Brussels, 17.12.2009
C(2009)10377 final

Subject: State Aid N 434/2009 – Austria
Short-term export-credit insurance

Sir,

I. PROCEDURE

1. On 20 July 2009 the Austrian authorities notified to the Commission the above mentioned measure aimed at publicly providing short-term export-credit insurance and re-insurance in cases where covers for marketable export credit risks are temporarily unavailable (hereafter the both measures, i.e. the export credit insurance and the re-insurance, referred to as "the scheme").

2. The Austrian authorities intend to use the possibility offered by the Communication of the Commission pursuant to Article 93(1) of the EC Treaty applying Articles 92 and 93 of the Treaty to short-term export credit insurance[1] (hereinafter the "Communication") and the Communication on the Temporary framework for State aid measures to support access to finance in the current financial and economic crisis[2] (hereinafter the "Temporary Framework") to demonstrate temporarily unavailability of cover for marketable risks as a consequence of the current financial crisis.

3. Prior to the notification the Austrian authorities submitted information on 4 May and on 17 July 2009.

4. The Commission requested further information on 25 August 2009 and the Austrian authorities replied on 28 September 2009. Further information was provided on 7 December 2009.

II. MARKET FOR SHORT -TERM EXPORT CREDIT INSURANCE IN AUSTRIA

5. In the private export credit insurance market in Austria mainly the following international insurers are active: Atradius Credit Insurance N.V. (Austria branch)

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[1] OJ C 281, 17.09.1997, p.4-10.
[2] OJ C 16, 22.01.2009, in particular point 5.1.

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and Coface Austria Kreditversicherung AG. Further credit insurers active in the Austrian market are OeKB Versicherung AG, Prisma Kreditversicherungs-AG and Garant Versicherungs-AG.

6. The private credit insurers in Austria offer wide range of export credit insurance products, e.g a whole-turnover policy, which means that the policy covers all exports by the company up to an agreed turnover limit and e.g. a single transaction policy.

7. The premium level in the Austrian private market before the current financial crisis ranged from ca. […][*]% (for low risk) to […]% (for high risk) for the export credit insurance for 30 days and between […]% (for low risk) and […]% (for high risk) for export credit insurance for 12 months.

8. According to the Austrian authorities in the context of the current financial and economic crisis, it is assumed that the premiums have increased by 40 – 90 basis points p.a. depending on the underlying risk profile. The estimate for withdrawal of insurance coverage of private credit insurers in Austria is up to 15-30%. Therefore, private credit insurers are decreasing or cancelling credit limits[3] agreed with exporters, even if this reduction in availability is not justified by an increase in the underlying risk of the insured operations.

9. In order to mitigate possible negative effect, the Austrian authorities have decided to extend the existing State export credit insurance framework, which in the normal market conditions is available only for the export transactions to the non-marketable countries, and to offer its insurance and reinsurance cover for the short-term export to the countries[4], for which risk cover has become temporarily unavailable due to the current crisis.

10. The Austrian authorities submitted to the Commission evidence of insurance cover unavailability for short-term export credit. The proof in form of letters from a large well-known international private export credits insurer and a national credit insurer was provided. The evidence demonstrated lack of cover for transactions relating to the countries listed in the Annex of the Communication, except Luxembourg and New Zealand. In this context, the Austrian authorities intend to supplement for the lack of cover by providing short term export insurance and reinsurance.

III. DESCRIPTION OF THE MEASURE

3.1 Objective

11. The purpose of the Austrian scheme is to provide short-term export-credit insurance coverage (hereafter "the export credit insurance") to exporters established in Austria who are temporarily confronted with unavailability of cover in the private market for financially sound transactions with buyers in certain countries[5] as a result of the financial crisis.

[*] Confidential information.

[3] The credit limit is one of the key elements in credit insurance policies and represents the maximum amount of outstanding receivables resulting from transactions with a certain buyer, which can be covered by the insurer at any given time.

[4] The countries listed in the Annex of the Communication.

