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**COMMISSION DECISION**

**of 2 July 2015**

**ON THE STATE AID  
SA.31883 - 2015/N, 2011/C  
which Austria implemented and is further planning to implement  
for ÖVAG and the Volksbanken Verbund  
and to amend the decision 2013/298/EU**

(Text with EEA relevance)

(Only the German version is authentic)

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<p>In the published version of this decision, some information has been omitted, pursuant to articles 24 and 25 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus [...].</p>		<p>PUBLIC VERSION</p> <p>This document is made available for information purposes only.</p>
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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 108(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments pursuant to the provision(s) cited above<sup>1</sup>,

Whereas:

## 1. PROCEDURE

- (1) On 9 December 2008<sup>2</sup> ('the 2008 Decision'), the Commission approved the Austrian bank support scheme, which was subsequently prolonged four times<sup>3</sup> and expired on 30 June 2011.

<sup>1</sup> Commission Decision SA.31883 - OJ C 46, 17.2.2012, p. 3.

<sup>2</sup> Commission Decision of 9 December 2008 in State aid case N 557/2008 – *Maßnahmen nach dem Finanzmarktstabilitäts- und dem Interbankmarktstärkungsgesetz für Kreditinstitute und Versicherungsunternehmen in Österreich*, OJ C 3, 8.1.2009, p. 2.

<sup>3</sup> The first extension of the scheme, including certain amendments, was approved on 30 June 2009 (OJ C 172, 24.7.2009, p. 4), the second extension on 17 December 2009 (OJ C 28, 4.2.2010, p. 6), the

- (2) In April 2009 Österreichische Volksbanken AG ('ÖVAG') received EUR 1 billion in fresh capital under the Austrian bank support scheme. In addition, ÖVAG placed three issues of debt instruments which were State guaranteed under that scheme in the market, each of EUR 1 billion, on 9 February, 18 March and 14 September 2009 respectively. Austria provided those aid measures on the assumption that ÖVAG was a sound financial institution, and submitted a viability plan on 29 September 2009.
- (3) Further analysis by the Commission led it to conclude that the application of the criteria laid down in the Annex to the Commission Communication on the recapitalisation of financial institutions in the current financial crisis: limitation of aid to the minimum necessary and safeguards against undue distortions of competition<sup>4</sup> ('the Recapitalisation Communication') indicated that the bank could not be considered sound within the meaning of that Communication at the time of the recapitalisation. Austria maintained its position that the bank was sound, but submitted a restructuring plan for ÖVAG on 2 November 2010.
- (4) By letter dated 9 December 2011<sup>5</sup>, the Commission informed Austria that it had decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union ('the Treaty') in respect of the recapitalisation of EUR 1 billion and the guarantee of EUR 3 billion granted by Austria to ÖVAG, and requested Austria to submit an amended restructuring plan, the final version of which was submitted on 4 September 2012 ('the 2012 restructuring plan').
- (5) On 19 September 2012, the Commission concluded the formal investigation procedure by adopting a compatible restructuring aid decision concerning ÖVAG ('the 2012 Decision')<sup>6</sup>, including the measures referred to in recital (2) above as well as a EUR 250 million capital injection by the State in the form of ordinary shares and an asset guarantee with the effect of increasing the capital by EUR 100 million. That Decision was based on the 2012 restructuring plan and the commitments in the Annex to the 2012 Decision ('the 2012 commitments').
- (6) The 2012 Decision was based on a plan to reorganise the Volksbanken-Verbund in Austria ('the Verbund') as an association with joint liability (*Haftungsgemeinschaft*). The group encompassed 51 independent Volksbanken ('primary banks') and ÖVAG. The primary banks had only limited liability in relation to ÖVAG, while ÖVAG had full liability in relation to the Verbund<sup>7</sup>.
- (7) On 26 October 2014 the results of the Comprehensive Assessment carried out by the European Central Bank and the European Banking Authority ('the ECB/EBA Comprehensive Assessment') revealed a capital shortfall in core equity tier 1 ('CET1') in both baseline and adverse scenarios at the level of the Verbund, which included ÖVAG.
- (8) The Austrian authorities publicly announced that they would not provide any further aid to the Verbund. The measures identified at the time by the Verbund to close the

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third extension on 25 June 2010 (OJ C 250, 17.9.2010, p. 4) and the fourth extension on 16 December 2010 (OJ C 20, 21.1.2011, p. 3).

<sup>4</sup> See point 13 and the Annex to the Commission Communication, OJ C 10, 15.1.2009, p. 2.

<sup>5</sup> Commission Decision of 9 December 2011 in case SA.31883 (2011/C) (ex N516/10), *Restructuring of Österreichische Volksbanken AG*, OJ C 46, 17.2.2012, p. 3.

<sup>6</sup> Commission Decision of 19 September 2012 in case SA.31883 (2011/C) (ex N516/10), *Restructuring of Österreichische Volksbanken AG*, OJ L 168, 20.6.2013, p. 30.

<sup>7</sup> The Verbund is further described in recitals (18) et seq.

capital shortfall (notably the sale of non-core subsidiaries and further reduction of risk-weighted assets ('RWAs')) would not on their own have been sufficient to close the capital shortfall in the timeframe required by the Single Supervisory Mechanism ('the SSM').

- (9) On 23 December 2014 ÖVAG held an extraordinary general meeting where it was decided to take the necessary steps to put ÖVAG into wind-down (*Abbaugesellschaft*), subject to approval from the national regulators, the SSM and the Commission. The core functions of ÖVAG as the central organisation for the Verbund would be transferred to one of the primary banks as part of a new restructuring plan ('the new restructuring plan') for the Verbund which included a system of fully joint and several liability.
- (10) The new restructuring plan represents a fundamental change to the 2012 restructuring plan, which renders necessary an amendment decision from the Commission.
- (11) During the period from October 2014 to June 2015, the Commission, the Austrian authorities, the SSM, ÖVAG and the Verbund discussed the new restructuring plan in a succession of telephone conversations and written correspondence. The Commission met representatives of ÖVAG and Austria on 18 December 2014 and representatives of the Verbund on 7 May 2015.
- (12) On 28 May 2015, a meeting of ÖVAG shareholders approved the transfer of its core functions to Volksbank Wien-Baden ('VBWB') and the establishment of a liquidation unit for residual functions pursuant to Section 162 of the Austrian Act on the Recovery and Resolution of Banks (*Bundesgesetz über die Sanierung und Abwicklung von Banken*, 'BaSAG').
- (13) On 29 May 2015, a meeting of VBWB shareholders approved the transfer of ÖVAG's core functions and a capital increase of EUR 113 million.
- (14) Also on 29 May 2015, primary banks representing 97.83 % of the Verbund's RWAs signed a banking association agreement (*Verbundvertrag*) and a cooperation agreement (*Zusammenarbeitsvertrag*).
- (15) The Verbund submitted the final version of the new restructuring plan on 23 June 2015.
- (16) On 25 June 2015, Austria submitted commitments, which are set out in the Annex to this Decision.
- (17) Since the present Decision is taken on the basis of the Commission's State aid powers, it is without prejudice to any merger control obligations to which the different parties involved in the transactions may be subject.

## **2. DETAILED DESCRIPTION OF PAST AND FUTURE MEASURES**

### **2.1. The recipient and its difficulties**

- (18) The Verbund currently encompasses (i) 51 legally independent primary banks – 41 regional cooperative banks, 5 special banks, 4 credit unions and 1 building society (Bausparkasse); (ii) the central organisation, ÖVAG; and (iii) the legal deposit insurance scheme, Volksbank Haftungsgenossenschaft eG. ÖVAG is the central organisation of the Verbund and as such provides services for the primary banks in the form of centralised administration and liquidity management activities. The primary banks are small banking operations (balance sheet size between

EUR 65 million and EUR 3 600 million) mainly providing banking services to local and regional private and corporate clients.

