


EFTA SURVEILLANCE AUTHORITY

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EFTA SURVEILLANCE AUTHORITY DECISION

OF 30 DECEMBER 1994

TO PROPOSE APPROPRIATE MEASURES TO SWEDEN
WITH REGARD TO THE AID SCHEME TO BANKS

THE EFTA SURVEILLANCE AUTHORITY,

Having regard to the Agreement on the European Economic Area¹, in particular to Protocol 26 and Articles 61 to 63 of the Agreement,

Having regard to the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice², in particular to Article 24 and Article 1(1) of Protocol 3 thereof,

WHEREAS:

I. FACTS

1. Introduction - procedural situation

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 of 4 January 1994 (1994/470D) the EFTA Surveillance Authority requested the submission of information on existing State aid in Sweden, i.a. by reference to the above provision of Protocol 3 to the Surveillance and Court Agreement. Sweden submitted a notification 2 March (1994/3732 A) on aid to banks.

¹Hereinafter referred to as the EEA Agreement

²Hereinafter referred to as the Surveillance and Court Agreement

At a meeting in Stockholm 20 May 1994 the Swedish authorities gave further clarifications on bank aid to representatives of the EFTA Surveillance Authority. Additional information was also given in letter of 4 July (1994/9996 A).

In the course of the autumn 1994, more information has informally been submitted by the Swedish authorities to the Authority.

2. Relevant provisions of the aid

The main provisions defining the aid are laid down in the Act on State Support for Banks and Other Credit Institutions 1993:765 of June 1993 (hereinafter referred to as the Act on State Support). Supplementary provisions are to be found in the regulation on State Support to Banks and other Credit Institutions 1993:890, in the proposition on Measures for strengthening the Financial System 1992/93:135 and in the proposition on a law for State Support for Banks and Other Credit Institutions 1992/93:245.

According to the Act on State Support, 1993:765, support may be extended to banks with a Swedish charter and their subsidiaries. This means that also subsidiaries and branches abroad and subsidiaries in Sweden of foreign banks may be included. In addition to banks and their subsidiaries, support may also be extended to another eight credit institutions with a State affiliation. These eight credit institutions are enumerated in the law. Also companies set up in the course of a reconstruction of an institution may be eligible for support (3§). The support can have various forms which include purchasing or guaranteeing bad assets, e.g. nonperforming loans, as well as injecting or guaranteeing new capital to the distressed institutions.

With a few exceptions, the Act on State Support aims at guaranteeing the commitments i.e. the liability side of the balance sheet of a credit institution on a timely basis (1§). Exceptions are, for example, equity capital and commitments in flagrant contravention of sound banking practice (2§). Support can be granted to companies that are viable and for reconstruction or liquidation of companies that are not expected to be profitable in long term. The support shall be given at commercial conditions and - as far as possible - not distort competition. The long term costs to the State should be as low as possible. The State should aim at getting the support repaid (5§).

The support is channelled via the Bank Support Authority (1§). A credit institution that has not submitted any application for support but which encounters problems in such a way that it cannot, for example, fulfil capital adequacy requirements can be subject to a proposal for support if the Bank Support Authority submits such a decision to the Appeal Board for Bank Support (6§). Disagreements between a credit institution and the Bank Support Authority should be referred to the Appeal Board for Bank Support (9§).

According to the regulation 1993:890, the responsibility of the Bank Support Authority is to handle applications for support to banks and credit institutions in accordance with the law 1993:765 (1§). Decisions that are of a major importance shall be submitted to Government for approval (3§). It is also the Bank Support Authority's

responsibility to follow the developments of the banks that have been granted support, and to monitor that conditions on repayments and other conditions are fulfilled (4§). The Bank Support Authority is responsible for the handling of shares and other assets that are submitted in connection with support (5§). The Bank Support Authority shall determine the fees paid for its services including guarantees (7§, 8§). Appeal on decisions made by the Bank Support Authority can be made to the Appeal Board for Bank Support unless otherwise agreed (9§ of 1993:765).