[5] The countries listed in the Annex of the Communication, except Luxembourg and New Zealand. The risks covered are defined in the Communication as commercial and political risks on public and non-

12. In addition, the scheme provides re-insurance and quota-share re-insurance for the insurance companies (hereafter "the re-insurance measure").

3.2 Legal basis

13. The legal basis of the notified scheme is the Export Guarantees Act as amended with effect from 24 December 2008[6] and Export Guarantees Decree as amended by the Decrees published in Federal Law Gazettes[7].

3.3 Implementing body

14. The export credit insurance is provided by the State through Oesterreichische Kontrollbank AG (hereafter "OeKB"), which is Austria's main provider of financial and information services to the export industry and the capital market.

15. In the reinsurance measure, the strategic and limit steering as well as the damage case handling (Schadensfallbearbeitung) is carried out by the Austrian Ministry of Finance. The administrative – technical processing, in particular the clearing (Verrechnung) will be carried out by OeKB.

3.4 Eligibility

16. All exporting companies established in Austria are eligible to apply for short-term export credit insurance cover within the scheme. The scheme does not foresee any limitation with regard to the groups of products or sectors, which can be covered by a policy within a scheme.

17. OeKB will not offer insurance cover to financial institutions under this scheme. All insurance companies established in Austria are eligible to apply for the scheme.

18. OeKB intervention will only take place in the areas where the market is not functioning properly that is in cases where the private sector does not have capacity to cover risks which are temporarily not available due to the financial crisis. OeKB will act as insurer of last resort.

19. In order to ensure that no financially unsound transactions, which would not be able to obtain insurance cover even in the normal market conditions, are covered under the scheme, OeKB will conduct risk assessment of the parties involved in the scheme. For this reason all applicants are being checked based on information such as financial statements, credit reports and contact with their bank. Therefore this excludes transactions with firms in difficulty.

20. In addition, OeKB will reject the application if the risk is too high or there is lack of sufficient information concerning the transaction.

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public debtors established in countries listed in its Annex and which cannot normally be covered with the support of Member States.

6 Federal Law dated 8 April 1981 relating to the granting of guarantees for contracts and rights (Export Guarantees Act-ExpGA) as amended by the Decrees published in Federal Law Gazettes No. 249/1984, 560/1986, 651/1987, 288/1991, 961/1993, 733/1995, I No. 63/2000, I 71/2003, I 95/2005, I 58/2007, I 2/2008, I 32/2008 and I 145/2008.

7 Decree of the Federal Minister of Finance dated April 30, 1981, relating to the regulations for the granting of guarantees by the Federal Republic (Federation) in implementation of the 1981 Export Guarantees Act (1981 Export Guarantees Decree), published in Federal Law Gazette no. 257/1981 as amended by the Decrees published in Federal Law Gazettes no. 203/1988, 349/1991, 130/1994, 816/1995, II no. 88/1998, 212/1998 and 90/1999.

21. The maximum risk period to be covered is up to 24 months for both export credit insurance and reinsurance.

3.5 Terms and conditions

Export credit insurance

22. Regarding the export credit insurance the exporters are required to make individual applications to OeKB and submit to OeKB in writing that they have been refused cover by one or two private insurers depending on the type of the insurance policy. OeKB will then apply standard underwriting procedures with normal risk assessment. However, the final decision of the acceptation of the application is made by the State.

23. The export credit insurance[8] cover will be given in two possible products: covering single transactions (*Garantie für direkte Lieferungen und Leitungen*), which means that the policy covers commercial and political risks of a single transaction of a company; or covering the whole-turnover of the insured (*revolvierende Rahmen- und Pauschalgarantie*), which means that the policy covers all exports by the company up to an agreed turnover limit.

24. Under the scheme, for marketable risks OeKB intend to cover primarily 80% of the total transaction value, but depending on the quality of the risk the coverage could range up to 90%. Therefore, a minimum of 10%, though usually 20%, of the underlying transaction risk remains by the exporter.

