

**DECISION OF THE EFTA SURVEILLANCE AUTHORITY****No 88/94/COL****of 20 July 1994****on the second amendment of the Procedural and Substantive Rules in the Field of State Aid**

## THE EFTA SURVEILLANCE AUTHORITY

has amended the Procedural and Substantive Rules in the Field of State Aid <sup>(1)</sup>, adopted on 19 January 1994 <sup>(2)</sup>, for the first time amended on 11 May 1994 <sup>(3)</sup>, as follows :

1. Paragraph 28 (1) of Chapter 28 of the State Aid Guidelines shall be replaced by the following :

'In accordance with the basic principles on regional aid, as set out above, and in applying the Joint Declaration on Article 61 (3) (c) of the EEA Agreement, the EFTA Surveillance Authority has adopted methods for the application of Article 61 (3) (a) and (c) of the EEA Agreement. These methods for assessment are described below.'

2. Paragraph 28 (2) of Chapter 28 of the State Aid Guidelines shall be deleted.

3. The second indent of section 28.2.1 (2) of the State Aid Guidelines shall be replaced by the following :

'— in the first stage of the analysis, the socio-economic situation of a region is assessed on the basis of three alternative criteria : per capita gross domestic product (GDP) or gross value added at factor cost (GVA), structural unemployment and low population density.'

4. A new section 28.2.3 shall be inserted as follows :

**'28.2.3. First stage of analysis with regard to regions with a very low population density <sup>(1)</sup>**

**28.2.3.1. Population density threshold**

1. In order to take account of special regional development problems arising out of demography, regions corresponding to NUTS Level III regions with a population density of less than 12,5 per square kilometre may also be considered eligible for regional aid under the exemption set out in Article 61 (3) (c).

2. The introduction of this threshold for the interpretation and application of Article 61 (3) (c) of the EEA Agreement with regard to regional aid may be based on the grounds set out below.

3. The Joint Declaration on Article 61 (3) (c) of the EEA Agreement acknowledges the fact that the indicators used in the first stage of the method do not properly reflect the regional problems specific to certain Contracting Parties, particularly the Nordic countries (Norway, Sweden, Finland and Iceland). In these countries there are important aspects of the regional situation which the indicators are supposed to describe and which fall outside the scope of the method of analysis of eligibility as described in section 28.2.2 of these guidelines.

4. These shortcomings are in a large part due to a number of special features shared by the Nordic countries : they derive from geography — the remote northern location of some areas, harsh weather conditions and very long distances inside the national borders of the country concerned — and from the very low population density in some parts. These are specific factors which are not reflected in the statistical indicators used in section 28.2.2.

<sup>(1)</sup> Hereinafter referred to as 'the State Aid Guidelines'.

<sup>(2)</sup> OJ No L 231, 3. 9. 1994, p. 1.

<sup>(3)</sup> See page 32 of this Official Journal.

5. A test of eligibility must therefore be used which reflects these problems. Such a test should be of general application, i.e. potentially applicable to any country. It should also be intergrated into the method for the application of Article 61 (3) (c) of the EEA Agreement in order not to disrupt the method of assessing regional aid. If it is to be an objective test which is valid *erga omnes*, it must be an alternative to the unemployment and GDP tests used in the first stage of the method. This would mean that any region corresponding to a NUTS Level III region presenting the required level of unemployment or GDP or satisfying the new test could be accepted as qualifying for regional aid in the appropriate circumstances and subject to approval by the EFTA Surveillance Authority.
6. On those grounds, it could be held that a population density threshold of less than 12,5 per square kilometre reflects the addressed regional problems in an appropriate manner. All regions corresponding to NUTS Level III regions with a population density below that figure may then qualify for the exemption for regional aid laid down in Article 61 (3) (c) of the EEA Agreement, subject to assessment and decision by the EFTA Surveillance Authority.

