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**Subject: State Aid SA.45840 (2019/N) – Austria – Tax Incentives for Mid-Sized Business Financing Companies**

Sir,

## 1. PROCEDURE

(1) On 7 April 2008[1], the Commission approved an Austrian tax incentive scheme for mid-sized business financing companies (the so called "Mittelstandsfinanzierungsgesellschaften" or "MiFiGs") on the basis of the 2006 Community guidelines on State aid to promote risk capital investments in small and medium-sized enterprises (hereafter "RCGs")[2]. The approved scheme – hereafter the "old MiFiG scheme"- provided tax incentives until 31 December 2018. However, the period during which MiFiGs were allowed to take new participations stopped already on 31 December 2012.

(2) By e-mail dated 13 June 2016, and registered by the Commission on 4 July 2016, the Austrian authorities indicated that they intended to revise the old MIFIG scheme. An amendment of the Mittelstandsfinanzierungsgesellschaten-Gesetz 2007 provided the legal basis for the notified Scheme (hereafter "the new MiFiG Scheme" or "the Scheme")

(3) On 29 July 2016, the Commission sent an information request to the Austrian authorities.

[1] SA.23851 (N 621/07), OJ C 134, 31.5.2008, p. 1.
[2] OJ C 194, 18.08.2006 p. 2-22.

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(4) On 20 January 2017, the Commission and the Austrian authorities had a telephone conference to discuss the status of the file and the need for an ex-ante assessment in line with the requirements of the Risk Finance Guidelines[3] (hereafter "the RFGs"), if the new MiFiG scheme would not comply with the conditions of Article 21 of the General Block Exemption Regulation (hereinafter "GBER") on risk finance aid.

(5) On 3 March 2017, Austria provided the Commission with partial replies to the information request of 29 July 2016. Austria also provided a concise description of the measure, and documentation on the draft legislative amendments.[4]

(6) On 24 March 2017, Austria supplemented its answers to the Commission's information request of 29 July 2016.

(7) Following a telephone conference on 3 April 2017, the Commission informed the Austrian authorities that it would administratively close the case as the timing of the ex-ante assessment was at that point uncertain.

(8) On 24 April 2018, Austria submitted an ex ante assessment and the Commission administratively re-opened the case.

(9) On 22 August 2018, the Commission asked a number of clarifications on the ex-ante assessment and the nature of the new MiFiG scheme.

(10) In response, Austria submitted an explanatory note on 19 October 2018. In a number of follow-up telephone conferences and email exchanges, the Commission asked the Austrian authorities for further clarifications

(11) By letters of 19 February 2019, 8 May 2019 and 21 May 2019 Austria provided the requested clarifications.

## 2. DESCRIPTION OF THE SCHEME

### 2.1. Objective of the Scheme

(12) The objective of the Scheme is to incentivize via tax incentives the provision of private risk capital for start-ups and innovative Small and Medium-sized Enterprises ("SMEs") in their growth phase in Austria. Traditionally, the Austrian financing market is characterised by an overreliance on banking credit[5], the absence of large pension funds and a lack of equity raising tradition on the Austrian exchanges.

(13) The Scheme seeks to compensate for the lack of a well-developed and established entrepreneurship culture. The objective of the Scheme is therefore to incentivize

[3] Communication from the Commission — Guidelines on State aid to promote risk finance investments, OJ C 19, 22.1.2014, p. 4–34

[4] SANI2 pre-notification 647738.

[5] Ex-ante study, section 2.5.

the venture capital and private equity markets in particular insofar as those markets target small and medium-sized enterprises.

(14) The Austrian authorities have commissioned an ex-ante assessment to identify the precise financing gap. Two independent experts – Dr. Christian Keuschnigg[6] and Dr. Sascha Sardadvar[7] – carried out a study (the "ex-ante study") dated 19 March 2018 which identifies an equity gap in the Austrian risk capital market in particular for young SMEs with a high R&D intensity (innovative SMEs), and also for medium sized enterprises (50-249 employees) in their growth phase.

(15) In terms of supply, the ex-ante study demonstrates the total volume of venture capital funds in Austria has shrunk significantly since the beginning of the financial crisis in 2007 and is now estimated at around EUR 30 Million or 0.008% of GDP (2017 figures).

(16) On the demand side, young and innovative companies tend to have less access to bank finance because of information asymmetry. As a result, they invest less in research and development which exacerbates the existing problem. Whereas the United States has developed a dynamic venture capital market, the Austrian market has been lagging: although the own funds ratio of most companies has increased somewhat over the last 10 years, the absolute figures for countries like Austria have been rather low when compared to Germany for example. This difference was particularly relevant in the medium and large company segments.

(17) A regression analysis in the study shows that for about 50 000 target undertakings, the Risk Capital Gap per undertaking (around EUR 250 000) is also smaller than the average Private Equity investments, which lie around EUR 800 000.

(18) Furthermore, it is shown that investments increase proportionally to total own funds. A comparison is made to Denmark, which has an EU leading role in Venture Capital with around 40 significant investments by Danish growth funds per year. If this were to be translated to the Austrian economy in proportion to GDP, this would lead to around 50 investments annually.

