

Case No: 74432
Event No: 693781
Dec. No: 171/14/COL

EFTA SURVEILLANCE AUTHORITY DECISION
of 24 April 2014
on aid to the citizens' co-operative Balzers ("CCB") for district heating in Balzers
(Liechtenstein)

The EFTA Surveillance Authority ("the Authority")

HAVING REGARD to:

The Agreement on the European Economic Area ("the EEA Agreement"), in particular to Articles 61 to 63 and Protocol 26 thereof,

The Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice ("the Surveillance and Court Agreement"), in particular to Article 24,

Protocol 3 to the Surveillance and Court Agreement ("Protocol 3"), in particular to Article 1(3) of Part I and Article 4(3) of Part II,

WHEREAS:

I. FACTS

1. Procedure

- (1) By letter of 26 September 2013 (Event No 684500), the Liechtenstein authorities notified the proposed aid measures in support of the citizens' co-operative Balzers ("the CCB") for district heating and forestry services, pursuant to Article 1(3) of Part I of Protocol 3.
- (2) By letter dated 3 October 2013 (Event No 685049), the Authority requested additional information. By letter dated 3 December 2013 (Event No 692243), the Liechtenstein authorities replied to the information request. By letter dated 8 January 2014 (Event No 693367), the Authority requested additional information. By letter dated 10 February 2014 (Event No 698738), the Liechtenstein authorities replied to the information request.
- (3) The Liechtenstein authorities submitted further information by email of 17 March 2014 (Event No 702630) and 24 March 2014 (Event No 703311), thereby completing the notification within the meaning of Article 4(5) of Part II of Protocol 3.

2. The supported project

- (4) The Liechtenstein authorities have notified investment aid in support to the citizens' co-operative Balzers for a bio-fuelled district heating plant in Balzers, a municipality located in southern Liechtenstein.
- (5) The district heating plant will be fuelled by wood chips made from waste wood (tree stumps, wood left behind in avalanches etc), twigs and garden waste.
- (6) The heat will be transported to buildings in the municipality of Balzers. The length of the district heating grid will be 4.2 km. There will also be a small grid for steam.

3. Objective

- (7) The Liechtenstein authorities aim to increase environmental protection in order to meet their Kyoto targets. The plant will produce 14.5 GWh of district heating annually. The Liechtenstein authorities have calculated the projected environmental gain in terms of oil usage reductions.¹ According to the Liechtenstein authorities 1.65 million litres of oil is needed to produce the same amount of heat per year. Based on this comparator the district heating plant is thus capable of reducing CO₂ emissions by up to 4000 tonnes annually.

4. Compensation for forestry services – outside the scope of this decision

- (8) The Authority notes that according to Government Bill No 63/2013, the Liechtenstein authorities also plan to entrust CCB with the provision of certain services of general economic interest (“SGEI”) in relation to forestry services within the limits of the SGEI *de minimis* Regulation.² The compensation constitutes payments for forestry services and will not cover the same eligible costs as the two notified aid measures, hence it will not be cumulated with the two notified aid measures.³ The compensation to be provided for this service is not covered by this decision as the Liechtenstein authorities have clarified that it will be granted in a manner that is compliant with the requirements of the Regulation. Measures meeting the requirements of the Regulation are not considered to constitute state aid within the meaning of Article 61 of the EEA Agreement and hence not subject to the notification obligation of Article 1(3) of Part I of Protocol 3.⁴

5. Recipient – the citizens' co-operative Balzers (“CCB”)

- (9) The recipient of the aid, CCB is a citizens' co-operative, which is a co-operation under public law comprised of its members.⁵ According to its statutes, the CCB has the objective of using its ownership rights in real estate (e.g. farmland and forests) to the benefit of its members. The CCB generates income by renting out real estate which it owns, receives membership fees and compensation payments from its members where the members do not voluntarily assist the CCB in carrying out its tasks (e.g. the maintenance of common farmland). CCB has six employees and its turnover is less than EUR 10 million per year, it

¹ It shall be noted that the district heating will replace both gas and oil fuelled heating equipment.

² Commission Regulation (EU) No 360/2012 of 25.4.2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid granted to undertakings providing services of general economic interest (OJ L 114 26.4.2012 p. 8), incorporated into the EEA Agreement at point 1ha of its Annex XV.

