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**Subject: State Aid SA.58661 (2020/N) – Austria
COVID-19: Fixed Cost Compensation according to 3.12 Temporary
Framework**

Excellency,

1. PROCEDURE

- (1) By electronic notification of 23 September 2020, Austria notified a framework scheme for uncovered fixed costs (“Verordnung des Bundesministers für Finanzen gemäß § 3b Abs. 3 des ABBAG-Gesetzes betreffend Richtlinien über die Gewährung von Zuschüssen zur Deckung von Fixkosten der Phase II durch die COVID-19 Finanzierungsagentur des Bundes GmbH (COFAG) (VO über die Gewährung von Fixkostenzuschüssen der Phase II”); “the measure”) under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, as amended (“the Temporary Framework”)¹.

¹ 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 of 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 of 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, by Communication from the Commission C(2020) 4509 final of 29 June 2020 on the Third Amendment of 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 and by Communication from the Commission C(2020) 7127 final of 13 October 2020 on the Fourth Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak and amendment to the Annex to the Communication from the Commission to the Member States on the application of Articles 107 and 108 of the Treaty

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- (2) By electronic communication of 23 and 27 October 2020 and 4, 10, 17 and 19 November 2020, Austria submitted additional information to complete the notification of the measure.
- (3) 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 1/1958² and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE MEASURE

- (4) Austria considers that the COVID-19 outbreak is affecting the real economy causing a significant economic impact on the Austrian economy. In the second quarter of 2020, the GDP has shrunk by about 12.8%. The tourism, hospitality and accommodation sectors as well as the retail trade are particularly affected by the current pandemic. The retail sector sales dropped by 25% on average compared to 2019. The apparel sector experienced a 40% reduction in sales compared to 2019.
- (5) The Austrian tourism sector recorded a minus of 54% less tourists and minus 45% in overnight stays during the 2020 summer season. For instance, international travel warnings and increasing infection rates in the entire EU have driven down the hotel room occupancy rate in Vienna to less than 10%. In Vienna alone, 116,000 jobs are directly or indirectly linked to tourism and around 35,000 jobs are under threat to be lost. Austria expects that the continued COVID-19 pandemic will also have a severe negative impact on the Austrian winter tourism sector.
- (6) After the general shutdown in Austria in March 2020, a significant number of measures was put into place by the Austrian Federal Government. While restrictions were eased over the summer of 2020, the influx of new SARS-CoV-2 infection cases at the beginning of September 2020 led the Austrian Federal Government to introduce new measures.
- (7) The measure forms part of an overall package of measures and aims to ensure that sufficient liquidity remains available in the market, to counter the liquidity shortage faced by undertakings because of the outbreak, to ensure that the disruptions caused by the outbreak do not undermine the viability of the undertakings and thereby to preserve the continuity of economic activity during and after the outbreak.
- (8) The measure is part of a wider package of State aid measures to support the economy that was approved on 8 April 2020³, 17 April 2020⁴, 19 May 2020⁵, 23

on the Functioning of the European Union to short-term export-credit insurance, OJ C 340 I, 13.10.2020, p. 1.

² Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

³ SA.56840 COVID-19 - Austrian liquidity assistance scheme.

⁴ SA.56981 COVID-19: Austrian scheme for guarantees on bridge loans.

May 2020⁶, 9 June 2020⁷, 17 July 2020⁸, 6 August 2020⁹ and 10 September 2020¹⁰.

- (9) Austria confirmed that the aid under the measure is not conditioned on the relocation of a production activity or of another activity of the beneficiary from another country within the EEA to the territory of the Member State granting the aid. This is irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA.
- (10) The compatibility assessment of the measure is based on Article 107(3)(b) TFEU, in light of sections 2 and 3.12 of the Temporary Framework.

2.1. The nature and form of aid

- (11) The measure provides aid in the form of direct grants to companies aiming to cover part of the specifically defined uncovered fixed costs (see section 2.7) of those undertakings for which the COVID-19 outbreak resulted in a suspension or reduction of their business activity.