Reinsurance

25. Regarding the reinsurance, the scheme intends to reinsure the topping up of the reinsurance. This topping up will be available for existing credit limits when they are reduced by credit insurers or new credit limits given by credit insurers. The maximum cover by the State is either 70% or 80% in the case of the reinsurance alongside private reinsurers.

3.6 Level of Remuneration

Export credit insurance

26. The premium paid by the exporter to OeKB covers both political and commercial risk. The premium takes into account the following factors: country risk, status of the buyer (public or private) and its creditworthiness, risk duration, collateral, if any, and the size of the sales amount. In addition, OeKB will taken into account the previous premiums charged by private insurers for the exporter applying for the scheme, if this data is available.

27. In general, Austria foresees premiums in approximately the following ranges (presented as premium rates in percent of the respective export contract value):

[8] The notified export credit insurance is referred to as a guarantee, rather than insurance, under the Austrian legislation. However, the Austrian authorities have confirmed that this guarantee has all features of insurance. Above all, the purpose of the scheme is to transfer the main part of the risk relating to a specific export transaction (namely the non-payment for the exported goods and/or services by the foreign buyer) from the exporter to the State. Further, the payment of the claims put forward by the exporters is conditional on the fulfilment of a number of requirements. Notably, the exporter becomes entitled to an indemnification only after having provided evidence that all conditions of the insurance policy were met. This conditionality gives the measure features of insurance.

Duration	Low risk	Medium risk	High risk
30 days	0.125	0.27	0.42
3 months	0.375	0.8	1.25
6 months	0.75	1.6	2.5
12 months	1.5	3.25	5.0

28. The Austrian authorities note that the premiums for lower risks are to be at least 1.5% p.a., with higher risks facing premiums of ca. 5%. Risks that require higher premiums are not to be covered at all.

29. The Austrian authorities argue that the premiums in the private export credit insurance markets are at the moment in the range of […]% p.a. – […]% p.a. pending the underlying risk profiles of the export contracts.

30. In addition, a handling fee will be added to the premium depending on the product. In case of a single transaction policy the handling fee is 0.1% of the transaction volume (at least EUR 10 and maximum EUR 720). In case of whole-turnover policy the handling fee is ca. EUR 60 p.a.

31. As a consequence, the Austrian authorities consider that the premiums of the state direct export credit insurance will in any case be above the level of the private export credit insurance market.

Reinsurance

32. The fee charged by the Austrian authorities for the reinsurance measure is benchmarked on the premiums charged by private insurers. In addition, an extra fee (the "commitment fee") of 10% is charged by the State from the insurer.

33. Furthermore, Austria has introduced a claw back clause for the remuneration of the State aid ("Besserungsklausel").[9] According to this clause, if the State suffers losses resulting from its actions as reinsurer, it is entitled to the future profits (for max. 10 years) of the primary insurer until the State's losses are covered.

34. The primary insurer will receive a management fee amounting to 27% of premium income, in order to cover its administrative costs. The Austrian authorities committed the following, when making use of the re-insurance:

    - to set-up a monitoring mechanism to ensure the management fee does not provide to insurers revenues in excess of the costs incurred in running the scheme.

    - to carry-out a review regarding the level of the management fee 6 months after the scheme has been adopted. This review should assess the administrative costs actually incurred by the insurers. If these costs are lower than initially estimated, the management fee should be revised downwards accordingly. No upward revision of the management fee should be envisaged.

[9] Austria argues that the additional remuneration is justified as for the State's willingness to take risk. It is argued that based on the State's action, the private insurers are being safeguarded to grant further coverage to exporters, and maintain their business plans as they were. Because it cannot be excluded that the State is to suffer losses from its actions taken here, it is argued based on 'fair burden sharing' that the State should be remunerated accordingly.