In Sweden two state owned asset management companies, Securum and Retriva, have been established. The objective of these two companies is to take over non-performing loans from banks, administer them and subsequently liquidate them. Both Securum and Retriva have substantial assets abroad mainly in the form of real estate.

The aid for banks was introduced before the entry into force of the EEA Agreement. It was introduced at a time when many Swedish banks were making substantial losses, when their share of non-performing loans were increasing and several banks encountered problems with fulfilling capital adequacy requirements. The situation for the banks has since then improved markedly. The aid is, however, still legally in force as no decision has been taken to dismantle it.

II. APPRECIATION

The Act on State Support and the other acts referred to in section I.2. above provide a framework for a wide range of measures to support banks. Such measures include different forms of guarantees as well as equity capital instruments.

Support under the Act on State Support can be given under conditions which may constitute state aid within the meaning of Article 61(1) of the EEA Agreement. The provisions of the Act as well as the criteria laid down in the supplementary legislation referred to above are general and broad in scope and do not lay down exact criteria or limit the aid to certain maximum aid intensities. Therefore, by examining the legal provisions governing the aid, it is not possible for the EFTA Surveillance Authority to assess whether individual awards of aid disbursed under the Act would be compatible with Article 61 of the EEA Agreement.

In view of the general principles of state aid control, the EFTA Surveillance Authority considers basically three ways of adjusting the provisions at hand to the requirements of the EEA Agreement. The required adjustment could be effected by

- (a) abolishing the legislation in question,
- (b) introducing criteria for the aid in accordance with the principles reflected in the relevant parts, e.g Chapter 15 on Aid for Rescue and Restructuring, of the Procedural and Substantive Rules in the Field of State Aid, or
- (c) notifying all individual awards of aid based on the Act on State Support and the supplementary legislation referred to above prior to implementation pursuant to Article 1 (3) of Protocol 3 to the Surveillance and Court Agreement.

Decisions to grant new aid, including conditions which may be attached to such aid, under the Act on State Support are to be done in circumstances where major difficulties in the banking sector have occurred. According to the information submitted by the Swedish authorities the situation in the banking sector has improved considerably and new aid would be granted rarely, if at all. Therefore, the EFTA Surveillance Authority considers option (c) to be the most appropriate means of adjusting aid under the Act on State Support and the supplementary legislation referred to above to the principles of State aid control under the EEA-Agreement.

Aid which may be granted to banks outside the existing schemes falls under the normal state aid control by virtue of Article 1(3) of Protocol 3 to the Surveillance and Court Agreement which obliges the Swedish authorities to notify individually such awards, if any, prior to their implementation. Such aid may include the selling to banks of assets by the asset management companies Securum and Retriva below market price.

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, it is proposed that a detailed annual report on the aid under the Act on State Support shall be submitted.

HAS ADOPTED THIS DECISION:

1. The EFTA Surveillance Authority proposes to Sweden, on the basis of Article 1(1) of Protocol 3 to the Surveillance and Court Agreement, the following appropriate measures with regard to the aid based on the Act on State Support for Banks and Other Credit Institutions 1993:765 of June 1993 and the regulation on State Support to Banks and other Credit Institutions 1993:890.
 - (i) The Swedish authorities are obliged to notify all individual awards of aid under the above acts prior to implementation pursuant to Article 1(3) of Protocol 3 to the Surveillance and Court Agreement.
 - (ii) The Swedish authorities are obliged to submit a detailed annual report in accordance with chapter 30 of and Annex III to the Procedural and Substantive Rules in the Field of State Aid on the application of aid awarded under the Act.
2. Sweden shall signify its agreement to the above proposal or otherwise submit its observations by 31 January 1995.
3. The Swedish Government is reminded of its obligation to notify all individual awards of aid to banks outside existing aid schemes prior to implementation pursuant to Article 1(3) of Protocol 3 to the Surveillance and Court Agreement.

Done in Brussels, 30 December 1994

For the EFTA Surveillance Authority



Knut Almestad
President



Heinz Zourek
College Member