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**Subject: State Aid SA.57291(2020/N) – Austria – COVID-19; Compensation Scheme: Directive for fixed cost subsidies**

Excellency,

**1. PROCEDURE**

- (1) By electronic notification of 9 May 2020, registered by the Commission on the same day, Austria notified a compensation scheme “Directive for fixed cost subsidies” for companies particularly exposed to the COVID-19 outbreak (“the measure”) in compliance with Article 108(3) of the Treaty on the Functioning of the European Union (TFEU). By electronic communication of 11, 13, 14, 19, 20 and 22 May 2020, the Austrian authorities provided further information and updated the legal basis of the notified measure.
- (2) Austria confirmed that the notification does not contain confidential information.
- (3) Austria exceptionally agrees to waive its rights deriving from Article 342 TFEU, in conjunction with Article 3 of Regulation 1/1958,<sup>1</sup> and to have this decision adopted and notified in English only.

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<sup>1</sup> Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

Seiner Exzellenz Herrn Alexander Schallenberg  
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## 2. DESCRIPTION OF THE MEASURE

### 2.1. COVID-19 outbreak in Austria and the official reaction of the Austrian authorities

- (4) In response to the COVID-19 outbreak, Austria imposed the first measures on 10 March 2020 with immediate effect: travel restrictions, closure of universities and a ban of all events with an audience of more than 100 people. As a result, cinemas and theatres closed, music, cultural and sports events were cancelled. Cross border road transport and other economic activities were severely hampered, as Austria imposed medical controls on the border with Italy on 11 March, with Switzerland on 14 March, and with Germany on 19 March 2020. Other neighbouring Member States imposed similar measures on their borders with Austria restraining all forms of cross border economic activities.
- (5) In order to curb the spread of COVID-19, a series of far reaching restrictive legislative measures were announced by the Austrian government on 13 March 2020 and entered into force on 16 March 2020. This package of measures imposed massive restrictions on the freedom of movement throughout Austria causing an effective standstill of almost the entire Austrian economy. Under the restrictive legislative measures, leaving the house was only admitted in exceptional cases: for work engagements and activities that could not be delayed or carried out from home, to make purchases of food or seek medical assistance or to assist other people in urgent need. As an immediate result, shops, bars, cafés, restaurants and other premises open to clients were closed. Only supermarkets, food shops and groceries, pharmacies, post offices, petrol stations, banks, tobacconists and animal feed stores were allowed to remain open, but with restrictions concerning opening hours and measures to avoid close contact. Schools and nursery schools had to close as from 16 March 2020. All tourism activities completely stopped as well.
- (6) On 21 March 2020, the Austrian Parliament adopted the second COVID-19 package, which led to further restrictions of social contacts: the prohibition of gatherings of more than five people in public places and on private premises - except for people living in the same household-, as well as a minimum distance of at least one metre which has to be observed.
- (7) As of mid-April 2020 Austria began with step-by-step confinement measures.
- (8) Austria confirmed that for all facilities open to the public strict measures concerning hygiene and social distancing (minimum one meter distance, ensure 10 m<sup>2</sup> per customer, if not possible, only one customer at a time allowed) were put in place and have to be complied with.<sup>2</sup> In addition, opening hours remain limited.
- (9) The first step was taken as of 14 April 2020, when building supplies markets and in general all small stores with a surface of less than 400 square meters were allowed to reopen under certain restrictions concerning the number of clients being inside, under safe distance and other safety measures.

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<sup>2</sup> COVID-19 Lockerungs-Verordnung, BGBl. II, Nr. 197/2020 in der jeweils geltenden Fassung.

