


EFTA SURVEILLANCE AUTHORITY

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EFTA SURVEILLANCE AUTHORITY DECISION

OF 21 DECEMBER 1994

ON A NEW GUARANTEE FACILITY BY THE FGG/EAST-WEST FUND
(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 25 October 1994, received by the EFTA Surveillance Authority on 27 October (Ref. 94-16004 A) the Austrian Government notified, in accordance with Article 1 (3) of Protocol 3 to the Surveillance and Court Agreement, guidelines³ on a new guarantee facility by the FGG⁴/East-West Fund. Additional information on the scheme was received on 23 November (Ref. 94-17293 A) and 30 November 1994 (Ref. 94-17480 A).

2. Background

The East-West Fund is part of the FGG. The aid schemes administered by the East West Fund of the FGG are covered by a frame of ATS 10 billion⁵, of which

¹ Hereinafter referred to as the EEA Agreement.

² Hereinafter referred to as the Surveillance and Court Agreement.

³ German title; "Richtlinien für Direktgarantien der FGG/Ost-West-Fonds im Rahmen von Kofinanzierungen"

⁴ Finanzierungsgarantie-Gesellschaft mit beschränkter Haftung

⁵ § 11 of the Guarantee Act of 1977

approximately ATS 6.5 billion can still be used. The frame has not been increased for the purpose of the new guarantee facility.

The new guarantee facility is established by introducing additional guidelines for the use of funds under § 11 of the Guarantee Act of 1977. The new guidelines include provisions to facilitate cofinancing arrangements between the East-West Fund and other financing arrangements⁶, notably the JOPP-Phare programme⁷. The new guarantee facility may, however, also be applied without international co-financing.

The objective of the scheme is to reduce commercial risks⁸ related to equity investments by Austrian firms in countries in transition to a market economy⁹ and in developing countries. Although all countries outside the EEA are covered by the scheme, the new guarantee facility will be focused¹⁰ towards countries in transition to a market economy.

The guarantees may be provided for the acquisition of a substantial share holding in foreign companies - including share and capital increases in existing ventures. A East-West Fund guarantee can cover up to 50 % of total acquisition costs under the new facility. The minimum investment volume of each project shall be ATS 10 million. The guarantee period shall not be less than 5 years or exceed 12 years. The yearly volume of new guarantees under the scheme is estimated by the Austrian authorities to be in the range of ECU 8 to 16 million.

The handling fee payable for guarantees will amount to 0.5 % of the proposed investment volume and shall not exceed ATS 500 000. The guarantee beneficiaries must also pay a guarantee fee of 0.5 % of the acquisition costs of the guaranteed equity portion twice a year. The East-West Fund has the right to charge higher fees for guarantees involving particularly high risk or for certain categories of projects. The new guidelines also allow the East-West Fund to impose fixed or performance related guarantee fees and to impose conditions concerning the transfer of shares of the foreign company to partly or fully off-set the risk covered. The Austrian authorities have estimated the aid intensity of a guarantee under the new facility to be up to 4 %¹¹ of total acquisition costs (share acquisition price plus other shareholders' funds).

The new guidelines foresee profit-sharing terms in line with the business policies and the guidelines of the intended co-financing partners, notably co-financing under the JOPP-Phare programmes. A profit-sharing agreement will be a standard condition in all cases involving beneficiaries with more than 500 employees, beneficiaries with net

⁶ I.a. EBRD (European Bank for Reconstruction and Development), IFC (The International Finance Corporation) and Phare programmes

⁷ JOPP is the abbreviation for the "Joint venture Phare programme". The Phare Programme is the European Union's initiative which provides grant finance to support the process of economic transformation in its eastern and central European neighbours.

⁸ Political risks may be covered by Österreichische Kontrollbank.

⁹ Primarily Eastern Europe; the notion of countries in transition to a market economy is not geographically defined.

¹⁰ I.a. according to the rules of co-financing partners, notably the JOPP-Phare programmes

¹¹ For a maximum guarantee quota of 50 %

fixed assets of more than ECU 75 million or for companies in which 1/3 or more of the capital is controlled by a company which exceeds these parameters¹².

II. APPRECIATION

The guarantees covered by the new guarantee facility by the FFG/East-West Fund for equity investment by Austrian firms will only be directed towards countries in transition to a market economy or towards developing countries. The foreseen charges to be paid by guarantee holders under the new guarantee facility, do not include an adequate risk-premium to cover the full operating costs of the scheme taking into account the risks related to default or insolvency of the guaranteed ventures. Thus, the new guarantee facility will have an effect on competition within the EEA by favouring the beneficiaries of the new guarantee facility compared to competitors who do not have access to State guarantees at a reduced price.

Although equity investment within the EEA is not to be covered by the new facility, it cannot be excluded that the scheme may have indirect trade effects by favouring the Austrian enterprises benefitting from the guarantee facility.

It may therefore be concluded that the new guarantee facility by the FFG/East-West Fund constitutes aid in the meaning of Article 61(1) of 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).

In view of the political and social importance of rapid conversion of the Eastern European economies to a market economy system and the vast volume of investment this requires, any slight effect the guarantee facility may have on intra-EEA competition and trade must be regarded to be far outweighed by the positive effects of the measure on the development of economic activities.

It is recognized by the Authority that the new guarantee facility has been established to facilitate financing of investment in the Eastern European economies in co-operation with institutions and arrangements established i.a. by the European Union for the same purpose. The relatively low aid intensities and the limited volume of guarantees that are foreseen under the scheme, indicates that the aid will not adversely affect trading conditions to an extent contrary to the common interest.

It is therefore concluded that the guidelines for East-West Fund direct guarantees within the framework of co-financing arrangements qualify for exemption under Article 61(3)(c) of the EEA Agreement by facilitating the development of certain economic activities.


¹² The criteria are established with reference to the definition of SMEs under the JOPP Programme.

HAS ADOPTED THIS DECISION:

1. The EFTA Surveillance Authority has decided not to raise objections to the guidelines for East-West Fund direct guarantees within the framework of co-financing arrangements (*Richtlinien für Direktgarantien der FGG/Ost-West-Fonds im Rahmen von Kofinanzierungen*) as notified in the fax received 27 October 1994 (Ref. 94-16004 A) and supplemented by additional information received on 23 November (Ref. 94-17293A) and 30 November 1994 (Ref. 94-17480A).
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