


EFTA SURVEILLANCE AUTHORITY

Doc.No. 99-4806 I
Dec.No. 135/00/COL
Ref. No. SAM030.00002

EFTA SURVEILLANCE AUTHORITY DECISION

OF 12 JULY 2000

TO OPEN THE FORMAL INVESTIGATION PROCEDURE PROVIDED FOR IN ARTICLE 1(2) OF
PROTOCOL 3 TO THE SURVEILLANCE AND COURT AGREEMENT WITH REGARD TO STATE
AID IN THE FORM OF REGIONAL AID - MAP OF ASSISTED AREAS

(ICELAND)

THE EFTA SURVEILLANCE AUTHORITY,

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

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
of Protocol 3 thereof,

WHEREAS:

I. FACTS

The EFTA Surveillance Authority (hereinafter “the Authority”) adopted by way of a
decision new Guidelines on national regional aid on 4 November 1998³. The
Authority proposed in that decision, as an appropriate measure under Article 1(1) of
Protocol 3 to the Surveillance and Court Agreement, that the EFTA States limit the
validity of all lists of assisted regions, which have been approved by the Authority
without an expiry date, or with an expiry date after 31 December 1999, to 31
December 1999. The Authority also proposed, as an appropriate measure under

¹ Hereinafter referred to as the EEA Agreement.

² Hereinafter referred to as the Surveillance and Court Agreement.

³ Dec.No.316/98/COL

Article 1 (1) of Protocol 3 to the Surveillance and Court Agreement, that the EFTA States amend all existing regional aid schemes, which would be in force after 31 December 1999, so as to make them compatible with the Guidelines applicable from 1 January 2000.

By letter of 4 November 1998⁴, the Icelandic authorities were informed that the Authority had adopted these new Guidelines on national regional aid. A copy of the Authority's decision, including the new chapters and annexes of the State Aid Guidelines, was enclosed. The Icelandic authorities were requested to submit their observations on the relevant proposed measures within two months; i.e. before 4 January 1999. In addition, the Icelandic authorities were asked to communicate to the Authority within six months of the date of the letter, i.e. before 4 May 1999, the changes envisaged, in order to make the existing regional aid schemes compatible with the Guidelines as from 1 January 2000.

In the letter of 4 November 1998, the Authority made it clear that should the Icelandic authorities not submit their observations within two months, and communicate the said changes within six months, or should they not be able to agree to the relevant measures (or certain features thereof), the Authority would be obliged to initiate the procedure provided for in Article 1(2) of Protocol 3 to the Surveillance and Court Agreement with regard to the said aid schemes.

In a letter of 26 January 1999⁵, the Authority reminded the Icelandic authorities of the letter of 4 November 1998 and requested the Icelandic authorities to submit their observations on the relevant proposed measures as soon as possible and at the latest by 12 February 1999.

In a letter of 11 May 1999⁶, the Icelandic authorities were again reminded that the Authority had received no answer. The Icelandic authorities were requested to respond as soon as possible and at the latest by 28 May 1999.

In a letter of 23 June 1999⁷, the Authority informed the Icelandic authorities that no reply had been received. The Authority requested the Icelandic authorities to signal its agreement to the Authority's decision of 4 November 1998, or otherwise submit its observations, within 15 working days. Furthermore, the Icelandic authorities were requested to notify by 1 September 1999 the amendments of all existing regional aid schemes that would be in force after 31 December 1999. The Authority made it clear that if no response was received within the above mentioned deadlines, the Authority would be obliged to initiate the procedure provided for in Article 1(2) of Protocol 3 to the Surveillance and Court Agreement with regard to the said aid schemes.

⁴ Ref.: Doc. No: 98-7502 D

⁵ Ref.: Doc. No: 99-688 D

⁶ Ref.: Doc. No: 99-3472 D

⁷ Ref.: Doc. No: 99-4657 D

In a letter of 7 July 1999 from the Icelandic Mission to the European Union, received and registered on 7 July 1999⁸, the Icelandic authorities accepted the new guidelines on regional aid and the appropriate measures.

In a letter dated 4 October 1999 from the Icelandic Mission to the European Union, received and registered on 4 October 1999⁹, the Icelandic authorities informed the Authority that it was not possible to introduce “*new legal aid measures at this point in time*”, because of reorganisation.

