


EFTA SURVEILLANCE AUTHORITY

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EFTA SURVEILLANCE AUTHORITY DECISION

OF 21 DECEMBER 1994

ON THE ITF SEED FINANCING PROGRAMME
TO CLOSE THE FILE (CASE 94-031) AND
TO PROPOSE APPROPRIATE MEASURES (CASE 93-375)
(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 26 July 1994 (Ref. 94-11365 A), received on 27 July 1994 and letter dated 2 August 1994, received on 3 August 1994 (Ref. 94-11744 A), as well as fax dated 16 August 1994, received on 17 August 1994 (Ref. 94-12113 A), your authorities notified the EFTA Surveillance Authority, in accordance with Article 1(3) of Protocol 3 to the Surveillance and Court Agreement, of a plan to prolong and modify the ITF Seed Financing Programme. By letter dated 5 October 1994 (Ref. 94-14819 D) and a reminder dated 11 November 1994 (Ref. 94-16615 D) the State aid and Monopolies Directorate requested additional information, which was provided by fax dated 22 November 1994 (Ref. 94-17186 A).

¹ Hereinafter referred to as the EEA Agreement.

² Hereinafter referred to as the Surveillance and Court Agreement.

The ITF Seed Financing Programme was originally submitted to the EFTA Surveillance Authority by the Austrian Government as part of the information on existing aid.³ In this information, the Austrian authorities indicated on 31 December 1993 as expiry date of the scheme. Therefore, the EFTA Surveillance Authority looked at the scheme as "pre-EEA aid" and concluded not to assess the case with regard to its compatibility with the EEA Agreement. Having received the notification referred to in the preceding paragraph, the EFTA Surveillance Authority became aware of the fact that the aid programme has been continued in 1994 without prior notification to and authorisation by it. In a first reaction, the State aid and Monopolies Directorate of the EFTA Surveillance Authority reminded the Austrian Government of its obligation under Article 1(3) of Protocol 3 to the Surveillance and Court Agreement that any plans to grant or alter aid may not be put into effect until the procedure before the EFTA Surveillance Authority has resulted in a final decision. Consequently, the Austrian authorities would be obliged to await the authorisation of the EFTA Surveillance Authority in order to be able to continue the programme.

In its reply dated 22 November 1994, the Austrian authorities responded that the decision to amend and to prolong the programme until 31 December 1996 was already taken on 14 December 1993.

2. The guidelines

The ITF-Seed Financing guidelines provide aid to promote high-tech start-ups for newly founded small enterprises. The annual budget foreseen is 41.5 million ATS for 1994 and 45 million ATS for 1995.

3. The application of the guidelines

In the additional information submitted to the EFTA Surveillance Authority by fax dated 22 November 1994, it has been clarified that the aid will be provided in the form of subsidised loans. Only in specific cases, cash grants are made which, however, remain below the limits of the *de minimis* rule as laid down in the State Aid Guidelines, i.e. ECU 50.000 for investment and ECU 50.000 for research and development per enterprise over a period of three years.

Furthermore, the Austrian authorities indicated their readiness to respect the maximum aid intensities as foreseen in the State Aid Guidelines⁴ of 15% for investment aid for small enterprises, 35% for expenditure on research and development (i.e. 25% + SME top-up of 10%) and 50% for consultancy help (all figures in gross terms), although the text of the ITF Seed Financing Programme allows higher aid intensities. This commitment relates to all cases of application of the scheme exceeding the *de minimis* limits including cases of cumulation with aid from other sources.

³ See letter dated 3 March 1994, received on 4 March 1994; Ref. 94-3878 A; code number WV4/Annex II of the submitted register of existing aid, registered as case 93-375 in SACH.

⁴ 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; henceforth referred to as State Aid Guidelines.

II. APPRECIATION

1. Legal Status of the aid scheme: existing aid

According to the information provided by the Austrian authorities by fax dated 22 November 1994, the decision to amend and to prolong the ITF Seed Financing Programme until 31 December 1996 was already taken on 14 December 1993, i.e. before the entry into force of the EEA Agreement. Consequently, the aid scheme in the prolonged and amended form as notified to the EFTA Surveillance Authority by faxes and letters referred to above constitutes existing aid in the meaning of Article 1(1) of Protocol 3 to the Surveillance and Court Agreement. As such, it may continue to be applied in the present form by the Austrian authorities without requiring an authorisation by the EFTA Surveillance Authority. Therefore, the EFTA Surveillance Authority concludes that the file may be closed because of inapplicability of the procedure for new aid and alterations of existing aid under Article 1(3) of Protocol 3 to the Surveillance and Court Agreement.

However, the aid programme is, as existing aid, subject to constant review by the EFTA Surveillance Authority with regard to its compatibility with the EEA Agreement. Under this procedure, the EFTA Surveillance Authority may propose appropriate measures required by the progressive development or by the functioning of the EEA Agreement.

