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**Subject: State Aid SA.60521 (2020/N) – Austria
COVID-19: State guarantee to package travel organisers and
facilitators of linked travel services**

Excellency,

1. PROCEDURE

- (1) By electronic notification of 30 December 2020, Austria notified aid in the form of State guarantees for package travel organisers and facilitators of linked travel services (the “measure”) under Article 107(3)(b) of the Treaty on the Functioning of the European Union (“TFEU”). The Commission needed supplementary information on the notification and requested further input from the Austrian authorities by electronic communication on 22 January 2021. The Austrian authorities replied on 22 January 2021.
- (2) Austria exceptionally agrees to waive its rights deriving from Article 342 TFEU, in conjunction with Article 3 of Regulation 1/1958¹ and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE MEASURE

- (3) Austria considers that the COVID-19 outbreak has been affecting the real economy. According to the Austrian authorities, the tourism sector, which is an important pillar of the Austrian economy contributing 7.3% to the Austrian value added, and the package travel market have been particularly impacted. Package travel organisers and facilitators of linked travel services have suffered significant

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

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loss of revenue due to the COVID-19 restrictions in international travel, which are still ongoing.

- (4) A recent study² submitted by the Austrian authorities highlights the impact of COVID-19 on the Austrian tourism sector. During the first lockdown in Austria in spring 2020, overnight tourist stays in the country dropped by almost 100%. Over the summer of 2020, despite temporary recovery, tourism activity remained clearly below 2019 levels. As of October 2020, another economic downturn in the Austrian tourism sector begun due to the increase in the number of COVID-19 infections and the related travel warnings adopted in neighbouring countries to Austria. On 2 November 2020, a second lockdown was imposed during which accommodation establishments and restaurants had to close. According to the same study, overnight tourist stays in Austria dropped again by around 95% in November 2020. On 2 December 2020, the Austrian government announced that Austrian accommodation establishments would not reopen before January 2021. In January 2021, the website of the Federal Ministry for Agriculture, Regions and Tourism announces that accommodation establishments will remain closed also in February 2021.³ In addition, travel warnings against travelling to Austria remain in place, issued by countries which contribute majorly to the tourism activity in Austria (especially Germany). Based on the study, the Austrian authorities estimate that the total overnight tourist stays in 2020 has decreased by 36%.
- (5) COVID-19-related travel warnings and travel restrictions adopted in Austria and other countries, as well as the closure of accommodation establishments and restaurants during the national lockdowns in Austria, led to cancellations of package travel between Austria and overseas destinations as well as within Austria. The package travel sector has therefore been considerably affected.
- (6) Pursuant to the Austrian implementing measures (see below, recital (15)) of Article 17 (1) of Directive (EU) 2015/2302 (the ‘Package Travel Directive’)⁴ package travel organisers and facilitators of linked travel services⁵ are required, by means of appropriate insolvency protection, to reimburse sums already paid (such as advance payments and residual payments) and to ensure the travellers' repatriation, in so far as, due to the organiser's insolvency, the booked travel

² Study from the Austrian National Bank (OeNB) „Totalausfall der Wintervorsaison bis Neujahr lässt ein Nächtigungsminus für das Gesamtjahr 2020 von 36 % erwarten“, Wien, 04.12.2020, Available at: <https://www.oenb.at/Presse/20201204.html>.

³ https://www.bmlrt.gv.at/tourismus/corona-tourismus/massnahmen_bundesregierung.html

⁴ Article 17 paragraphs (1) and (2) of the Package Travel Directive provides that Member States shall ensure that package travel organisers established in their territory provide security for the refund of all payments made by or on behalf of travellers insofar as the relevant services are not performed as a consequence of the organiser's insolvency. If the carriage of passengers is included in the package travel contract, organisers shall also provide security for the travellers' repatriation. The security shall cover reasonably foreseeable costs, the amounts of payments made by or on behalf of travellers in respect of packages, taking into account the length of the period between down payments and final payments and the completion of the packages, as well as the estimated cost for repatriations in the event of the organiser's insolvency.