2.2. Legal basis

- (12) The national legal basis for the measure are (1) Federal Law concerning the creation of a Federal Abbaubeteiligungsaktiengesellschaft (ABBAG-Act)¹¹; (2) Ordinance of the Federal Minister of Finance based on § 3b (3) ABBAG-Act concerning the Directive to grant subsidies to cover fixed costs phase II by the Federal COVID-19 Financing Agency (COFAG).¹² Additionally, the COVID-19 Funding Audit Act¹³ applies.

⁵ SA.57148 COVID-19: Support Measures by Carinthia, Styria, Tyrol, Upper Austria and Vienna.

⁶ SA.57291 COVID-19; Compensation Scheme: Directive for fixed cost subsidies

⁷ SA.57520 COVID-19; Garantien für große Unternehmen auf Basis Garantiegesetz 1977 durch die Austria Wirtschaftsservice GmbH (aws).

⁸ SA.57640 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.

⁹ SA.57928 COVID-19; Compensation scheme: Directive for fixed cost subsidies for economic activities of Non-Profit-Organisations

¹⁰ SA.58360 Richtlinien des NÖ Wirtschafts- und Tourismusfonds - Förderprogramm COVID-19

¹¹ Bundesgesetz über die Einrichtung einer Abbaubeteiligungsaktiengesellschaft des Bundes (ABBAG-Gesetz).

¹² Verordnung des Bundesministers für Finanzen gemäß § 3b Abs. 3 des ABBAG-Gesetzes betreffend Richtlinien über die Gewährung von Zuschüssen zur Deckung von Fixkosten der Phase II durch die COVID-19 Finanzierungsagentur des Bundes GmbH (COFAG).

¹³ COVID-19-Förderungsprüfungsgesetz.

2.3. Administration of the measure

- (13) The measure will be managed by the COVID-19 Finanzierungsagentur des Bundes GmbH (“COFAG”),¹⁴ a federal agency of Austria.

2.4. Budget of the measure

- (14) The estimated budget of the measure is up to EUR 12 billion.¹⁵

2.5. Beneficiaries

- (15) The beneficiaries of the measure are SMEs and large enterprises¹⁶.
- (16) Compensation under the 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 Act¹⁷;
 - (c) the undertaking must not have committed any abuse within the meaning of Section 22 of the Federal Fiscal Code¹⁸ in the last three years of assessment, which has led to a change in the tax base of at least EUR 100 000 in the respective assessment period;
 - (d) the undertaking was not subject to paragraph 12(1)(10) of the Austrian Corporate Tax Act¹⁹ 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;
 - (e) during the last five tax years, the undertaking was not affected by the prohibition of deduction under paragraph 12 (1) 10 of the Corporate Tax Act with a total of more than EUR 100 000 or by the provisions of

¹⁴ COVID-19 Finanzierungsagentur des Bundes GmbH, Taborstraße 1-3/OG 14, 1020 Wien; www.cofag.at.

¹⁵ The total amount is shared with the budget of the first approved fixed cost compensation scheme SA.57291 (2020/N) – Austria – COVID-19; Compensation Scheme: Directive for fixed cost subsidies, recital (50), which had a budget of EUR 8 billion.

¹⁶ As defined in Annex I to 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, 26.6.2014, p. 1.

¹⁷ Einkommenssteuergesetz 1988.

¹⁸ Bundesabgabenordnung 1961.