- (19) The Verbund has a market share of approximately 6 % in Austria, with around 900 000 private customers and 80 000 business customers. The primary banks have more than 500 branches, with 4 900 members of staff. The total volume of advances to customers amounts to around EUR 30 billion and the total volume of liabilities to customers amounts to around EUR 27 billion.
- (20) The members of the Verbund are bound together by an association agreement providing for joint liability and a transfer of liquidity. Under the current system, the central organisation, ÖVAG, has unlimited liability for the primary banks, whilst the liability of the primary banks for the central organisation is limited to the extent that the equity ratio of a primary bank cannot fall below the minimum regulatory requirements.
- (21) 51.6 % of ÖVAG is currently held by the primary banks through its holding company Volksbanken Holding. Austria holds 43.3 % of ÖVAG. Other significant shareholders are DZ Bank AG (3.8 %) and Raiffeisen Zentralbank (0.9 %), while 0.4 % is owned by other parties.
- (22) The Verbund's most significant geographic market is Austria. However, ÖVAG was previously active in several central and eastern European countries, although its market share was small there, except in Romania.
- (23) The sources of ÖVAG's difficulties were manifold: its exposure to central and eastern European countries through its retail banking subsidiaries, grouped in VB International AG ('VBI'); its engagement in public finance and infrastructure financing; real estate activities; an investment portfolio containing among others instruments issued by Lehman Brothers and Icelandic banks; and reliance on wholesale funding<sup>8</sup>. Those factors led to significant losses at ÖVAG in 2008 and resulted in the support measures granted to the bank by Austria in 2009<sup>9</sup>. The magnitude of losses for 2011 led to further State aid measures<sup>10</sup>. Despite restructuring efforts, in 2014 the ECB/EBA Comprehensive Assessment in 2014 revealed an additional capital shortfall at the level of the Verbund (including ÖVAG), mainly driven by risks and weaknesses in ÖVAG<sup>11</sup>.

## **2.2. Aid measures of 2009 and the subsequent restructuring**

### *Aid measures*

- (24) In April 2009, Austria underwrote participation certificates (*Partizipationsscheine*, 'PS') for ÖVAG amounting to EUR 1 billion ('the 2009 recapitalisation'). That PS instrument did not confer voting rights on the State but gave it a preferential coupon and a conversion option. The instrument is perpetual and is still treated as core tier 1 capital. The PS absorb losses in proportion to the total loss-absorbing capital. ÖVAG had the right to redeem all or tranches of the PS at any time. The State had the right to convert the PS into ordinary shares in ÖVAG, but did not do so.

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<sup>8</sup> See recitals (13) and (14) of the 2012 Decision.

<sup>9</sup> See recitals (24) and (25).

<sup>10</sup> See recitals (27) to (30) and the 2012 Decision for more detail.

<sup>11</sup> The capital shortfall is further described in recital (33).

- (25) ÖVAG also received government guarantees under the Austrian bank support scheme and issued EUR 3 billion of State-guaranteed bonds in 2009 that matured in 2012 and 2013.

#### *Restructuring*

- (26) ÖVAG had already initiated a restructuring process in 2009, which among other things aimed at separating the bank from the activities which were the main source of its problems. Nevertheless, some of the risks stemming from the legacy portfolio affected the bank again in 2011. They included:
- (a) losses generated by the VBI subsidiaries and impairments on their book value in ÖVAG's accounts totalling EUR 380 million;
  - (b) impairments of EUR 300 million on ÖVAG's investments linked to the countries most affected by the sovereign crisis;
  - (c) a write-down by EUR 142 million of the remaining participation capital which ÖVAG held in Kommunalkredit;
  - (d) a downward revaluation of the book value of Investkredit ('IK') by EUR 323 million in the context of a merger by absorption by ÖVAG.

### **2.3. Aid measures of 2012 and the subsequent restructuring**

#### *Aid measures*

- (27) The magnitude of the losses reported by ÖVAG for 2011 led to further State aid measures, consisting of a EUR 250 million capital injection by the State in form of ordinary shares ('the 2012 recapitalisation') and an asset guarantee.
- (28) The 2012 recapitalisation was conducted in two steps. First, the bank's capital was reduced by 70 % to offset the accumulated losses. That reduction in capital also reduced pro rata the PS which Austria had injected in 2009, leaving EUR 300 million of State participation capital in ÖVAG. In a second step, ÖVAG received fresh capital totalling EUR 484 million, EUR 250 million of which was underwritten by Austria, the rest by the Volksbanken Holding. The price per share was EUR 2.181.
- (29) As a result, the State obtained a 43.4 % stake in ÖVAG and became the second-biggest shareholder after the Volksbanken Holding (then 50.2 %), thereby diluting the stakes of the other shareholders, which did not participate in the capital injection: DZ-Bank 3.8 %, ERGO 1.5 %, RZB 0.9 %, and free float 0.1 %.
- (30) The asset guarantee increased ÖVAG's capital by EUR 100 million through covering losses on the insured portfolio of non-performing loans. ÖVAG can draw on the asset guarantee only under certain conditions which will be verified on 31 December 2015.<sup>12</sup> The asset guarantee is remunerated at 10 % p.a. (i.e. like a capital injection) and will expire on 1 January 2016.

#### *Restructuring*

- (31) In connection with the aid measures of 2012, ÖVAG revised its original restructuring plan and opted for a profound restructuring. The measures were approved in the 2012 Decision. The 2012 restructuring plan, which underpinned the 2012 Decision, included the following points:

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<sup>12</sup> For details, refer to recitals (24) to (29) of the 2012 Decision.

- (a) ÖVAG created an internal resolution division within which certain assets, the so-called non-core segment, were to be liquidated.
  - (b) ÖVAG's balance sheet and risk-weighted assets had to shrink to EUR 18.4 billion and EUR 10.1 billion respectively by 31 December 2017. The greater part of the reduction was to be achieved in the non-core segment, whilst the balance sheet and risk-weighted assets in the core segment had to drop only slightly (target values of EUR 5.4 billion and EUR 4.5 billion respectively by 31 December 2017).
  - (c) In the core segment, ÖVAG was to maintain only its role as the central organisation of the Verbund and to offer products and services for the primary banks and their customers. ÖVAG was no longer authorised to carry out credit operations with third parties for its own account.
  - (d) ÖVAG was to withdraw from certain business areas, in particular renewable energy and specific types of real estate financing ('Modellfinanzierung').
  - (e) ÖVAG was to sell its shares in VBLI, Malta/IK Malta Volksbank, Volksbank Romania and RZB to parties independent of the Verbund and the Austrian State.
  - (f) The shareholders DZ Bank, Ergo Gruppe and RZB were to take certain measures to boost the capital of ÖVAG.
  - (g) Until the end of the restructuring period on 31 December 2017, ÖVAG was to refrain from making any acquisitions, paying out dividends, leading on prices in its internet banking unit, Live Bank, and referring to state aid for advertising purposes, and to observe certain rules on the remuneration of its managerial staff.
  - (h) ÖVAG committed to pay back the entire remaining State participation of EUR 300 million by 31 December 2017, with at least EUR 150 million being paid in the first half of 2017. The primary banks were to play a part in realising that repayment, as far as the minimum regulatory capital adequacy requirements allowed.
- (32) Between 2012 and 2014 ÖVAG succeeded in reducing its balance sheet and its RWAs in both the non-core and core segments quicker than required under the 2012 Decision. At 31 December 2014 it had a balance sheet total of EUR 15.1 billion, RWAs of EUR 8.7 billion and a core equity capital ratio of 6.21%.

#### **2.4. ECB/EBA Comprehensive Assessment**

- (33) In 2014 the European Central Bank (ECB) and the European Banking Authority carried out the Comprehensive Assessment, scrutinising 130 of the biggest banks in the euro area for the quality of their balance sheets and their financial resilience. The results of the Comprehensive Assessment were published on 26 October 2014. The Verbund was assessed on a consolidated basis including ÖVAG, in accordance with Article 10 of the Capital Requirements Regulation<sup>13</sup> and Article 30 of the Austrian Banking Act<sup>14</sup>. The Verbund was one of the 25 banks that failed to meet the

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<sup>13</sup> Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, OJ L 176, 27.6.2013, p. 1.

<sup>14</sup> Bankwesengesetz ('BWG').

minimum own funds requirements in the projected scenarios. Its CET1 ratio for 2016 was 7.2 % (threshold: 8 %) in the baseline scenario and 2.1 % (threshold: 5.5 %) in the stress scenario. The maximum difference between the test result and the threshold corresponds to an additional CET1 capital requirement of EUR 865 million.

- (34) The ECB gave the Verbund until 26 July 2015 to cover that capital requirement and reach a CET1 ratio of 14.63 %.