(19) The ex-ante study demonstrates that Austria suffers from a lack of equity investments due to a number of historical factors: an overreliance on banking credit, the absence of large pension funds and a traditional lack of equity raising tradition on the Austrian exchanges.

(20) In addition, a regression analysis demonstrates that although the financing gap decreases somewhat for the older companies in general, this is in particular not the case for innovative SMEs.

(21) Concretely, the experts argued that existing aid measures[8] already stimulated the total amount invested in early phase companies and innovative undertakings but

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8 such as the Austrian Risk Capital Premium Scheme (SA.48840 (2018/N) of 11.07.2018, OJ 2018/C 292/01).

did not yet give a decisive boost to the Austrian risk capital market, whose size has remained negligible compared to France, Germany, UK, Ireland and Finland.[9]

## 2.2. Brief description of the Scheme

### *2.2.1. Mittelstandfinanzierungsgesellschaften ("MiFiGs")*

(22) MiFiGs are special purpose risk capital vehicles in the form of a Limited Liability Company. MiFiGs are Stock Companies with a minimum capital of EUR 7.5 million and solely founded to act as a participation fund to attract aided investments in target undertakings.

(23) MiFiGs need to follow a diversified investment strategy, in line with point 67 of the Risk Finance Guidelines[10]. They must not invest more than 20% of their capital in a single undertaking and may not obtain a majority stake in any undertaking.

(24) MiFiGs have to invest at least 75% of own funds in target undertakings. Assets used for liquidity management should not exceed 25% of total assets and should take the form of money market investments, deposits with credit institutions or bonds. Trades done for risk management purposes are included in the 25% limit.

(25) MiFiGs should have at least five shareholders and any single shareholder should not hold more than 49% of the shares of a MiFiG.

### *2.2.2. Eligible investors*

(26) The new MiFiG scheme provides for income tax advantages for natural persons investing in MiFiGs, who can either be qualified private investors[11] or private investors fulfilling the conditions of §48(8e) of the Alternative Investment Fund Managers Law[12].

(27) Institutional investors[13] can also invest in MiFiGs. However, according to Austrian tax law, dividends received by corporations are already exempt from corporate income tax ("Körperschaftsteuer"). Under the MiFiG legislation

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[9] Insufficient Risk Capital is cited as "a bottleneck for innovation in Austria" in "Innovationsland Österreich F&E, Unternehmensentwicklung und Standortattraktivität", by Keuschnigg et al. (2017).

[10] § 6b Abs. 1 Z. 4 KStG: Die Investitionsstrategie der Mittelstandsfinanzierungsgesellschaft muss wirtschaftlich solide sein und eine nach Maßgabe der Rz 67 der Leitlinien für staatliche Beihilfen zur Förderung von Risikofinanzierungen, ABl C 19 vom 22.1.2014 (Leitlinien 2014) geeignete Risikodiversifizierungsstrategie umfassen.

[11] According to § 2 (1) Z 42 AIFMG, which defines a Qualified Private Client (Investor) as an investor who has confirmed to have at least EUR 250 000 in liquid assets, of which financial expertise, experience and knowledge has been established and of which the Asset Management Company is satisfied that the investor is able to make his own investment decisions and understands the risks involved in investment and that such liability is appropriate for the investor; and which undertakes to invest at least EUR 10 000 in an Alternative Investment Fund

[12] According to § 48 (8e) AIFMG, which specifies inter alia that private investors most prove that they have a least EUR 100 000 in liquid assets at their disposal, invest at most 10% of their liquid assets in MiFiGs and invests minimum EUR 10 000 in an Alternative Investment Fund.

[13] Professional Clients as decribed in § 58 WAG 2007.

corporations also do not benefit from any special (capital gains) tax exemption for the sale of participations in domestic corporations.[14] In other words, the MiFiG legislation does not contain any tax advantages for institutional investors.

### *2.2.3. Target undertakings and maximum amounts*

(28) The target undertakings consist of two categories:

- "Undertakings in their early phase" and;
- "Innovative SMEs in their growth phase".

(29) "Undertakings in their early phase" fulfil the criteria of GBER Article 21 and more in particular paragraphs 5 and 6 thereof:

- they have been operating in any market for less than 7 years following their first commercial sale (investments after that 7 year period are only possible as follow-on investments which were already foreseen in the original business plan; or
- they require an initial risk finance investment which, based on a business plan prepared in view of entering a new product or geographical market, is higher than 50% of their average annual turnover in the preceding 5 years.

(30) Undertakings in their early phase are however not necessarily SMEs[15]. If an "undertaking in its early phase" is not an SME, it must be:

- either a Small Mid Cap (i.e. a company with less than 500 employees and an annual turnover of less than EUR 100 million or a balance sheet less than EUR 86 million) or;
- an Innovative Mid Cap (less than 1 500 employees) whose R&D and innovation costs, as defined by the GBER, represent

  (a) at least 15% of its total operating costs in at least one of the 3 years preceding the first investment under the risk finance State aid measure, or

  (b) at least 10% per year of its total operating costs in the 3 years preceding the first investment under the risk finance State aid measure.[16]

(31) "Innovative SMEs in their growth phase" have to be either

- operating in the market less 7 years following their first commercial sale or;
- if they don't adhere to this age limit, they have to be either active in Risky Sectors[17] or, during a period of 3 years prior to granting the aid, have had

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14 According to § 10 KStG (Austrian Tax Code).

