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**PUBLIC VERSION**

**WORKING LANGUAGE**

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**Subject: State aid N 445/2008 – Austria  
Boxmark Leather - Grant for waste water filtering unit**

Dear Madam,

## **1. PROCEDURE**

1. By letter dated 4 September 2008, registered on the same day, the Austrian authorities notified the Commission that the government of the Burgenland/ Austria will grant an individual aid to the Boxmark Leather GmbH & Co KG (hereafter: the beneficiary) for the construction of an additional waste water filtering unit. The Commission requested additional information by letter dated 24 September 2009. By letter dated 23 October 2008, registered the same day, the Austrian authorities provided the requested information.

## **2. DESCRIPTION OF THE AID**

2. The Austrian authorities intend to grant 360 000 EUR to the beneficiary, a manufacturer of leather products, for the construction of an additional waste water filtering unit. The aid should enable the undertaking to go beyond Community standards for environmental protection and to further increase environmental protection in the absence of such standards.

Ihrer Exzellenz Frau Dr. Ursula PLASSNIK  
Bundesminister für auswärtige Angelegenheiten  
Ballhausplatz 2  
A - 1014 Wien

## **2.1. Background and Objective**

3. The manufacturing of leather involves the tanning of hides and skins. This process creates considerable amounts of various emissions such as chrome, sulphides and others. In the case of the beneficiary these emissions are already reduced by a primary and secondary filtering process. In spite of these measures the beneficiary still releases emissions into the nearby river 'Raab'. The Austrian government provided documentation according to which the emissions are in line with Community standards. The emissions also fulfil the stricter national standards. However, the Austrian authorities and the beneficiary intend to reduce these emissions further.
4. The objective of the measure is to protect the environment by enabling the beneficiary to go beyond Community standards and to further increase environmental protection in the absence of such standards (Point 3.1.1 of the Guidelines on State Aid for Environmental Protection, hereafter: the Environmental Guidelines<sup>1</sup>). In particular the measure aims at reducing emissions of chrome and sulphides as well as emissions of TOC, CSB, BSB<sub>5</sub> and AOX.

## **2.2. National Legal Basis**

5. The aid is based on an individual decision by the local Government of Burgenland/Austria from 24 July 2008 (Zl.: 5-G-F48/242-2008). According to paragraph 4 of the said decision the aid will only be put into effect after approval by the Commission.

## **2.3. Beneficiary**

6. The beneficiary is a large enterprise active in the manufacturing of leather and related products (NACE Code C15). The production site is situated in the Austrian region of Burgenland, a region eligible for assistance under Article 87 (3) (a) of the EC Treaty (NUTS-Code AT11). However, in view of the aid intensities, the Austrian government notified the aid under the Environmental Guidelines.

## **2.4. Budget**

7. The aid consists of a direct grant of 360 000 EUR as a single payment. The aid complements further aid of 540 000 EUR granted under the Austrian Guidelines 2002 for Corporate Sewage Measures, a scheme approved by the Commission on 23 September 2002 (N 811/2001). The aid will be put into effect as of the 1 January 2009 subject to approval by the Commission.

## **2.5. Aid Instrument and Funding**

8. The notified measure consists of individual aid granted in form of a direct non-reimbursable grant of 360 000 EUR funded through the budget of the Burgenland/Austria. The further aid of 540 000 EUR granted under the Austrian Guidelines 2002 for Corporate Sewage Measures (N 811/2001) is funded through the federal budget.

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<sup>1</sup> OJ C 82 of 1.4.2008, p. 1

9. The execution, implementation and monitoring of the aid will be effected by the Kommunalkredit Public Consulting GmbH (hereafter: KPC) in accordance with the rules laid down in the Austrian Guidelines 2002 for Corporate Sewage Measures. The KPC is a service provider dedicated to the execution, implementation and monitoring of Government grants. The beneficiary is required to report regularly to the KPC. In particular, the beneficiary is obliged to inform the KPC of all further aid requested or received.

## **2.6. Duration**

10. The aid will be granted as a single payment, not in tranches. It will be put into effect on 1 January 2009 subject to approval by the Commission.

## **2.7. Cumulation**

11. The aid of 360 000 EUR (representing 20 % of the alleged eligible investment costs) cumulates with a direct grant of 540 000 EUR (representing 30% of the alleged eligible investment costs) under the Austrian Guidelines 2002 for Corporate Sewage Measures (N811/2001). The total aid thus adds up to 900 000 EUR (representing 50% of the alleged eligible investment costs). The KPC monitors the implementation of the cumulation rules. In particular the beneficiary is required to inform the KPC of any additional aid requested or received.

## **3. ASSESSMENT**

12. The Commission has examined the proposed amendment in accordance with Article 87 et seq. of the EC Treaty and Article 61 et seq. EEA Agreement<sup>2</sup> and has decided, in the light of its policy on environmental protection, not to raise objections to its implementation.