⁵ According to the Austrian Trade Regulation 1994 (*GewO 1994*, as amended) § 127 (2) (*Pauschalreiseveranstalter und Vermittler von verbundenen Reiseleistungen*), these are: organizers of package travel and facilitators of linked travel services within the meaning of the Package Travel Directive.

services are not provided either in whole or in part. This obligation may be secured by the conclusion of an insurance contract, the provision of a bank guarantee as well as by guarantees issued by a public body.

- (7) The Austrian authorities submit that, due to the extraordinary circumstances caused by the COVID-19 outbreak in the tourism and travel sector, insurance companies have largely withdrawn from the package travel insurance market across Europe and are cancelling existing insurance contracts.⁶ The Austrian authorities further submit that it has become practically impossible for organisers in Austria to secure insurance coverage by means of a bank guarantee. Without such insurance coverage, the Austrian law⁷ provides that package travel organisers and facilitators of linked travel services can no longer offer package travel or linked travel arrangements.
- (8) The Austrian authorities therefore consider that immediate measures are needed to support the package travel sector in this regard, especially in view of the absence of adequate options available in the market. The measure aims to provide, for a limited amount of time, State guarantees to package travel organisers and facilitators of linked travel services in order to ensure that in the event of their insolvency, there is adequate insolvency insurance to refund any payments received from travellers for booked travel services which were not provided (in full or in part), and to guarantee the travellers' repatriation. The measure therefore aims to ensure that package travel organisers and facilitators of linked travel services can continue to provide services and that travellers are adequately protected against the organiser's or facilitator's insolvency. According to the Austrian authorities, the duration of the guarantees is limited to 31 December 2021 as to allow the time to find a long-term solution.
- (9) 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.
- (10) 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.
- (11) The measure is notified directly under Article 107(3)(b) TFEU whilst taking into account, by analogy, the relevant provisions of Sections 2, 3.2 and 4 of the

⁶ The Austrian authorities mention in particular HDI Global SE, which used to provide insurance for a large proportion (approx.. 50%) of travel agents and organisers in Austria, but no longer offers insurance for the package travel market since the end of 2020.

⁷ According to § 127 of the Austrian Trade Regulation 1994 (GewO 1994, as amended) organizers of package travel and traders of related travel services within the meaning of the Package Travel Directive must provide security and may begin to carry out their activity, for which they have to provide security, only from the time the entitlement to provide travel services is entered in the travel insolvency insurance directory (GISA) of Austria.

Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak (the “Temporary Framework”).⁸

2.1. The nature and form of aid

- (12) The measure provides aid in the form of State guarantees to cover, for a limited amount of time, the insolvency risk of package travel organisers and facilitators of linked travel services. The measure aims to ensure that there is adequate insolvency protection to reimburse payments already received from travellers for booked travel services, which were not provided either in whole or in part, and in the latter case, to guarantee the travellers’ repatriation and the ensuing costs of repatriation.
- (13) The measure is temporary in nature and will guarantee the risk of insolvency of package travel organisers and facilitators of linked travel services until 31 December 2021. The measure provides a guarantee of 100% for the liability of package travel organisers and facilitators of linked travel services, given the current withdrawal of banks and insurance providers from package travel insurance and the difficulties for package travel organisers and facilitators of linked travel services to find affordable guarantees on the market.

2.2. Objective

- (14) The measure pursues the objectives of ensuring that package travel organisers and facilitators of linked travel services can continue to provide services, given that, in the absence of insolvency insurance they are not allowed to provide services. In addition, the measure ensures that travellers are adequately protected against the potential insolvency of package travel organisers or facilitators of linked travel services.

2.3. Legal basis

- (15) The legal bases of the measure are:
- paragraph 127 of the Trade Regulation 1994 (“*Gewerbeordnung 1994 – GewO 1994, BGBl. Nr. 194/1994*”) as amended (*BGBl. I Nr. 45/2018*);

⁸ 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 on the Functioning of the European Union to short-term export-credit insurance, OJ C 340 I, 13.10.2020, p. 1.