15 GBER Article 21 only applies to SMEs (cfr GBER Article 21(1))

16 "Small mid cap" and "innovative mid cap" follow the definitions of paragraph 52(xxviii) resp. 52(xvii) RFG.

17 In accordance with paragraph 73 RFG

R&D expenses of at least 10% of total costs[18]. In any case, they must not be operating in the market for more than 10 years following their first commercial sale.

(32) All target undertakings have to be unlisted in the sense that their shares do not trade on an exchange. However, financial instruments of the target undertakings can trade on an alternative investment platform.[19]

(33) MiFiGs may not invest more than 30% of their assets in Mid Caps.

(34) The target undertakings are not required to have their headquarters or their principal establishment in Austria. However, MiFiGs are allowed to target their investment strategy to the Austrian market if they wish to do so. There is however no fiscal disadvantage from investing in non-Austrian undertakings.

(35) Target undertakings may not be undertakings in difficulty in the sense of the Rescue and Restructuring Guidelines, nor undertakings in those specific sectors, which are explicitly[20] excluded from the scope of the GBER.

(36) The law foresees compliance with transparency and cumulation requirements: the total investment amount under the measure must not exceed EUR 15 million per eligible beneficiary[21] and regular reporting in accordance with paragraph 166 of the RFGs is foreseen[22].

### *2.2.4. Form of aid*

(37) Investors (natural persons) investing in MiFiGs do not have to pay income tax on dividends for 75% of dividend distributions by MiFiGs for dividend amounts of up to EUR 15 000 per year (i.e. an annual advantage of EUR 4 125 when using for illustration purposes the headline income tax rate of 27.5% [23]).

(38) MiFiGs are exempt from corporate income tax (“Körperschaftsteuer”) on the profit stemming from the sale of participations in domestic target undertakings. In principle, under Austrian tax law, this tax would have amounted to 25% of the capital gain. However, at the same time, MiFiGs are required by law to distribute dividends to investors equal to at least the amount of the tax advantage.[24]

### *2.2.5. Granting authority*

(39) The granting authority is the Austrian Ministry of Finance.

[18] In accordance with Article 2 (80) of the GBER

[19] "As defined in paragraph 52(i) of the RFG.

[20] Ship Construction, Coal and Steel.

[21] § 6b Abs. 2 Z 4 KStG

[22] § 6b Abs. 5 KStG

[23] According to § 27 Abs. 7 EStG

[24] According to § 6b Abs 2 Z 4 of the amended Körperschaftsteuergesetz.

#### 2.2.6. *Legal Basis*

(40) The existing scheme has its legal basis in Austrian tax law, specifically the amendments to the Income Tax Law ("Einkommensteuergesetz 1988"), and the Corporate Tax Law ("Körperschaftsteuergesetz 1988"). In addition, amendments to the VAT law and the Alternative Investment Fund Manager Law (Alternative Investmentsfond Manager Gesetz) also contain relevant legal provisions[25].

(41) The new scheme will apply to applications submitted before 31 December 2023 and will be in effect until 31 December 2029.

#### 2.2.7. *Budget*

(42) The overall budget of the scheme (in terms of foregone tax revenue) is estimated to be around EUR 50 million per annum. This amount takes into account foregone federal taxes but also lower regional and local taxes (which indirectly result from lower federal taxes).

## 3. ASSESSMENT

### 3.1. Existence of State aid

(43) For a measure to constitute State aid within the meaning of Article 107(1) TFEU, all the conditions set out in that provision must be fulfilled. First, the measure must be imputable to the State and financed through State resources. Second, the measure must be liable to affect trade between Member States. Third, it must confer a selective advantage on its recipient. Fourth, it must distort or threaten to distort competition.[26]

(44) The Scheme was put into place through an amendment of the Mittelstandsfinanzierungsgesellschaten-Gesetz 2007. It has its legal basis in various instruments of Austrian tax law. It is thus imputable to the State.

(45) By providing two tax exemptions, described in Section 2.2.4, the State foregoes revenues of approximately EUR 50 million per annum, to which it would otherwise be entitled in the absence of the Scheme. The measure is thus financed from State resources.

(46) According to the Risk Finance Guidelines, the Commission has to verify the existence of aid at three levels: the investor level, the financial intermediary level and the target investment company.

#### 3.1.1. *Aid to Investors*

(47) The Commission distinguishes between two types of investors benefitting from the Scheme: private individual investors and professional institutional investors.

[25] The law consolidating all necessary amendments is referred to as the Mittelstandsfinanzierungsgesellschaftengesetz 2017 (MiFiGG 2017)

[26] Joined Cases C-20/15 P *Commission* v *World Duty Free* EU:C:2016:981, paragraph 53 and the case law cited.