### **3.1. Presence of State Aid Pursuant to Article 87(1) of the EC Treaty**

13. A measure constitutes state aid under Article 87(1) of the EC Treaty if it fulfils four conditions. Firstly, the measure is funded by the state or through state resources. Secondly, the measure confers an advantage to the recipients. Thirdly, the measure favours selected undertakings or economic activities. And fourthly, the measure affects trade between Member States and distorts competition in the common market.
14. The aid to the beneficiary fulfils all the conditions mentioned above. The aid is funded by the budget of the region of Burgenland/Austria. The aid confers an advantage to the beneficiary by providing funds which he would not have obtained under normal market conditions. The aid is selective since it is granted only to the beneficiary. The aid has the potential to affect the trade between Member States and to distort competition because the beneficiary is active in a sector where trade between Member States takes place. The aid granted to the beneficiary thus constitutes state aid pursuant to Article 87 (1) of the EC Treaty.

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<sup>2</sup> The following assessment is based on both the EC Treaty and the EEA Agreement, but for reasons of simplification, in the following assessment it will only be referred to the EC Treaty provisions.

### **3.2. Legality of the Aid**

15. By notifying the measure before its implementation, the Austrian authorities have fulfilled their obligation according to Article 88 (3) of the EC Treaty. Any disbursements will only be made after the authorisation of the notified measure by the Commission.

### **3.3. Compatibility of the Aid with Article 87(3)(c) of the Treaty**

16. The Commission finds that the notified measure can be found compatible with Article 87(3)(c) of the EC Treaty, since it complies with the provisions of the Environmental Guidelines.
17. Pursuant to point 43 of the Environmental Guidelines the aid provides an incentive to the beneficiary to achieve a higher level of environmental protection. The aid enables the beneficiary to improve its level of environmental protection in the absence of Community standards and – where Community standards exist – enables the beneficiary to achieve a level of environmental protection beyond these standards.
18. According to point 70 (3) of the Environmental Guidelines Community standards are defined as either a mandatory standard setting the levels to be attained in environmental terms by individual undertakings, or the obligation under Directive 2008/1/EC to use the Best Available Techniques (hereafter: BATs) as set out in the most recent relevant information published by the Commission pursuant to Article 17 (2) of that Directive.
19. The aid aims at reducing a variety of emissions of the beneficiary into the river 'Raab'. The aid partly focuses on reducing emissions of chrome and sulphide for which Community standards exist. The aid further focuses on reducing emissions for which no Community standards exist, such as surface tension, Al, Fe, TOC, CSB, BSB<sub>5</sub>, AOX and others. According to the information provided by Austria, these emissions are subject to Austrian standards.

#### ***Aid to Increase Environmental Protection beyond Community Standards***

20. With regard to the emissions of leather manufacturers BATs have been set out by the Commission in the 'Reference Document on Best Available Techniques for the Tanning of Hides and Skins' (hereafter: BAT Tanning of Hides and Skins)<sup>3</sup>.
21. The BAT Tanning of Hides and Skins foresees in Chapter 5.4 the following measures for the effluent treatment:
  - To keep sulphide-containing effluent from the beamhouse separate and at high pH until the sulphide is removed. The associated emission level after treatment is 2 mg S<sup>2</sup>/l in a random sample in the separate effluent. After the sulphide is removed (on site or in a jointly used dedicated treatment plant) the effluent can be mixed.
  - To collect chromium-containing partial effluent (e.g. from tanning and samming) with a concentration of Cr<sub>(total)</sub> > 1 g/l in combination with other effluent.
  - To use mechanical treatment (on or off site)

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<sup>3</sup> European Integrated Pollution Prevention and Control Bureau (EIPPCB), 'Reference Document on Best Available Techniques for the Tanning of Hides and Skins', February 2003, available at <http://eippcb.jrc.es/pub/english.cgi/0/733169> (last visited 14 November 2008).

- To use biological treatment (on or off site)
  - To use post-purification sedimentation and sludge handling (on or off site).
22. According to the notification the above mentioned techniques are already implemented in the first and secondary treatment of the beneficiary's waste water. The planned tertiary treatment will go beyond these standards. It consists of physical and chemical treatment which is not provided for by the BAT. Austria confirmed that it will enable the beneficiary to reduce its emissions of Cr (total) from 0,0054 mg/l to below 0,0017 mg/l, i.e. below the BAT-level of 1 g/l, as well as its emissions of sulphide from 0,1 mg/l to below 0,02 mg/l, i.e. below the BAT-level of 2g/l. The aid will thus increase the environmental protection beyond Community standards.