#### 28.2.3.2. *Criteria for transport aid*

1. The population density test may provide a satisfactory response to the problem of underpopulation in certain regions, but it does not address another regional handicap specific to the Nordic countries, namely the extra costs to firms caused by very long distances and harsh weather conditions. These factors affect regional development in two ways : they may induce firms in such regions to relocate to less remote areas which hold out better prospects for economic activity and they might dissuade firms from locating in such outlying areas.
2. The EFTA Surveillance Authority could therefore decide to authorize aid to firms aimed at providing partial compensation for the additional cost of transport, on a limited basis and at its discretion, in order to safeguard the common interest. Such compensation must however comply with the following conditions :
  - Aid may be given only to firms located in areas qualifying for regional aid on the basis of the population density test.
  - Aid must serve only to compensate for the additional cost of transport. The EFTA State concerned will have to show that compensation is needed on objective grounds. There must never be overcompensation. Account will have to be taken here of other schemes of assistance to transport, notably pursuant to Articles 49 and 51 of the EEA Agreement.
  - Aid may be given only in respect of the extra cost of transport of goods inside the national borders of the country concerned. It must not be allowed to become export aid.
  - Aid must be objectively quantifiable in advance, on the basis of an aid-per-kilometre ratio or the basis of an aid-per-kilometre and an aid-per-unit-weight ratio, and there must be an annual report drawn up which, among other things, shows the operation of the ratio or ratios.
  - The estimate of additional cost must be based on the most economical form of transport and the shortest route between the place of production or processing and commercial outlets.
  - No aid may be given towards the transport or transmission of the products of enterprises without an alternative location (products of the extractive industries, hydroelectric power stations, etc.).

- Transport aid given to firms in industries which the EFTA Surveillance Authority considers sensitive (motor vehicles, textiles, synthetic fibres, ECSC products and non-ECSC steel) are subject to the sectoral rules for the industry concerned and must in particular respect the specific notification obligations stipulated in the relevant chapters of these guidelines or in the Act referred to in point 1a of Annex XV to the EEA Agreement <sup>(1)</sup>.
  - Agricultural products within the scope of Annex II to the EC Treaty, and falling within the scope of the EEA Agreement are not covered by this measure <sup>(2)</sup>.
  - Any plans to put into effect new schemes or to amend existing schemes of assistance to transport should contain a limitation in time and should never be more favourable than existing schemes in the relevant EFTA State.
3. The EFTA Surveillance Authority aims at reviewing the existing schemes of assistance to transport on the basis of these criteria within three years from the entry into force of the EEA Agreement.

<sup>(1)</sup> This section corresponds to the Commission notice on changes to the method for the application of Article 92 (3) (c) of the EC Treaty to regional aid, adopted by the European Commission on 1 June 1994.

<sup>(2)</sup> Commission Decision No 3855/91/ECSC of 27 November 1991 establishing Community rules for aid to the steel industry (OJ No L 362, 31. 12. 1991, p. 57).

<sup>(3)</sup> The corresponding condition in the Commission notice referred to in footnote 1 reads as follows: "les produits agricoles relevant de l'Annexe II du Traité CE, autres que les produits de la pêche, ne sont pas couverts par les present dispositions". The different condition in the present State Aid Guidelines is due to the fact that the EFTA Surveillance Authority lacks competence in respect of State aid in the fisheries sector.'

5. Section 28.2.3 shall be renumbered into section 28.2.4.

The first sentence of paragraph 1 of this section shall be replaced by the following:

'1. The first stage of analysis outlined above permits a basic examination of the socio-economic situation of a region in its national and EEA context in terms of unemployment, income levels and low population density.'

Paragraph 3 of this section shall be replaced by the following:

'3. It is possible that these other relevant indicators may reveal an adequate justification for regional aid even in regions which do not satisfy totally the thresholds established in the course of the first stage.'

6. Section 28.2.4 shall be renumbered into section 28.2.5.

Done in Brussels, 20 July 1994.

*For the EFTA Surveillance Authority*

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