


EFTA SURVEILLANCE AUTHORITY

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EFTA SURVEILLANCE AUTHORITY DECISION

OF 21 DECEMBER 1994

ON THE EURO-ECONOMIC PROMOTION PROGRAMME OF OBERÖSTERREICH
(EURO-WIRTSCHAFTSFÖRDERUNGSPROGRAMM EWP - AUSTRIA)

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. The notification

By fax dated 3 November 1994, received by the EFTA Surveillance Authority on 4 November 1994 (Ref. 94-16302 A), the Austrian Government notified, in accordance with Article 1 (3) of Protocol 3 to the Surveillance and Court Agreement, a plan to replace both the current "SME Eurofit Programme" (*KMU-Eurofit-Programm*) and the current "Quality Programme for Tourism" (*Qualitätsprogramm für den Tourismus -QAT*) by a new programme. The notification was amended and completed by additional information submitted by fax dated 5 December 1994, received on 6 December 1994 (Ref. 94-17826 A). The currently applied SME guidelines have not been submitted as existing aid programme to the EFTA Surveillance Authority, as they

¹ Hereinafter referred to as the EEA Agreement.

² Hereinafter referred to as the Surveillance and Court Agreement.

were regarded to fulfil the conditions for de minimis aid, whereas the tourism guidelines were notified by the Austrian Government as existing aid³.

2. The contents of the proposed guidelines

The new *EWP*-guidelines foresee aid for material and immaterial investment of SMEs for the following business activities (see point 3 of the guidelines) of enterprises located or to be located in Oberösterreich:

- a) production of new or "high quality" products
- b) to introduce innovative production technologies
- c) to provide new "high quality" services
- d) to invest in quality improvements in the tourism sector
- e) consultancy help
- f) marketing, and
- g) to establish or improve combined transport facilities and individual logistic equipment.

The aid will be given in the form of one-off grants, the intensity of which is limited by one or more of the following ceilings:

- a) 50.000 ECU per enterprise within a period of three years for all enterprises regardless of their size,
- b) 7.5% gross for medium-sized enterprises located outside assisted areas,
- c) 15% gross for small enterprises located outside assisted areas,
- d) 15% and 20% gross for SMEs in assisted areas as defined in EFTA Surveillance Authority Decision 38/94/COL of 11 May 1994 (see point 4.2. of the guidelines).

Without prejudice to the maximum intensities referred to above under b) to d), grants to enterprises are limited to an additional ceiling of ECU 50.000 per calendar year.

As a general rule, at least 30% of the investment would have to be financed from the enterprises' own resources or from external commercial financing. In cases of cumulation with aid from other public sources, the part of investment costs, which have already been taken into account for aid from other sources, will be deducted from the eligible costs under the aid scheme at hand. The remaining eligible costs may not exceed 5 million ATS.

Aid awards to enterprises in the synthetic fibres, motor vehicle, steel and transport industries will be subject to individual scrutiny and assent by the EFTA Surveillance Authority (see point 2.6 of the guidelines).

In addition, the Land Oberösterreich undertakes to submit an annual report in accordance with Annex IV of the Guidelines on the application and interpretation of

³ See letter dated 3 March 1994, received on 4 March 1994; Ref. 94-3878 A; code number OÖ 6 of the submitted register of existing aid - registered as case 93-285 in SACH.

Article 61 and 62 of the EEA Agreement and Article 1 of Protocol 3 to the Surveillance and Court Agreement⁴ to the EFTA Surveillance Authority.

The guidelines shall apply until 31 December 1998 (see point 9 of the guidelines).

The budget foreseen for this purpose is 240 million ATS for the whole duration (1994-1998 - 60 million per year).

II. APPRECIATION

The *EWP*-guidelines foresee aid awards in the form of one-off grants in favour of certain undertakings. The measures are granted on a discretionary basis by decision of the local government of Oberösterreich. By relieving the undertakings concerned of some of their costs, which they normally would have to bear themselves, such aid gives financial advantages and improves their competitive situation. Since the production of the favoured undertakings may be in competition with that of undertakings in other States participating in the EEA, such aid is liable to distort intra-EEA trade. The interest subsidies are funded through the budget of the *Land* Oberösterreich. Thus, the aid will be granted by the State through State resources.⁵ For those reasons, the foreseen measures constitute aid in the meaning of Article 61 (1) of the EEA Agreement.

Consequently, the EFTA Surveillance Authority is obliged to assess whether any of the exemption clauses under Article 61 (2) and (3) are applicable in order to exempt the aid measure from the general prohibition of aid under Article 61 (1).

The scheme foresees investment aid for clearly defined purposes. Its objective is to help small and medium-sized enterprises to invest. The definition of SMEs stated in the guidelines is compatible with the EEA provisions on State aid, as stated in chapter 10 of the State Aid Guidelines, adopted by the EFTA Surveillance Authority on 19 January 1994. As the regional component (higher aid intensities in certain areas) of the scheme refers explicitly to the map of assisted areas as authorised by the EFTA Surveillance Authority Decision 38/94/COL of 11 May 1994, it may be concluded that both the delimitation of the areas and the cumulated maximum intensities apply in each case of application of the scheme.

Given the clearly defined scope of the aid scheme (see point 3 of the guidelines and the summary under point 2 of the Facts above) and its restriction to SMEs or *de minimis* aid in accordance with the relevant definition in chapter 12 of the State Aid Guidelines, it may be held that the measures foreseen under the scheme in question promote objectives which are covered by the exemption clause under Article 61(3)(c) of the EEA Agreement. Furthermore, the foreseen maximum aid intensities, which remain within the limits stipulated, regarding SMEs located outside assisted areas, in the State Aid Guidelines, and, regarding SMEs located in assisted areas, in the EFTA

⁴ Henceforth referred to as State Aid Guidelines.

⁵ See ECJ, 14 October 1987, Case 248/84, *Germany/Commission* (1987) ECR 4013 with regard to Article 92 of the EC Treaty.

Surveillance Authority Decision 38/94/COL of 11 May 1994, ensure that the aid does not adversely affect trading conditions to an extent contrary to the common interest.

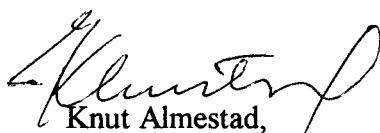
Therefore it is concluded that the guidelines for the "Euro-Economic Promotion Programme" of Oberösterreich (*Euro-Wirtschaftsförderungsprogramm - EWP*) qualify for exemption under Article 61(3)(c) of the EEA Agreement by facilitating the development of certain economic activities (with regard to the promotion of SMEs) and economic areas (with regard to the regional aid component consisting in higher aid intensities in such areas).

HAS ADOPTED THIS DECISION:

1. The EFTA Surveillance Authority has decided not to raise objections to the "Euro-Economic Promotion Programme" of Oberösterreich (*Euro-Wirtschaftsförderungsprogramm - EWP*) as notified on 4 November 1994 (Ref. 94-16302 A) and completed on 6 December 1994 (Ref. 94-17826 A).
2. 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 law to the EFTA Surveillance Authority.

Done at Brussels, 21 December 1994

For the EFTA Surveillance Authority


Knut Almestad,
President


Heinz Zourek
College Member