- the Federal Law on special subsidies for small and medium-sized enterprises (*„Bundesgesetz über besondere Förderungen von kleinen und mittleren Unternehmen (KMUFörderungsgesetz)“*).

The implementing provisions are:

- the “Guidelines of the Federal Minister for Agriculture, Regions and Tourism for the assumption of liabilities for the tourism and leisure industry 2014-2020” [*Richtlinie der Bundesministerin für Landwirtschaft, Regionen und Tourismus für die Übernahme von Haftungen für die Tourismus- und Freizeitwirtschaft 2014 - 2020*];
- the Ordinance of the Federal Minister for Digital and Economic Affairs on package tours and related travel services (Package Travel Ordinance – „PRV“) (*„Verordnung der Bundesministerin für Digitalisierung und Wirtschaftsstandort über Pauschalreisen und verbundene Reiseleistungen (Pauschalreiseverordnung – PRV), BGBl. II Nr. 260/2018“*).

- (16) The measure will enter into force after the notification of the Commission’s decision.

2.4. Administration of the measure

- (17) The Austrian Hotel and Tourism Bank (*Österreichische Hotel- und Tourismusbank GmbH*, “ÖHT“)⁹ together with the Federal Ministry for Agriculture, Regions and Tourism and the Federal Ministry for Digital and Economic Affairs are responsible for administering the measure. The granting authority is the Federal Ministry of Finance.¹⁰

2.5. Budget and duration of the measure

- (18) The estimated budget of the measure is EUR 300 million. The guarantee amount per beneficiary ranges from a minimum of EUR 13 000 to a maximum of EUR 20 million. The guarantees will be made available through the Federal budget.
- (19) The Austrian authorities confirm that the guarantees will not exceed 100% of the liability of package travel organisers and facilitators of linked travel services.
- (20) Guarantees may be granted under the measure as from the notification of the Commission’s decision until no later than 30 June 2021. The duration of the guarantee shall not exceed the 31 December 2021.

⁹ The ÖHT is a private limited company and a specialised bank according to § 3 (11) Bankwesengesetz, with a licence limited to funding activities in the public interest. It does not operate on the regular banking market but implements and administers the funding programmes of the State.

¹⁰ The guarantees will be made available through a specific guarantee framework in § 7 para 2b KMUFörderungsgesetz (SME promotion act). The indemnification for the guarantees provided by the ÖHT is done by the Federal Ministry of Finance.

2.6. Beneficiaries

- (21) The beneficiaries of the measure are package travel organisers and facilitators of linked travel services¹¹, which are SMEs or large enterprises,¹² active in Austria. Financial institutions are excluded as eligible beneficiaries.
- (22) The Austrian authorities estimate that number of beneficiaries is between 501 and 1000.
- (23) Aid may not be granted under the measure to enterprises that were already in difficulty within the meaning of the General Block Exemption Regulation (“GBER”)¹³ on 31 December 2019. Aid may be granted to micro and small enterprises that were in difficulty within the meaning of the General Block Exemption Regulation (“GBER”)¹⁴ 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 aid¹⁵ or restructuring aid.¹⁶

2.7. Sectoral and regional scope of the measure

- (24) The measure is open to undertakings in the tourism sector (i.e package travel organisers and facilitators of linked travel services, recital (21) above) and excludes the financial sector. It applies to the whole territory of Austria.

¹¹ According to § 127 (2) GewO 1994 *Pauschalreiseveranstalter und Vermittler von verbundenen Reiseleistungen*, these are: organizers of package travel and facilitators of linked travel services within the meaning of the Package Travel Directive.

¹² 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.

¹³ 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, 26.6.2014, p. 1.

¹⁴ 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, 26.6.2014, p. 1[, 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, and 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.]

¹⁵ 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.

¹⁶ 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.