³ Article 2(6) of the Regulation.

⁴ Article 2(1) of the Regulation.

⁵ Act on citizens' co-operatives of 20 March 1996 (*Gesetz vom 20. März 1996 über die Bürgergenossenschaften*), Article 1.

therefore qualifies as a “small enterprise” within the meaning of point 70(16) of the Authority’s Guidelines on state aid for environmental protection (the “EAG”).⁶

6. The notified aid measures

- (10) The Liechtenstein authorities have notified investment aid for the wood-fired district heating in Balzers composed of the following:
1. A direct grant of CHF 1.07 million as investment aid for the renewable district heating plant.
 2. Annual payments for CO₂ reductions, capped at a maximum of CHF 100 000 per year and to be paid over 15 years. For the first ten years, the payment would be based on a price of CHF 25 per tonne of CO₂ avoided. For the following five years the price per CO₂ reduction will be set in 2021.⁷ The net present value of these payments, based on the maximum annual level of CHF 100 000 and discounted at the Authority’s reference rate, amounts to CHF 1 476 143.⁸
- (11) Of the maximum total aid amount of CHF 2 546 143, 25% (CHF 636 536) will be apportioned to the renewable energy production and 75% (CHF 1 909 607) to the district heating infrastructure.
- (12) The national legal basis for the aid measures is the Government Bill No 63/2013. The Liechtenstein authorities have confirmed that the CCB will obtain the legal right to the investment aid when the Liechtenstein Landtag adopts the Government Bill No 63/2013.

7. Eligible costs

7.1 Eligible costs of the renewable energy production

- (13) The Liechtenstein authorities have estimated the eligible costs for energy production by comparing the costs of the investment to the costs of a technically comparable investment that does not provide the same degree of environmental protection. The project analysis is based on the extra investment costs needed in order to achieve the required amount of energy production, while taking into account operating benefits and costs for the first five years of operation.
- (14) The Liechtenstein authorities have submitted that the alternative to the investment in renewable district heating for the CCB is not to build any district heating installation. However, the alternative for the end-user of the energy is to use distributed solutions based on gas. The existing buildings currently use mainly gas, with only a low number (8 out of 33 installations) using oil.
- (15) The Liechtenstein authorities have itemised the investment costs for the renewable energy production as set out in the table below.

Budget item	Costs in CHF
Energy production equipment	2 665 000

⁶ OJ L 144 10.6.2010 p. 1.

⁷ But still capped at a maximum of CHF 100 000 per year.

⁸ The Authority has in its decisional practice accepted that investment aid can be granted in tranches for a 10 and 13 year periods in Decision No 390/10/COL on a scheme under the Act on Incentives for Initial Investments in Iceland, available online: <http://www.eftasurv.int/media/state-aid/390-10-COL.pdf>.

Construction cost	2 050 000
Planning and project management (50%) ⁹	309 260
Total costs	5 024 260

- (16) Based on an expert report commissioned by the Liechtenstein authorities, the cost of the gas boiler alternative amounts to CHF 926 440.
- (17) The project analysis is based on the extra investment costs needed in order to achieve the required amount of energy production, while taking into account operating benefits and costs for the first five years of operation. Given the difficulties in evaluating the exact operating costs and benefits for the distributed solutions used as a counterfactual, the cost of energy (biomass and gas, respectively) is used as a proxy for the difference in operating costs/benefits. This information is summarised in the following table.

Costs and benefits	CCB (CHF)	Counterfactual (CHF)
Investment cost of renewable energy production	5 024 260	926 440
Operating costs (first five years)	7 625 710	6 866 400
Operating benefits (first five years)	6 800 000	6 800 000
Sum (costs minus benefits)	5 849 970	992 840

- (18) On this basis, the eligible costs for the renewable energy production amount to CHF 4 857 130 (CHF 5 849 970 minus CHF 992 840).

7.2 Eligible costs for the district heating infrastructure

- (19) As regards the infrastructure, the Liechtenstein authorities have calculated the eligible costs using a zero counterfactual, in line with the practice of the Authority and the European Commission.¹⁰ Environmental aid should normally be limited to the extra investment costs borne by the beneficiary of an investment aimed at a higher level of environmental protection compared to an investment in conventional technology. However, in the case of certain investments, the alternative would be not to invest at all; therefore, in such cases, the Authority has concluded that there is no relevant counterfactual reference investment. That has been the case, for example, for investments in district heating infrastructure.