- (10) The Austrian government took the next step on 30 April 2020 and announced that restaurants, bars and cafés are allowed to reopen as of 15 Mai 2020, museums as of 15 May 2020, swimming baths, hotels and hostels as of 29 May 2020. For all these facilities open to the public many restrictions and rules concerning safety measures and opening hours were put in place and have to be complied with.
- (11) The next step is envisaged to start in June 2020. However, the extent of its implementation will depend on socioeconomic considerations and the development of the spread of the infection.
- (12) In particular, the prohibition against gatherings of more than ten people is expected to be modified to 100 people by June, to 250 people by July and to 1000 people by August subject to a stable development of the infection rate. Large gatherings of more than 1000 people will however remain prohibited for the time being at least until beginning of September 2020. This impacts all kinds of cultural and sports events and all economic sectors linked to it and caused for instance the cancellation of major Austrian culture festivals, such as the Bregenzer Festspiele. Austria notes that even if gatherings of people are progressively allowed again, many cultural events can nevertheless not take place, either because rehearsals for artists were not possible at all or continue to be restricted for the foreseeable future by continuous hygiene and social distancing obligations. Gyms, concert venues, nightclubs etc. remain closed for the time being since appropriate hygiene and security measures still have to be developed.
- (13) Austria's borders remain widely closed until further notice and except for limited, bilateral agreements with some of its neighboring countries, it is currently not foreseeable, when and under which conditions free movement of persons across Austrian borders will be possible again.
- (14) The Austrian government points out that the COVID-19 outbreak and the governmental measures adopted have started to affect the real economy, as numerous cancellations of cultural events, restaurant visits, temporary closure of shops and businesses, etc. have had a significant negative affect on the businesses concerned. As a direct consequence, these businesses have actively sought to mitigate their losses, which caused knock-on effects in many sectors of the Austrian economy. The economic impact of the COVID-19 crisis, in general and with regard to different sectors in particular, has been assessed by Österreichische Nationalbank (OeNB, Central Bank of Austria). According to this analysis, the estimated lost turnover or decline in turnover for all affected sectors amounts to over EUR 1.6 billion per week or around EUR 7.1 billion per month.<sup>3</sup>

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<sup>3</sup> Austria has in particular referred to its tourism sector. According to OECD surveys on the contribution of tourism in different economies, tourism in Austria accounts for 6.5 % of GDP in 2018. The tourism industry also accounts for 5.8 % of all jobs in Austria. In particular, a high number of businesses normally generate most of the income and revenues during summer season, which ranges until mid September.

## 2.2. Objective of the measure

- (15) By this notification, the Austrian authorities intend to implement a compensation scheme for companies having suffered substantial damage due to the COVID-19 outbreak, on the basis of Article 107(2)(b) TFEU.
- (16) Unlike the other Austrian State aid measures to remedy the COVID-19 outbreak (SA.56840<sup>4</sup>, SA. 56981<sup>5</sup> and SA.57148<sup>6</sup>), the purpose of the “Directive for fixed cost subsidies” is in particular to compensate for the economic damage of the containment and lockdown measures adopted in Austria from mid-March 2020. The focus is on companies which have suffered significant losses in revenues because of the governmental or legislative containment and lockdown measures taken in response to the COVID-19 outbreak (hereinafter the “governmental measures”).

## 2.3. The nature and form of aid

- (17) The aid will take the form of direct grants.

## 2.4. National legal basis

- (18) The legal basis for the measure is the “Directive for fixed cost subsidies”<sup>7</sup> by the Federal Ministry of Finance. The Federal Ministry of Finance was empowered to issue such a directive by § 3b(3) of the ABBAG Act<sup>8</sup>. Additionally, the COVID-19 Funding Audit Act<sup>9</sup> applies.

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<sup>4</sup> Commission Decision C(2020) 2354 final of 8 April 2020 not to raise objections on the State aid n° SA.56840 (2020/N) - Austria - COVID-19 - Liquidity scheme.

<sup>5</sup> Commission Decision C(2020) 2537 final of 17 April 2020 not to raise objections on the State aid n° SA.56981 (2020/N) - Austria - COVID-19 - Austrian scheme for guarantees on bridge loans.

<sup>6</sup> Commission Decision C(2020) 3411 final of 19 April 2020 not to raise objections on the State aid n° SA.57148 (2020/N) - Austria - Support Measures by the States (Länder) of Carinthia, Upper Austria, Styria, Tyrol and Vienna under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak.

<sup>7</sup> Verordnung des Bundesministers für Finanzen gemäß § 3b Abs. 3 des ABBAG-Gesetzes betreffend Richtlinien über die Gewährung von Zuschüssen zur Deckung von Fixkosten durch die COVID-19 Finanzierungsagentur des Bundes GmbH (COFAG), not yet published in the Federal Law Gazette of Austria.