***Aid to Increase Environmental Protection in the Absence of Community Standards***

23. Austria demonstrated that a number of emissions or negative impacts for which no Community standards exist will be reduced as a result of the measure. Most notably there will be a significant drop in the emissions of TOC (from 99,1 mg/l to 6,2 mg/l), CSB (from 282 mg/l to 39 mg/l), BSB<sub>5</sub> (from 14 mg/l to 1 mg/l) and from AOX (from 0,46 mg/l to 0,22 mg/l). The beneficiary will thus increase the level of environmental protection in the absence of Community standards.

***Eligible Costs***

24. According to point 76 of the Environmental Guidelines the aid intensity must not exceed 50% of the eligible investment cost as defined in points 80 to 84. Pursuant point 80 of the Environmental Guidelines these eligible investment costs must be limited to the extra investment costs directly related to the increased level of environmental protection less the operating benefits and plus the operating costs.
25. According to point 81 of the Environmental Guidelines the protection-related cost are usually identified by comparing the investment with the counterfactual situation in absence of State aid (point 81 (b) of the Environmental Guidelines) except where the protection-related cost can be easily identified without (point 81 (a) of the Environmental Guidelines). This is the case where the parts which improve the environmental protection can be clearly identified. The tertiary waste water treatment unit will solely increase the level of environmental protection at the 'end of pipe'. The Austrian authorities confirmed that the measure will not interfere with the production process as such and will not lead to any operating benefits. In particular there will be no increase in capacity and no creation of any by-products. Therefore the protection-related costs can easily be identified as the entire costs of the tertiary waste water treatment unit as such.
26. Accordingly, the measure is in line with points 81, 82, 83 and 84 of the Environmental Aid Guidelines. Austria provided a detailed list of the costs of the waste water treatment unit which amount to 1 899 397 EUR. The KPC recognised 1 800 000 EUR as eligible costs.

***Aid Intensity and Cumulation***

27. According to point 76 of the Environmental Guidelines the aid intensity must not exceed 50% of the eligible investment costs. Since the eligible investment as identified by the KPC amount to 1 800 000 EUR, the maximum aid must not exceed 900 000 EUR. Furthermore, according to point 190 of the Environmental Guidelines aid may not be

combined with other State aid if such overlapping results in an aid intensity higher than that laid down in these guidelines.

28. The present aid of 360 000 EUR represents 20 % of the eligible costs. According to the notification the beneficiary will receive another 540 000 EUR of aid under the Austrian Guidelines 2002 for Corporate Sewage Measures. This aid represents 30% of the eligible costs. The cumulated aid thus totals 900 000 EUR. As it represents in total 50% of the eligible costs the aid is in line with the maximum aid intensity as described in point 76 of the Environmental Guidelines and with the provisions on cumulation in point 190 of the said guidelines. Austria confirmed that the beneficiary is obliged to notify the KPC of any further aid requested or received.

### *Incentive Effect*

29. According to point 142 of the Environmental Guidelines State aid must have an incentive effect. The incentive effect is the causal relation between the granted State aid and a change in the behaviour of the beneficiary that results in a higher level of environmental protection. In line with point 143 of the Environmental Guidelines Austria confirmed that the beneficiary has not started the project prior to the submission of the application for the aid to the national authorities.
30. Since the beneficiary is a large enterprise Austria has to demonstrate the incentive effect in accordance with points 145 et seq. of the Environmental Guidelines. Austria confirmed that the beneficiary already complies with the existing norms. Austria further pointed out that the measure will not bring about any operational benefits, neither in increase in capacity nor in the form of by-products. Thus, the investment can easily be identified as the costs of the construction of the waste water treatment unit as such. From a purely economic point of view the investment is clearly unprofitable. It is thus credible that the beneficiary will not make the investment without the aid. It can therefore be concluded that the State aid does have the desired incentive effect. Therefore, the Commission considers that on the basis of the information provided by Austria the measure is in line with point 146 of the Environmental Aid Guidelines.

## **4. DECISION**

31. The Commission has accordingly decided not to raise objections to the notified measure, because the aid can be found compatible with the common market in accordance with Article 87 (3) (c) of the EC Treaty and Article 61 (3) (c) of the EEA Agreement, since it complies with the Environmental Guidelines.
32. The Commission reminds the Austrian Authorities that, in accordance with article 88 (3) of the EC Treaty, plans to refinance, alter or change this aid have to be notified to the Commission pursuant to provisions of the Commission Regulation (EC) No 794/2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 (now 88) of the EC Treaty (OJ L 140, 30.4.2004, p.1).
33. If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site:

[http://ec.europa.eu/community\\_law/state\\_aids/index.htm](http://ec.europa.eu/community_law/state_aids/index.htm).

Your request should be sent by registered letter or fax to:

European Commission  
Directorate-General for Competition  
Directorate for State Aid  
State Aid Greffe  
B-1049 Brussels  
Fax No: (0032) 2-296.12.42

For the Commission

*Neelie KROES*  
Member of the Commission