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Subject: State Aid SA.57640 (2020/N) – Austria
Second amendment of the scheme SA.56981 (2020/N) – Austrian guarantee scheme on bridge loans under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak

Excellency,

1. PROCEDURE

- (1) By decision of 17 April 2020 (“the initial Decision”)¹, the Commission approved the *Austrian guarantee scheme on bridge loans under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak* (“the initial aid scheme”) under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, as amended (“the Temporary Framework”)². By decision of 9 June 2020 (the “first amendment

¹ Commission decision C(2020) 2537 final of 17 April 2020, in case SA.56981 (2020/N).

² Communication from the Commission - Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 91I, 20.3.2020, p. 1, as amended by Communication from the Commission C(2020) 2215 final of 3 April 2020 on the Amendment to the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 112I, 4.4.2020, p. 1, by Communication from the Commission C(2020) 3156 final of 8 May 2020 on the Amendment to the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 164, 13.5.2020, p. 3 and by Communication from the Commission C(2020) 4509 final of 29 June 2020 on the Third amendment to the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 218, 2.7.2020, p. 3.

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Decision”)³, the Commission approved the first amendment to the initial aid scheme. By electronic notification of 10 June 2020, Austria notified a second amendment of the initial aid scheme. On 1 July 2020, Austria amended its notification (see recital (11) of this decision) in the light of the Third amendment to the Temporary Framework of 29 June 2020 (see footnote 2). On the same day, as well as on 9 and 14 July 2020, Austria provided supplementary information.

- (2) Austria exceptionally agrees to waive its rights deriving from Article 342 of the Treaty on the Functioning of the European Union (“TFEU”), in conjunction with Article 3 of Regulation 1/1958,⁴ and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE SCHEME

- (3) By the present notification, the Austrian authorities wish to amend the initial aid scheme approved by the initial Decision and the first amendment Decision.

2.1. The initial aid scheme

- (4) The objective of the initial aid scheme is to ensure that sufficient liquidity remains available in the market to counter the impact of the COVID-19 outbreak and to preserve the continuity of economic activity during and after the outbreak.
- (5) The initial aid scheme consists of two parts:
 - (a) Part 1: the Austria Wirtschaftsservice GmbH (“aws”) – guarantee scheme for small and medium-sized enterprises (“SMEs”) active in all sectors;
 - (b) Part 2: the Austrian Hotel and Tourism Bank G.m.b.H. (*Österreichische Hotel- und Tourismusbank GmbH*, “ÖHT”) – guarantee scheme for SMEs active in the tourism and leisure time sector.
- (6) According to recital (19)(a) of the initial Decision, the initial aid scheme provides “Temporary limited amounts of aid” within the meaning of Section 3.1 of the Temporary Framework in the form of guarantees covering 100% of the underlying loan principal. The total nominal value of the guaranteed loans may not exceed EUR 500 000 per undertaking; by way of derogation, the total nominal value of the guaranteed loans may not exceed EUR 120 000 per undertaking active in the fishery and aquaculture sector⁵ or EUR 100 000 per undertaking active in the primary production of agricultural products⁶.
- (7) The eligible beneficiaries under the initial aid scheme were small and medium-sized enterprises (“SMEs”) registered or active in Austria that were not already in difficulty on 31 December 2019 (within the meaning of the General Block

³ Commission decision C(2020) 3956 final of 9 June 2020, in case SA.57520 (2020/N).

⁴ Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

⁵ As defined in Article 2(1) of Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the fishery and aquaculture sector, OJ L 190, 28.6.2014, p. 45.

⁶ All products listed in Annex I to the TFEU with the exception of the products of the fisheries and aquaculture sector.

Exemption Regulation⁷ (“GBER”), the Agricultural Block Exemption Regulation⁸ (“ABER”) or of the Fisheries Block Exemption Regulation⁹ (“FIBER”) respectively.¹⁰

2.2. The first amendment

- (8) The first amendment, as approved by the first amendment Decision, concerned Part 1 of the initial aid scheme. It expanded the scope of eligible beneficiaries to large enterprises and the economic activities of not-for-profit associations (*gemeinnützige Vereine*) registered or active in Austria that were not already in difficulty on 31 December 2019 (within the meaning of the GBER, the ABER or the FIBER respectively).

2.3. The notified amendment

- (9) According to the notification of 10 June 2020, Austria envisaged to further modify the initial aid scheme, namely to expand the scope of beneficiaries to all types of undertakings in difficulty.
- (10) The Third amendment to the Temporary Framework provides that aid may be granted to micro or small enterprises (within the meaning of Annex I of the GBER, Annex I of the ABER and Annex I of the FIBER) that were already in difficulty on 31 December 2019, provided that at the moment of the granting, these enterprises are not subject to collective insolvency procedure under national law, and that they have not received rescue aid¹¹ or restructuring aid.¹²
- (11) Taking account of this amendment to the Temporary Framework, Austria amended its notification of the second amendment of the initial aid scheme. As a result of the second amendment, the scope of eligible beneficiaries for Part 1 and Part 2 of the initial aid scheme is not expanded to all types of undertakings in difficulty but only to micro and small enterprises (within the meaning of Annex I of the GBER, ABER and FBER respectively) that were already in difficulty on 31 December 2019, provided that they are not subject to collective insolvency procedure under Austrian law and that they have not received rescue aid or restructuring aid. As a result of the second amendment, there will be up to 1 000 additional eligible beneficiaries (500 for Part 1 and 500 for Part 2) under the initial aid scheme.