<sup>8</sup> BGBl. I Nr. 51/2014, zuletzt geändert durch das 3. COVID-19 Gesetz, BGBl. I Nr. 23/2020.

<sup>9</sup> COVID-19-Förderungsprüfungsgesetz (CFPG), BGBl. I Nr. 44/2020.

## **2.5. Administration of the measure**

- (19) The measure will be managed by the COVID-19 Finanzierungsagentur des Bundes GmbH (“COFAG”), a federal agency of Austria.

## **2.6. Description of the measure**

- (20) As stated above (recital (15) and (16)), the objective of the measure is to compensate companies for damage resulting from the COVID-19 outbreak and the governmental measures.
- (21) Depending on the loss of revenues between mid-March 2020 and mid-September 2020 undertakings affected in this way may receive compensation of up to 75 % of eligible fixed costs, but limited to a maximum of EUR 90 million per undertaking or group. The actual damage suffered by those undertakings and deriving from the exceptional occurrence is the difference between the profit/loss incurred during the COVID-19 outbreak and governmental measures and the profit/loss incurred in the reference period (net losses).
- (22) For the purposes of the measure, the Austrian authorities set up a two-step approach for calculating, in a first step an estimate of the damage giving rise to compensation, and in a second step a methodology to control and correct ex-post the compensations granted based on an updated damage amount, as described in recitals (25) to (40) below.

### *2.6.1. Duration*

- (23) Under the measure, compensation can in a first step be granted based on an estimate of the companies' fixed costs during a period of maximum three months within the period from 16 March 2020 until 15 September 2020.
- (24) Applications for compensation can be submitted to the COFAG no later than 31 August 2021.

### *2.6.2. On the eligibility criteria and determination of the amount of compensation*

- (25) Companies are eligible if they suffer a decline of turnover resulting from the governmental measures that reaches or exceeds 40% compared to a reference period as defined in this recital. Applicants may, choose between the following two calculation methods and reference and observation periods:
- (a) Applicants may rely on an observation period corresponding to the second quarter of 2020 (i.e. 1 April 2020 to 30 June 2020) and compare it to a reference period corresponding to the second quarter of 2019 (i.e. 1 April 2019 to 30 June 2019) when assessing their decline in turnover; the fixed costs will be assessed in the period between 16 March 2020 and 15 June 2020. The observation period for fixed costs refers exactly to the date of

the beginning of the shutdown of business activities; the assessment of the turnover refers to the preliminary Value Added Tax return (“Umsatzsteuervoranmeldung”) for small and medium enterprises (“SME”). Smaller undertakings may file their preliminary VAT tax-return on a quarterly basis.

or

- (b) Applicants may assess the decline in turnover and the fixed costs by comparing a limited period of one, two or maximum three consecutive months from within the observation period (16 March 2020 until 15 September 2020) with the exact same one, two or maximum three months in the year 2019. In case the observation period starts on 16 March 2020 it may optionally last until 15 April 2020, 15 May 2020 or 15 June 2020 and will be compared with the period from 16 March 2019 to 15 April 2019 (one month), or to 15 May 2019 (two months) or to 15 June 2019 (three months) respectively. Observation periods ending on 15 September 2020 may start on 16 August 2020 (one month), 16 July 2020 (two months) or 16 June 2020 (three months).
- (26) The Austrian authorities acknowledge that the turnover decline is in general not a sufficient reference for the damage suffered (as opposed to net losses). However, in their view, under the current exceptional circumstances, turnover decline is one of the available elements for estimating the level of damage suffered until definitive information about the net losses is known and the compensation can be corrected accordingly. The actual damage suffered by those undertakings and deriving from the exceptional occurrence is the difference between the profit/loss incurred during COVID-19 outbreak and governmental measures and the profit/loss incurred in the reference period (net losses).
- (27) The eligible costs for companies that have suffered damage are their fixed costs, during either:
- (a) the period 16 March 2020 to 15 June 2020, in case the beneficiary has chosen the reference period 1 April 2020 to 30 June 2020 for determining the decline in turnover, as described in recital (25)(a) above; or
  - (b) the period that equals the reference period chosen by the beneficiary for determining the decline in turnover, as described in recital (25)(b).
- (28) Consequently, the measure provides ex-ante for a method to determine the amount to be compensated while the COVID-19 outbreak and the governmental measures are still occurring, based on the available elements and along a progressive scale:

Decline in turnover (vs turnover in same period 2019)	Maximum level of compensation (in percentage of firms fixed costs)
40-60%	25 %
60-80 %	50 %
80-100 %	75 %

- (29) The higher the decline in turnover, the less a company can cover its fixed costs. Therefore, the compensation increases with the increasing decline in turnover. Depending on the increasing decline in turnover, the compensation covers 25%, 50% or a maximum of 75% of the specific fixed costs as listed in recital (30) below.
- (30) Specific fixed costs within the meaning of the measure are defined as expenses arising from an undertaking's domestic operations which are incurred during a maximum of three months period from 16 March 2020 to 15 September 2020 and which fall under one of the following points:
- (a) renting of premises and premises directly linked to the undertaking's activities;
  - (b) insurance premiums covering risks from operative activities;
  - (c) interest payable on loans and advances;
  - (d) the part of the financing costs of leasing payments;
  - (e) operating royalties, unless the receiving entity is directly or indirectly a member of the group;
  - (f) expenditure on electricity, gas and telecommunications;
  - (g) depreciation of perishable or seasonal goods, provided that they lose at least 50 % of the value due to the COVID-19 crisis. Seasonal good is one that is particularly demanded during a recurrent period of a year;
  - (h) an appropriate entrepreneurial wage for companies subject to income tax (natural persons acting as sole or co-contractors); this is to be calculated on the basis of the last tax year (monthly entrepreneurial wage = tax profit of the last tax year/months with business activity). In any event, the entrepreneur's salary is limited up to a maximum of EUR 2 666.67 per month;
  - (i) personnel costs incurred exclusively for the processing of cancellations and transfers due to the crisis;
  - (j) contractual payment obligations which are not related to personnel.
- (31) Insurance payments covering the costs listed above have to be deducted.

- (32) Disbursement of the fixed costs subsidy may be requested by the beneficiary in the following instalments and as from the following dates:
- (a) the first instalment shall not exceed 50 % of the estimated aid amount and may be requested from 20 May 2020 onwards;
  - (b) the second instalment shall cover an additional amount of maximum 25 %, i.e. a maximum of 75 % of the total aid amount, and may be requested from 19 August 2020 onwards;
  - (c) the third instalment may be requested from 19 November 2020 onwards.
- (33) For the disbursement of the first instalment (by 18 August 2020) and, if applicable, the second instalment (by 18 November 2020), the beneficiary is asked to provide a best estimate of the decline in turnover (recital (25)) and of the fixed costs (recital (27)).
- (34) The payment of the third instalment (from 19 November 2020) requires the transmission of qualified accounting data. If these are already available at the time of the application for the second instalment (from 19 August 2020), the entire aid amount may be applied for in the second instalment.
- (35) If the payment is made in several instalments, corrections to the data on fixed costs and decline in turnover previously provided must be made at the latest with the last instalment. The instalments already disbursed shall be corrected with the subsequent instalments disbursed.
- (36) The aid application also includes a declaration of the beneficiary stating the decline in turnover and justifying the link between the decline and the COVID-19 outbreak and the damage as well as a description of mitigation measures taken to limit the damage. The amount of decline in turnover and fixed costs must be confirmed and reported by a tax adviser, auditor or chartered accountant.
- (37) The aid applicant has to further declare that, within the limits of the legal possibilities, the remuneration or other benefits of the owner, the executive bodies of the company (management board, supervisory board) employees or essential agents of the applicant undertaking does not exceed a reasonable remuneration. In particular, in 2020 no bonus payments are paid to board members or directors in excess of 50 % of their bonus payments for the previous year. In addition, payment of dividends is restricted until 16 March 2021. Until 31 December 2021, only a measured disbursement of dividends or profits is allowed.
- (38) Only companies that are eligible for a compensation of at least EUR 500 can benefit from the measure.
- (39) Aid under the scheme cannot be cumulated with other aid for the same eligible costs. Support received from public authorities or based on the epidemic law,<sup>10</sup> which is related to the COVID-19 crisis will be deducted from the payment.