In a letter dated 6 October 1999¹⁰, the Authority reminded the Icelandic authorities of the letters of 4 November 1998 and 23 June 1999, where it had been made clear that if the Icelandic authorities did not communicate the said changes within the specified deadlines mentioned above, the Authority would be obliged to initiate the procedure provided for in Article 1(2) of Protocol 3 to the Surveillance and Court Agreement. The Authority made it clear that the validity of all lists of assisted regions in Iceland, and the existing aid schemes, were limited to 31 December 1999. Furthermore, the Authority reminded the Icelandic authorities that the new guidelines and the appropriate measures had been accepted by the Icelandic authorities in the letter of 7 July 1999 and that this was applicable regardless of whether Icelandic institutions were being reorganised or not. Finally, the Authority once again requested the Icelandic authorities to notify as soon as possible the amendments of all existing regional aid schemes that would be in force after 31 December 1999.

At a meeting in Reykjavik on 26 November 1999, between representatives of the Icelandic authorities and the Authority, the Icelandic authorities were again reminded of their obligation to notify a map of assisted regions.

In a letter dated 6 January 2000¹¹ from the Icelandic Mission to the European Union, received and registered on 6 January 2000, the Icelandic authorities informed the Authority that a new bill on the Regional Institute would come into force on 1 January 2000. The Icelandic authorities informed the Authority that it was the intention of the Icelandic Government to assist the same areas as before, and that population density would be used as an indicator to justify the aid. The population coverage was 38.5%, according to the Icelandic authorities. The letter furthermore stated that the Icelandic authorities intended to use 20% Net Grant Equivalent (NGE) as a ceiling for regional aid with the possibility of adding a further 10% for SMEs.

In a letter dated 12 January 2000¹², from the Icelandic Mission to the European Union, received and registered on 12 January 2000, the Icelandic authorities informed that “*a new legislation came into force on the Regional Institute in Iceland the 1 January 2000. According to the new legislation it will be the task of the Board of the Regional Institute to take decisions on new regional aid programs and to grant aid to individual projects. No new decisions on regional aid will be taken until the new*

⁸ Ref.: Doc. No: 99-5111 A

⁹ Ref.: Doc. No: 99-7324 A

¹⁰ Ref.: Doc. No: 99-7348 D

¹¹ Ref.: Doc. No: 00-108 A

¹² Ref.: Doc No: 00-236 A

Board has been elected. As soon as the new Board has been elected the Ministry will inform the Board about the current situation concerning notification on regional aid to the EFTA Surveillance Authority. The Ministry will also ask the Board not to take any decisions on new regional aid programs before the EFTA Surveillance Authority has approved a proposal on regional aid from the Icelandic authorities.”

In a letter dated 21 March 2000¹³, from the Icelandic Mission to the European Union, received and registered on 21 March 2000, the Mission forwarded a letter from the Ministries of Industry and Commerce stating that *“The Ministry hereby notifies a proposal that all areas except the area here referred to as the Capital region will be eligible for regional aid.”* According to the Icelandic authorities, the proportion of the total population living in the proposed assisted areas was 38.5% on 1 December 1999.

In a letter dated 4 April 2000¹⁴, the Authority informed the Icelandic authorities that the Authority did not consider the letter of 21 March 2000 to constitute a notification as it did not refer to Article 1(3) of Protocol 3 to the Surveillance and Court Agreement¹⁵. Moreover, the Authority considered the information submitted to be incomplete. The proposal did not contain any information about aid intensities. Furthermore, the proposal was lacking information about the methodology and the quantitative indicators that the Icelandic authorities had used to determine the eligible regions¹⁶. The Icelandic authorities were reminded that Iceland as from 1 January 2000, and until the Authority had approved a new map, did not have a valid map of assisted areas. Finally, the Authority made it clear that granting of any regional aid without the approval of the Authority would be unlawful.

The Icelandic authorities adopted Regulation No 347/2000 of 16 May 2000 for the Institute of Regional Development (IRD)¹⁷. The Regulation contains provisions, which, i.a. allows IRD to grant loans and issue guarantees (Article 14), and which restricts the municipalities where regional aid can be granted (Article 17). The Regulation was adopted on the basis of Article 19 of Parliamentary Act No 106/1999 of 27 December 1999.

II. APPRECIATION

Any regional aid in Iceland funded by State resources will favour certain undertakings in the meaning of Article 61(1) of the EEA Agreement. Benefiting enterprises will actually or potentially be in competition with similar undertakings in Iceland and other EEA States. Such aid will distort or threaten to distort competition and affect trade

¹³ Ref.: Doc. No: 99-2410 A

¹⁴ Ref.: Doc. No: 00-2697 D

¹⁵ See point 3.2.3 of the Guidelines

¹⁶ See Chapter 25, Regional aid, of the Guidelines.

¹⁷ In Icelandic: Reglugerð frá 16. maí 2000 n.r. 347/2000 fyrir Byggðastofnun. Heimildarlög: Lög nr. 106/1999 frá 27. desember 1999.

within the EEA. Regional aid will therefore constitute State aid in the meaning of Article 61(1) of the EEA Agreement.