⁹ As the costs of planning and project management relate equally to the production and the infrastructure parts of the project, these costs are split equally between the two parts.

¹⁰ Decision No 114/14/COL of 12.3.2014 on aid to BE Varne AS for the construction of district heating in Bodø, Nordland (not yet published); Decision 158/12/COL of 9.5.2012 on aid to Akershus Energi Varne AS for the construction and expansion of district heating and cooling infrastructure in Lillestrøm, Strømmen and Nitteberg (OJ C 284 20.9.2012 p. 14); European Commission Case N 494/2010 – Italy – Aid scheme for district heating production installations and networks in Veneto (OJ C 180 21.6.2011 p. 1).

- (20) The Liechtenstein authorities have itemised the investment costs for the district heating infrastructure as set out in the table below.

Budget item	Costs in CHF
District heating grid	2 931 000
Grid for the distribution of steam	250 000
Heat exchangers	530 000
Planning and project management (50%)	309 260
Total costs	4 020 260

7.3 Summary

- (21) For renewable energy production the aid of CHF 636 536 results in an aid intensity of 13.1% which is within the intensity of 80% provided for small enterprises in the EAG.¹¹
- (22) For infrastructure the aid of CHF 1 909 607 results in an intensity of 47.5% of the eligible costs.

¹¹ EAG point 103.

II. ASSESSEMNT

1. The presence of state aid

- (23) Article 61(1) of the EEA Agreement reads as follows: “Save as otherwise provided in this Agreement, any aid granted by EC Member States, EFTA States or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Contracting Parties, be incompatible with the functioning of this Agreement.”
- (24) According to Article 61(1) of the EEA Agreement, as interpreted by the EFTA Court, a measure will constitute “state aid” if four cumulative conditions are met: (i) there must be an intervention by the state or through state resources; (ii) that intervention must confer an advantage on the recipient; (iii) it must be liable to affect trade between the EFTA States; and (iv) it must distort or threaten to distort competition.
- (25) The two notified measures described in paragraph (10) above stem from sources controlled by the Liechtenstein authorities and therefore constitute state resources. Furthermore, they constitute ad-hoc individual economic advantages CCB would not have received in the normal course of its business. This advantage is selective in that it is only granted to CCB. CCB qualifies as an undertaking within the meaning of Article 61(1) as it is providing energy in the form of heat and steam on a market in competition with other operators.¹² The grant of financial support to CCB is liable to distort competition and affect trade between the Contracting Parties to the EEA Agreement. District heating replaces, *inter alia*, the use of gas, oil and electricity. Trade in gas, oil and electricity takes place on an EEA level. For these reasons, the Authority concludes that the two notified measures described in paragraph (10) above constitute state aid within the meaning of Article 61(1) of the EEA Agreement.

2. Procedural requirements

- (26) Pursuant to Article 1(3) of Part I of Protocol 3, “*the EFTA Surveillance Authority shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid (...). The State concerned shall not put its proposed measures into effect until the procedure has resulted in a final decision*”.
- (27) By submitting a notification of the aid to the CCB for district heating before granting it, the Liechtenstein authorities have complied with the notification requirement. The Authority therefore concludes that the Liechtenstein authorities have respected their obligations pursuant to Article 1(3) of Part I of Protocol 3.

3. Compatibility of the aid

3.1 Legal framework

3.1.1 Introduction

- (28) The Liechtenstein authorities submit that because of the environmental benefits of the project, the aid is compatible with the EAG and with Article 61(3)(c) of the EEA Agreement.
- (29) The Authority assesses the aid as follows:

¹² Compare Case C-222/04 Ministero dell’Economica e delle Finanze v Cassa di Risparmio di Firenze SpA [2006] ECR I-289, paragraph 108.