## **2.5. The notified new restructuring plan 2015**

- (35) As a result of the difficulties outlined above, the Verbund has embarked on a fundamental transformation, in agreement with the Austrian State. That transformation plan is underpinned by the following principles:

- (a) The central organisational function will be transferred from ÖVAG to VBWB.
- (b) Once the central organisation has been transferred, ÖVAG will be deconsolidated from the Verbund.
- (c) The deconsolidated ÖVAG will go into liquidation, and will relinquish its banking licence, so that it no longer has to meet the own funds requirements for banks.
- (d) The 51 primary banks in the Verbund will be merged into 10 bigger institutions and will cooperate to a greater extent than in the past.
- (e) The primary banks will henceforth have unlimited liability for the obligations of the Verbund and the central organisation. Until now they have been liable only insofar as this did not prevent them from meeting the regulatory requirements on minimum own funds.

- (36) The measures set out in the transformation plan, in particular the liquidation of ÖVAG, the relinquishing of its banking licence and its deconsolidation from the Verbund, will enable the Verbund to achieve a CET1 ratio of [9-11](\*) % immediately. Furthermore, the Verbund has set in motion a number of additional measures to free up capital. They include reducing its exposure in the corporate and real estate sector (with a cumulative effect on CET1 of EUR [100-200] million from January 2014 to December 2017), selling off product companies (EUR [100-200] million), and selling off securities (EUR [50-100] million). However, for the period up to the end of 2017 those measures will release capital of only EUR [450-550] million, which is not enough to offset a capital shortfall of EUR 865 million.

### *Transfer of the central organisational function*

- (37) VBWB will take over the central organisational function of the Verbund, which has so far been performed by ÖVAG. The assets required for that function will be transferred to VBWB, together with the corresponding liabilities of ÖVAG, on 30 June 2015, with retroactive effect from 1 January 2015. The total assets and liabilities to be transferred each amount to just under EUR 8.6 billion. That sum encompasses all the activities assigned to the core segment in the 2012 Decision, except for three smaller subsidiaries – VB Factoring, VB Mobilienleasing and VB Investments – which will remain in ÖVAG making up less than 10 % of the overall sum.

### *Deconsolidation and liquidation of ÖVAG*

- (38) After the central organisation and the relevant assets and liabilities have been transferred, ÖVAG will on 4 July 2015 be placed in liquidation and converted into a

\* Confidential information.



wind-down entity ('*Abbaugesellschaft*') under Section 162 of BaSAG. The name of the institution will be changed to immigon portfolioabbau ag ('Immigon'). The remaining assets of EUR 7.4 billion will be liquidated by 31 December 2017. They include all the activities assigned to the non-core segment in the 2012 Decision and the holdings in VB Factoring, VB Mobilienleasing and VB Investments mentioned in recital (37).

- (39) Under the current plan, the revenue from liquidating the assets will be sufficient to fully cover the remaining liabilities. In the process, ÖVAG's equity capital and the participation capital will be reduced by 96.65 %. That reduction also applies to the remaining State participation capital of EUR 300 million.
- (40) The existing asset guarantee will remain in ÖVAG/Immigon but will be modified. Currently, all assets giving rise to a claim under the guarantee need to be registered by 31 December 2015 and the sum of these claims will be settled by 31 July 2016. Under the modified guarantee agreement, the date for registering claims under the guarantee remains on 31 December 2015. However, settlement of the sum of these claims can be requested at any time between 31 December 2015 and the end of the wind-down period in 2017. At the same time, the capital threshold below which settlement can be requested will be reduced from below 10 % CET ratio to below zero capital, i.e. guarantee claims can only be settled if ÖVAG/Immigon would otherwise become insolvent during the wind-down process. The fee for the extended settlement period of the guarantee remains at 10 % per annum.
- (41) In order to realise a capital benefit from that transformation, the Verbund needs to implement two major steps:
  - (a) The return of the banking licence by ÖVAG/Immigon in order to free the company from the obligation to fulfil the applicable capital requirements on a stand-alone basis.
  - (b) The deconsolidation of ÖVAG/Immigon from the Verbund in order to ensure that the Verbund will not have to fulfil capital requirements for ÖVAG/Immigon on a consolidated basis.
- (42) On 10 December 2014, ÖVAG signed a contract with the Romanian bank Banca Transilvania for the sale of its 51 % stake in Volksbank Romania SA, which removed the major obstacle to a return of its banking licence. The transaction was completed on 7 April 2015. That transaction also allowed ÖVAG to meet one of the conditions of the 2012 restructuring plan. In addition, ÖVAG has closed the sale of VB Malta in September 2014, and decided to wind down IK Malta, fulfilling the corresponding requirements of the 2012 Decision.
- (43) In order to deconsolidate Immigon, the Verbund must reduce its share in Immigon to a minority holding. It will do so by transferring 8.5 % of the share capital of 51.6 % held by the Volksbanken Holding to an independent third party, GPVAUBEOE Beteiligungen GmbH, a special-purpose vehicle.
- (44) With the transfer of the central organisation, a substantial part of ÖVAG's liabilities to the Verbund will be transferred to VBWB. Nevertheless, after the break-up, the Verbund will retain an exposure to Immigon amounting to EUR [700-800] million in the form of various financial instruments used to provide funding to ÖVAG.
- (45) To neutralise the risk to the Verbund arising from this remaining exposure to Immigon, the Verbund has taken the following steps:

- (a) EUR [200-300] million of the Immigon exposure will be sold immediately in the market, reducing the remaining exposure to EUR [400-600] million. This transaction will result in losses to the Verbund of EUR [0-100] million.
- (b) The remaining EUR [400-600] million will be covered by a commercial guarantee for an annual fee of [0-5] %. The guarantee will only become effective after a first loss piece of EUR [0-200] million has been consumed.
- (c) The first loss piece of EUR [0-200] million will be fully provisioned, resulting in a further negative impact on the 2015 result of EUR [0-200] million.

#### *The transformation of the Verbund*

- (46) The Verbund currently consists of 51 primary banks. Under the transformation plan those 51 institutions will merge to form 10 larger banks: 8 regional banks with balance sheet totals of EUR 1.9 billion to EUR 5.3 billion, operating in different parts of Austria, and two special banks – Sparda Bank Austria (EUR 0.8 billion) and the Ärzte-/Apothekerbank (EUR 1.1 billion). The relevant mergers will take place by the end of 2017. The start:bausparkasse grouping together the building societies (Bausparkassen) of the Verbund are likely to be sold off.
- (47) The relationships between the primary banks within the Verbund are governed by two agreements: the association agreement under Section 30a BWG (*Verbundvertrag*) and the cooperation agreement.
- (48) The association agreement is concluded between the central organisation in the form of VBWB, the primary banks of the Verbund, and Volksbank Haftungsgenossenschaft eG. Its main provisions are the following:
  - (a) The central organisation ensures the supply of liquidity to the primary banks and compliance with the regulatory requirements on own funds. The members undertake to conclude agreements on fund transfer pricing for the allocation of own funds.
  - (b) As before, the central organisation has unlimited liability in relation to the payment of contributions to members. In the new association agreement the primary banks now also have unlimited liability.
  - (c) The central organisation receives greater powers and can now also issue instructions that affect the interests of individual banks in the Verbund. It can impose penalties in the event of infringements. The greater powers cover in particular administrative, financial and technical supervision, Verbund planning and control, compliance with supervisory rules, internal control mechanisms for members, risk analysis, risk assessment and risk control procedures, and criteria for the ongoing business of members.
  - (d) Capital withdrawals and reductions are, as before, allowed only with the approval of the central organisation.
- (49) The cooperation agreement (*Zusammenarbeitsvertrag*) regulates those areas that are not covered by the association agreement. The contracting partners are the primary banks of the Verbund and Volksbank Haftungsgenossenschaft eG. The aim of the cooperation agreement is to realise synergies in the Verbund by implementing the planned mergers and stepping up cooperation between members. The decision-making powers in the areas covered by the cooperation agreement are transferred to Volksbank Haftungsgenossenschaft. Decisions by the management board of Volksbank Haftungsgenossenschaft are binding on the contracting partners. The

cooperation agreement regulates in particular the areas of marketing, a single sales strategy, product policy including framework contracts with third-party suppliers, sales control, optimisation and standardisation of business processes, IT procurement and legal representation.

- (50) In the event of a dispute, the central organisation decides whether a measure under the cooperation agreement constitutes an inadmissible encroachment on its responsibilities under the association agreement. Should the regulator require amendments to the association agreement, the cooperation agreement contains a clause enabling it to be adjusted accordingly as well.
- (51) The aim of the transformation plan is to establish a structure consisting of eight strong regional banks, together with a central organisation, and two special banks. The local offices will focus on sales and local customer service, while administration is concentrated in the regional banks and the central organisation.
- (52) The Verbund will focus on customers in Austria, with a particular emphasis on small and medium-sized businesses, the self-employed, private customers, housing finance and wealthy customers.

