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Subject: State aid N 241/2010;
Third extension of the Austrian bank support scheme

Sir,

I. PROCEDURE

(1) On 9 June 2010, Austria notified the third extension of its support measures to the banking and insurance industry until 31 December 2010.

(2) 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]. The second prolongation was approved on 17 December 2009[3].

II. DESCRIPTION

(3) 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 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

[1] OJ C 3, 8.1.2009, p. 2.
[2] OJ C 172, 24.7.2009, p. 4.
[3] OJ C 28, 4.2.2010, p. 6

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decree[4], which was published on 30 October 2008, contains further details in respect of this framework. 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.

(4) The Austrian authorities seek to prolong the entry window of the existing scheme for a period of six months until 31 December 2010.

(5) Austria notified amendments in substance concerning (i) the total budget of the scheme, (ii) an increase in liability guarantee fees (in line with the new conditions set by the Commission[5]) and (iii) the obligation to submit viability reviews for banks relying heavily on guarantees.

(6) The budget will be reduced by EUR 15 billion to EUR 65 billion (from EUR 80 billion previously and EUR 90 billion in the original decision).

(7) All other conditions of the scheme, as approved by the Commission Decisions in cases State aid N557/2008, N352/2009 and N663/2009, respectively, remain unchanged and continue to apply.

(8) Pursuant to point 41 of the Banking Communication[6] Austria has submitted a report on the use of the scheme, covering the period 1 November 2009 to 30 April 2010. According to the report, there has been additional take-up of the measures.[7]

(9) 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.

III. POSITION OF AUSTRIA

(10) Austria acknowledges that the liquidity situation of the Austrian market has improved since the beginning of the crisis. However, as the financial situation is still fragile, it is necessary to maintain the scheme. Therefore, Austria requests a prolongation of the scheme for another 6 months until 31 December 2010.

(11) Austria undertakes to maintain the commitments made in the context of the original authorisation and the prior extensions of the scheme, as reflected in the Commission decision of 17 December 2009 (N 663/2009) authorizing the latest extension.

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4 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

5 http://ec.europa.eu/competition/state_aid/studies_reports/phase_out_bank_guarantees.pdf

6 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.

7 The report covers the period of 1 November 2009 – 30 April 2010. At the end of this period, issued guarantees had used in total 43% of the budget set for guarantees (EUR 65bn), whereas at the end of the previous reporting period in October 2009 (report covering 16 May 2009 – 30 October 2009), the overall usage was 40%. As regards guarantees relating to debt with maturities between three and five years, these corresponded to 10% of all guaranteed debt at the end of April 2010, whereas at the end of October 2009 the longer maturities corresponded to 18% of all guaranteed debt. The take-up rate of recapitalisation measures was at the end of April 2010 49% of the budget set for recapitalisations (EUR 15bn), whereas the take-up rate was 43% at the end of October 2009.

(12) In addition, Austria undertakes to charge beneficiary banks a guarantee fee that is higher than under the pricing formula recommended by the ECB in October 2008 by

- 20 basis points for banks with a rating of A+ or A[8],
- 30 basis points for banks rated A-[9], and
- 40 basis points for banks rated below A-. Banks without a rating will be considered to belong to the category of banks with a BBB rating[10].

(13) Austria furthermore undertakes to present a viability review for every bank that is granted guarantees on new or renewed liabilities as from 1 July 2010 and for which at the time of the granting of new guarantees the total outstanding guaranteed liabilities (including guarantees accorded before 1 July 2010) exceed both a ratio of 5% of total liabilities of that bank and a total amount of EUR 500 million. The viability review will be communicated to the Commission within three months of the granting of guarantees and will comply with the principles set out in the Restructuring Communication[11]. In particular, it will cover the solidity of the funding capacity of the bank concerned; where necessary and in any event where requested by the Commission in case of doubt, a liquidity stress test will be carried out. No separate viability review has to be presented for banks that are already in restructuring or obliged to present a restructuring plan or subject to a pending viability review at the time new guarantees are granted.

(14) In addition to the existing commitments concerning reporting obligations, Austria undertakes to submit to the Commission a concise mid-term review on the operation of the guarantee scheme by 15 October 2010 at the latest. Also, 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).

(15) The Austrian central bank confirms the view of the Austrian authorities that a prolongation of the scheme is necessary to ensure financial stability in Austria. Tight liquidity markets and uncertainties regarding the future economic development in Europe justify the prolongation of the measures.

IV. ASSESSMENT

(16) In its decision of 9 December 2008, the Commission concluded that the measures of the scheme constitute State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union ("TFEU"). At the same time it found the measures compatible with the internal market under Article 107(3)(b) TFEU, because they were apt to remedy a serious distortion of the Austrian economy. To this end, the Commission had assessed the appropriateness, necessity and proportionality of the measure.