- a. Aid for production: under the principles set out in section 3.1.6 of the EAG.
- b. Aid for infrastructure: under Article 61(3)(c) of the EEA Agreement.¹³

3.1.2 Investment aid for energy production

- (30) Section 3.1.6 of the EAG allows aid to be granted for the promotion of energy from renewable sources, as defined in point 70(9) of the EAG, which provides that: “*energy from renewable energy sources*” means energy produced by plants using only renewable energy sources, as well as the share in terms of calorific value of energy produced from renewable energy sources in hybrid plants which also use conventional energy sources. It includes renewable electricity used for filling storage systems, but excludes electricity produced as a result of storage systems”.
- (31) According to chapter 3.1.6 of the EAG, the aid intensity for investment aid must not exceed 80% of the eligible investment costs in the case of small enterprises. Eligible costs must be limited to the extra investment costs borne by the beneficiary compared with a conventional power plant or with a conventional heating system with the same capacity in terms of the effective production of energy; and must be calculated net of any operating benefits and operating costs related to the extra investment and arising during the first five years of the life of the investment.
- (32) The plant will be fuelled by biomass in the form of wood chips made from waste wood (tree stumps, wood left behind in avalanches etc), twigs and garden waste. The production of energy from biomass is eligible for aid under section 3.1.6 of the EAG.¹⁴
- (33) The Authority has reviewed the eligible cost calculations presented by the Liechtenstein authorities, as described in chapter I.7.1 above and is satisfied that they comply with the provisions set out in chapter 3.1.6 of the EAG. The CHF 636 536 of aid for the heat production leads to an intensity of 13.1% which is within the maximum intensity of 80% as set out in the guidelines.
- (34) On this basis, the Authority concludes that the investment aid for the energy production meets the criteria of the EAG and is compatible with the functioning of the EEA Agreement on the basis of its Article 61(3)(c).

3.1.3 Investment aid for infrastructure

- (35) As set out above, support for district heating infrastructure does not fall within the scope of the EAG. Point 67 of the EAG states that: “*to the extent that the provisions relating to energy saving set out in section 3.1.5 are not applicable, these Guidelines do not apply to state aid to investments in infrastructure related to district heating, which will be assessed under Article 61(3)(c) of the EEA Agreement.*” This is confirmed in footnote 52 of the EAG, which reiterates that financing of district heating infrastructure falls to be assessed directly under Article 61(3)(c) of the EEA Agreement.
- (36) The Authority will therefore assess the aid for infrastructure in the project directly on the basis of Article 61(3)(c) of the EEA Agreement.
- (37) Pursuant to Article 61(3)(c) the following may be considered compatible with the functioning of the EEA Agreement: “*aid to facilitate the development of certain economic*

¹³ See paragraph (35) below.

¹⁴ See point 70(5) and (6) of the EAG.

activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest”.

- (38) In order to be considered compatible under Article 61(3)(c) of the EEA Agreement, the aid must be necessary and in a proportionate manner pursue an objective of common interest. In that regard, the following questions must be assessed (the “balancing test”):¹⁵
- 1) Is the aid measure aimed at a well-defined objective of common interest (i.e. does the proposed aid address a market failure or another objective of common interest)?
 - 2) Is the aid well designed to deliver the objective of common interest? In particular:
 - i. Is the aid measure an appropriate instrument (i.e. are there other, better-placed instruments)?
 - ii. Is there an incentive effect (i.e. does the aid change the behaviour of the undertakings)?
 - iii. Is the aid measure proportionate (i.e. could the same change in behaviour be obtained with less aid)?
 - 3) Are any distortions of competition and the effect on trade limited, so that the overall balance is positive?
- (39) Article 61(3)(c) of the EEA Agreement does not contain any explicit limit on aid intensity, but requires, as noted above, aid measures to be proportionate. Furthermore, as explained above, both the Authority and the European Commission have allowed the eligible costs to be calculated using a zero counterfactual in the case of infrastructure.
- (40) An objective of common interest is an objective which has been recognised as being in the common interest of the EEA States. The EEA institutions have recognised that the protection of the environment and the reduction of CO₂ emissions are in the common interest of the Member States. Both the EU Member States and the EFTA States have made a commitment to achieve at least a 20% reduction in greenhouse gas emissions compared to 1990 and at least a 20% saving in energy consumption compared to the projections for 2020.¹⁶ According to the EAG, the main positive element to be taken into consideration when assessing the compatibility of the aid, is the fact that the aid induces undertakings to pursue environmental protection which they would not otherwise have pursued.¹⁷ The support granted to CCB will allow it to produce 14.5 GWh of renewable energy. Even though the Liechtenstein authorities have not provided accurate data on the reductions in CO₂ emissions, the Authority nevertheless considers that the project will contribute to a significant emission reduction where the use of fossil fuels will be replaced by the use of renewable biomass. On this basis, the Authority concludes that the notified aid aims at a well-defined objective of common interest.

