


EFTA SURVEILLANCE AUTHORITY

Doc. No.: 94-18216-I
Dec. No.: 278/94/COL
Ref. No. SAM 030.94.049
and SAM 030.94.051

EFTA SURVEILLANCE AUTHORITY DECISION

OF 21 DECEMBER 1994

ON THE PROLONGATION AND MODIFICATION OF THE AID SCHEME
UNDER THE BUSINESS STRUCTURE IMPROVEMENT ACT (CASE 94-049) AND
THE REGIONAL COMPONENT THEREUNDER (CASE 94-051)
(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 4 November 1994, received by the EFTA Surveillance Authority the same day (Ref. 94-16337 A), the Austrian Government notified, in accordance with Article 1 (3) of Protocol 3 to the Surveillance and Court Agreement, a plan to modify and to prolong the Aid Scheme under the Business Structure Improvement Act (*Richtlinien für die Gewährung von Förderungen nach dem*

¹ Hereinafter referred to as the EEA Agreement.

² Hereinafter referred to as the Surveillance and Court Agreement.

Gewerbestrukturverbesserungsgesetz 1969 vom 1994 - Case 94-049). By the same fax, the Austrian authorities notified the principles of the new agreements between the Federal State and Austrian *Länder* for regional top-ups to be awarded under the scheme (Ref. 94-16515 A - Case 94-051). The notification was amended and completed by fax dated 7 December 1994, received by the EFTA Surveillance Authority on 9 December 1994 (Ref. 94-18061 A). The new guidelines will, as from 1 January 1995, replace the currently applied guidelines which were notified by the Austrian Government as existing aid³ and amended by notification dated 25 July 1994 and authorised by EFTA Surveillance Authority Decision 149/94/COL of 9 November 1994.

2. The contents of the proposed amendments

The aid scheme under the Business Structure Improvement Act foresees investment aid for SMEs regardless of their location and business sector. The aid will be given in the form of a grant of up to 2% p.a. for investments of up to 5 million ATS, leading to a maximum aid intensity of 5.8% gross. "TOP investment" as defined in the scheme might be aided by a grant of up to 3% p.a. instead of the 2% referred to above, leading to a maximum aid intensity of 8.8% gross. However, aid to medium-sized enterprises may not exceed a maximum intensity of 7.5% gross. For certain investment projects defined in the scheme, the aided investment may go up to 10 million ATS. Newly established enterprises may benefit from a guarantee for up to 80% of the assessment base. The assessment base is 70% of the total project costs of up to 5 million, in certain cases up to 10 million ATS. According to the information provided by the Austrian authorities, no losses of outstanding guarantees have occurred within the past three years.

The regional component consists of a top-up possibility in the form of additional grants of up to 1.5% p.a. which would have to be financed by the Austrian *Länder* participating in the scheme. This participation is still under negotiation between the Federal State and all Austrian *Länder* except Vienna. In the notification, the Austrian authorities indicated that the *Länder* Agreements would foresee top-up possibilities in the form of regional aid for assisted areas as defined in the EFTA Surveillance Authority Decision 38/94/COL of 11 May 1994 observing the maximum aid intensities authorised therein. For Vorarlberg, the only *Land* besides Vienna without assisted areas, this top-up possibility would consist of a top-up for small enterprises defined in conformity with Chapter 10 of the State Aid Guidelines,⁴ which are located in certain regions of that *Land* and would not exceed the maximum aid intensity of 15% gross for such enterprises.

³ See letter dated 3 March 1994, received on 4 March 1994; Ref. 94-3878 A; code number wA 1.0. of the submitted register of existing aid - registered as case 93-232 in SACH; regional component (Agreements with 8 Austrian *Länder*: code number wA 1.1. of the submitted register of existing aid - registered as cases 93-241 and 242 and 243 to 249 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.

In cases of cumulation with aid from other sources, the combined maximum aid intensity would not exceed 15% gross for small enterprises and 7.5% gross for medium-sized enterprises located outside assisted areas or, as the case may be, the prevailing authorised maximum aid intensity for assisted areas.