#### *Financial planning*

- (53) On the basis of the new restructuring plan, the Verbund has sent the Commission forecasts of the expected trend in key financial indicators in the next five years. Those forecasts have been made for two scenarios – a baseline scenario and a stress scenario.
- (54) The financial planning as delivered takes into account the impact of the neutralisation of the Immigon exposure<sup>15</sup> as well as the projected payment flows by the Verbund on the profit participation right (*Genussrecht*) provided to Austria under the commitment catalogue.
- (55) The baseline scenario assumes moderate economic growth in the core market, Austria, amounting to a nominal 0.8 % in 2015, 1.5 % in 2016 and 1.7 % in subsequent years up to 2019, an annual inflation rate of between 1.1 % and 2.2 %, and a three-month Euribor rising from 0.1 % in 2015 to 1.9 % in 2019. On those assumptions the Verbund forecasts losses for 2015 but a positive return on equity (RoE) of [8-9] % in 2019. The CET1 ratio is expected to increase from [9-11] % in 2015 to [11-13] % in 2019. Trends in further key figures can be seen from the following profit and loss calculation and balance tables.

[...]

#### **Table 1 – Key financial data in baseline scenario**

- (56) The stress scenario is based on the assumption of a credit crunch caused by weaknesses in the European banking sector which foreign funders (donors) and the ECB cannot resolve. Real economic growth is slightly negative, with a slow recovery as from 2017. In 2015 and 2016 the rate of inflation is negative, and in the subsequent years marginally positive. Interest rates remain extraordinarily low and the value of the Swiss franc rises further against the euro. On the basis of those assumptions, the Verbund predicts that the RoE will remain negative in 2015 and 2016 and rise subsequently to [5-8] % in 2019, and the CET1 ratio will rise from

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<sup>15</sup> See recital (45).

[8-10] % in 2015 to [10-12] % in 2019. Trends in further key figures can be seen from the following profit and loss calculation and balance tables.

[...]

### **Table 2 – Key financial data in stress scenario**

#### *New commitments and compensatory measures on the part of Austria*

- (57) The Austrian authorities have undertaken a number of commitments relating to the implementation of the new restructuring plan. Those commitments by the Austrian authorities are set out in a separate document annexed to this Decision.
- (58) Under Section 5 of the Restructuring Communication, reports must be submitted regularly so that the Commission can check whether the new restructuring plan is being properly implemented. Austria will employ a monitoring trustee to support the Commission in meeting its task of ensuring that the decision is implemented correctly. The monitoring trustee will submit a monitoring report every six months. The first report should be submitted no later than six months after the Restructuring Plan has been approved. In the Commission's view, that commitment ensures proper monitoring of implementation of the Restructuring Plan.

#### *Supervisory approval of the plan*

- (59) The new restructuring plan notified to the Commission corresponds to the capital raising plan submitted to the ECB/SSM and has the main objective of transforming the Verbund in such a way that the capital shortfall identified in the Comprehensive Assessment by the ECB/EBA will be addressed.
- (60) The SSM has set a prudential capital requirement of 14.63 % to be achieved from 26 July 2015. On that day, the SSM will review the prudential capital requirement also taking into account the implementation of the capital raising plan. The implementation of the plan has been initiated by the entry of measures (a) to (c) in recital (35) in the Austrian corporate register. In order for the national Austrian courts to approve the entry into the corporate register, the SSM has approved these measures.

### **3. THE FORMAL INVESTIGATION PROCEDURE**

- (61) The Commission recalls that it has opened a formal investigation procedure in consequence of which the 2012 Decision was adopted. It has become necessary to amend that decision pursuant to Article 7(3) of Regulation 659/99<sup>16</sup>.

### **4. POSITION OF AUSTRIA**

- (62) In public statements Austria has excluded any new aid for the Verbund. Austria takes the view that the restructuring plan submitted does not constitute new aid.
- (63) However, Austria acknowledges that the new restructuring plan significantly changes the 2012 restructuring plan so that an amendment decision by the Commission is

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<sup>16</sup> Council Regulation No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, OJ L 83, 27.3.1999, p. 1.

necessary before it can be implemented. It has accordingly notified the new plan to the Commission.

- (64) Austria similarly acknowledges that the Verbund must be seen, in terms of State aid rules, as the successor to ÖVAG and is therefore also the object of this amendment decision.
- (65) At the same time, Austria maintains that the new restructuring plan, with its list of commitments, preserves the balance of the 2012 Decision and therefore the original compatibility of the aid.

## **5. ASSESSMENT OF THE MEASURES**

### **5.1. State aid**

#### *Presence of existing State aid and economic succession*

- (66) With regard to the measures approved by the Commission as restructuring aid in favour of ÖVAG in 2009 and 2012, the Commission has already concluded that those measures constituted State aid. As a consequence, it is not necessary to reassess the State aid nature of these measures in this Decision.
- (67) A central element of the 2012 restructuring plan on which the 2012 Decision was based was refocusing ÖVAG on its function as a central organisation integrated in a joint liability scheme with the primary banks. In that setup, ÖVAG as central organisation assumed liability for the entirety of obligations of the Verbund, whereas the individual primary banks were only liable as long as it would not breach their own individual capital ratio.
- (68) Some of the 2012 commitments provided by Austria also concerned the primary banks, protecting particular revenue streams of ÖVAG as the central institution (commitment 9) and obliging the primary banks to participate in the repayment of the participation capital in ÖVAG ‘as far as the minimum regulatory requirements allow’ (commitment 11.2). Those commitments were necessary because of the particular liability arrangement in the Verbund to find the aid compatible. Moreover, those commitments in combination with the particular liability arrangement allowed the Commission to treat ÖVAG separately from the Verbund.
- (69) Under the new restructuring plan, the core economic activity of ÖVAG will be carried out by one of the primary banks, VBWB. More specifically, VBWB will take over ÖVAG's role as the central organisation of the Verbund, with all relevant necessary functions and assets being transferred from ÖVAG to VBWB. In total, EUR 8.6 billion in assets and liabilities will be transferred, including all core functions of ÖVAG, as defined in the 2012 Decision, with the exception of three minor subsidiaries, VB Factoring (with a balance sheet of EUR 86 million), VB Mobilienleasing (EUR 700 million) and VB Investments (EUR 30 million), which will remain in the wind-down entity Immigon.
- (70) In contrast with the asymmetric liability structure between primary banks and central organisation, the Verbund will be integrated into a fully joint and several liability arrangement under the new restructuring plan. In conjunction with the further structural changes in the Verbund (recital (49)), the new central organisation, VBWB, can no longer be considered separately from the primary banks. That view is supported by the consolidated approach that the SSM took in the

Comprehensive Assessment, and the fact that the capital requirement was formulated at aggregated (Verbund) level.

- (71) For those reasons, the Commission considers the Verbund to be the economic successor of the entity aided under the 2012 Decision, ÖVAG. Therefore, the Verbund is the beneficiary of the existing State aid.

*No new State aid to ÖVAG, Immigon, VBWB or the Verbund*

- (72) In addition to the question of the transfer of the existing State aid to the economic successor, the Commission also has to assess whether any new aid is involved in the new restructuring plan.
- (73) The Commission observes that, according to Austria, no additional State aid will be granted as part of the new restructuring plan.
- (74) According to Article 107(1) TFEU, State aid means ‘any aid granted by a Member State or through State resources in any form whatsoever which distorts, or threatens to distort, competition by favouring certain undertakings, in so far as it affects trade between Member States’. A measure constitutes State aid within the meaning of that provision if all of the following conditions are met: (a) the measure must be imputable to the State and financed through State resources; (b) it must confer an advantage on its recipient; (c) that advantage must be selective; and (d) the measure must distort or threaten to distort competition and have the potential to affect trade between Member States.
- (75) The new restructuring plan does not confer any new advantage on ÖVAG or Immigon. ÖVAG ceases to exist, with all its core assets and liabilities being transferred to VBWB, and the remainder being wound down in Immigon. According to the current plan, it is expected that the wind-down of Immigon will consume its capital almost entirely however without recourse to the asset guarantee. This implies that the risks immanent in the CET1 instruments of ÖVAG are expected to materialise, including the loss of Austria's equity share in ÖVAG of EUR 250 million as well as the outstanding participation capital in the nominal amount of EUR 300 million.
- (76) The asset guarantee continues to cover ÖVAG/Immigon. Under the current contractual arrangement, the guarantee can only be exercised on 31 December 2015 on claims registered up to that date and to the amount necessary to support a CET1 ratio of 10 %. According to information provided by Austria, securities eligible for compensation under the guarantee have already been registered exceeding in sum the maximum guarantee amount of EUR 100 million. While the eligibility of registered claims will be decided only on 31 December 2015, the Immigon management has no choice under its legal obligation to protect the interests of the owners but to register all possible claims for settlement at the end of 2015.
- (77) At 31 December 2015, Immigon as a wind-down entity will no longer have to fulfil capital requirements. Accordingly, it is difficult to assess the guarantee settlement condition linked to a CET1 ratio. However, given that this assessment is entirely a question of national law, the Commission accepts Austria's position according to which the continuation of ÖVAG in the form of a wind-down entity according to Article 162 BaSAG has no influence on the continuing validity of the guarantee. On the basis of this position and because Immigon will at that date have suffered a capital reduction of 96.65 %, the settlement condition of less than 10 % CET ratio will be fulfilled and all at 31 December 2015 eligible claims will have to be settled.