2.8. Basic elements of the measure

2.8.1. General information

- (25) In order to benefit from aid under the measure, package travel organisers and facilitators of linked travel services have to follow the following procedure:
- (26) Applications for aid under the measure can be submitted to the ÖHT via its customer portal¹⁷ by package travel organisers and facilitators of linked travel services. Applications are being submitted since 4 January 2021. The final acceptance of applications is subject to approval of the measure by the Commission.
- (27) Applicants need to fulfil the following eligibility criteria, which are examined by the ÖHT in the application process and confirmed in its reports:
- Business licence for the specific purpose of selling package travels must have existed on 30 November 2020;
 - The beneficiary was not qualified as a company in difficulty (except micro and small enterprises) and, at the moment of application, the beneficiary must not be subject to collective insolvency procedure under national law (recital (23)).
- (28) Upon receipt of the complete applications, the ÖHT will examine the applications and will issue reports regarding the provision of guarantees to the applicants. The ÖHT shall submit these reports and obtain the opinion of the Federal Ministry for Agriculture, Regions and Tourism on compliance of the application with the Guidelines (recital (15)). The ÖHT will also seek the Federal Ministry's approval for the provision of the guarantee to the applicant. Upon the approval issued by the representative of the Federal Ministry, a declaration of liability will then be issued. The declaration of liability is implicitly accepted by the applicant by transferring an administrative fee and guarantee premia (recital (36) below) to the ÖHT. The administrative fee that the applicant has to pay amounts to 1% of the guarantee requested.¹⁸
- (29) Once the declaration of liability is effectuated, the insolvency liability will be assumed by the ÖHT which will receive the necessary financing from the Federal budget.¹⁹
- (30) In the event of a subsequent insolvency of the package travel organiser or facilitators of linked travel services, travellers will be able to receive a reimbursement for advance payments they made to the package travel organiser or facilitators of linked travel services by making a claim to a liquidator ("Abwickler"). The liquidator has previously entered into a special agreement ("Abwicklungsvereinbarung") with the ÖHT. At the request of the liquidator, who shall be responsible for the processing and payment of the travellers' claims, the ÖHT shall transfer to him the respective amount of liability. The processing costs

¹⁷ The portal is available at www.oeht.at.

¹⁸ With a minimum of EUR 500 and a maximum of EUR 30.000.

¹⁹ Which is administered in trust by the ÖHT.

of the liquidator will be borne by the package travel organiser or facilitators of linked travel services.

- (31) The risk exposure will be initially covered (whenever available) by private insurance or bank guarantee of the beneficiary and only in absence of a private insurance covering the same risk, the guarantee will be triggered by the State.
- (32) The calculation of the liability amount will be determined on the basis of the 2019 annual turnover of the beneficiaries. Turnover data shall be calculated on the basis of those activities relating to the organisation of package travel and linked travel arrangements, within the meaning of the Package Travel Directive. If no annual turnover is available in 2019, the turnover of the latest 12 calendar months shall be used for the calculation. The amount of liability shall be explicitly stated in the declaration of liability.

More specifically, the liability amount:

- shall not be less than EUR 13 000 or

- it shall be at least 18 % of the turnover of the calendar year referred to above or at least 50 % of the turnover of the peak month of that calendar year, whichever is the greater. The liability amount may only cover risk up to a maximum amount of EUR 20 million per beneficiary.

- (33) The ÖHT shall establish its own reserve for the purpose of risk provisioning for payments from the guarantees provided. The reserve will be established with funds allocated by the Federal budget, under the measure (recital (18)). The reserve will be further increased by the premia to be paid by the beneficiaries (recital (36)). This reserve may only be used for payments under these guarantees. This reserve shall be kept separate from any other reserves administered by the ÖHT.
- (34) The insolvency protection granted under the measure shall benefit travellers regardless of their place of residence, the place of departure or the place of sale of the package.
- (35) The guarantees will cover the following risks of the beneficiaries:
- payments already made (down payments and residual payments) in so far as, as a result of the insolvency of the beneficiary, the travel services are not performed in whole or in part;
 - the costs necessary for the repatriation of travellers and, if necessary, the costs of accommodation prior to their repatriation, incurred as a result of the insolvency of the beneficiary; and
 - where applicable, the costs necessary for the continuation of the package or the linked travel service provided.