3.7 Duration

35. The mandate given to OeKB to provide insurance cover will be in force only temporarily, i.e. until 31 December 2010.

3.8 Budget

36. According to the Austrian authorities, the state measure should be carried out in the frame of the existing Austrian export credit system, which foresees that the claim payments are covered by the premium income. Therefore, no separate budget is foreseen for the state measure. The necessary assumption of liability according to the Export Guarantees Act should be covered by the legal liability frame, which amounts to a maximum of EUR 50 billion (current utilization: approximately EUR 42 billion).

IV. ASSESSMENT

37. The Commission examined the notified measure pursuant to the Temporary Framework and the Communication.

38. Point 2.5 of the Communication defines 'marketable risks' as those on public and non-public debtors established in the countries listed in the Annex to the Communication[10]. Financial advantages in favour of exporters or export credit insurers, who respectively enter or cover a transaction qualified as marketable risk, are normally prohibited.

39. The measure at hand provides public support with regard to insuring risks on the market that faces unavailability of the insurance cover for certain countries. Insofar as countries not listed in the Annex to the Communication are concerned, such risks are 'non-marketable' within the meaning of the Communication and public support for insuring them is in compliance with the Communication

40. According to the Communication and in particular point 4.4, risks incurred on debtors established in countries listed in the Annex to the Communication are considered temporarily non-marketable only if it can be demonstrated that private insurance cover for the risks generally viewed as marketable is unavailable in certain Member State. In particular, Member States who wish to invoke this escape clause have to provide a market report and produce evidence thereof from two well-known, international export-credit insurers as well as a national credit insurer both demonstrating the unavailability of cover for the risks in the private insurance market. Moreover, the public or publicly supported export-credit insurer shall, as far as possible, align its premium rates for such non-marketable risks with the rates charged elsewhere by export credit insurers for the type of risk in question and provide a description of the conditions which the public export-credit insurer intends to apply in respect of such risks.

41. In order to speed up the procedure, the Temporary Framework simplifies, until 31 December 2010, the proof that Member States need to produce to demonstrate the unavailability of cover. To this end, Member States have to submit evidence provided by a large well-known international private export credits insurer and a national credit insurer or by at least four well-established exporters in the Member State.

[10] The list includes EU and OECD countries.

4.1 Unavailability of cover in the private insurance market and the application of the escape clause

42. According to the information provided by the Austrian authorities, the two largest international export credit insurance companies (Atradius and Coface) and two national - Prisma Kreditversicherungs-AG and OeKB Versicherung AG- are the main players in the Austrian export credit insurance market. The role of the state handling agency OeKB is to complement the market by offering the cover for non-marketable risks.

43. The unavailability of cover for the risk in question was demonstrated by means of the evidence provided by one large well-known international private export credits insurer and by one national credit insurer. The evidence demonstrated lack of cover for transactions relating to a number of EU and high-income OECD countries. The estimate for withdrawal of insurance coverage of private credit insurers in Austria is up to 15-30%.

44. The Commission considers the evidence as sufficient to demonstrate temporal unavailability of private coverage as a consequence of the current financial crisis at least for a significant part of the market.

45. In addition, the construction of the scheme ensures to a large extent that the state will only cover transactions for which private cover is not available in the market as a consequence of the financial crisis. Firstly, OeKB could start processing a guarantee application on a case by case basis, only after lack of cover from the private insurers is demonstrated by the exporter by means of a formal statement(s) as proof of refusal.

46. Secondly, the eligibility criteria mentioned in paragraph 19 provide safeguards which will prevent OeKB from reinsuring financially unsound transaction, which have previously been unable to obtain credit insurance due to the negative credit assessment by the private credit insurance companies. Their effect is strengthened by the retention requirement, which means that under the scheme a cover can be granted up to a maximum of 90% of the total transaction value and the exporter has to retain in any case at least 10% of the risk. The Austrian authorities estimate that in most cases the insurance cover will amount to 80% of the total transaction, leaving the exporter 20% of the risk. This way the insurance cover granted under the scheme will be based on both the risk assessment conducted by OeKB and the counterparty risk monitoring by the exporter. Regarding the reinsurance, the private insurers retain at least 20% of the risk.

