EUROPEAN COMMISSION

Brussels, 17.12.2009

C (2009) 10240 final

PUBLIC VERSION

WORKING LANGUAGE

This document is made available for information purposes only.

Subject: State aid N 663/2009;
Second prolongation of the measures for credit institutions and insurance companies in Austria, N 557/2008

Sir,

I. PROCEDURE

(1) On 30 November 2009, Austria notified the second prolongation request for its support measures to the banking and insurance industry until 30 June 2010. The original scheme, which consisted of a package of measures to ensure the stability of the financial system, was notified on 31 October 2008 and approved by the Commission on 9 December 2008[1]. The first prolongation of the scheme, including certain amendments, was adopted on 30 June 2009[2].

II. DESCRIPTION

(2) In response to the exceptional turbulence in world financial markets Austria brought forward a package of measures ("the scheme") designed to restore stability to the

1 Commission Decision C (2008) 8408 final of 9 December 2008 - State Aid N557/2008 "Maßnahmen nach dem Finanzmarktstabilitäts- and Interbankmarktstärkungsgesetz für Kreditinstitute und Versicherungsunternehmen in Österreich", OJ C3, 8.1.2009.

2 Commission Decision C (2008) 5253 final of 30 June 2009 - State Aid N352/2009, OJ C172, 24.7.2009, p.4.

Seiner Exzellenz Herrn Bundesminister Dr. Michael SPINDELEGGER
Bundesministerium für europäische und internationale Angelegenheiten
Minoritenplatz 8
A - 1014 Wien

financial system and to remedy a serious disturbance in the economy of Austria. These measures are based on two Austrian laws, i) the *Interbankmarktstärkungsgesetz* (IBSG, law on enhancing inter-bank markets) and ii) the *Finanzmarktstabilitätsgesetz* (FinStaG, law on enhancing stability of the financial market). An accompanying decree[3], which was published on 30 October 2008, contains further details in respect of this framework. These measures have as their objective to encourage inter-bank lending, ensure the macroeconomic balance and strengthen and protect the stability of the Austrian financial market. The scheme which is based on the cited laws allows in particular for the following types of aid measures:

i) recapitalisation of financial institutions and the provision of loans, and

ii) guaranteeing of bank assets and liabilities.

(3) While FinStaG's validity is not limited in time, IBSG expires on 31 December 2009. The Austrian authorities plan to extend the validity of IBSG until 31 December 2010.

(4) At the same time, the Austrian authorities seek to prolong the entry window of the existing scheme for the second time for a period of six months, until 30 June 2010.

(5) Apart from the budget reduction of EUR 10 billion to EUR 80 billion from the initial EUR 90 billion, all other conditions of the scheme, as approved by the Commission Decisions in cases State aid N557/2008 and N352/2009, respectively, remain unchanged and continue to apply.

(6) Pursuant to point 41 of the Banking Communication[4] Austria has submitted a report on the use of the scheme, covering the period 16 May to 31 October 2009. According to the report, take-up of the measures slowed down as compared to the previous prolongation of the scheme.[5]

(7) This report on the use of the scheme confirms that the measures are adequate and effective in order to remedy a serious disturbance in the Austrian economy. Several Austrian credit institutions participated in the scheme and as a result could maintain their activities and continue lending to the real economy. Thus, an aggravation of the financial crisis was prevented.

III. POSITION OF AUSTRIA

(8) Austria acknowledges that the liquidity situation on the Austrian market has improved since the beginning of the crisis. However, the economic outlook is still uncertain, notably in Eastern European markets (where Austrian banks have a large exposure). Therefore, it is necessary to maintain the guaranteed refinancing possibility for banks.

(9) Furthermore, Austria considers it necessary to prolong the measures aiming at strengthening and stabilising certain institutions against the background of possible loan defaults and write-downs of which the precise volume is uncertain at this stage.

---

[3] Decree on conditions and restrictions regarding measures pursuant to the Finanzmarktstabilitätsgesetz (law on enhancing stability of the financial market) and the Interbankmarktstärkungsgesetz (law on enhancing inter-bank markets), 30 October 2008, BGBl II, Nr. 382/2008

[4] Communication from the Commission – The application of State aid rules to measures taken in relation to financial institutions in the context of the current global crisis, OJ C 270, 25.10.2008.

[5] In total, issued guarantees had used 40% of the budget (EUR 65bn). Corresponding figure in recapitalisations was 43% (of EUR 15bn). As regards guarantees relating to debt with a maturity of between three and five years, these corresponded to 18% of all guaranteed debt.