The Authority is obliged to open the procedure provided for in Article 1(2) of Protocol 3 to the Surveillance and Court Agreement, whenever it is in any doubt about the compatibility of aid with the functioning of the EEA Agreement. The procedure is applicable in all types of cases, whether of notified, unnotified or existing aid. The decision to open proceedings is without prejudice to the final decision. The purpose of proceedings under Article 1(2) of Protocol 3 to the Surveillance and Court Agreement is to ensure a comprehensive examination of the case by giving all parties concerned the right to be heard¹⁸.

The Authority proposed two appropriate measures, under Article 1(1) of Protocol 3 to the Surveillance and Court Agreement, when the new regional aid guidelines were adopted on 4 November 1998. First, that the EFTA States limit the validity of all lists of assisted regions approved by the Authority without an expiry date, or with an expiry date after 31 December 1999, to 31 December 1999. Secondly, that the EFTA States amend all existing regional aid schemes, which would be in force after 31 December 1999, so as to make them compatible with the Guidelines applicable from 1 January 2000. The Icelandic authorities accepted these appropriate measures in their letter of 7 July 1999.

The Authority has on several occasions (see point I above) reminded the Icelandic authorities that the Authority would be obliged to initiate the procedure provided for in Article 1(2) of Protocol 3 to the Surveillance and Court Agreement if the Authority did not receive a notification. The Authority has also made it clear to the Icelandic authorities that Iceland did not have a valid map of assisted areas after 1 January 2000 and that any regional aid granted after this date without the approval of the Authority would be unlawful aid¹⁹.

The Icelandic authorities have put forward legislation on IRD (see last paragraph of point I above) without any notification being submitted to the Authority. The last sentence of Article 1(3) of Protocol 3 to the Surveillance and Court Agreement provides that the EFTA State shall not put a proposed aid measure into effect until the Article 1(2) procedure has resulted in a final decision. This provision implies a general prohibition to implement the aid before the Authority has taken a decision (also in cases where formal proceedings are not opened). Not only does “putting into effect” mean the action of granting aid to the recipient, but it is sufficient that the conferment of powers enabling the aid to be granted without further formality having taken place²⁰. The adoption of the Regulation for IRD is thus in violation of Article 1(3) of Protocol 3 to the Surveillance and Court Agreement.

Against this background the Authority is obliged to open the proceedings provided for in Article 1(2) of Protocol 3 to the Surveillance and Court Agreement.

¹⁸ See State Aid Guidelines, Chapter 5.2

¹⁹ “Aid unlawful on procedural grounds”, see State Aid Guidelines, Chapter 6.

²⁰ See State Aid Guidelines, Chapter 3.3.

The Authority reminds the Icelandic authorities that the Authority may request Iceland to suspend payment of the aid pending the outcome of the investigation²¹. In cases where a suspension order does not go far enough, the Authority can also order Iceland to recover any aid which has been disbursed in infringement of the procedural requirements. If Iceland fails to suspend payment of the aid or to recover the aid after a suspension order has been adopted, the Authority is entitled, while carrying out the examination on the substance of the matter, to bring the matter directly before the EFTA Court and apply for a declaration that such payments constitute an infringement of the EEA Agreement.

The Icelandic authorities are finally reminded that the Authority is empowered to proceed and to take a decision on the basis of the information available, even in the absence of any submission to it from Iceland.

²¹ The procedure is described in Chapter 6.2.1 of the State Aid Guidelines.

HAS ADOPTED THIS DECISION:

1. The procedure provided for in Article 1(2) of Protocol 3 to the Surveillance and Court Agreement is opened with regard to regional aid in Iceland (map of assisted areas).
2. The Icelandic authorities are requested to refrain from applying regional aid.
3. The Icelandic authorities are requested to submit full details on the application of regional aid in Iceland, and any other information relevant to the assessment of the case, within 20 working days from the date of this decision. This includes information on possible payments of regional aid after 1 January 2000 relevant for a possible decision by the Authority to suspend payment of aid and a possible provisional decision that money which have been disbursed in infringement of the procedural requirements shall be recovered.
4. The Icelandic authorities shall be informed by means of a letter containing a copy of the decision.
5. The European Commission shall be informed, in accordance with Protocol 27(d) of the EEA Agreement, by a copy of this decision.
6. Other EFTA States, EC Member States, and interested parties shall be informed by the publishing of the attached notice in the EEA Section of the Official Journal of the European Communities and the EEA Supplement thereto, inviting them to submit comments within one month from the date of the publication.
7. This decision is authentic in the English language.

Done at Brussels, 12 July 2000

For the EFTA Surveillance Authority

Hannes Hafstein
Acting President

Bernd Hammermann
College Member