2.8.2. *The level of premia*

- (36) For the determination of the level of guarantee premia and the calculation method, the Austrian authorities indicated that they will apply the minimal rates established in Section 3.2 of the Temporary Framework, namely:

<i>Type of recipient</i>	<i>For 1st year</i>
<i>SMEs</i>	<i>25 bps</i>
<i>Large enterprises</i>	<i>50 bps</i>

- (37) The premium will be paid by the beneficiary package travel organiser or facilitators of linked travel services to the ÖHT. The premium is due before the declaration of liability takes effect and is to be paid by the beneficiary of the guarantee.
- (38) The Austrian authorities have also indicated that the mobilisation of the guarantees will be contractually linked to specific conditions, which have to be agreed between the parties when the guarantee is initially granted.

2.9. Cumulation

- (39) The Austrian authorities confirm that aid granted under the measure may be cumulated with aid under de minimis Regulations²⁰ or the GBER or the Temporary Framework provided the provisions and cumulation rules of those Regulations and Communication are respected.

2.10. Monitoring and reporting

- (40) Although the measure is notified under Article 107(3)(b) TFEU, the Austrian authorities indicated that they will apply 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 on the comprehensive national State aid website or Commission's IT tool within 12 months from the moment of granting²¹).

3. ASSESSMENT

3.1. Lawfulness of the measure

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

²⁰ 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).

²¹ Referring to information required in Annex III to Commission Regulation (EU) No 651/2014. For guarantees, the nominal value of the underlying instrument shall be inserted per beneficiary.

3.2. Existence of State aid

- (42) 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.
- (43) The measure is imputable to the State, since it is granted and administered by a State agency (the ÖHT), by the Ministry of Finance and by the Federal Ministries for Agriculture, Regions and Tourism and for Digital and Economic Affairs (recital (17)) and it is based on the “*Guidelines of the Federal Minister for Agriculture, Regions and Tourism for the assumption of liabilities for the tourism and leisure industry 2014-2020*” and its implementing provisions (recital (15)). It is financed through State resources, since it is financed by the Federal Budget (recital (17)).
- (44) The measure confers an advantage on its beneficiaries in the form of non-market conform guarantees (recital (12)) to cover, for a limited amount of time, the insolvency risk of package travel organisers and facilitators of linked travel services. The measure thus relieves those beneficiaries of costs which they would have had to bear under normal market conditions.
- (45) The advantage granted by the measure is selective, since it is awarded only to certain undertakings, in particular package travel organisers and facilitators of linked travel services. Moreover, undertakings active in the financial sector are excluded (recital (21)).
- (46) 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.
- (47) In view of the above, the Commission concludes that the measure constitutes aid within the meaning of Article 107(1) TFEU to package travel organisers and facilitators of linked travel services. The Austrian authorities do not contest that conclusion.

3.3. Compatibility

- (48) 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.
- (49) 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*”.
- (50) The Commission has already acknowledged 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”²²

- (51) The COVID-19 outbreak had a significant impact on the Austrian economy and notably on the tourism and package travel sector (see recitals (3)-(5)).
- (52) The Commission assess the measure directly on the basis of Article 107(3)(b) TFEU, since it does not fall within the scope of any of its guidelines. In particular as regards section 3.2 of the Temporary Framework, the measure does not fall within the scope of that section, because it does not concern State guarantees on the beneficiaries’ loans but State guarantees on the beneficiaries’ liability as package travel organisers and facilitators of linked travel services. Nevertheless, due to the similarities of the State guarantees under section 3.2 of the Temporary Framework and the State guarantees at issue in the present case, the Commission applies by analogy certain requirements of section 3.2.
- (53) In particular, by analogy with points 25(a), 25(c), 25(f), 25(h) and 25(h)bis of Section 3.2 of the Temporary Framework, the Commission considers that the measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State on the basis of the following considerations:
- (a) For the determination of the level of guarantee premia to be paid by the beneficiary undertakings and the calculation method, Austria applied the minimum premia set out in point 25(a) of the Temporary Framework (recital (36)). Therefore, the Commission considers justified the levels of the premia set by Austria;
 - (b) The guarantees are granted under the measure by 30 June 2021 at the latest (recital (20)) by analogy with point 25(c) of the Temporary Framework;
 - (c) The guarantees will have a duration of less than six years in line with point 25(f) of the Temporary Framework (recital (20));
 - (d) Aid may not be granted under the measure to medium and large enterprises that were already in difficulty on 31 December 2019 (see recital (23)). The measure therefore complies with point 25(h) of the Temporary Framework. 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 aid or restructuring aid (see recital (23)). The measure therefore complies with point 25(h)bis of the Temporary Framework.
- (54) As regards point 25(d) of the Temporary Framework, as well as the part of point 25(f) that concerns the coverage limits of the State guarantees, the Commission considers that they are not applicable by analogy, because the idea behind them is to place a maximum limit on the leverage possibilities of beneficiaries when contracting loans at better than market terms. However, that consideration