¹⁹ Körperschaftssteuergesetz 1988.

paragraph 10a Corporate Tax Act (add-on taxation, change of method); however, the aid may still be granted if the company has, upon submitting its corporate income tax declaration for the year in question, already disclosed the application of paragraph 12 (1) 10 Corporate Tax Act or paragraph 10a Corporate Tax Act, has added the amount covered by the provisions and this amount does not exceed EUR 500 000;

- (f) the undertaking must neither have its registered office nor a permanent establishment in a state, which is included in the EU list of non-cooperative countries and territories for tax purposes and which, at the registered office or permanent establishment in this state, generates predominantly passive income within the meaning of paragraph 10a (2) Corporate Tax Act in the first financial year beginning after 31 December 2018. The version of the EU list of non-cooperative countries and territories for tax purposes that is valid on the respective balance sheet date of the financial year to be used to assess the predominance of passive income within the meaning of paragraph 10a (2) Corporate Tax Act applies;
- (g) no final financial penalty or corresponding association fine may have been imposed on the applicant or his executive bodies in the exercise of their executive function during the last five years prior to the application; however, the aid may still be granted if it is a minor fine²⁰ or a financial penalty or association fine not exceeding the amount of EUR 10,000;
- (h) no insolvency proceedings may be pending at the time of the application. This does not apply to companies for which reorganisation proceedings have been opened in accordance with paragraphs 166 ff of the Federal Act on Insolvency Proceedings (Insolvency Regulation - IO)²¹. In such a case, the amount of aid applied for may not exceed the maximum amounts of the applicable *de minimis* regulation (see recital (18i) below);
- (i) the undertaking must not have been in difficulty already on 31 December 2019 or, within the meaning of the General Block Exemption Regulation (“GBER”)²², or Agricultural Block Exemption Regulation (“ABER”)²³ or Fishery and Aquaculture Block Exemption Regulation (“FIBER”).²⁴ When assessing whether a company is in difficulty, measures which strengthen the company's equity capital, such as shareholder contributions,

²⁰ Finanzordnungswidrigkeit.

²¹ Bundesgesetz über das Insolvenzverfahren (Insolvenzverordnung) 1914.

²² As defined in Article 2(18) of Commission Regulation (EU) No 651/2014 of 17 June 2014.

²³ 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, 1.7.2014, p. 1.

²⁴ 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, 24.12.2014, p. 37.

and which took place up to the date of the application for the aid, have to be taken into account. If a company in difficulty is a small or micro enterprise as defined in Annex I to the GBER, in Annex I to the ABER and Annex I to the FIBER, the enterprise may nevertheless be granted the aid, provided that it is not the subject to insolvency proceedings under national law and it has not received rescue aid²⁵ or restructuring aid.²⁶ Where a company in difficulty is not a small or micro enterprise as defined in Annex I to the GBER, in Annex I to the ABER and Annex I to the FIBER, it can only be granted the aid in accordance with the applicable *de minimis* Regulation. In so doing, the respective applicable ceilings must be respected, taking into account the applicable cumulation rules. In accordance with the *de minimis* Regulation²⁷, the general ceiling is EUR 200 000, EUR 100 000 for support for road transport activities. For aid granted based on the *de minimis* regulation for the agricultural sector²⁸, the maximum aid amount is EUR 20 000 or, under certain conditions EUR 25 000 over any period of three fiscal years. For aid granted based on *de minimis* regulation for the fishery and aquaculture sector, the maximum aid amount is EUR 30 000 over any period of three fiscal years²⁹.

- (j) the undertaking has taken reasonable measures to reduce the damage and thus the amount of uncovered fixed costs (obligation to mitigate damage).

(17) The following undertakings are excluded as beneficiaries of the measure:

- (a) undertakings of the financial sector;
- (b) undertakings fully 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 having a self-coverage ratio³⁰ of less than 75 %;

²⁵ 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.

²⁶ 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.

²⁷ Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid (OJ L 352, 24.12.2013, p.1),

²⁸ Commission Regulation (EU) No 1408/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid in the agriculture sector (OJ L 352, 24.12.2013 p. 9).

²⁹ Commission Regulation 1388/2014 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).

³⁰ Eigendeckungsgrad.

- (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 achieve a turnover before 16 September 2020.

2.6. Sectoral and regional scope of the measure

- (18) The measure is open to all sectors except the financial sector. It applies to the whole territory of Austria.