(48) First, private individual investors do not have to pay personal income tax on dividends received (75% of the dividend amounts up to EUR 15 000 per annum) from their investments in MiFiGs, which constitutes an advantage to them because it amounts to a derogation from the normal fiscal rules and reduces the fiscal revenues of the State.

(49) However, insofar as the tax relief is provided to private investors which do not perform economic activities and therefore do not constitute undertakings within in the meaning of Article 107(1) TFEU (i.e. natural persons), the advantage does not constitute State aid within the meaning of that provision. In that regard, the Commission recalls that where a shareholding only gives rise to the exercise of rights attached to the status of shareholder as well as, if appropriate, the receipt of dividends, which are merely the fruits of the ownership of an asset, the investor will not be considered an undertaking if it does not itself provide goods or services on a market.[27].

(50) In contrast, insofar as the tax relief is provided to private investors in MiFiG who are undertakings, it constitutes State aid within the meaning of Article 107(1) TFEU. This is the case where private investors in MiFiGs are business angels or individual venture capital investors, who manage their investments and in that capacity act as undertakings.

(51) Second, professional institutional investors can also invest in MiFiGs. Although a dividend tax exemption is *a priori* tax neutral for such investors, since they are in any event exempt from dividend tax[28], they get the benefit of the capital gains tax exemption at the SPV level.[29] This improves their return on investment, as they would normally have to pay the capital gain tax if they had invested directly in the target companies.

(52) The Scheme is selective, in that it only benefits investors in MiFiGs and not in other entities. The Commission therefore concludes that the Scheme confers a selective advantage on both professional institutional investors and private individual investors.

(53) The Scheme has an effect on trade between Member States, since investors benefitting from it may invest throughout Europe. Consequently, the Scheme distorts investment flows in Europe by making investments in the target companies more attractive.

(54) The Scheme also distorts competition in relation to the investors. As a tax exemption, the benefit to which the Scheme gives rise constitutes operating aid. According to the Court of Justice, such aid should be considered to distort or

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27 Case C-222/04 *Cassa di Risparmio di Firenze SpA and Others*, EU:C:2006:8, paragraphs 107 to 118 and 125.

28 Intercorporate dividends and other profit distributions received under the national and international participation exemption are items excluded in determining the taxable income of companies. Dividends are exempt from corporate income tax in the hands of corporate shareholders, regardless of the size of the holding.

29 See Recital (55) et seq.

threaten to distort competition by strengthening the financial position of its recipient on the markets on which it operates.[30]

### *3.1.2. Aid to Financial Intermediaries*

(55) The Commission distinguishes between the Special Purpose Vehicle (the MiFiG or "SPV") and the Manager of the SPV (which might be a bank or an asset management company).

(56) By benefiting from a capital gains tax exemption, the SPV obtains a selective advantage, since other investment vehicles that compete with it on the EU capital investment markets are in principle subject to tax. Because of the higher expected post-tax returns – which is what investors focus on - the SPVs will find it easier to attract investors.

(57) In order to exclude the advantage at the MiFiG level, Austria has included a requirement in its legislation for the MiFiG to make a profit distribution in the fiscal year subsequent to the capital gain. That profit distribution would at least amount to the tax benefits related to capital gains on the sale of target companies in the previous fiscal year[31].

(58) As a result of this correction, the assets under management in the SPV would mimic the net assets under management in a counterfactual scenario without the capital gains tax exemption, thus precluding any advantage at the intermediary level.

(59) As regards the MiFiG manager, the manager’s remuneration by the SPV investors is in line with standard market practice. The State does not interfere in the selection of the management and in defining the remuneration conditions. On that basis, the Commission considers that the remuneration reflects the current market remuneration in comparable situations and therefore does not give rise to an advantage.

(60) Since a finding of aid needs all four conditions listed in Recital (43) to be fulfilled, the Commission concludes that the Scheme does not grant State aid to the financial intermediaries.

### *3.1.3. Aid to the target companies*

(61) The tax exemptions incentivize investors to commit capital to the MiFiGs who will then invest those amounts for at least 75% in target undertakings. As a result, the target undertakings obtain an advantage in that they receive better access to capital than they would have in the absence of the measure. That advantage is selective in nature because only the eligible companies may benefit from the MiFiGs investments. It also has the potential to affect intra-EU trade, since target undertakings that benefit from the scheme may operate on several EU markets.

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[30] Case C-128/16 P *Commission* v. *Spain* EU:C:2018:591 paragraph 84. See also C-271/13 P *Rousse Industry v Commission* EU:C:2014:175, paragraph 44; Joined Cases C-71/09 P, C-73/09 P and C-76/09 P *Comitato "Venezia vuole vivere" and Others v Commission* EU:C:2011:368, paragraph 136; Case C-172/03 *Heiser* EU:C:2005:130, paragraph 55; and Case C-156/98 *Germany* v *Commission* EU:C:2000:467, paragraph 30, and the case-law cited.

[31] § 6b Abs. 1 Z 6 KStG

Finally, the measure has the potential to distort competition because it enables target undertakings to lower their costs of capital and those undertakings compete with other European companies in their respective markets.