⁷ As defined in Article 2(18) of Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187 of 26.6.2014, p. 1.

⁸ As defined in Article 2(14) of Commission Regulation (EU) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 193 of 1.7.2014, p.1.

⁹ As defined in Article 3(5) of Commission Regulation (EU) No 1388/2014 of 16 December 2014 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 369 of 24 December 2014, p. 37.

¹⁰ See recitals (16), (17) and (28) of the initial Decision (see footnote 1 of the present decision).

¹¹ Alternatively, if they have received rescue aid, they have reimbursed the loan or terminated the guarantee at the moment of granting of the aid under the notified measure.

¹² Alternatively, if they have received restructuring aid, they are no longer subject to a restructuring plan at the moment of granting of the aid under the notified measure.

- (12) The objective of the second amendment is to provide micro and small enterprises that meet the criteria mentioned in recital (11) with sufficient liquidity to counter the impact of the COVID-19 outbreak for those enterprises.
- (13) The second amendment will only be put into effect after the Commission's approval of that amendment.
- (14) All the other conditions of the initial aid scheme, as described in the initial Decision and the first amendment Decision, remain unchanged.

2.4. Legal basis

- (15) The legal bases for the second amendment are:
 - (a) For Part 1: *Richtlinie der Bundesministerin für Digitalisierung und Wirtschaftsstandort für Garantieübernahmen der Austria Wirtschaftsservice GmbH gemäß KMU-Förderungsgesetz für das Jahr 2020.*
 - (b) For Part 2: *Richtlinie der Bundesministerin für Landwirtschaft, Regionen und Tourismus für die Übernahme von Haftungen für die Tourismus- und Freizeitwirtschaft 2014-2020 gemäß Bundesgesetz über besondere Förderungen von kleinen und mittleren Unternehmen (KMU-Förderungsgesetz), BGBl. Nr. 432/1996.*

3. ASSESSMENT

3.1. Lawfulness of the measure

- (16) By notifying the second amendment to the initial aid scheme before putting it into effect, the Austrian authorities have respected their obligations under Article 108(3) TFEU.

3.2. Existence of State aid

- (17) For a measure to be categorised as 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, it must confer an advantage on its recipients. Third, that advantage must be selective in nature. Fourth, the measure must distort or threaten to distort competition and affect trade between Member States.
- (18) In recitals (25) to (30) of the initial Decision and in recitals (10) and (11) of the first amendment Decision, the Commission concludes that the initial aid scheme as modified constitutes State aid within the meaning of Article 107(1) TFEU. The second amendment of the measure does not affect that conclusion. The Commission therefore refers to the respective assessment of the aforementioned decisions and concludes that the scheme as modified by the second amendment constitutes State aid in the meaning of Article 107(1) of the TFEU.

3.3. Compatibility

- (19) The Commission assessed the initial aid scheme and its first amendment on the basis of Article 107(3)(b) of the TFEU in light of the Temporary Framework and

concluded that the initial aid scheme and the scheme as amended were compliant with the compatibility conditions set out in that framework.

- (20) As regards the second amendment, the Commission considers that micro and small undertakings have been particularly affected during the current crisis by the liquidity shortage caused by the economic impact of the COVID-19 outbreak. The unprecedented supply and demand shock due to the crisis has also exacerbated the difficulties such undertakings face to access financing on the market in general, as compared to medium-sized and large enterprises. Given their limited size and limited involvement in cross-border transactions, it is therefore less likely that State aid granted to these enterprises would distort competition in the internal market and affect intra-EU trade than State aid granted to medium-sized and large companies. This holds true even if these enterprises were to fall under the category of an undertaking in financial difficulty already on 31 December 2019, as long as they are not subject to a collective insolvency procedure under national law and have not received rescue aid (which has not been repaid) or restructuring aid (and are still subject to a restructuring plan). These considerations are expressed in the Third amendment to the Temporary Framework.
- (21) In light of point 22c)bis of the Temporary Framework, the Commission considers that the initial aid scheme as modified by the first and second amendments meets the conditions of the Temporary Framework. The second amendment does not affect the compatibility analysis as set out in recitals (31) to (38) of the initial Decision and in recitals (12) to (17) of the first amendment Decision.

4. CONCLUSION

The Commission has accordingly decided not to raise objections to the notified amendment on the grounds that it is compatible with the internal market pursuant to Article 107(3)(b) of the TFEU.

The decision is based on non-confidential information and is therefore published in full on the Internet site: <http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President