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<sup>10</sup> Epidemie Gesetz, BGBl. Nr 186/1950.



- (40) The payment made to beneficiaries shall be net of any amount recovered by insurance, litigation, arbitration or other source for the same damage. If the aid is paid out before the insurance, Austria will recover the insurance amount from the beneficiary.

### *2.6.3. On the control mechanism to avoid overcompensation*

- (41) In a second step, controls are carried out by Austrian authorities to verify that the compensation granted does not exceed the damage actually suffered by each beneficiary, as a result of the COVID-19 outbreak and governmental measures.
- (42) To that end, ex-post control of grants under the measure is carried out in accordance with the provisions of the COVID-19 Funding Audit Act.<sup>11</sup> In the case of grants above EUR 10 million, a case-by-case assessment must be carried out, in particular by examining the net loss (actual damage) during the maximum three months compensation period in order to avoid overcompensation of the damage actually suffered. For grants of up to EUR 10 million, similar audits on a sample basis are foreseen.
- (43) The precise methodology for the examination of the net loss (actual damage) will be defined later. The Austrian authorities commit to send the methodology to the Commission for approval before 31 December 2020.
- (44) The Austrian authorities also commit to ensure that beneficiaries repay any overcompensation, should the ex post assessment show that the total aid received by an individual beneficiary to compensate the damage caused by the COVID-19 outbreak exceeds the total amount of the damage suffered by the beneficiary.
- (45) Austria provides a report no later than one year after the date of the Commission decision, specifying the amount of compensation granted to each beneficiary under the scheme, as well as a summary of all recoveries ordered under the scheme.

### *2.6.4. On beneficiaries*

- (46) Compensation under this measure may only be granted in favour of undertakings for which the following cumulative conditions are met:
- (a) the undertaking has its registered office or a permanent establishment in Austria;
  - (b) the undertaking carries out an operational activity in Austria which gives rise to income pursuant to Paragraphs 21, 22 or 23 of the Austrian Income Tax Act<sup>12</sup>;

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<sup>11</sup> COVID-19 Förderungsprüfungs-Gesetz (CFPG), BGBl. I Nr. 44/2020

<sup>12</sup> Einkommenssteuergesetz BGBl. No 400/1988 (EStG 1988)

- (c) the undertaking was not subject to Paragraph 12(1)(10) of the Austrian Corporation Tax Act<sup>13</sup> for the last three years (no aggressive tax planning), and the undertaking was not subject to a final financial penalty (excluding financial irregularities) or a corresponding association fine for intentional behaviour in the five years preceding the aid application;
  - (d) the undertaking suffers a loss of turnover caused by the COVID-19 outbreak;
  - (e) the undertaking was not already in difficulty within the meaning of the General Block Exemption Regulation (“GBER”)<sup>14</sup> on 31 December 2019;
  - (f) the undertaking has taken reasonable measures to reduce the damage.
- (47) The following undertakings shall be excluded as beneficiaries of the measure:
- (a) undertakings of the financial sector;
  - (b) undertakings owned (directly or indirectly) by regional or local authorities and bodies governed by public law;
  - (c) undertakings majority owned (directly or indirectly) by regional or local authorities and other bodies governed by public law and having a degree of autonomy of less than 75 %;
  - (d) undertakings which on 31 December 2019 had employed more than 250 employees, measured as full-time equivalents, and which had dismissed more than 3 % of the employees in the period under review instead of using short-time work.
  - (e) undertakings receiving payments from the non-profit organisations support funds;
  - (f) newly created undertakings, which did not have turnover before 16 March 2020.

#### 2.6.5. *On the maximum aid amounts*

- (48) Aid under the measure per undertaking is limited to a maximum of:
- (a) EUR 90 million with a grant limiting to 75 % of the fixed costs;
  - (b) EUR 60 million with a grant limiting to 50 % of the fixed costs; and
  - (c) EUR 30 million with a grant limiting to 25 % of the fixed costs.

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<sup>13</sup> Körperschaftsteuergesetz BGBl. No 401/1988 (KStG 1988)

<sup>14</sup> As defined in Article 2(18) of Commission Regulation (EU) No 651/2014 of 17 June 2014.