#### *3.1.4. Conclusion on the existence of aid*

(62) In light of the foregoing, the Commission considers the Scheme to constitute State aid within the meaning of Article 107(1) TFEU to professional institutional investors and private investors, in so far as they are undertakings, as well as to the target companies benefitting from the Scheme.

### 3.2. Lawfulness of the aid

(63) By notifying the measure prior to its implementation, the Austrian authorities have respected the notification and standstill obligations laid down in Article 108(3) TFEU.

### 3.3. Compatibility assessment

(64) Since the scheme constitutes State aid, the Commission must examine whether that aid is compatible with the internal market. The Commission notes that the conditions of the measure do not fall within the scope of Article 21 of the GBER, since that provision does not allow granting risk finance aid in the form of fiscal incentives to corporate investors. Moreover, that provision does not cover risk finance aid targeting SMEs that have operated for more than 7 years counting from the date of their first commercial sale. The Commission will therefore examine whether the Scheme may be deemed compatible on the basis of the Treaty.

(65) Article 107(3)(c) TFEU provides that aid to facilitate the development of certain economic activities may be considered compatible with the internal market where such aid does not adversely affect trading conditions to an extent contrary to the common interest. The Scheme incentivizes the provision of risk finance to SMEs. The notified measure thus constitutes a risk finance measure. The RFGs outline how the Commission applies Article 107(3)(c) in relation to risk finance measures falling outside the scope of Article 21 GBER.

(66) Under the RFGs, a series of standard conditions laid down in Section 2 of the guidelines has to be met. In addition, the Commission has to ascertain that the aid is in line with the common assessment principles for risk finance measures laid down in section 3 of the guidelines, to declare it compatible with the internal market.

#### *3.3.1. Assessment of the requirements in Section 2 of the RFGs*

##### 3.3.1.1. Exclusion of risk finance to companies listed on the official list of a stock exchange or a regulated market

(67) Point 22 of the RFGs excludes companies listed on a stock exchange or a regulated market from a risk finance aid. This requirement is met (see Recital (32)).

3.3.1.2. Minimum involvement of private investors

(68) Point 23 of the RFGs prohibits any risk finance aid measure that does not involve private investors. Point 24 of the RFGs excludes risk finance aid where private investors do not undertake any appreciable risk, and/or where the benefits flow entirely to the private investors.

(69) In the case at hand, private investors have to finance the investment from their own resources and are exposed to the risk of poor performance or capital loss on their investment. Although the tax advantage improves performance of the investment when dividend pay-out takes place, investors remain – in a meaningful manner - exposed to the future performance of their (indirect) investments both on the upside, but also on the downside. Therefore, the Scheme meets the requirements of Points 23 and 24 of the RFGs.

3.3.1.3. Exclusion of buy-outs, of companies in difficulty and of companies that have received unrecovered illegal State aid, and of export related activities

(70) Point 25 of the RFGs states that risk finance aid may not be used to support buy-outs (except in case of risk finance aid in the form of replacement capital). In addition, point 26 of the RFGs excludes risk finance aid to enterprises in difficulty, and to undertakings that have received illegal State aid, which has not been fully recovered[32]. Finally, point 27 of the RFGs excludes risk finance aid to export-related activities towards third countries or Member States.

(71) The Scheme meets those requirements (see Recitals (23) and (35)). In addition, the MiFiGs are required to report their outstanding investments annually to the Ministry of Economy, indicating the investment form, the development stage and the size of the undertakings they have invested in.

### *3.3.2. Assessment under Section 3 of the RFGs*

(72) To assess whether a measure is compatible with the internal market, the Commission generally analyses whether the design of the measure ensures that its positive impact towards an objective of common interest outweighs its potential negative effects on trade between Member States and competition.

(73) The Commission will only consider an aid measure compatible with the internal market if it satisfies all of the following criteria:

(a) contribution to a well-defined objective of common interest;

(b) need for State intervention;

(c) appropriateness of the aid measure;

(d) incentive effect;

(e) proportionality of the aid (aid limited to the minimum);

(f) avoidance of undue negative effects on competition and trade between Member States;

[32] Covered by § 6b Abs. 2 Z 4 KStG

(g) transparency of aid.

3.3.2.1. Contribution to a common objective (Section 3.2 RFGs)

(74) The RFGs state that *"[f]or risk finance aid, the general policy objective is to improve the provision of finance to viable SMEs from their early-development up to their growth stages, […], so as to develop in the longer run a competitive business finance market in the Union, which should contribute to overall economic growth"*. Furthermore, those guidelines require that *"[t]he measure must define specific policy objectives in view of these general policy objectives"* and that *"[t]o that end, the Member State must carry out an ex ante assessment in order to identify the policy targets and define the relevant performance indicators. The size and duration of the measure should be adequate for the policy targets*."

(75) The objectives of the new MiFiG scheme are the following:

(a) To incentivize the venture capital and private equity markets in particular insofar as those markets target SMEs. The MiFiGs will build up knowledge in those specialised investment niches, which they will retain and which will allow them to be more competitive on the European venture capital market.

(b) To close the market financing gap for risk capital for early phase and innovative undertakings in Austria.