2. Maximum aid intensities

The initial examination of the scheme carried out under the notification procedure indicated that the legal provisions were not altogether compatible with the rules on State aid under the EEA Agreement. However, the additional information on the aid scheme provided by the Austrian authorities has shown that the actual or intended application of the scheme deviates from the text of the aid scheme. On the basis of this information, the EFTA Surveillance Authority concluded that the application of the scheme could be regarded to conform with the requirements under the State aid rules of the EEA Agreement, esp. with regard to aid intensities, whereas the text of the scheme would allow aid intensities up to 75%, which would be clearly beyond acceptable maximum aid ceilings for aid to investment and for development purposes.

Therefore, the EFTA Surveillance Authority considers that, in a first attempt to adjust the ITF Seed Financing Programme to the requirements of the EEA Agreement, it suffices to ensure that the criteria and the maximum aid intensities as described in the additional information provided by the Austrian authorities referred to above are respected in all cases of application of the scheme. In addition, the scheme shall be restricted to small enterprises as defined in Chapter 10 of the State Aid Guidelines in cases exceeding the *de minimis* threshold. By doing so, it is ensured that aid disbursed under the scheme is made compatible with the functioning of the EEA Agreement and

corresponds to the criteria for exemption from the general prohibition to award aid under Article 63(3)(c) of the EEA Agreement.

This does not, however, preclude any further assessment and review with regard to the criteria set out in the guidelines under Article 1 (1) of Protocol 3 to the Surveillance and Court Agreement at a later stage going beyond the proposals made in this decision.

3. 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.⁵ 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.

4. Specific notification obligations

In certain sensitive sectors (currently synthetic fibres, motor vehicles and steel), the State Aid Guidelines (Chapters 22, 23 and 24) and the Act referred to under point 1a of Annex XV to the EEA Agreement (Commission Decision 3855/91/ECSC, known as Steel Aid Code) contain specific obligations to notify all individual awards of aid to the Authority prior to implementation. In some of these cases, this obligation only applies to aid awards related to investment exceeding a certain threshold. As the aid schemes at hand do not contain any references to these obligations, the EFTA Surveillance Authority considers it appropriate to remind the Austrian Government thereof in the context of this decision.

⁵ See Chapter 30 of the State Aid Guidelines.

HAS ADOPTED THIS DECISION:

1. The EFTA Surveillance Authority has decided to close the case 94-031 concerning the modification and prolongation of the ITF Seed Financing Programme as notified by fax dated 26 July 1994 (Ref. 94-11365 A), letter dated 2 August 1994 (Ref. 94-11744 A) and fax dated 16 August 1994 (Ref. 94-12113 A) due to the inapplicability of the procedure for new aid and alterations of existing aid under Article 1(3) of Protocol 3 to the Surveillance and Court Agreement.

2. 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 ITF Seed Financing Programme (existing aid 93-375) as amended by the information submitted to the EFTA Surveillance Authority by fax dated 16 August 1994 (Ref. 94-12113 A):

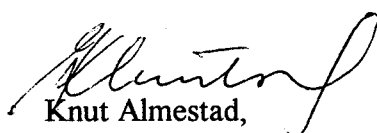
- (i) For cases above the *de minimis* threshold, the maximum intensity of aid disbursed under the scheme shall not exceed 15% for investment aid, 35% for expenditure on research and development (i.e. 25% + SME top-up of 10%) and 50% for consultancy help (all figures in gross terms). Furthermore the scheme shall be restricted to small enterprises as defined in Chapter 10 of the State Aid Guidelines.
- (ii) In cases of cumulation with aid from other public sources, the combined maximum aid intensity for aid awarded under the ITF Seed Financing Programme shall, together with all other aid, not exceed the intensities stipulated under (i) above.
- (iii) The text of the aid schemes shall be adjusted in view of the conditions referred to under points (i) and (ii) above as soon as possible and not later than 30 April 1995. The EFTA Surveillance Authority shall be informed of the adjustments made.
- (iv) The aid granting authorities shall, when awarding aid, take account of the conditions referred to under points (i) and (ii) above as from 1 January 1995 at the latest.
- (v) 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.

3. Austria shall signify its agreement to the above proposal or otherwise submit its observations by 31 January 1995.

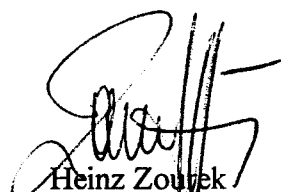
4. The Austrian Government is reminded of its obligation to notify all individual awards of aid to enterprises in sensitive sectors (currently synthetic fibres, motor vehicles and steel) in accordance with the rules laid down in Chapters 22, 23 and 24 of the State Aid Guidelines and in the Act referred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

Done at Brussels, 21 December 1994

For the EFTA Surveillance Authority



Knut Almestad,
President



Heinz Zourek
College Member