¹⁵ See Authority Decision No 248/11/COL on the Norwegian Energy Fund Scheme (OJ C 314 27.10.2011 p. 4), paragraph 87.

¹⁶ See <http://www.efta.int/eea/eea-news/2011-12-20-jc-renewable-energy.aspx> on the incorporation of the Directive on the promotion of renewable energy into the EEA Agreement.

¹⁷ See EAG, paragraph 166.

- (41) An instrument is appropriate if there are no other less distortive means to achieve the same results. The Authority understands that there are currently no regulatory requirements or standards requiring investment in renewable steam and district heating infrastructure. According to the Liechtenstein authorities the project achieves the highest CO₂-reduction that can be realised efficiently in the short term. After having assessed these factors, the Authority has concluded that it appears that there are no less distortive instruments to achieve the goals aimed at, and that the envisaged aid constitutes an appropriate instrument.
- (42) State aid provides an incentive effect if the aid changes the behaviour of the recipient towards reaching the objective of common interest. In order to be compatible with the functioning of the EEA Agreement state aid has to be proportionate. Generally, the incentive effect can be demonstrated by showing that the project realised with aid has an increased environmental benefit compared to the credible counterfactual. According to the Liechtenstein authorities, the credible counterfactual scenario as an alternative to the aided investment is not to invest in building the district heating infrastructure. As a result, the Liechtenstein authorities consider it most likely that the investment would not be undertaken without the aid. The Liechtenstein authorities have submitted a business plan for the district heating plant, which shows that without the aid, the project would be loss-making. Even with the maximum aid amount, it is expected that the plant will only achieve a modest annual surplus of about CHF 35 000. The Authority has examined the information provided and has concluded that it is credible and that it demonstrates that the project is not viable without aid. Furthermore, as the credible information forecasts only a modest profit the Authority can conclude that the aid is proportionate. Hence, the Liechtenstein authorities have demonstrated that the production of renewable energy and the corresponding reduction in CO₂ emission from the project would not have occurred under normal market conditions, as the profitability of the project without the aid is negative. On this basis, the Authority considers that the aid granted to CCB provides the necessary incentive effect and that it is proportionate.
- (43) As for the potential for distortion of competition and trade the Authority notes that the aid awarded to the project is limited – it is well below the threshold of EUR 7.5 million for when the Authority carries out a detailed assessment in accordance with paragraph 160 of the EAG, and the district heating network covers a limited geographical area, the municipality of Balzers. Furthermore, the Authority considers that the notified measures ensure that the aid is proportionate and that the aid amount is limited to the minimum necessary to achieve the higher level of environmental protection sought. It can therefore be concluded that any possible distortion of competition or effect on trade will be limited.
- (44) On balance, the Liechtenstein authorities have demonstrated that the project will make possible an environmental benefit of an annual reduction in CO₂ emissions of up to 4000 tonnes. It can therefore be concluded that the aid granted to CCB will ensure positive environmental effects which outweigh the limited distortions of competition and trade.

4. Conclusion

- (45) On the basis of the foregoing assessment, the Authority considers that the notified aid to CCB for district heating is compatible with the functioning of the EEA Agreement.

HAS ADOPTED THIS DECISION:

Article 1

The aid to the citizens' co-operative Balzers for district heating is compatible with the functioning of the EEA Agreement on the basis of its Article 61(3)(c).

Article 2

The implementation of the measure is authorised accordingly.

Article 3

This Decision is addressed to the Principality of Liechtenstein.

Article 4

Only the English language version of this decision is authentic.

Done at Brussels, on 24 April 2014.

For the EFTA Surveillance Authority



Oda Helen Sletnes
President



Helga Jónsdóttir
College Member