(76) As explained in Recital (21), the experts concluded that existing aid measures[33] already stimulated the total amount invested in early phase companies and innovative undertakings, but did not yet give a decisive boost to the Austrian risk capital market, whose size has remained negligible compared to France, Germany, UK, Ireland and Finland.[34] One of the objectives of the measure is to further promote risk finance in Austria.

(77) The new MiFiG scheme specifically targets innovative SMEs and early phase mid-caps, who traditionally suffer most from a funding gap. Those companies can use the additional capital for fundamental research (in which Austrian companies are weaker as compared to Denmark[35]), patent and prototype development, etc. Once a cluster of innovative companies is established, it becomes easier to attract investments, including international investments.

(78) The measure also stimulates the development of the Austrian venture capital market in itself: MiFiGs benefit from a capital gains tax exemption and receive additional investments from individuals that can benefit from an income tax deduction.

[33] Such as the Austrian Risk Capital Premium Scheme (SA.48840 (2018/N) of 11.07.2018, OJ 2018/C 292/01).

[34] Insufficient Risk Capital is cited as "a bottleneck for innovation in Austria" in "Innovationsland Österreich F&E, Unternehmensentwicklung und Standortattraktivität", by Keuschnigg et al. (2017).

[35] "Innovationsland Österreich F&E, Unternehmensentwicklung und Standortattraktivität", §2.1.2.

(79) In light of the foregoing, the Commission finds that the above general and specific objectives of the new MiFiG scheme are in line with Section 3.2. of the RFGs, and that the new MiFiG scheme, by also favouring better access to finance for innovative SMEs, helps to reach those objectives.

#### *3.3.3. Need for state intervention to address a market failure (Section 3.3 RFGs)*

(80) Point 63 of the RFGs recalls that "*State aid can only be justified if it is targeted at specific market failures affecting the delivery of the common objective.*" As for the "access to finance" market failure, point 64 of the RFGs points out that there is no general market failure as regards to access to finance for SMEs, but at the same time it notes that there are "*SMEs in their early stages which, despite their growth prospects, are unable to demonstrate their credit-worthiness or the soundness of their business plans to investors".*

(81) Point 64 of the RFGs requires that a risk finance measure is established on the basis of an ex-ante assessment which demonstrates a funding gap for the companies targeted by the measure. Point 65 requires both the structural and cyclical (that is to say, crisis-related) problems leading to suboptimal levels of private funding to be analysed. It further requires that the analysis is based on data covering the 5 years preceding the notification of the risk finance measure and, on this basis, it should estimate the nature and size of the funding gap, that is to say, the level of unmet demand for finance from eligible undertakings. Finally, point 66 states that the assessment should preferably be conducted by an independent entity based on objective and up-to-date evidence and should not date from less than 3 years preceding the notification of the risk finance measure.

(82) An ex-ante study was carried out which demonstrated the existence of a funding gap for the specific target group, which is early stage and innovative SMEs. Those companies still have untested business models, have not yet built up a credit history and cannot yet offer sufficient collateral. For smaller companies, it is also relevant that investors have less of an incentive to make an effort to overcome the asymmetry of information problem as for smaller investments, the search and monitoring costs might outweigh the potential benefits of the investment.[36]

(83) From an empirical perspective, by comparing supply and demand of risk capital in Austria and looking at the ex-ante study, the Commission concludes that the Austrian risk capital market is characterised by an equity gap, also as compared to EU peers. The Commission takes in particular note of the findings of the ex-ante study described in Recitals (15) to (21) which demonstrates a funding gap for the companies targeted by the measure.

(84) The Commission observes that the ex-ante study is conducted by independent analysts, based on recent data and analyses the market gap with a sufficient degree of detail.

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[36] The Commission notes that risk finance schemes with a similar scope of target undertakings have been approved in France (SA.41265, OJ C 46, 5.2.2016, p. 8), the UK (SA.49923, OJ C 360, 5.10.2018, p. 5) and Germany (SA.46308, OJ C68, 3.3.2017, p. 14).

(85) The Commission therefore concludes that the ex-ante study fulfils the requirements of points 65 and 66 of the RFGs.

(86) Point 68 of the RFGs requires that the measure take into account the specific market failures faced by eligible target undertakings, such as the requirements for measures targeting undertakings older than 7 years and for measures providing fiscal aid.

(87) As indicated above, the scope of target undertakings now also includes companies whose commercial activities started more than 7 years ago but less than 10 years ago. Point 73 of the RFGs acknowledges that "*certain types of undertakings may be regarded as still being in their expansion/early growth stages if, even after this seven-year period, they have not yet sufficiently proven their potential to generate returns and/or do not have a sufficiently robust track record and collaterals. This may be the case in high-risk sectors, such as the biotech, cultural and creative industries, and more in general for innovative SMEs*[37]."

(88) The ex-ante study shows that the lack of equity investment applies in Austria to a broader age sample of innovative SMEs, and is not limited to early stage SMEs. Moreover, the equity gap in Austria is not limited to business angels and venture capital, which tend to support companies in their early expansion, but also to private equity, which normally provides capital somewhat later. Finally, from the regression analysis it follows that, although the financing gap decreases for the older companies in general, this is not the case for innovative SMEs.