The foreseen budget for the scheme for the years 1995 and 1996 was not indicated. However, reference has been made to the budget or expenditure in 1992 - 1994, indicating a federal budget of 443 million ATS for 1992, 458 million ATS for 1993 and 470 million ATS for 1994. The contribution of all eight *Länder* to the regional component for 1993 and 1994 was altogether 52.4 and 54 million ATS.

The estimated number of recipients of investment aid under the scheme is 2.000 to 2.500 enterprises per year for the basic aid from the Federal State and 800 to 900 enterprises per year for the regional component co-financed by the Federal State and the *Länder*.

The Austrian government undertakes to submit an annual report to the EFTA Surveillance Authority in accordance with Chapter 30 of the State Aid Guidelines (see point 20 of the notification form).

The guidelines shall apply until 31 December 1996 (see point T of the guidelines).

II. APPRECIATION

The measures are granted on a discretionary basis by decision of the *Bürges-Förderungsbank*, which is entrusted with the application and implementation of the aid scheme in accordance with the Business Structure Improvement Act. 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 or the services provided by 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 grants are funded through the federal budget of Austria (Case 94-049) or through a combined financing from the *Länder* and the federal level (case 94-051). Thus, the aid will be granted by the State through State resources. 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 small and medium-sized enterprises.

Regarding the SME component, it shall be noted that the definition of SMEs and the foreseen maximum aid intensities stated in the notification are compatible with the EEA provisions on State aid, as stated in Chapter 10 of the State Aid Guidelines. The EFTA Surveillance Authority expressed, in the same Chapter of the State Aid

Guidelines, a general presumption in favour of the compatibility of aid to SMEs with the functioning of the EEA Agreement. It concluded that such aid would be eligible for exemption under Article 61 (3)(c) of the EEA Agreement, if the conditions laid down in the State Aid Guidelines, in particular with regard to intensities, were met.

As the regional component 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 and its restriction to SMEs, 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 and do not adversely affect trading conditions to an extent contrary to the common interest.

Therefore it is concluded that the new Aid Scheme under the Business Structure Improvement Act (*Richtlinien für die Gewährung von Förderungen nach dem Gewerbestrukturverbesserungsgesetz 1969 vom 1994*) and its regional component (framework for Agreements with Austrian *Länder*) qualify for exemption under Article 61(3)(c) of the EEA Agreement by facilitating the development of certain economic activities.

However, the Austrian authorities were not in a position to indicate the foreseen budget for the scheme and its regional component both on the federal and the *Länder* level for the years 1995 and 1996. Therefore, the EFTA Surveillance Authority took the budget figures for 1994 as the basis for assessment. Should the budgetary approximations for 1994 (i.e. 470 million ATS on the federal and 54 million ATS on the *Länder* level) be exceeded in 1995 or 1996 by more than 20%, the Austrian authorities are obliged to notify the new budget as alteration to the scheme in accordance with Article 1(3) of Protocol 3 to the Surveillance and Court Agreement.


HAS ADOPTED THIS DECISION:

1. The EFTA Surveillance Authority has decided not to raise objections to the Aid Scheme under the Business Structure Improvement Act (*Richtlinien für die Gewährung von Förderungen nach dem Gewerbestrukturverbesserungsgesetz 1969 vom 1994*) as notified by fax dated 4 November 1994 (Ref. 94-16337 A) and fax dated 7 December 1994 (Ref. 94-18061 A).
2. The EFTA Surveillance Authority has decided not to raise objections to the regional component of the Aid Scheme under the Business Structure Improvement Act (framework for Agreements with Austrian *Länder*) as notified by fax dated 4 November 1994 (Ref. 94-16515 A) and fax dated 7 December 1994 (Ref. 94-18061 A).

3. The Austrian authorities shall submit copies of the agreements between the Federal State and the Austrian *Länder* (excluding, however, Vienna) referred to under 2. above as soon as they are put into effect.
4. Should the budgetary approximations for 1994 (i.e. 470 million ATS on the federal and 54 million ATS on the *Länder* level) be exceeded in 1995 or in 1996 by more than 20%, the Austrian authorities are obliged to notify the new budget as alteration to the scheme in accordance with Article 1(3) of Protocol 3 to the Surveillance and Court Agreement.
5. 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 scheme to the EFTA Surveillance Authority.
6. 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