(10) Moreover, certain measures are currently under negotiations with a beneficiary institution and will probably not be approved by the end of the year. Austria committed that the scheme will not be applied after 30 June 2010, and requests a prolongation of the scheme until 30 June 2010.

(11) In addition, Austria commits to report comprehensively on the cost of comparable guaranteed and non-guaranteed debt issuances (instrument, volume, rating, currency and any other relevant parameters).

(12) The Austrian National Bank confirms the view of the Austrian authorities that a prolongation of the scheme is necessary to ensure financial stability in Austria. Uncertainties regarding the future economic development, in Austria and Eastern Europe, justify the prolongation of the measures.

IV. ASSESSMENT

(13) In its decision C (2008) 8408 final of 9 December 2008 the Commission concluded that the measures comprised in the Austrian scheme constitute a State aid scheme within the meaning of Article 107(1) TFEU[6]. The Commission had assessed the appropriateness, necessity and proportionality of the measures and subsequently found that the measures were compatible with the internal market under Article 107(3)(b) TFEU because they were needed to remedy a serious disturbance in the Austrian economy.

(14) As the financial crisis is still ongoing the Commission concludes that a prolongation of the measures is justified under Article 107(3)(b) TFEU.

(15) The Commission considers that the limitations set out in the decisions of 9 December 2008 and 30 June 2009, respectively, which continue to apply, provide presently a sufficient safeguard that undue distortions of competition are avoided. The Commission can therefore agree to the present prolongation of the scheme.

(16) On the basis of the above, the notified second prolongation of the Austrian scheme does not alter the previous assessment in the decision of 9 December 2008 and 30 June 2009, respectively, so that the measures under the scheme remain compatible with the internal market until 30 June 2010.[7]

---

6 With effect from 1 December 2009, Articles 87 and 88 of the EC Treaty have become Articles 107 and 108, respectively, of the TFEU (Treaty on the Functioning of the European Union). The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 107 and 108 of the TFEU should be understood as references to Articles 87 and 88, respectively, of the EC Treaty where appropriate

7 In assessing the request for the prolongation of this guarantee scheme, the Commission has to balance its positive effects for financial stability with the distortions of competition and the delay in the return to a normal functioning of the financial markets that the prolongation entails. Guarantee schemes should contain minimum exit incentives, and a gradual alignment to market conditions should take place in order to minimise negative spill-over effects on competitors and other Member States.

The evolution of the market situation and the reduction of the risk premia for unguaranteed debt has brought about a first step towards an alignment with market conditions, whilst providing an exit incentive for the sounder institutions. While more convergence towards market conditions may be necessary to further reduce distortions across banks in the internal market and avoid the risk of State aid dependence, the still fragile recovery suggests that banks should retain for the time being the possibility of accessing government guarantees schemes in the present conditions.

On balance, the Commission considers that the prolongation until mid 2010 of the State guarantee scheme in the present conditions is compatible with the internal market.

(17) As indicated in the Annex to the Restructuring Communication, any restructuring plan should contain all State aid received as individual aid or under a scheme during the restructuring period and all such aid needs to be justified as satisfying all criteria prescribed by the Restructuring Communication (i.e. return to viability, own contribution by the beneficiary and limitation of competition distortion). This means that, as soon as a Member State is under an obligation to submit a restructuring plan for a certain aid beneficiary, the Commission needs to take a view in its final decision as to whether any aid granted during the restructuring period satisfies the criteria required for the authorisation of restructuring aid. To this end an individual *ex ante* notification is necessary.

(18) Furthermore, based on paragraph 16 of the Restructuring Communication[8], the Commission recalls that, should further aid not initially foreseen in a notified restructuring plan be necessary for the restoration of viability, this additional aid cannot be granted under an approved scheme but needs to be subject to individual *ex ante* notification and any such further aid will be taken into account in the Commission's final decision on that bank.

V. DECISION

The Commission concludes that the notified measures constitute a State aid scheme within the meaning of Article 107(1) TFEU. Since the above-mentioned aid measure fulfils the conditions under Article 107(3)(b) TFEU, this aid measure is compatible with the internal market. The Commission has accordingly decided not to raise objections.

The Commission recalls that, according to the commitment given by Austria, the scheme including the measures taken within its framework is limited in duration until 30 June 2010.

If this letter contains confidential information which should not be published, 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 publication of the full text of this letter 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_en.htm

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

European Commission
Directorate-General for Competition
State aid Greffe
rue Joseph II, 70
B-1049 Brussels
Fax No: (+32)-2-296.12.42

Yours faithfully,
For the Commission

Neelie Kroes
Member of the Commission

8 OJ C 195, 19.08.2009