- (49) Where several eligible undertakings belong to a group, the maximum amount can be granted only once, and is based on the individual applicant from the affiliated group with the highest decline in turnover.

#### 2.6.6. *On the budget*

- (50) The measure has a total budget of EUR 8 billion. It will be financed through the national Austrian budget.

### **3. ASSESSMENT**

#### **3.1. Lawfulness of the measure**

- (51) By notifying the measure before putting it into effect, the Austrian authorities have respected their obligations under Article 108(3) TFEU.

#### **3.2. Existence of State aid**

- (52) Article 107(1) TFEU defines State aid as ‘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 or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market’.
- (53) The measure is imputable to the State, since it’s based on legislative acts as set out in recital (18) and is granted by the Ministry of Finance and administered by the Ministry of Finance and COFAG (recital (19)).
- (54) The measure therefore confers an advantage on its beneficiaries in the form of direct grants (recital (17)). The advantage corresponds to the amount of compensation paid under the measure. The measure thus relieves these beneficiaries of costs, which they would have had to bear under normal market conditions.
- (55) The advantage is selective, since it is awarded only to certain undertakings that meet the conditions described in recital (46).
- (56) The measure is liable to distort competition, since it strengthens the competitive position of its beneficiaries. It also affects trade between Member States, since it is open to undertakings of all sectors in Austria that are also active in other Member States.
- (57) In view of the above, the Commission concludes that the measure constitutes State aid within the meaning of Article 107(1) TFEU.

### 3.3. Compatibility assessment

- (58) Since the measure involves State aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether that measure is compatible with the internal market. The Commission has examined the measure pursuant to Article 107(2)(b) TFEU.

#### 3.3.1. *The notion of exceptional occurrences within the meaning of Article 107(2)(b) TFEU*

- (59) Article 107(2)(b) TFEU stipulates that aid to make good damage caused by natural disasters or exceptional occurrences shall be compatible with the internal market. Neither the TFEU, nor other Union legislation contains a precise definition of the notion of exceptional occurrence. As they constitute exceptions to the general prohibition of State aid within the internal market laid down in Article 107(1) TFEU, the Commission, in line with the settled case-law of the Court of Justice of the European Union<sup>15</sup>, has consistently held that the notions of ‘natural disaster’ and ‘exceptional occurrence’ referred to in Article 107(2)(b) TFEU must be interpreted restrictively.
- (60) The Commission assesses whether an event qualifies as an exceptional occurrence on a case-by-case basis, having regard to its previous decision-making practice<sup>16</sup>. For an event to be regarded as an exceptional occurrence, it needs to meet the following cumulative criteria: (i) be unforeseeable or difficult to foresee<sup>17</sup>; (ii) have significant scale/economic impact<sup>18</sup>, and (iii) be extraordinary<sup>19</sup>.

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<sup>15</sup> Judgements of the Court of Justice of 11 November 2004, *Spain v Commission*, C-73/03, ECLI:EU:C:2004:711, paragraph 37, and of 23 February 2006, *Giuseppe Atzeni and others*, joined cases C-346/03 and C-529/03, ECLI:EU:C:2006:130 paragraph 79.

<sup>16</sup> Exceptional occurrences that have been accepted by the Commission in the past include war, internal disturbances and strikes, and, with certain reservations and depending on their extent, major industrial accidents which result in widespread economic loss. See Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020, paragraph 330 (OJ C 204, 1.07.2014, p. 53).

<sup>17</sup> Commission Decision of 1 August 2008, case SA.32163, Remediation of damage to airlines and airports caused by seismic activity in Iceland and the volcanic ash in April 2010, Slovenia, recital 31.

<sup>18</sup> Elements taken into account by the Commission to consider that the occurrence reached a significant scale include: (i) the fact that negative consequences cannot be contained (Commission Decision of 4 October 2000 on case NN 62/2000, Régime temporaire d'aides aux entreprises victimes des intempéries et de la marée noire – France); (ii) the significant number of dead or injured people (Commission Decision of 11 April 2012 on case SA.33487, Agricultural and fisheries aid to compensate for damage due to exceptional occurrence (red mud "Aluminium accident"), Hungary, recital 35; Commission Decision of 2 May 2002 on case N241/2002, Régime en faveur des entreprises victimes de la catastrophe industrielle de Toulouse, France, recital 19); (iii) the occurrence of immense ecological and economic damage (Commission Decision of 11 April 2012 on case SA.33487, recital 36); (iv) the amount of material damage, despite the local character of the industrial accident (Commission Decision of 2 May 2002 on case N 241/2002, recital 19).