(89) The Commission accepts that the way that target undertakings are defined is aligned with the definition of innovative SMEs as set out in Art 2(80) GBER. Under the scheme, innovative SMEs have to demonstrate, through an independent audit, that they have not yet sufficiently proven their potential to generate returns in order to be able to access the aid beyond the 7 year period.

(90) As regards fiscal incentives to professional investors, point 87 of the RFGs acknowledges that "*Member States may find it appropriate to put in place measures applying […] incentives to corporate investors. […] The measure must […] be subject to specific restrictions in order to ensure that aid at the level of the corporate investors remains proportionate and has a real incentive effect*".

(91) The Commission takes note of the argument made by the Austrian authorities that, due to the lack of a well-developed and established entrepreneurship culture, the effectiveness of the measure would significantly increase by also allowing professional investors and corporates to benefit from the scheme. From a corporate taxation perspective, part of the measure is tax neutral as corporate investors would be exempt from dividend tax, which limits the incentive effect to a capital gains tax exemption at the level of the financial intermediary SPV.

(92) The advantage to the professional investors is therefore limited to 25% of the net capital gains on their equity investments. This incentivizes those investors to make investments which they would not have made without the measure. However, the advantage remains proportionate in the light of the investment

[37] The innovative character of an SME is to be appraised in the light of the definition set out in GBER.

portfolio of the MiFiG, to whose risks investors remain exposed to a very important extent.

(93) The Commission notes positively that MiFiGs must invest in innovative SMEs or start-up companies,with the additional restriction of investing not more than 30% of the portfolio in Mid Caps. In conclusion, the Commission considers the aid to corporate investors to be proportionate, while maintaining a real incentive effect.

(94) In light of the foregoing, the Commission concludes that the existence of the market failure which the new MiFiG scheme aims to address is sufficiently demonstrated.

### *3.3.4. Appropriateness of the aid measure (Section 3.4 RFGs)*

(95) According to points 90 and 92 of the RFGs, for a risk finance measure to be appropriate, the Commission will consider to what extent the measure is an appropriate instrument compared to other policy instruments not involving aid. It will also consider alternative State aid instruments addressing the same market failure.

(96) The ex-ante study demonstrates that Austria suffers from a lack of equity investments due to a number of historical factors: an overreliance on banking credit, the absence of large pension funds and a traditional lack of equity raising tradition on the Austrian exchanges. Stimulating the creation of venture capital funds in the form of MiFiGs[38] can therefore be an appropriate measure to fill the equity gap for target undertakings. At the same time, the measure makes private individual investors as well as professional institutional investors more familiar with this type of investment.

(97) Using fiscal measures is an appropriate measure, since it improves the return on investment for investors, thereby incentivising them to increase their investments in venture capital and private equity. Private investors do not have to pay personal income tax on the dividends received. Moreover, an additional incentive for all investors comes from the fact that the SPV is exempt from paying a capital gains tax, provided that the vehicle distributes at least the amount of the foregone capital gains tax in dividends.As such, any aid to the SPV is mitigated, but the measure still provides an extra incentive to investors.

(98) The SPV is also exempt from capital gains tax on non-eligible investments (which could amount to up to 25% of the assets under management at any given time). However, the legislation foresees that this feature merely relates to liquidity management assets (such as bank deposits), which will unlikely lead to significant capital gains. In addition, supervision by the Austrian Financial Market Authority and the obligation to outline an investment plan in a prospectus mitigates further the risks of an untargeted measure.

(99) In line with point 91 of the RFGs, the ex-ante study has shown that MiFiG investments are covering the somewhat larger investment segment (median EUR

[38] Ex-ante study, section 2.5.

850 000 per investment) and hence act complementary to existing Austrian schemes[39] that target different (smaller) investment segments.

(100) It follows both from the ex-ante study and from reports on the former aid scheme that the measure is appropriate, in line with 3.4.1 of the RFGs.

(101) As regards section 3.4.3 of the RFGs - which lays out specific compatibility conditions for fiscal instruments -the tax relief is designed in such a manner so as to contain specific limits as to the maximum percentage of the invested amount that the investor can claim for the tax relief. This is because the deduction must be claimed from income tax on the amount of received dividends up to a maximum of EUR 15 000 per year, in accordance with point 122 of the RFGs.

(102) In line with point 123 of the RFGs, the ex-ante study clearly demonstrates the lack of venture capital and private equity vehicles in Austria. It also shows that the problem is particularly relevant for young and innovative undertakings, which the measure targets. Moreover, the measure is also open to all private investors and corporates fulfilling the required criteria, without discrimination to their place of establishment, in line with point 126 of the RFGs.

(103) The Commission concludes that the measure meets the conditions for fiscal instruments of section 3.4.3 of the RFGs.

(104) In light of the foregoing, the Commission concludes that it has been sufficiently demonstrated that the notified tax incentives are an appropriate policy tool to stimulate the Austrian risk capital market and promote access to finance for young companies and innovative SMEs, in line with Section 3.4 of the RFGs.