47. Therefore, these above-mentioned safeguards ensure that the state-owned agency will only cover transactions for which private cover is not available in the market as a consequence of the financial crisis and that the private insurers are not crowded out, should they still be willing to provide cover to any segment of the market.

4.2 Alignment of premium rates with rates charged elsewhere by private credit insurers

48. The premium for the cover provided within the scheme, i.e. regarding the export credit insurance and the reinsurance measure, is set after taking into consideration the information on the market pricing of the certain risk types provided by the private market players.

49. For the export credit insurance, the premium will be set high enough to encourage exporters to return to the banks and private insurers as soon as the market has recovered. According to the information provided by the Austrian authorities, the level of the premium charged by the private credit insurers oscillates between […]% and […]%. Under the state supported scheme, exporters will be charged premiums rates from […]% to […]%, depending on the class of risk and the length of the risk period etc.

50. The Commission considers that the premium rates charged under the export credit insurance are, as far as possible, aligned with the rates charged by private export-credit insurers for the same type of risk. The fact that the premiums charged by the OeKB are higher than the market levels is partially explained by the difference in the type of policy offered. The private insurers operate mostly on a whole turnover basis, which provides for the diversification of risk. Whereas the premiums charged by the OeKB reflect the higher risk associated with the individual transactions or smaller group of buyers, which otherwise would not be covered in the current market conditions.

51. The levels of the premiums charged by OeKB limit the crowding out of the private insurers as the exporters have an incentive to seek cover with private insurers who charge relatively lower premiums as the premium tends to be higher compared to the premium charged by the private insurers during the pre-crises period. Therefore the level of premium should ensure that the exporters return to the private insurers as soon as the market conditions allow and the risk becomes marketable again.

52. The Commission also notes that the requirement that the exporter must face the withdrawal of the private cover first, before applying for the insurance within the state supported scheme, should ensure that private insurers will not be crowded out of the short-term export credit insurance market. Therefore the scheme contains an in-built mechanism that should lead to phasing out of the state intervention as soon as the private insurance market revives.

53. As regards the reinsurance measure, the State is introducing premiums which automatically take into account the premiums of the private markets. However, as for not to incentivise to use the public measure for a longer period, public measures are to entail exit-strategies motivating to shift using services of the private sector. In this respect, the premiums of the public measure should in any case be higher than the corresponding ones of the private markets. To answer this requirement, Austria has introduced the commitment fee of 10% for the remuneration of the State aid to ensure that the overall fee structure of using the public measure is higher than the one of the private markets.

54. Additionally, the State has introduced a claw back clause for the remuneration of the State aid. Accordingly, if the State suffers losses resulting from it acting as a reinsurer, the State is entitled to the future profits of the reinsurance contracts of the primary insurer falling under the scheme for max. 10 years to cover the State's losses.

55. Based on the above, the scheme contains an in-built mechanism that should lead to phasing out of the state intervention as soon as the private insurance and reinsurance market revives, since the level of premium charged would ensure that the exporters return to the private insurers as soon as the market conditions allow and the risk becomes marketable again.

4.3 Conclusion

56. On the basis of the foregoing assessment, the Commission concludes that the scheme meets the requirements of the escape clause of the Communication (point 4.4) and the evidence is in line with the Commission's temporary framework for state aid measures, which gives Member States additional scope to facilitate access to financing in the present economic and financial crisis.

V. DECISION

The Commission has accordingly decided to consider the notified measure to be compatible with the internal market until 31/12/2010. The Commission notes that the Republic of Austria accepts that the decision be adopted in the English language.

If this letter contains confidential information, which should not be disclosed to third parties, please inform the Commission within fifteen working days of receipt. If the Commission does not receive a reasoned request within 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/state_aids_texts_de.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: +32 2 296 12 42

We would ask you to state the case name and number in all correspondence.

Yours faithfully,
For the Commission

Neelie KROES
Member of the Commission