32/1994*) shall be binding in

⁷ See Chapter 30 of the State Aid Guidelines.

all cases of application, including cases in which aid awards under the Act are cumulated with aid from other public sources.

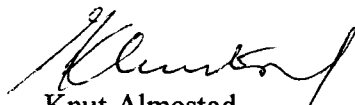
- (ii) The legislation governing aid to the mining industry shall be adjusted so as to comply with the requirements referred to under (i) as soon as possible and not later than 31 December 1995. The EFTA Surveillance Authority shall be informed of the adjustments made to the legislation by copy of the law as published in the Austrian *Bundesgesetzblatt* including a copy of the comments to the draft bill (*Regierungsvorlage* or *Initiativantrag*) and the report of the Parliamentary Committee (*Ausschußbericht*).
- (iii) The aid granting authorities shall, when awarding aid, take account of the conditions in point (i) above as from 1 January 1995 at the latest.
- (iv) 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 Mining Assistance Act to the EFTA Surveillance Authority as from calendar year 1994.


2. This Decision does not affect any aid awards under the Mining Assistance Act to iron ore mining.

3. Austria shall signify its agreement to the above proposal or otherwise submit its observations by 20 December 1994.

Done at Brussels, 7 December 1994

For the EFTA Surveillance Authority


Knut Almestad
President


Heinz Zourek
College Member