- (78) Under those conditions, the changes in the guarantee agreement – (a) prolonging the settlement period of the guarantee payment without allowing further claims to be registered beyond 31 December 2015 and (b) making the settlement payment exercisable only in the case that the capital would otherwise fall below zero – actually reduce the risk to the guarantee provider of the guarantee being exercised. Moreover, the applicable fee payments of 10 % per annum will continue to apply for a further two years. Therefore, the new conditions of the asset guarantee only strengthen the position of the guarantee provider and do not provide a further advantage to ÖVAG/Immigon.
- (79) The new restructuring plan also confers no new advantage on the Verbund, including its new central organisation, VBWB. As explained above<sup>17</sup>, the Verbund is the beneficiary of the existing aid. More specifically, under the 2012 Decision, the primary banks had to participate in realising the repayment of the outstanding EUR 300 million of participation capital by the end of 2017 as far as their minimum regulatory requirements allowed. It has to be recalled that in the Comprehensive Assessment the capital shortfall was assessed not at the level of ÖVAG alone but at the level of the Verbund as a whole.
- (80) While the risk-bearing participation capital is being consumed in the wind-down of ÖVAG/Immigon, the new commitments presented by Austria include a payment by the Verbund to Austria in the amount of EUR 300 million, through the granting of a profit participation right to Austria. The Verbund commits to a payment schedule amounting to a cumulative EUR 300 million by the end of [2020-2025], subject to intermediary payment thresholds in [...], [...] and [...].
- (81) By providing a new commitment to pay EUR 300 million to the State, the Verbund reinstates a claim equivalent in amount to the original repayment required. That original claim would be lost in the liquidation of ÖVAG as immanent risks would materialise. While the new payment schedule will result in a significant payment delay compared with the original commitment, it must be considered that under a simple liquidation for ÖVAG (as well as the counterfactual scenario of the resolution of the entire Verbund), all State claims, equity and participation capital would cease to exist.
- (82) In addition, that new commitment is binding on the Verbund, although the payments relating to the profit participation right remain profit-dependent. At the same time, the commitment ensures that Austria's claim to those payments is senior to any dividend payments. Moreover, for any dividend distribution to parties outside the consolidated Verbund, Austria will receive a compensation payment of equal amount and in addition to the payment from the profit participation right.
- (83) Furthermore, Austria will receive a stake of 25 % plus one share in VBWB as collateral for the payments on the profit participation right. If the Verbund fails to make payments according to the thresholds set in the payment schedule, VBWB shareholders will transfer further shares to Austria for free, increasing Austria's stake in VBWB to [26-40] %. In addition, Austria will also be able to seize the collateral at that moment.

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<sup>17</sup> See recitals (66) to (71).

- (84) As such, the new commitment, although it differs in some features from the original commitment, is equivalent to the latter and cannot therefore be considered to confer an advantage on ÖVAG, Immigon, VBWB or the Verbund.
- (85) Apart from the new commitment to pay an amount equivalent to the original value of the participation capital in ÖVAG on a newly instated profit participation right in VBWB, the new restructuring plan makes no other substantial modifications in relation to the Austrian State that could be interpreted as conferring an advantage on VBWB or the Verbund.
- (86) As the new restructuring plan does not confer an advantage on ÖVAG, Immigon, VBWB or the Verbund, there is no need to pursue the assessment of the cumulative State aid criteria. On that basis, the Commission considers that the measures provided for in the new restructuring plan do not fulfil the conditions of Article 107(1) TFEU and, therefore, do not constitute new State aid to ÖVAG, Immigon, VBWB or the Verbund within the meaning of that provision.

## **5.2. Assessment of the legal compatibility of the measures**

- (87) As explained in section 5.1, the new restructuring plan contains no new aid, while the aid for ÖVAG approved in the 2012 Decision is transferred to the Verbund as the economic successor of ÖVAG.
- (88) On the basis of the 2012 Decision, therefore, the Commission needs to establish whether the 2012 aid measures remain compatible with the internal market under the new restructuring plan and catalogue of commitments. That assessment must take place on the same legal basis that applied in the 2012 Decision, i.e. on the basis of the Recapitalisation Communication and the 2011 Prolongation Communication<sup>18</sup> and also the Restructuring Communication<sup>19</sup>.
- (89) Recitals (83) to (92) of the 2012 Decision regarding the compatibility of the 2012 aid assessed on the basis of the Recapitalisation Communication and the 2011 Prolongation Communication continue to apply without any change. The recapitalisation granted to ÖVAG in the amount of EUR 250 million and the remaining participation capital in the amount of EUR 300 million will remain with Immigon and will, according to the plan, be completely consumed in the liquidation by 2017.
- (90) As explained in recital (93) of the 2012 Decision, the Restructuring Communication provides that the restructuring of a financial institution in the context of the current crisis is compatible with the internal market under Article 107(3)(b) TFEU only if it will restore the profitability of the bank, includes a sufficient own contribution and appropriate burden-sharing, and also contains sufficient measures to limit the distortion of competition. With regard to those three elements, the Commission must check to what extent the changes submitted in the restructuring plan and in the catalogue of commitments preserve the compatibility of the measures established in the 2012 Decision.

### *Viability under the baseline scenario*

- (91) As explained in recital (71), the 2012 aid is transferred to the Verbund, which is also fully covered by the new restructuring plan. Here it is necessary to examine whether

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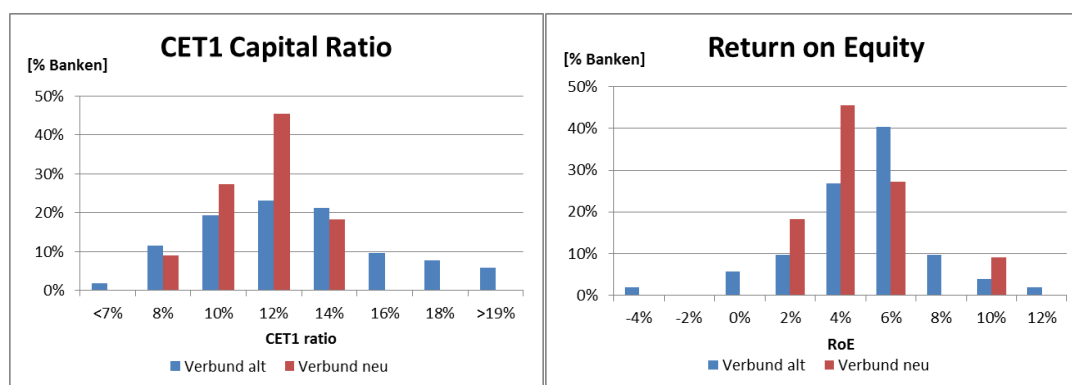
<sup>18</sup> See recital (82) of the 2012 Decision.

<sup>19</sup> See recital (93) of the 2012 Decision.



the long-term profitability of the Verbund in its new form under the restructuring plan will be re-established by 2019.

- (92) To that end, Austria has submitted a financial plan running up to 2019, which includes a baseline scenario and a stress scenario for the entire Verbund, on the basis of which the Commission carried out its analysis.
- (93) The transformation of the structure of the Verbund itself through the merging of the local primary banks into regionally organised institutions can be assessed as beneficial in so far as the existing differences in the Verbund with regard to capital contribution and profitability will be somewhat equalised and economies of scale and potential synergies can be exploited. The graph below clearly shows that in a comparison between the old and new Verbund the spread in the CET1 capital ratio and RoE is reduced.