#### *3.3.5. Incentive effect of the aid (Section 3.5 RFGs)*

(105) Point 130 of the RFGs specifies that "*State aid can only be found compatible with the internal market if it has an incentive effect that induces the aid beneficiary to change its behaviour by undertaking activities which it would not carry out without the aid or would carry out in a more restrictive manner due to the existence of a market failure.*" In addition, point 132 of the RFGs specifies that "*once the market failure has been properly identified and the measure has an appropriate design, it can be assumed that an incentive effect is present*".

(106) The Commission notes that by improving the investment returns for the end investors via tax relief the measures encourage investors to make risk finance investments which they would not have made without the incentives. At the same time, however, the measures still imply that investors are sufficiently exposed to the future performance of their investments, thereby encouraging them to make efforts to find the investments with the best risk/return characteristics.

(107) Since the measure addresses a market failure and is appropriately designed, the Commission concludes that its incentive effect is respected, in line with Section 3.5 of the RFGs.

[39] Such as the Austrian Risk Capital Premium Scheme (SA.48840 (2018/N) of 11.07.2018, OJ 2018/C 292/01).

### *3.3.6. Proportionality of the aid (Section 3.6 RFGs)*

(108) According to point 133 of the RFGs, *"State aid must be proportionate in relation to the market failure being addressed in order to achieve the relevant policy objectives. It must be designed in a cost-efficient manner, in line with the principles of sound financial management. For an aid measure to be considered proportionate, aid must be limited to the strict minimum necessary to attract funding from the market to close the identified funding gap, without generating undue advantages".*

(109) First, the Commission notes that investments made under the scheme, including to innovative SMEs, are made by private investors without any direct participation of public investors. This ensures that all investment decisions are commercially driven by the individual decision of private investors. The Commission also notes that the budget of the Scheme is limited to EUR 50 million per annum in foregone tax revenue as described in Recital (42) above. By contrast, as described in recital (17), the study has identified a potential of 50 000 target companies with a theoretical average funding gap of EUR 250 000 per company of which only 145 companies have received venture capital or private equity investments[40].

(110) Second, under the new MiFiG scheme investors have no protection against any downside on the invested amounts and the SPV, while benefiting from the capital gains tax exemption, can also not claim any tax credits on capital losses. Consequently, investors remain sufficiently exposed to the consequences of their investment decisions, which should encourage them to search for the best investment vehicle, which makes investments more efficient.

(111) Third, as regards the proportionality requirements of the RFGs for fiscal instruments, the Commission notes that point 149 of the RFGs requires that the "*Total investment for each beneficiary undertaking may not exceed the maximum amount fixed by the risk finance provision of the GBER*", i.e. EUR 15 million. As described in Recital (36), the measure respects this condition and the underlying legal framework, since it contains an explicit reference to this limit[41].

(112) Finally, since the income tax relief to private individuals is limited to income tax on dividends for 75% of dividend distributions by MiFiGs for dividend amounts of up to EUR 15 000 per year (so that the actual benefit is limited to income tax paid on EUR 15 000), the measure satisfies both points 151 and 152 of the RFGs.

(113) In light of the foregoing, the Commission considers that the measure is proportionate.

[40] Ex-ante study, pages 36 and 43. The funding gap described in the study comprises both risk capital and private equity, and depends on the timing of the investment in the growth phase of the target undertaking.

[41] § 6b Abs. 3 Z 2 lit. b KStG

### *3.3.7. Avoidance of undue negative effects on competition and trade between Member States (Section 3.7 RFGs)*

(114) Point 115 of the RFGs requires that "*The State aid measure must be designed in such a way that it limits distortions of competition within the internal market. The negative effects have to be balanced against the overall positive effect of the measure.*"

(115) First, as regards competition distortions at the level of the investors, the measure targets a well-defined market failure, which substantially reduces the risk of crowding out. Private investors are still incentivised to focus on the performance of their investments, the risk investment amounts per company are not excessive, and the measure targets a specific category of SMEs or young mid-caps (as opposed to larger companies).

(116) Second, as regards competition distortions at the level of the target undertakings, the measure explicitly excludes companies in difficulty and focuses on innovative young companies and innovative SMEs.

(117) In light of the foregoing, the measure can be considered to be designed in such a way so as to limit the distortion to competition and minimize undue advantages and its positive effects may be considered to outweigh any potential negative effects on competition in the internal market.

### *3.3.8. Transparency*

(118) As indicated in Recital (36), Austria has committed to fulfil the transparency requirement,[42] specified in Section 3.8 of the RFGs.

### *3.3.9. Cumulation*

(119) As indicated in Recital (36), the requirement on cumulation, specified in Section 3.9 of the RFGs, is fulfilled.

## 4. CONCLUSION

In light of all the foregoing, the Commission concludes that the scheme fulfils the conditions set out in the RFGs. It has therefore found the new MiFiG scheme to be compatible with the internal market pursuant to Article 107(3)(c) TFEU and has decided not to raise objections to the measure.

If this letter contains confidential information, which should not be disclosed to third parties, 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 the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site:

http://ec.europa.eu/competition/elojade/isef/index.cfm.

Your request should be sent electronically to the following address:

[42] § 6b Abs. 5 KStG

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Yours faithfully
For the Commission

Margrethe VESTAGER
Member of the Commission