(17) The Commission observes that the extension of the scheme is a response to the continuing financial difficulties that Austria, as most Member States, continues to experience. Since the objective of the measure is to provide short- and medium-term

[8] Or A1 and A2 depending on the rating system employed.

[9] Or A3 depending on the rating system employed.

[10] In the case of divergent assessments by different rating agencies the relevant rating for the calculation of the fee increase should be the higher rating. The material time for the rating in the determination of the guarantee fee is the day on which the guarantee is granted in relation to a specific bond issuance by the beneficiary.

[11] OJ C 195, 19.8.2009, p.11. See point 8 in conjunction with section 2.

financing as well as capital to financial institutions which are unable to obtain such funds on the financial markets, it is important to ensure the availability of the scheme as long as the global financial crisis continues.

(18) Although access to funding and capital for banks has gradually improved in most markets over the past year and is no longer a systematic and generalized problem, markets have not yet fully returned to entirely normal functioning. Against this background and taking into account the residual fragility of recovery process and the possibility of setbacks in that process, the continuation of the scheme can be deemed necessary to ensure financial stability as confirmed by the central bank of Austria. The Commission therefore considers that the extension of the scheme for a further six months is appropriate and necessary to remedy a disturbance of the Austrian economy.

(19) As regards the new provisions on liquidity guarantees the Commission notes first that it 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 extension 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.

(20) The gradual stabilisation of the market situation and the resulting reduction of the risk premium for unguaranteed debt have brought about a first step towards an alignment with market conditions, whilst providing an exit incentive for the sounder institutions. Lower-rated banks for which bond issuances with a government guarantee still hold considerable economic benefits have become the prime users of guarantee schemes.

(21) It is necessary to minimise distortions across banks in the internal market and avoid the risk of State aid dependence. There should therefore be an adjustment of the terms on which banks may retain for the time being the possibility of accessing government guarantees schemes. On the basis of these considerations, the prerequisites for the compatibility of guarantee schemes with Article 107(3)(b) TFEU that have been established by the Banking Communication[12] and the Commission's subsequent decisional practice continue to apply but need to be complemented by requirements aimed at achieving two objectives.

(22) First, banks should be incentivised to scale down or terminate their recourse to government guarantees by means of pricing rules that bring the funding costs of beneficiary banks closer to market conditions and thereby reduce distortions of competition. This should be achieved by an increase in the guarantee fee[13] in comparison with the ECB Recommendations of October 2008 that amounts at least to 20 basis points for banks with a rating of A+ or A[14], 30 basis points for banks rated A-[15], and 40 basis points for banks rated below A-[16].

(23) Second, the use of guarantee schemes should not enable banks with structural weaknesses in their business models to postpone or avoid the necessary adjustments. To this end, the Member State concerned should present a viability review for any bank that requests new guarantees under a scheme which take or keep the total amount of the bank's outstanding guaranteed liabilities above 5% of that bank's total liabilities

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[12] '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 financial crisis' (OJ C 270, 25.10.2008, p. 8).

[13] For liabilities of all eligible maturities.

[14] Or A1 and A2, depending on the rating system employed.

[15] Or A3, depending on the rating system employed.

[16] Banks without a rating will be considered as having a BBB rating.

and above the absolute amount of EUR 500 million. That viability review should be presented on the basis of the parameters established in the Restructuring Communication within three months of the granting of the guarantees[17]. The viability review will either confirm the bank's long-term viability without State support or show that farther-reaching restructuring is required.

(24) With the notification, Austria has provided commitments to follow these new conditions. The Commission therefore considers that the notified extension until 31 December 2010 of the aid scheme complies with the requirements set out above and is compatible with the internal market.

(25) As regards the combination of this guarantee scheme with other aid measures, 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). Accordingly, once 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.

(26) Furthermore, the Commission recalls that based on point 16 of the Restructuring Communication, if aid not initially foreseen in a notified restructuring plan is 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.

(27) In addition to the above, Austria agrees to provide the Commission with a concise mid-term review of the operation of the scheme by 15 October 2010 in addition to the pre-existing reporting requirements and to complement its future reports on the operation of the scheme with updated available data on the cost of comparable (nature, volume, rating, currency, etc.) non-guaranteed and guaranteed debt issuances[18]. This will allow the Commission to assess the appropriateness, necessity and proportionality of possible further extensions of the scheme beyond 31 December 2010 and the conditions for such extensions. Any further extension will require the Commission's approval and will have to be based on a review of the developments in financial markets and the scheme's effectiveness.

V. DECISION

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

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[17] Except where the bank concerned is already in restructuring or subject to a pending viability review on the basis of a restructuring or viability plan; in those circumstances the award of additional State aid will be assessed within the framework of the ongoing restructuring/viability review process.

[18] See point 23 of the Commission decision of 28 April 2009.

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 31 December 2010.

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

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Yours faithfully,
For the Commission

Joaquín Almunia
Vice-President of the Commission