- (94) The Commission welcomes the fact that potential synergies have influenced financial planning only in the area of costs which are more easily quantifiable than revenues and have been included at only [70-80] % of the potential that has already been identified. With less than [10-20] % per annum in staffing costs and less than [5-10] % per annum in non-staffing costs, the Commission is of the opinion that a rather cautious approach has been adopted and that further synergies might be available than those already included into the plan.
- (95) The business strategy of the Verbund in its new form remains essentially unchanged. The focus is clearly placed on local and regional clients both in the private and commercial customer segments and on business with small and medium-sized companies. Those business activities already make up the bulk of the portfolio, are profitable, and were not considered to be problematic in the 2012 Decision. In the baseline scenario, the interest-bearing assets in those areas increase by around [5-7] % until 2019 and thus by less than half of the predicted real economic growth of around 15 % over this same period<sup>20</sup>. It is only in special business areas, such as, for example, securities investment services, that higher growth rates are envisaged. Given the very limited initial size of those businesses, higher growth assumptions are justified.
- (96) On the liabilities side, the particular relevance of business with private clients' deposits must be stressed (around 80 % of all liabilities). That type of funding is rated under Basel III as especially reliable and counts correspondingly highly in

<sup>20</sup> All assumptions regarding economic growth and inflation are taken from the Commission's Spring 2015 Report.

funding indicators such as the Liquidity Coverage Ratio and the Net Stable Funding Ratio. The Verbund has also supplied proof of the particular stability of the deposit business even during the crisis, so that the Commission finds the Verbund's funding situation to be a particular strength. In the deposit business too, growth by 2019 is at around [5-7] % and over 50 % lower than predicted real economic growth.

- (97) Risk assumptions with regard to the various credit portfolios appear plausible. In the baseline scenario, the planned values for risk provisioning and impairments correspond to standard risk cost rates of approximately [7-15] basis points for private client business and [30-45] basis points for commercial client business. Those assumptions seem appropriate for the economic situation in the Austrian credit business, although not conservative.
- (98) The plan according to the baseline scenario will bring the Verbund from a negative after-tax RoE with a CET1 of [9-11] % in 2015 to an after-tax RoE of [8-9] % with a CET1-ratio of [11-13] % in 2019. In view of the moderate risk profile of the Verbund's business model, the planned after-tax RoE can be assessed as an appropriate remuneration of capital.
- (99) The considerations in recitals (94) to (98) on the financial planning with regard to growth, liquidity, costs, risk management and profitability allow the Commission to conclude that the planning is solid, that it has been calculated on the basis of essentially cautious assumptions, and that it is likely to ensure the long-term profitability of the Verbund and thus its ability to access the capital market.

#### *Viability under the stress scenario*

- (100) That assessment of long-term profitability and of viability is also confirmed by the stress scenario provided at the same time. Here, the assumption is that there will be simultaneous stress through (a) a longer-lasting low-interest environment than is currently envisaged and (b) a credit crisis. While longer-lasting low interest rates exert pressure on the interest margin, the credit crisis also has to be simultaneously financed through higher risk provisioning and impairments as well as a generally higher risk weighting of loan stocks resulting in higher capital requirements.
- (101) Given the reduced yields and the higher risk provisioning and impairments, the Verbund would make significant losses in 2015 and further light losses in 2016. However, it is clear that even without taking countermeasures such as a cost saving programme or adjusting pricing margins accordingly the resulting losses can be met out of the core capital ratio at the time, and will affect the Verbund's long-term yield position only to a limited extent. In that scenario the core capital ratio does not sink below [8-10] %, and the Verbund still achieves after-tax profitability of [5-8] % in 2019.

#### *Supervisory requirements*

- (102) Following on from the capital shortfall identified in the supervisory authority's Comprehensive Assessment of 2014, the Verbund has currently been given the objective of achieving a CET1 core capital ratio of 14.63 % by 26 July 2015. The current financial planning will not deliver such a capital ratio.
- (103) Moreover, the Commission notes that the measures taken to neutralise the Verbund's risk stemming from the exposure to Immigon<sup>21</sup> have a detrimental impact on the

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<sup>21</sup> See recital (45).

CET1-ratio roughly equivalent to [0-2] %. In addition, the submitted planning is based on the assumption that the Immigon exposure can be reduced in [...] and [...] through further sales. These sales would lead to an overall expected loss from the exposure of EUR [0-200] million with an additional downside risk of a further EUR [0-100] million if sales cannot be achieved and the EUR [0-200] million first loss piece is fully consumed. Additional losses of EUR [0-100] million would further reduce the CET1-ratio by [0-2] percentage points.

- (104) On the other hand, the Verbund has also identified measures to further reduce its RWA beyond the measures already included in the financial planning. Further possible measures include a securitisation structure for a credit portfolio of small and medium-sized enterprises and the sale of start:bausparkasse and IMMO-Bank, which would increase the core capital ratio to up to [10-15] % when taking into account the necessary threshold payment on the Austrian profit participation right. Here, the Commission notes that the simultaneous implementation of all these measures – if required – could have a detrimental impact on the future profitability of the bank.
- (105) However, given the limited size of downside risks and the scope of the already identified RWA measures, the Commission considers that there is a sufficient buffer in the plan to limit the impact on viability. This view is further strengthened by the positive decision the supervisor has taken regarding the approval of measures (a) to (c) in recital (35) with a view to allowing their entry into the Austrian corporate register. That positive decision by the SSM has been based on the same restructuring plan underlying the present Decision, suggesting to the Commission that the SSM will also consider that the Verbund – even when taking into account the risks inherent in the plan – will be capable of fulfilling the necessary prudential capital requirements applicable after the supervisory review on 26 July 2015.

#### *Own contribution and burden-sharing*

- (106) The Commission has to assess whether the new set of commitments can adequately replace the 2012 commitments to guarantee the compatibility of the existing aid for the Verbund, the economic successor of ÖVAG. Accordingly, it must be examined whether the Verbund's own contribution and burden-sharing are adequate.
- (107) In relation to own contribution and burden-sharing, the list of commitments annexed to the 2012 Decision included provisions on remuneration and repayment of (a) the asset guarantee and (b) the participation capital, as well as a dividend ban.
- (108) With regard to the changes to the asset guarantee, the current wind-down plan does not rely on any cash payment from the guarantee for a solvent wind-down. If all assumptions materialise as predicted and the wind-down remains solvent without the guarantee, then a windfall payment from the guarantee corresponding to the settlement of all eligible claims in July 2016 will actually only serve to increase the final liquidation mass of Immigon available to participation capital and equity holders. The current plan of limiting the guarantee payment to the case of preventing the insolvency of Immigon serves to limit to a minimum the risk of State aid being used to compensate the holders of own fund instruments.
- (109) With regard to participation capital, pursuant to the list of commitments annexed to the 2012 Decision<sup>22</sup>, ÖVAG had to repay EUR 300 million by the end of 2017, with

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<sup>22</sup> Point 11.2 of the list of commitments annexed to the 2012 Decision.

the Verbund having to contribute as far as the minimum regulatory requirements allow. Its wording made it clear that, in the case of the Verbund, that commitment was a declaration of intent rather than a legally binding requirement.

