


EFTA SURVEILLANCE AUTHORITY

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EFTA SURVEILLANCE AUTHORITY DECISION

OF 7 DECEMBER 1994

TO PROPOSE APPROPRIATE MEASURES TO AUSTRIA
ON THE TOP 2 SCHEME (TOP 2-AKTION - EXISTING AID 93-240)
AND THE TOP FÜ SCHEME (TOP FÜ- AKTION - EXISTING AID 93-243)

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 TOP 2 scheme (*TOP 2-Aktion*) and TOP FÜ scheme (*TOP FÜ-Aktion*). The text of the schemes (*"TOP 2 - Merkblatt für die Vergabe von*

¹Hereinafter referred to as the EEA Agreement.

²Hereinafter referred to as the Surveillance and Court Agreement.

Kredit zur Finanzierung von immateriellen innovationsunterstützenden Investitionen durch die österreichischen Kreditinstitute (Hausbanken) und die Investkredit" and "TOP FÜ - Merkblatt für die Vergabe von Krediten zur Finanzierung von immateriellen innovationsunterstützenden Investitionen durch die österreichischen Kreditinstitute (Hausbanken) und die Investkredit")³ were also submitted to the Authority. The cases have been registered as existing aid schemes (cases 93-240 and 93-243). In the meeting 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 eligible costs of the TOP FÜ scheme (*Förderbare Kostenpositionen bei TOP FÜ*) was handed over to the Authority.

An initial examination of the TOP 2 scheme and the TOP FÜ scheme 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 schemes

2.1. TOP 2

The TOP 2 scheme is an aid scheme for intangible investment and foresees interest subsidies for loans taken up for that purpose at Austrian banks (point 1 of the guidelines). Eligible for aid are all enterprises which are members of the Austrian Economic Chamber. The scheme supports intangible investment in the context of the production of goods or projects to improve the immaterial structure and flexibility of enterprises (e.g. systems to obtain and use market data, software-development, computer-based logistic systems, industrial design, market development; see point 2.1. of the guidelines).

The aid element consists in a reduced interest rate for loans awarded consortially by the firms' bank and *Investkredit*, the bank entrusted by the Federal Ministry of Economic Affairs to implement the scheme. The interest rate is fixed at 3 percentage points - rounded to the next full 1/8% p.a. - below the refinancing costs of *Investkredit*, with the lowest possible interest rate being fixed at 4.5% p.a.. The time till maturity of the loans is a maximum of five years. The amount of the loan may range from 2,5 to 30 million ATS. At least 25% of the investment costs have to be financed from the enterprises' own sources or from external commercial financing. According to the information provided by the Austrian authorities, these conditions lead to a maximum aid intensity of 4.68% gross.

The rules on cumulation with aid from other public sources contained in the guidelines (point 4.3.) impose an information obligation on the aid recipients and exclude, in principle, the project to benefit from other federal aid.

³ Based on: Ministerratsbeschluß vom 9. Oktober 1981, BMF-Zl.090101/9-V/2/81.

2.2. TOP FÜ

The TOP FÜ scheme is an aid scheme giving incentives to enterprises in the manufacturing industry for product development and innovative projects. It foresees interest subsidies for loans taken up for that purpose at Austrian banks (point 1 of the scheme). Eligible for aid are all enterprises which are members of the section for industry and small businesses (*Sektion Industrie und Gewerbe*) of the Austrian Economic Chamber. The scheme supports investment for applied research and development (points 2.1.a) - c) of the guidelines) and marketing start-ups (point 2.1.d).

The aid element consists in a reduced interest rate for loans awarded consortially by the firms' bank and *Investkredit*, the bank entrusted by the Federal Ministry of Economic Affairs to implement the scheme. The interest rate is fixed at 3 percentage points - rounded to the next full 1/8% p.a. - below the refinancing costs of *Investkredit*, with an invariable interest rate of 4% p.a. for the first five years of the term of the loan and a lowest possible interest rate of 5% p.a. for the remaining maximum time till maturity of up to another five years. The amount of the loan may range from 2,5 to 70 million ATS. If the project is guaranteed by *Finanzierungsgarantiegesellschaft* (FGG), the interest rate will be lowered by 0.5%. At least 25% of the investment costs have to be financed from the enterprises' own sources or from external commercial financing. According to the information provided by the Austrian authorities, these conditions lead to a maximum aid intensity of 9.77% gross.

The rules on cumulation with aid from other public sources (point 4.3. of the guidelines) are identical to those of the TOP 2 scheme as described under 2.1. above.

II. APPRECIATION

1. Restriction of the schemes to assisted areas and to SMEs outside assisted areas

The TOP 2 scheme and, with regard to the cost categories referred to under point 2.1.d) of the guidelines, the TOP FÜ scheme, constitute investment schemes. As such, they should be, according to the general principles of State aid control in the EEA as reflected in 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 Agreement⁴, restricted either to small and medium-sized enterprises (SMEs) or to enterprises located in assisted areas.

