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Subject: State aid N 47 a/2009 – Austria
Limited amounts of compatible aid under the Temporary Framework
("Österreichregelung Kleinbeihilfen")

Sir,

1. PROCEDURE

- (1) By electronic notification of 30 January 2009, Austria notified a federal framework ("Rahmenregelung für Beihilfenmaßnahmen zur Bekämpfung der aktuellen Finanz- und Wirtschaftskrise") containing five aid measures under the Temporary Framework for State aid measures to support access to finance in the current financial and economic crisis" (hereinafter referred to as the Temporary Framework)¹. The federal framework was initially registered under N 47/2009 and

¹ Communication from the Commission - Temporary framework for State aid measures to support access to finance in the current financial and economic crisis, OJ C 16 of 22 January 2009, as amended on 25 February 2009 (http://ec.europa.eu/competition/state_aid/legislation/horizontal.html).

Dr. Michael Spindelegger
Bundesminister für auswärtige Angelegenheiten
Ballhausplatz 2
A - 1014 Wien

was subsequently split into five components, called "Limited amount of compatible aid" registered under N 47a/2009, "Interest rate reduction" registered under N 47b/2009, "Subsidized Guarantees" registered under N 47c/2009, "Risk capital" registered under N 47d/2009, "Green products" registered under N 47e/2009.

- (2) For N 47a/2009, Austria submitted by electronic communication of 5 March 2009 the information requested by the Commission services on 13 February 2009. By electronic communication of 14 March 2009, the Commission requested additional confirmation which was received on the same day by electronic communication.

2. DESCRIPTION

2.1. Objective of the aid scheme

- (3) Austria considers that the financial crisis starts affecting the whole economy at federal and regional level. The notified measure for aid in form of limited amounts of compatible aid forms part of an overall federal package of measures ("Rahmenregelung für Beihilfenmaßnahmen zur Bekämpfung der aktuellen Finanz- und Wirtschaftskrise") aimed at remedying a serious disturbance in the economy of Austria.²
- (4) The scheme is expressly based on Article 87 (3) (b) ECT, as interpreted by paragraph 4.2.2 of the Temporary framework.

2.2. The nature and form of the aid

- (5) The aid will be provided in the form of transparent forms of aid, as defined by the General Block Exemption Regulation³, and in particular, in the form of direct grants, interest rate subsidies, subsidised public loans with an element which is calculated on the basis of the communication on the revision of the method for setting the reference and discount rates (2008/C14/02) and public guarantees where the aid element is calculated either on the basis of notified methodologies⁴, or on the basis of the safe harbour premiums laid down in the annex A to the amended Temporary Framework.

2.3. Legal basis

- (6) The legal basis for the scheme is the "Regelung zur vorübergehenden Gewährung geringfügiger Beihilfen im Geltungsbereich der Republik Österreich während der Finanz- und Wirtschaftskrise" ("Österreichregelung Kleinbeihilfen").

² The general budget for the federal package is estimated at EUR 300 million. The Austrian authorities provided data that allow to assess the necessity and proportionality of the measure notified in the context of the real economy crisis.

³ OJ L 214, 9 August 2008, p. 3, Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General block exemption Regulation).

⁴ Notified under N 185/2008 – Austria: Methode der AWS GmbH zur Berechnung des Barwertes von Haftungen.

2.4. Administration of the scheme

- (7) The notified scheme is a federal framework scheme, allowing aid to be granted at all levels, including the federal, regional, and local level, and can be applied by all relevant aid awarding authorities.

2.5. Budget and duration of the measure

- (8) The Austrian authorities estimate that under the scheme aid not exceeding €150 million will be granted in 2009 and 2010.
- (9) Under the scheme, limited amounts of compatible aid can be granted as from its approval by the Commission until 31 December 2010.

2.6. Beneficiaries

- (10) The scheme applies to SMEs and large firms.
- (11) The Austrian authorities confirmed that no aid under this scheme will be granted to large firms which were, on 1 July 2008, firms in difficulties in the meaning of point 2.1 of the Community guidelines on State aid for rescuing and restructuring for firms in difficulty⁵, nor to SMEs which were on that date firms in difficulties in the meaning of Art. 1 (7) of the General Block Exemption Regulation. SMEs are defined in line with annex I to the General Block Exemption Regulation.
- (12) The scheme may be applied to firms that were not in difficulty on 1 July 2008, but entered into difficulty thereafter as a result of the global financial and economic crisis. In particular, information will be obtained demonstrating that the beneficiary was not a company in difficulty on 1 July 2008.
- (13) The Austrian authorities estimate the number of beneficiaries will exceed 1000 firms.

2.7. Sectoral scope, exclusion of export aid and aid favouring domestic over imported product

- (14) The scheme applies in all sectors, with the exception of the sectoral exclusions laid down in sections 4.2.2 (d) ("fisheries") and (h) ("primary production of agricultural products"; where this measure applies to undertakings active in the processing and marketing of agricultural products (as defined in Article 2.3 and 2.4 of Regulation (EC) 1857/2006), the amount of the aid is not fixed on the basis of the price or quantity of such products purchased from primary producers or put on the market by the undertakings concerned, or the aid is not conditional on being partly or entirely passed on to primary producers (section 4.2.2 (h), second sentence of the Temporary Framework).
- (15) Export aid and aid favouring domestic over imported goods and services are excluded (section 4.2.2 (e) of the Temporary framework).

⁵ OJ C 244, 1 October 2004, p. 2-17.