<sup>19</sup> In its Decision of 19 May 2004 in case C-59/2001 (OJ L 62, 2007, p. 14), the Commission considered that the (alleged) fall in sales of poultry meat in a Member State not directly affected by the dioxin

### 3.3.2. *COVID-19 outbreak as an exceptional occurrence*

- (61) Following the first reports of cases of COVID-19 in the Chinese Wuhan municipality at the end of December 2019, the Chinese authorities have identified a novel coronavirus (SARS-CoV-2) as the main causative agent, which had not been previously identified in humans. The outbreak has rapidly evolved, spreading not only to other parts of China but also to the majority of countries worldwide. Specific sectors and areas are particularly affected by the outbreak, be it because of national outbreak control measures, travel restrictions or supply chain disruptions.
- (62) The declaration of the World Health Organization of a pandemic,<sup>20</sup> associated with the public health risk deriving from the absence of therapeutics or vaccines for the COVID-19, determine the exceptional nature of the circumstances. The rapidity of the spread can cause enormous consequences both in terms of fatal outcomes in high-risk groups and in terms of economic and societal disruption<sup>21</sup>. The necessity to adopt and encourage the respect of measures aimed at interrupting transmission chains stems from this acknowledgement. Such measures can result in far-reaching disruption of various economic sectors, which is clearly outside the normal functioning of the market.
- (63) In view of the above, this event qualifies as an exceptional occurrence because: (i) it was not foreseeable; (ii) it clearly distinguishes itself from ordinary events by its character and effects on both the undertakings directly affected and the economy as a whole; and (iii) it lies outside of the normal functioning of the market.
- (64) In this context, the COVID-19 outbreak can be regarded as an exceptional occurrence within the meaning of Article 107(2)(b) TFEU.

### 3.3.3. *Causal link between COVID-19 outbreak and damage compensated by the measure*

- (65) As an immediate consequence of the COVID-19 outbreak in Austria, the Austrian authorities have adopted the governmental measures described in recitals (4) to (14). These measures have an immediate impact on both demand and supply, especially for all companies particularly exposed to the restrictive measures. Undertakings operating in several economic sectors have been exposed in Austria

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contamination, did not constitute in itself an exceptional occurrence. In fact, it was an unforeseeable event but formed part of the normal commercial risks to which an undertaking is exposed.

<sup>20</sup> WHO Director-General's opening remarks at the media briefing on COVID-19 on 11 March 2020, <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-mediabriefing-on-covid-19---11-march-2020>.

<sup>21</sup> ECDC's Rapid Risk Assessment, Outbreak of novel Coronavirus disease 2019 (COVID-19): increase transmission globally – fifth update, 2 March 2020.

to an explicit legal obligation to close down their operations for a certain period of time. Such obligation has resulted in a significant reduction in their turnover compared to the reference period (as described in recital (25)).

- (66) The damage compensation period is limited to three months within the observation period ranging from 16 March until 15 September 2020 (cf. recital (27)).
- (67) The actual damage suffered by those undertakings and deriving from the exceptional occurrence is the difference between the profit/loss incurred during COVID-19 outbreak and governmental measures and the profit/loss incurred in the reference period (net losses).
- (68) Only beneficiaries for which a direct link between the damage suffered and the COVID-19 related mitigation measures can be established, shall be entitled to compensation.