In order to adjust the schemes to the requirements of the EEA Agreement in the field of State aid, their application should be restricted to assisted areas as proposed by Austria and accepted by the EFTA Surveillance Authority in its Decision 38/94/COL of 11 May 1994 and, outside assisted areas, to SME as defined in Chapter 10 of the State Aid Guidelines.

⁴ OJ 1994 L 231; hereinafter referred to as State Aid Guidelines.

2. Aid intensities and cumulation control

The maximum aid intensity under the TOP 2 scheme remains with 4.68% gross well below the generally accepted maximum aid ceilings. However, the TOP FÜ scheme exceeds, with its maximum aid intensity of 9.77% gross, the generally accepted ceiling of 7.5% gross for medium-sized enterprises outside assisted areas.⁵ Consequently, the Austrian authorities should take the appropriate measures to ensure that the ceiling of 7.5% with regard to these enterprises is not exceeded.

The Austrian authorities are further requested to ensure that in cases of cumulation of aid disbursed under the schemes at hand with aid from other public sources, the maximum aid intensities for regional aid as laid down in the EFTA Surveillance Authority Decision 38/94/COL of 11 May 1994 and, outside assisted areas, for SME aid in accordance with Chapter 10 of the State Aid Guidelines, are not exceeded.

Furthermore, in cases falling under the cost categories referred to under points 2.1.a) to 2.1.c) of the TOP FÜ guidelines, the aid intensity shall, in cases of cumulation with aid from other public sources, not exceed the generally accepted maximum aid ceiling of 25% gross for applied research and development as reflected in Chapter 14 of the State Aid Guidelines.

3. Discrimination of EEA-banks

Both the TOP 2 and the TOP FÜ scheme stipulate that the investment project as defined in the schemes would qualify for aid only if the loans for those purposes are taken up by the enterprises applying for aid at Austrian banks ("*Kredite österreichischer Kreditinstitute*" - point 1 of the text of both guidelines). This restriction is in conflict with the provisions on the freedom to provide services and free movement of capital within the territory of the Contracting Parties, in particular with Articles 36 and 40 of the EEA Agreement. Consequently, it shall be amended in a way that any discrimination on grounds of nationality between banks established in the EEA is excluded.

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.⁶ 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

⁵ See 10.4.1.(2) State Aid Guidelines.

⁶ See Chapter 30 of the State Aid Guidelines.

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 TOP 2 scheme (*TOP 2-Aktion*) and the TOP FÜ scheme (*TOP FÜ-Aktion*):

- (i) The eligibility of enterprises for awards of aid under the TOP 2 scheme (*TOP 2-Aktion*) and item 2.1.d) of the TOP FÜ scheme (*TOP FÜ-Aktion*) shall be restricted to enterprises located in assisted areas as defined in the EFTA Surveillance Authority Decision 38/94/COL of 11 May 1994 and, outside assisted areas, to SME as defined in Chapter 10 of the State Aid Guidelines.
- (ii) The maximum intensity of aid under item 2.1.d) of the TOP FÜ scheme (*TOP FÜ-Aktion*) shall not exceed, with regard to medium-sized enterprises located outside assisted areas, 7.5% gross.
- (iii) In cases of cumulation with aid from other public sources, the combined maximum aid intensity for aid awarded under the TOP 2 scheme or item 2.1.d) of the TOP FÜ scheme shall not exceed
 - for enterprises located in assisted areas: the limits stipulated in the EFTA Surveillance Authority Decision 38/94/COL of 11 May 1994 and,
 - for enterprises located outside assisted areas: the SME limits as laid down in Chapter 10 of the State Aid Guidelines.
- (iv) In cases of cumulation with aid from other public sources, the combined maximum aid intensity for aid awarded under items 2.1.a) to 2.1.c) of the TOP FÜ scheme shall not exceed 25% gross.
- (v) The Austrian authorities shall ensure that the schemes concerned shall be applied in a way that any discrimination on grounds of nationality between banks established in the EEA is excluded.
- (vi) The text of the aid schemes shall be adjusted in view of the conditions and principles referred to under points (i) - (v) above as soon as possible and not later than 31 December 1995. The EFTA Surveillance Authority shall be informed of the adjustments made.
- (vii) The aid granting authorities shall, when awarding aid, take account of the conditions and principles referred to under points (i) - (v) above as from 1 January 1995 at the latest.

(viii) 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 schemes to the EFTA Surveillance Authority as from calendar year 1994.

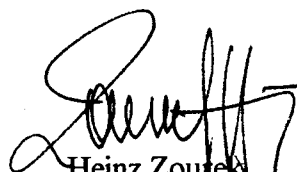
2. Austria shall signify its agreement to the above proposal or otherwise submit its observations by 20 December 1994.

3. The Austrian Government is reminded of its obligation to notify all individual awards of aid to enterprises in sensitive sectors (currently synthetic fibres, motor vehicles and steel) in accordance with the rules laid down in Chapters 22, 23 and 24 of the State Aid Guidelines and in the Act referred to under point 1a of Annex XV to the EEA Agreement (Commission Decision 3855/91/ECSC, known as Steel Aid Code).

Done at Brussels, 7 December 1994

For the EFTA Surveillance Authority


Knut Almestad,
President


Heinz Zourek
College Member