- (110) The new set of commitments introduces a legally-binding requirement for the Verbund. More specifically, the Verbund undertakes to make available to Austria a new financial instrument, a profit participation right (*Genussrecht*). On the basis of that instrument, which has a small nominal value, Austria will receive profit-dependent distributions which will be senior to all other hybrid or dividend distributions. By [2020-2025], distributions on a profit participation right will amount to EUR 300 million, minus any payments received from the winding down of ÖVAG.
- (111) The cash flow corresponding to the profit participation right will be further ensured by the fact that Austria will receive (a) a shareholding in VBWB of 25 % and one share (a blocking minority) as collateral and (b) the right to appoint a half of supervisory board members of VBWB.
- (112) The profit participation right has the following cumulative payment thresholds: EUR [0-50] million in [...]; EUR [0-100] million in [...]; EUR [0-200] million in [...]; and EUR 300 million in [2020-2025]. Should a threshold not be adhered to, Austria receives the title right to the shareholding held as collateral, which otherwise, after receipt of the full amount of EUR 300 million, returns to the ownership of the Verbund. In addition, in the case of non-adherence to payment thresholds, Austria would get a further [1-15] % of all shares as well as the right to seize this collateral. Furthermore, there is an obligation for the Verbund in this event to present a new restructuring plan which Austria would then have to notify to the Commission.
- (113) The Commission has assessed the influence of the new repayment arrangement on the restructuring plan and has concluded that the latter is sufficiently robust for the repayment to be made as planned, without placing an undue burden on the core capital ratio. The threshold of EUR [0-50] million in [...] remains feasible even in the stress scenario. However, the Commission has noted that simultaneous implementation of all identified RWA-reduction measures<sup>23</sup> would have a negative influence on the bank's profitability which could also jeopardise the repayment plan.
- (114) The Commission considers that the new commitment on aid repayment ensures the continued compatibility of the existing aid for the following reasons:
- (a) By means of that commitment Austria receives a new claim that adequately replaces the defaulted claim on ÖVAG. As a wind-down entity, ÖVAG is not expected to repay participation capital beyond residual surpluses from its wind-down.
  - (b) The combination of the cumulative threshold values and voluntary distributions of dividends described below<sup>24</sup> is an adequate compromise between ensuring aid repayment and restoring the Verbund's viability.
  - (c) On that basis, the extension of the repayment schedule can be accepted.
  - (d) Austria has the possibility to use its blocking minority to amend the new restructuring plan if necessary.

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<sup>23</sup> Those measures are further described in recital (103).

<sup>24</sup> See recital (115).

- (115) With regard to the dividend ban, the relevant commitment<sup>25</sup> annexed to the 2012 Decision continues to apply in a modified manner. Under the new commitment, dividends can be distributed to external investors provided that
- (a) the total of all the distributions is less than EUR [5-8] million;
  - (b) the profit participation right has been exercised as a priority in at least the same amount in accordance with the agreed thresholds and in the same year;
  - (c) Austria receives an additional compensatory payment of the same amount as the proposed dividends; and
  - (d) fresh external core capital has been generated of at least the sum of any dividend and additional compensatory payments.
- (116) The Commission considers that the combination of the priority nature of the repayment obligation, the compensatory payment and fresh external core capital generation are sufficient to ensure that aid does not serve as a return on capital, and that any dividends are paid solely from surplus revenues.
- (117) Overall, the Commission considers that the new set of commitments ensures the compatibility of the existing aid with regard to own contribution and burden-sharing.

*Measures to limit distortions of competition*

- (118) The Commission has to assess whether the new set of commitments can adequately replace the 2012 commitments to guarantee the continuing compatibility of the existing aid for the Verbund. Accordingly, it must be examined whether distortions of competition due to aid to the Verbund are limited as far as possible.
- (119) The 2012 commitments included the following measures with respect to ÖVAG, to limit distortions of competition: (i) reduction of balance sheet and RWAs; (ii) restriction of activities to the ‘association-related business’ of ÖVAG, as the Verbund's central organisation; (iii) a ban on acquisitions; (iv) a ban on price leadership, applicable to ÖVAG's online banking subsidiary, Live Bank; (v) a ban on referring to State aid for advertising purposes; and (vi) behavioural measures relating to remuneration and risk management systems.
- (120) The new set of commitments, annexed to this Decision, maintains the original balance in terms of limiting distortions of competition. In particular, the issues of balance sheet and RWA reduction are addressed by the wind-down of ÖVAG, whilst the issue of focusing on the functions of the Verbund's central organisation is addressed by the transfer of those functions to VBWB. The new set of commitments also maintains the bans on price leadership, acquisitions and State aid advertising as well as the existing behavioural measures.
- (121) In relation to price leadership, Live Bank will not be allowed to offer customers interest rates, relating to any maturity, higher than those offered by the third-best competitor in the direct online banking market.
- (122) In relation to acquisitions, the Verbund will not be allowed to acquire controlling or minority stakes and any asset bundles. The only exceptions to that ban are (a) acquisitions necessary to preserve financial or Verbund-level stability, or those carried out in the interests of effective competition, provided that they are approved

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<sup>25</sup> Point 9.3 of the list of commitments annexed to the 2012 Decision.

beforehand by the Commission, and (b) acquisitions that belong, in terms of management of existing obligations of customers in financial difficulty, to the Verbund's normal ongoing business.

- (123) In relation to advertising, the Verbund will not be allowed to advertise the granting of the State aid measures or any advantages arising therefrom.
- (124) In relation to behavioural measures, the Verbund will maintain adequate remuneration and risk management systems. More specifically, the Verbund's remuneration systems will be transparent, based on incentives preventing inappropriate risks, and aligned with sustainable long-term business objectives. The Verbund's risk management system will be further developed, with the aim of pursuing a prudent, sound and sustainable business policy.
- (125) Considering the above the Commission believes that the new set of commitments adequately limits distortion of competition brought about by the existing State aid to the Verbund,

HAS ADOPTED THIS DECISION:

#### *Article 1*

1. The measures contained in the restructuring plan of 23 June 2015 and the corresponding set of commitments do not constitute new State aid.
2. The measures contained in the restructuring plan of 23 June 2015 and the corresponding set of commitments are such that the measures referred to in Article 1(1) of Commission Decision 2013/298/EU remain compatible with the internal market.

#### *Article 2*

1. Article 2 of Commission Decision 2013/298/EU is replaced with the following:  
‘Austria shall ensure that the restructuring plan submitted on 23 June 2015 is implemented in full, including the commitments set out in the Annex to this Decision.’
2. The annex to Commission Decision 2013/298/EU is replaced with the annex to the present Decision.

#### *Article 3*

This Decision is addressed to the Republic of Austria.

If the decision 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 the decision. Your request specifying the relevant information should be sent by registered letter or fax to:

European Commission,  
Directorate-General Competition  
State Aid Greffe

B-1049 Brussels  
BELGIUM  
[Stateaidgreffe@ec.europa.eu](mailto:Stateaidgreffe@ec.europa.eu)

Done at Brussels, 2 July 2015

*For the Commission*

*Margrethe VESTAGER  
Member of the Commission*

## ANNEX

to the

### COMMISSION DECISION

of 2 July 2015

#### ON THE STATE AID

SA.31883 - 2015/N, 2011/C

which Austria implemented and is further planning to implement  
for ÖVAG and the Volksbanken Verbund

#### List of commitments in State aid procedure SA.31883 Österreichische Volksbanken AG

##### Preamble

By Commission decision of 19 September 2012, State aid SA.31883 (2011/C) which Austria granted to Österreichische Volksbanken AG (ÖVAG) was found to be compatible with the internal market.

Owing to the renewed need for restructuring of the Volksbanken sector, the present list of commitments has been drawn up taking into account the earlier set of commitments and the underlying restructuring and liquidation plan of ÖVAG ('the restructuring plan'). The provisions of the earlier set of commitments annexed to the Commission decision of 19 September 2012 thereby cease to have effect.

The modified restructuring plan makes no provision for additional State support measures for ÖVAG. The reduction in ÖVAG's share capital including the Republic of Austria's share in the amount of 43.3 % (corresponding to approximately EUR 250 million) and the simultaneous reduction in the Republic of Austria's participation capital in the amount of EUR 300 million by 96.65 % do not constitute new aid within the meaning of Article 1(c) of Regulation 659/1999.

The Republic of Austria hereby provides the following commitments concerning Österreichische Volksbanken-Aktiengesellschaft ('ÖVAG') and the Volksbanken-Verbund, represented by Volksbank Wien-Baden AG ('VBWB') in its capacity as the new central organisation of the Verbund, in order that the European Commission, by decision under Article 107(3)(b) of the Treaty on the Functioning of the European Union ('TFEU'), may find the aid granted to ÖVAG compatible with the internal market.

This text should be interpreted within the general framework of EU law and with reference to Council Regulation (EC) No 659/1999, as well as with regard to the decision, to which the commitments are attached as commitments and/or conditions and obligations.

##### 1. General

- 1.1. The Republic of Austria undertakes to ensure that the restructuring for ÖVAG submitted end of June 2015 is correctly and fully implemented.



- 1.2. The Republic of Austria undertakes to ensure that the commitments listed below ('the commitments') are fully observed during the implementation of the restructuring plan.
- 1.3. The restructuring phase will end on the date of the general meeting of VBWB which decides on the annual accounts for the fiscal year 2019, but at the latest on 30 June 2020. The following commitments will apply during the restructuring phase unless otherwise provided.