2.8. Basic elements of the scheme

- (16) The Austrian authorities confirm that the conditions laid down in section 4.2.2 for granting limited amounts of compatible aid will be fully met. In particular,
- the aid shall not exceed 500,000 € per undertaking, as laid down in section 4.2.2(a) of the Temporary framework. All figures used shall be gross, that is, before any deduction of tax or other charge. Where aid is awarded in a form other than a grant, the aid amount shall be the gross grant equivalent of the aid, calculated as indicated in paragraph (5) of this decision.
 - before granting the aid, the aid granting authorities shall obtain from the undertakings concerned a declaration about any de minimis aid (as defined in the Commission de minimis-Regulation⁶) or aid granted under this measure received during the current fiscal year (section 4.2.2 (g), first sentence).
 - The total amount of de minimis aid and aid granted under this measure per undertaking in the period 1.1.2008 to 31.12.2010 may not exceed €500,000 (section 4.2.2 (g), second sentence)
 - where the aid granted under this measure is to be combined with other compatible aid or with other forms of Community financing, the maximum aid intensities indicated in the relevant Guidelines or Block exemption regulations will be respected (section 4.7, last paragraph).

2.9. Monitoring and reporting, business secrets

- (17) The Austrian authorities confirm that the monitoring and reporting obligations laid down in Section 6 of the Temporary Framework will be respected (e.g.: by 31 July 2009, a list of schemes put in place on the basis of the Temporary Framework must be provided to the Commission; detailed records regarding the granting of aid must be maintained for 10 years; by 31 October 2009 a report on the measures put in place should be provided).
- (18) The Commission notes that the Austrian authorities have confirmed that the notification does not contain business secrets.

3. ASSESSMENT

3.1. Legality of the measure

- (19) By notifying the aid measure before putting it into effect, the Austrian authorities respected their obligations under Article 88 (3) of the EC Treaty.

3.2. Existence of state aid

- (20) State resources are involved in the notified scheme since the aid is granted from federal and regional resources, via the respective aid granting authorities at federal and regional level.

⁶ OJ L 379 of Official Journal L 379, 28.12.2006

- (21) The measure is selective since aid is awarded only to certain undertakings.
- (22) The measure conveys an advantage by making available limited amounts of compatible aid which would not be available to the beneficiaries without the measure.
- (23) The measure affects trade between Member States since the scheme is not limited to beneficiaries which are active in sectors where no intra-community trade exists.
- (24) The measure distorts or threatens to distort competition.
- (25) In view of the above, the Commission considers that the notified measure constitutes state aid within the meaning of Article 87 (1) of the EC Treaty. The Austrian authorities do not contest that conclusion.

3.3. Compatibility of the measure

- (26) Having established that the measure involves state aid within the meaning of Article 87 (1) of the EC Treaty, it is necessary to consider whether the above mentioned measure can be found compatible with the common market.
- (27) The notified measure is one of a series of measures⁷ conceived at federal level by the Austrian authorities to remedy a serious disturbance in their economy. By adopting the Temporary Framework, the Commission indeed acknowledged (section 4.1) the "seriousness of the current financial crisis and its impact on the overall economy of the Member States". The Commission concluded "that certain categories of State aid are justified, for a limited period, to remedy these difficulties and that they may be declared compatible with the common market on the basis of Article 87(3)(b)."
- (28) A measure of such a scale can be reasonably anticipated to produce effects across the entire Austrian economy. Furthermore, the measure has been designed to meet the requirements of the additional category of aid ("Aid in the form of limited amounts") described in section 4.2.2 of the Temporary Framework.
- (29) The Commission accordingly considers that the notified measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State and meets all the conditions of the Temporary Framework. In particular,
 - The maximum aid amount will not exceed the cash equivalent of EUR 500,000⁸ per undertaking (point 4.2.2 (a));
 - The measure is granted through an aid scheme in line with point 4.2.2 (b);

⁷ See paragraph (1) of this decision.

⁸ The Commission confirms in this context that the aid element of limited amounts of compatible aid which are granted in form of guaranties has to be established on the basis of the approaches outlined in the General Block Exemption Regulation (Article 5 (1) (c)), or on the basis of the safe harbour premiums laid down in the Temporary Framework, which are explicitly applicable to the present type of measure. The flat rate approach applied for the calculation of the aid element of de-minimis guarantees is applicable exclusively to interventions which do not constitute aid.

- The aid granting authorities will obtain from the undertakings concerned a declaration about any de minimis aid or aid granted under this measure received during the current fiscal year (point 4.2.2 (g), first sentence) and will check that the total aid will not exceed 500 000 per undertaking during the period from 1 January 2008 to 31 December 2010. Thus, the cumulation rules with de minimis aid and aid for other purposes are respected (in particular point 4.2.2 (g) and point 4.7).
- Firms in difficulty (situation of 1.7.2008) are excluded from eligibility under the scheme in compliance with point 4.2.2 (c).
- Firms active in the fisheries sector are excluded from the scope of this measure (point 4.2.2 (d)).
- Undertakings active in the primary production of agricultural products are excluded from the scope of this measure. Aid to the processing and marketing of agricultural products is subject to the relevant conditions (point 4.2.2 (h)).
- export aid and aid favouring domestic over imported goods and services are excluded (point 4.2.2 (e));
- in line with point 4.2.2 (f) aid may be granted until 31.12.2010.
- The monitoring and reporting rules laid down under point 6 of the Temporary Framework will be respected.

3.4. Conclusion

- (30) For these reasons, the Commission considers that the notified measure is in conformity with the Temporary Framework and considers it to be compatible with the Treaty on the basis of Article 87 (3) (b) EC.
- (31) The Commission notes that the Austrian authorities have confirmed that the notification does not contain business secrets.

4. DECISION

- (32) The Commission has accordingly decided
- to consider the notified aid scheme as compatible with the EC Treaty
- (33) The Commission reminds the Austrian authorities to transmit the concrete implementing rules as soon as possible after the approval of the notified aid.

Yours faithfully,
For the Commission

Neelie KROES
Member of the Commission