2.7. Description of the measure

- (19) The measure provides support in form of direct grants. It contributes to cover part of the uncovered fixed costs of those undertakings for which the COVID-19 outbreak resulted in the suspension or reduction of their business activity.

2.7.1. Duration

- (20) The measure may be granted as from its approval until no later than 30 June 2021 and covers part of the specifically defined uncovered fixed costs (see recitals (22) to (27)) incurred during the period between 16 September 2020 and 30 June 2021 (“eligible period”).
- (21) While the measure may be granted no later than 30 June 2021, applications for disbursement of the aid can be submitted to the COFAG no later than 30 June 2021 for the first instalment and no later than 31 December 2021 for the second instalment³¹.

2.7.2. On the eligibility criterion

- (22) The measure may only be granted to undertakings that suffer a decline in turnover during the eligible period of at least 30% compared to the same period in 2019. In order to establish the decline in turnover, undertakings may compare periods in 2020 or 2021 with periods in 2019 in defining either one observation period comprising of one or more months linked in time³² or by defining two observation periods of one or more months each, which are each linked in time.³³

³¹ It is not possible to apply for disbursement of the first instalment without having applied for the entire aid.

³² There are ten observation periods from 16 September 2020 to 30 June 2021. The ten observation periods correspond to nine full months from 1 October 2020 to 30 June 2021 and one half month lasting from 16 September to 30 September 2020.

³³ The decline in turnover is calculated based on the difference between the accumulated turnover of the selected observations period(s) in 2020/2021 and the accumulated turnover of the corresponding reference period(s) in 2019.

- (23) The turnover is calculated based on the sales revenues of goods and/or services, which an undertaking takes into account for the purposes of its income or corporate tax assessment. Insurance benefits, aid from local authorities received in connection with the COVID-19 crisis and compensation received under the Epidemics Act³⁴ are not included in the calculation of turnover. The turnovers achieved during the selected observation period(s) are accumulated.

2.7.3. *On the determination of the aid amount*

- (24) Costs are business expenses pursuant to paragraph 4 (4) Income Tax Act³⁵ and paragraph 7 (3) Corporate Tax Act³⁶. The costs arising during the selected observation period(s) are accumulated.
- (25) In order to establish the uncovered fixed costs, first the difference between the accumulated turnover as defined in recital (23) and the accumulated costs as defined in recital (24) is calculated.
- (26) In a second step, the following payments have to be deducted from the difference between turnover and costs insofar as these payments relate to the selected observation period(s): insurance payments, aid from federal, regional and local authorities³⁷ received in connection with the COVID-19 crisis, subsidies received in connection with short-time working, compensation received under the Epidemic Act, aid received based on the Ordinance of the Federal Minister of Finance under paragraph 3b (3) of the ABBAG Act on a Directive for the Granting of Lockdown Turnover Compensation by the COVID-19 Federal Financing Agency for Private Limited Companies (COFAG)³⁸, aid received based on the Ordinance of the Federal Minister of Finance on the granting of lockdown revenue replacement for indirectly affected sectors³⁹ and aid received based on the Ordinance of the Federal Minister of Finance under section 3b (3) of the ABBAG Act on Guidelines on the Granting of a Limited Fixed Cost Subsidy of up to EUR 800 000 by COVID-19 Finanzierungsagentur des Bundes GmbH (COFAG)⁴⁰.
- (27) The uncovered fixed costs are the result of this two-step calculation, which mirrors the calculation of losses of undertakings from either their profit and loss

³⁴ Epidemiegesetz 1950.

³⁵ Einkommensteuergesetz 1988.

³⁶ Körperschaftssteuergesetz 1988.

³⁷ Gebietskörperschaften.

³⁸ Verordnung des Bundesministers für Finanzen gemäß § 3b Abs. 3 des ABBAG-Gesetzes betreffend Richtlinien über die Gewährung eines Lockdown-Umsatzersatzes durch die COVID-19 Finanzierungsagentur des Bundes GmbH (COFAG).