#### *3.3.4. Proportionality of the aid measure*

- (69) In order to be compatible with Article 107(2)(b) TFEU, the aid must be proportional to the damage caused by the exceptional occurrence. Aid must not result in overcompensation of damage; it should only make good the damage caused by the exceptional occurrence.
- (70) The actual damage of the beneficiaries of the measure is the difference between the profit/loss incurred in the new circumstances (after the COVID-19 outbreak and restrictive measures imposed by the Austrian government) and the profit/loss incurred before these events (net losses). In light of the exceptional circumstances, including the large amount of beneficiaries and the urgent need for a support measure that is administratively simple to implement, the Commission can accept that the precise calculation of the amount of the compensation is calculated based on the available elements. In the present case, such element is the decline in turnover of the eligible undertakings.
- (71) The Austrian authorities have put in place certain safeguards to ensure that the compensation under the measure does not exceed what is necessary to make good the damage caused by the exceptional occurrence:
  - (a) First, the amount of compensation, as calculated ex ante (recital (28)) constitutes a limited percentage (maximum 75%) of the fixed costs” (see the table in recital (28)) experienced by the company in the lockdown period, compared to the reference period.
  - (b) Second, as indicated in recital (48), the maximum amounts of the compensation per beneficiary are, depending on the decline of turnover, EUR 30 million (40-60% decline in turnover), EUR 60 million (60-80% decline in turnover) and EUR 90 million (80-100% decline in turnover). Grants above EUR 800 000 have to be approved by the supervisory board of COFAG.

- (c) Third, the period for compensation is limited to a maximum of three months (recital 23).
  - (d) Fourth, the compensation will not be disbursed in a single payment, but in three instalments. The first instalment is limited to 50% of the total compensation, the second and third instalment to 25% of the total compensation, respectively. Through splitting the payment of the grant in three instalments, it is possible to make corrections to the data on fixed costs and decline in turnover previously provided and to adjust the overall amount of the compensation before the final instalment is disbursed to the beneficiary (recitals (33) and (35)).
  - (e) Fifth, the Austrian authorities have set up an ex post control system to verify that no beneficiary is overcompensated. As explained in recitals (41) to (45), for grants above EUR 10 million, a case-by-case assessment must be carried out, in particular by examining the net loss (actual damage) in order to avoid overcompensation of the damage. For grants of up to EUR 10 million, similar audits on a sample basis are foreseen. This will enable the Austrian authorities, once the actual damage (i.e., net losses) suffered by each beneficiary due to the COVID-19 outbreak is calculated, to compare it with the amount of compensation already paid. Should overcompensation be detected, Austria will recover the amount of the overcompensation. The precise method will be defined at a later stage based on a methodology submitted before 31 December 2020 by Austria to the Commission for approval (recital (43)).
  - (f) Sixth, aid received under the measure cannot be cumulated with other aid for the same eligible costs. Support received from public authorities or based on the epidemic law,<sup>22</sup> which is related to the COVID-19 crisis, will be deducted from the payment (cf. recital (44)).
  - (g) Seventh, the payment made to beneficiaries are net of any amount recovered by insurance, litigation, arbitration or other source for the same damage. If the aid is paid out before the insurance, Austria will recover the insurance amount from the beneficiary (recitals (31) and (40)). Additionally, as explained in recital (36), the benefit of the aid is excluded for any applicant who is responsible for the damage suffered and/or did not conduct his activities with due diligence or in compliance with applicable legislation or did not take any measure to mitigate its damages.
  - (h) Eighth, undertakings in difficulty within the meaning of the GBER on 31 December 2019 (recital 46) as well as companies not facing serious economic problems by a decline in turnover of at least 40% (recital 28) are excluded.
- (72) The Commission, in light of the safeguards listed above, and taking into account the limited period covered by the compensation, considers the compensation proportionate.

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<sup>22</sup> Epidemie Gesetz, BGBl. Nr 186/1950.

(73) The Commission further notes that the measure includes restrictions regarding the use of aid received by the beneficiaries. In particular, bonus payments and dividend payments are restricted (recital (37)).

(74) In view of the above, the Commission that the notified aid scheme is compatible with the internal market in accordance with Art 107(2)(b). TFEU.

#### **4. CONCLUSION**

The Commission has accordingly decided not to raise objections to the notified aid measure on the grounds that it is compatible with the internal market pursuant to Article 107(2)(b) TFEU.

Yours faithfully,

For the Commission

Margrethe VESTAGER  
Executive Vice-President

**CERTIFIED COPY**  
For the Secretary-General,

**Jordi AYET PUIGARNAU**  
Director of the Registry  
EUROPEAN COMMISSION