## **2. Restructuring and liquidation plan**

- 2.1. ÖVAG's share capital of EUR 577 328 623.46 (including the Republic of Austria's share in the amount of 43.3 %) will be reduced to EUR 19 335 951.23. The State's participation capital in the amount of EUR 300 million will be reduced in the same proportion by 96.65 %.
- 2.2. The central organisation and central institution function of ÖVAG will be transferred retroactively with effect from 31 December 2014 by it as transferor company to VBWB as transferee company subject to the continued existence of the transferor company, in exchange for the issue of shares.
- 2.3. With effect from 4 July 2015, ÖVAG will with the agreement of the competent supervisory authority (ECB) withdraw from the Verbund, after supervisory approval operate henceforth as a wind-down entity in accordance with section 162 of the Federal Act on the Recovery and Resolution of Banks (Bundesgesetz über die Sanierung und Abwicklung von Banken - BaSAG) and as such will no longer hold a banking licence in accordance with section 1 of the Banking Act (Bankwesengesetz, BWG). The name of the wind-down entity will be changed to 'immigon portfolioabbau ag'.
- 2.4. Drawing on the federal Republic as provider of an asset guarantee to the amount of EUR 100 million in line with the agreement on an asset guarantee from 15 March 2013 as amended by the draft agreement from 25 June 2015 ('the guarantee amendment agreement') is allowed at any time between 31 December 2015 up to and including the day of the approval of the annual accounts of ÖVAG for the financial year 2017.
- 2.5. Conditions for an eventual drawing on the asset guarantee are either the partial or entire uncollectibility of the assets concerned or the formal insolvency of the debtor in addition to the necessity of the payout from the guarantee to prevent over-indebtedness of ÖVAG in accordance with insolvency law and subject to all other applicable conditions in the guarantee amendment agreement. Reference date for the evaluation of guaranteed claims in the pool according to Annex 1 to the guarantee agreement from 15 March 2013 as amended by the guarantee amendment agreement is 31 December 2015. No further claims from the guarantee will be accepted after that date.
- 2.6. The aim of the liquidation plan of ÖVAG is to fully liquidate all assets by 31 December 2017. It also follows from ÖVAG's liquidation plan that a positive residual value will remain. As partial compensation for the reduction in the share capital held by the Republic of Austria in ÖVAG, the Verbund and Volksbanken Holding eGen will assign their claims to the liquidation proceeds of ÖVAG to the Republic. Moreover, the Verbund has given a best endeavour commitment to the

effect that other shareholders in ÖVAG will also assign their claims to the Republic of Austria.

### **3. Sale of ÖVAG holdings**

In implementation of the provided draft of the restructuring agreement with the Republic of Austria from 23 June 2015 ('the restructuring agreement'), ÖVAG will sell off all shares in RZB completely ('signing') by 31 December 2017.

### **4. Measures by RZB**

Austria undertakes that the measures planned by Raiffeisen Zentralbank Österreich AG (RZB) to reduce ÖVAG's equity capital as laid down in the restructuring agreement of 26 April 2012 with a current residual amount of EUR [0-20] million will be implemented by [...].

### **5. Future profit distribution by the Verbund**

- 5.1. Profit distributions by entities consolidated in the credit institution association (*Kreditinstituteverbund*) of the Volksbanken in agreement with section 30a(1) BWG, as amended, to third (natural or legal) persons will in principle be admissible only if the conditions set out in points 5.2. to 5.6. of this agreement are fulfilled.
- 5.2. The exercise of the Republic of Austria's profit participation right will take place in agreement with the restructuring agreement; in particular, non-observance of the thresholds laid down therein will entitle the Republic of Austria to dispose of the shares in VBWB transferred to it pursuant to the restructuring agreement.
- 5.3. The exercise of the Republic of Austria's profit participation right in accordance with the restructuring agreement will take place preferentially in at least the amount of the distribution.
- 5.4. The total amount of all distributions will be limited to EUR [5-8] million p.a.
- 5.5. The Republic of Austria will receive a compensation payment independent of point 5.3. in the amount of the distribution. Profit distributions on own-fund items designated after 29 June 2015 to strengthen and aid the recovery of the Verbund will not give rise to any compensation payment to the Republic of Austria.
- 5.6. The Verbund will raise fresh external common equity tier 1 capital (net, after the deduction of repayments) in at least an amount corresponding to the annual sum of the distributions and compensation payments (compensation for retained earnings).

### **6. ÖVAG dividend ban**

ÖVAG will not pay dividends in the period up to the end of the liquidation. In so far as they are legally separable, payments for remunerating the aid measures will remain unaffected.

### **7. Ban on price leadership**

In the area of deposit services, Live Bank is prohibited in the period up to the end of the liquidation from offering interest rate conditions (for all maturities) better than its competitor with the third-best conditions in the Austrian market for direct online banking without the

Commission's prior approval.

## **8. Representation of the Republic of Austria in Volksbank Wien-Baden AG in its capacity as central organisation of the Verbund**

- 8.1. With effect from the splitting-up of ÖVAG and the transfer of the function as central organisation of the Verbund to VBWB the Republic of Austria will have transferred to it a share of 25 % plus one share ('25 % + 1') free of charge by the Verbund.
- 8.2. If the Verbund fails to fulfil its repayment commitments in accordance with point 9.3., the Republic of Austria will have transferred to it additional shares in VBWB free of charge by the Verbund up to a total stake of Austria of [26-40] %. In addition, the Republic of Austria will receive the right of disposal over its entire shareholding in accordance with the provisions of the restructuring agreement.
- 8.3. The Republic of Austria will be granted by the Verbund a right of representation of half of the members of the VBWB supervisory board to be appointed by the owners.

## **9. Remuneration of the aid measures**

- 9.1. The asset guarantee of EUR 100 million provided by the Republic of Austria to ÖVAG will be remunerated with a non-profit-related bonus of 10 % p.a.
- 9.2. VBWB grants the Republic of Austria a profit participation right as compensation for the reduction under the restructuring agreement in the State's EUR 300 million participation capital in ÖVAG during the course of the split-up. From the entire payment to be made on the profit participation right will be deducted any participation capital held by the State which is retained during the course of the split-up and is duly repaid.
- 9.3. The payment on the profit participation right has to reach at least EUR [0-50] million by the time of approval of the [...] annual accounts of VBWB and at least EUR [0-100] million by the time of approval of the [...] annual accounts of VBWB. In the event of one of these two thresholds not being reached, a new restructuring plan will have to be notified. It should be noted that the restructuring agreement provides for a payment threshold of at least EUR [0-200] million by the time of approval of the [...] annual accounts of VBWB and for a complete payment by the time of approval of the [2020-2025] annual accounts of VBWB.

## **10. Other behavioural obligations**

- 10.1. ÖVAG and the Verbund commit to refrain from acquisitions. This applies to both the purchase of companies with their own legal structure, and shares in companies, as well as asset bundles that represent a commercial transaction or a branch of activity. This does not apply to acquisitions that must be made in order to maintain financial and/or association-related stability, or in the interests of effective competition, provided that they have been approved beforehand by the Commission. This does not apply either to acquisitions that belong, in terms of the management of existing obligations of customers in financial difficulty, to a bank's normal ongoing business.

- 10.2. ÖVAG and the Verbund must not use the granting of the aid measures or any advantages arising therefrom for advertising purposes.
- 10.3. ÖVAG and the Verbund must verify the incentive effect and appropriateness of their remuneration systems and ensure, using the possibilities under civil law, that they do not result in exposure to undue risks, are oriented towards sustainable, long-term company objectives, and are transparent.
- 10.4. The Verbund is to continue expansion of its risk-monitoring operations and to conduct a commercial policy that is prudent, sound and oriented towards sustainability.

## **11. Monitoring trustee**

- 11.1. The Republic of Austria is to ensure that the full and correct implementation of the restructuring plan of ÖVAG and the Verbund and the full and correct implementation of all commitments within this commitments document are continuously monitored by an independent, sufficiently qualified monitoring trustee who is obliged to maintain confidentiality.
- 11.2. The appointment, duties, obligations and discharge of the monitoring trustee must follow the procedures set out in the 'Trustee' Annex.
- 11.3. The Republic of Austria is to ensure that, during the implementation of the Decision, the Commission or the trustee has unrestricted access to all information needed to monitor the implementation of this Decision. The Commission or the trustee may ask ÖVAG and the Verbund for explanations and clarifications. The Republic of Austria, ÖVAG and the Verbund are to cooperate fully with the Commission and the monitoring trustee with regard to all enquiries associated with monitoring of the implementation of this Decision.