³⁹ Not yet adopted/published.

⁴⁰ Verordnung des Bundesministers für Finanzen gemäß § 3b Abs. 3 des ABBAG-Gesetzes betreffend Richtlinien über die Gewährung eines begrenzten Fixkostenzuschusses bis EUR 800.000 durch die COVID-19 Finanzierungsagentur des Bundes GmbH (COFAG), not yet adopted/published.

statements or from a method equivalent to profit and loss statements which complies with tax law during the selected observation period(s)⁴¹.

- (28) The aid amount is calculated as 70% of the uncovered fixed costs as defined in recital (27), except for micro and small companies, where the aid amounts to 90% of the uncovered fixed costs. In both cases, only undertakings that are eligible for an aid of at least EUR 500 can benefit from the measure. The maximum aid amount must not exceed EUR 3 million per undertaking. All figures used must be gross, that is, before any deduction of tax or other charge.
- (29) Disbursement of the aid may be requested by the beneficiary in the following instalments and as from the following dates:
- (a) The first instalment comprises 80 % of the estimated aid amount and may be requested following the approval of the Commission⁴² until 30 June 2021;
 - (b) The second instalment covers the remaining aid amount, and its disbursement may be requested from 1 July 2021 until 31 December 2021.
- (30) The application for the aid must include the estimated or actual turnovers and estimated or actual costs in the selected observation period(s). Records of the turnover achieved from the sales of goods and services, which are kept for tax purposes should be used as appropriate evidence. If such records are not mandatory for the beneficiary, other suitable records kept by the beneficiary will be used.
- (31) For the disbursement of the first instalment, the beneficiary is asked to provide a best estimate of accumulated turnover (recital (23)) and of the costs (recital (24)). The actual and forecasted turnover during the selected observation period(s) in 2020 and 2021 will be compared to the turnover of the corresponding reference period(s) in 2019.
- (32) For the application for the second instalment, corrections to the estimated figures submitted for the first instalment must be made (considering actual costs and turnover figures).
- (33) The turnover and cost figures must be confirmed and submitted by a tax consultant, auditor or accountant, unless the total aid amount does not exceed EUR 36 000. In the latter case, the requested aid amount must not exceed the respective maximum aid amounts as defined in the appropriate *de minimis* Regulation (see recital (16 i)). Accountants may only issue such confirmation for companies whose balance sheets they are permitted to prepare pursuant to section 2 (1) no. 2 of the Accounting Law⁴³. The tax consultant, auditor or accountant

⁴¹ One-off impairment losses are not included in the calculation of the losses.

⁴² Precise date to be defined in the national legal basis following the approval of the measure by the Commission.

⁴³ Bilanzbuchhaltungsgesetz 2014.

must maintain his independence vis-à-vis the applying company and avoid any bias or conflict of interest.

- (34) The aid applicant must in particular undertake to adjust the withdrawals of the owner of the undertaking⁴⁴ or profit distributions to owners in the period from 16 March 2020 to 31 December 2021 to the economic circumstances. In particular, therefore, the granting of aid under this measure in the period from 16 March 2020 to 30 June 2021 is not in line with (i) the distribution of dividends or other legally non-mandatory profit distributions and (ii) the buyback of own shares. Thereafter, a moderate dividend and profit distribution policy⁴⁵ must be followed until 31 December 2021.

2.7.4. *On the control mechanism to avoid overcompensation*

- (35) Ex-post control of grants under the measure is carried out in accordance with the provisions of the COVID-19 Funding Audit Act⁴⁶. For all beneficiaries that achieve a turnover of EUR 40 million or more⁴⁷ during the business year in which the aid is received, an ex-post case-by-case assessment must be carried out. With regard to the other beneficiaries, similar checks must be carried out on the basis of random samples.
- (36) In the course of the ex-post controls, it will be assessed in particular whether the costs and turnover figures submitted in the application correspond to the actual figures as established in the audited accounts or tax accounts. Any payment exceeding the final amount of the aid will be recovered.

2.8. **Cumulation**

- (37) Austria confirms that aid granted under the measure may not be cumulated with other aid for the same eligible costs.
- (38) Austria confirms that aid granted under the measure may be cumulated with aid under *de minimis* Regulations⁴⁸ or the GBER, ABER or FIBER provided the provisions and cumulation rules of those Regulations are respected.

⁴⁴ Eigenentnahmen des Unternehmers.

⁴⁵ Maßvolle Dividenden- und Gewinnausszahlungspolitik.

⁴⁶ COVID-19 Förderungsprüfungs-Gesetz.

⁴⁷ Turnover as defined in paragraph 189a (5) of the Austrian Companies Act (Unternehmensgesetzbuch).

⁴⁸ Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid (OJ L 352, 24.12.2013, p. 1), Commission Regulation (EU) No 1408/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the agriculture sector (OJ L 352, 24.12.2013 p. 9), 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) and Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid granted to undertakings providing services of general economic interest (OJ L 114, 26.4.2012, p. 8).

- (39) Austria confirms that aid under the notified measure may be cumulated with other forms of Union financing, provided that the maximum aid intensities indicated in the relevant Guidelines or Regulations are respected.
- (40) Austria confirms that aid granted under the measure may be cumulated with aid granted under other measures approved by the Commission under other sections of the Temporary Framework provided the provisions in those specific sections are respected.
- (41) Austria confirms that if the beneficiary receives aid on several occasions or in several forms under the measure or aid under other measures approved by the Commission under section 3.12 of the Temporary Framework, the overall maximum cap per undertaking, as set out in point 87(d) of that framework, will be respected.

2.9. Monitoring and reporting

- (42) Austria confirms that it will respect the monitoring and reporting obligations laid down in section 4 of the Temporary Framework (including the obligation to publish relevant information on each individual aid above EUR 100 000 granted under the measure and EUR 10 000 in the agricultural and fisheries sector on the comprehensive national State aid website or Commission's IT tool within 12 months from the moment of granting⁴⁹).

3. ASSESSMENT

3.1. Lawfulness of the measure

- (43) By notifying the measure before putting it into effect, Austria has respected its obligations under Article 108(3) TFEU.

3.2. Existence of State aid

- (44) 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.
- (45) The measure is imputable to the State, since it is administered by COFAG (recital (13)) and it is based on the national legal basis referred to in section 2.2 (recital (12)). It is financed through State resources, since it is financed by public funds.
- (46) The measure confers an advantage on its beneficiaries in the form of direct grants (recital (11)) for specifically defined uncovered fixed costs (recitals (22) to (27)).

⁴⁹ Referring to information required in Annex III to the GBER and Annex III to the ABER and Annex III to the FIBER. *For guarantees and loans and other forms of aid, the nominal value of the underlying instrument shall be inserted per beneficiary. For tax and payment advantages, the aid amount of the individual aid may be indicated in ranges.*

The measure thus provides those beneficiaries with an advantage, which they would not have had under normal market conditions.

- (47) The advantage granted by the measure is selective, since it is awarded only to certain undertakings, as referred to in recital (16), excluding the financial sector and certain undertakings (recital (17)).
- (48) The measure is liable to distort competition, since it strengthens the competitive position of its beneficiaries. It also affects trade between Member States, since those beneficiaries are active in sectors in which intra-Union trade exists.
- (49) In view of the above, the Commission concludes that the measure constitutes aid within the meaning of Article 107(1) TFEU. Austria does not contest that conclusion.

3.3. Compatibility

- (50) Since the measure involves aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether that measure is compatible with the internal market.
- (51) Pursuant to Article 107(3)(b) TFEU the Commission may declare compatible with the internal market aid “*to remedy a serious disturbance in the economy of a Member State*”.
- (52) By adopting the Temporary Framework on 19 March 2020, the Commission acknowledged (in section 2) that “*the COVID-19 outbreak affects all Member States and that the containment measures taken by Member States impact undertakings*”. The Commission concluded that “*State aid is justified and can be declared compatible with the internal market on the basis of Article 107(3)(b) TFEU, for a limited period, to remedy the liquidity shortage faced by undertakings and ensure that the disruptions caused by the COVID-19 outbreak do not undermine their viability, especially of SMEs*”.
- (53) The measure aims at contributing to cover part of uncovered fixed costs at a time when the normal functioning of markets is severely disturbed by the COVID-19 outbreak and that outbreak is affecting the wider economy and leading to severe disturbances of the real economy of Member States.
- (54) The measure is one of a series of measures conceived at national level by Austria to remedy a serious disturbance in their economy. The importance of the measure to e.g., stimulate economic continuity is widely accepted by economic commentators and the measure is of a scale, which can be reasonably anticipated to produce effects across the entire Austrian economy. Furthermore, the measure has been designed to meet the requirements of a specific category of aid (“Aid in the form of support for uncovered fixed costs”) described in section 3.12 of the Temporary Framework.
- (55) The Commission accordingly considers that the measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State and meets all the conditions of Section 3.12 of the Temporary Framework.

- Aid is granted under the measure no later than 30 June 2021 and covers specifically defined uncovered fixed costs incurred during the period between 16 September 2020 to 30 June 2021. The measure therefore complies with point 87(a) of the Temporary Framework;
- Aid is granted under the measure on the basis of a scheme to undertakings that suffer a decline in turnover during the eligible period of at least 30% compared to the same period in 2019 (recital (22)). The measure therefore complies with point 87(b) of the Temporary Framework;
- The specifically defined uncovered fixed costs are in accordance with point 87(c) of the Temporary Framework (recitals (22) to (27)) and the aid intensity will not exceed 70% of the uncovered fixed costs, except for micro and small companies, where the aid intensity will not exceed 90% of the uncovered fixed costs (recital (28)). The actual losses of undertakings from their profit and loss statements during the eligible period⁵⁰ are considered to constitute uncovered fixed costs (recital (27)). The aid under this measure may be granted based on forecasted losses, while the final amount of aid will be determined after realisation of the losses on the basis of audited accounts or on the basis of tax accounts (recital (36)). Any payment exceeding the final amount of the aid must be recovered (recital (36)). The measure therefore complies with point 87(c) of the Temporary Framework;
- The aid takes the form of grants (recital (11)). The overall nominal value of grants will not exceed EUR 3 million per undertaking; all figures used must be gross, that is, before any deduction of tax or other charges (recital (28)). The measure therefore complies with point 87(d) of the Temporary Framework;
- Aid may not be granted under the measure to medium⁵¹ and large enterprises that were already in difficulty on 31 December 2019 (recital (16 i)). Aid may be granted to micro and small enterprises that were in difficulty on 31 December 2019, if those enterprises, at the moment of granting the aid, are not subject to collective insolvency procedure under national law and they have not received rescue aid⁵² or restructuring aid⁵³ (recital (16 i)). The measure therefore complies with point 87(f) of the Temporary Framework;

(56) Austria confirms that the monitoring and reporting rules laid down in section 4 of the Temporary Framework will be respected (recital (42)). Austria further confirms that the aid granted under the measure may not be cumulated with other

⁵⁰ One-off impairment losses are not included in the calculation of the losses.

⁵¹ As defined in Annex I to the GBER, in Annex I to the ABER and in Annex I to the FIBER.

⁵² 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.

⁵³ 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.

aid for the same eligible costs (recital (37)) and the overall maximum cap per undertaking of 3 million, as set out in point 87(d) of the Temporary Framework is respected (recital (28)).

- (57) The Commission therefore considers that the measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State pursuant to Article 107(3)(b) TFEU since it meets all the relevant conditions of the Temporary Framework.

4. CONCLUSION

The Commission has accordingly decided not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107(3)(b) of the Treaty on the Functioning of the European Union.

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