²² See Temporary Framework, Section 2.

(avoidance of excessive borrowing) does not concern State guarantees that do not cover loans but only the beneficiaries' liability as package travel organisers and facilitators of linked travel services. Nevertheless, there is still a need to have a maximum limit in the State guarantees at stake, in order to avoid excessive distortions of competition through high amounts of aid. The Commission considers the following limits and safeguards appropriate in that regard:

- (a) The guarantee amount will only cover risk up to a maximum amount of EUR 20 million per beneficiary (recital (18));
 - (b) The risk exposure will be initially covered (whenever available) by private insurance or bank guarantee of the beneficiary and only in absence of a private insurance covering the same risk the guarantee will be triggered by the State (recital (31));
 - (c) The guarantees will have a much shorter duration than the standard of six years considered under point 25(f) of the Temporary Framework (recital (20));
 - (d) Austria has indicated that the guarantees will not exceed 100% of the liability of package travel organisers and facilitators of linked travel services (see recital (19));
 - (e) The guarantees will be granted upon an application submitted by eligible package travel organisers and facilitators of linked travel services and an evaluation process by the authorities administering the measure in conformity with the legal basis of the measure (recital (15)), and the measure will enter into force after adoption of the present decision (recital (16));
 - (f) Austria has confirmed that the mobilisation of the guarantees will be contractually linked to specific conditions, which have to be agreed between the parties when the guarantee is initially granted (recital (38)).
- (55) As regards section 3.4 of the Temporary Framework, the measure introduces safeguards in relation to the possible indirect aid in favour of the financial institution involved, namely ÖHT, in order to limit undue distortions to competition. The financial intermediary ÖHT, which is a specialised bank not operating on the regular banking market but implementing and administering funding programmes of the State (recital (17)), will cap the administrative fee charged to the beneficiaries for the processing of the applications under the measure at 1%, with a minimum fee of EUR 500 and a maximum of EUR 30 000 (recital (26)). In addition, ÖHT shall establish its own reserve for the purpose of risk provisioning for payments from the guarantees provided. This reserve may only be used for payments under these guarantees and it shall be kept separate from the other reserves that the ÖHT administers (recital (33)). The safeguards thus ensure that ÖHT, to the largest extent possible, passes on the advantages of the measure to the final beneficiaries (recital (21)). The measure therefore complies with points 28 to 31 of the Temporary Framework applied by analogy.
- (56) Finally, although the measure is notified directly under Article 107(3)(b) TFEU, Austria has confirmed that it will respect the applicable monitoring and reporting obligations laid down in the Temporary Framework (see recital (40)). The

Austrian authorities further confirm that aid under the measure may only be cumulated with other aid, provided the specific provisions in the sections of the Temporary Framework are respected and the cumulation rules of the relevant Regulations are respected (see recital (39)).

4. COMPLIANCE WITH INTRINSICALLY LINKED PROVISIONS OF DIRECTIVE 2014/59/EU AND REGULATION (EU) 806/2014

- (57) Without prejudice to the possible application of Directive 2014/59/EU on bank recovery and resolution (“BRRD”)²³ and of Regulation (EU) 806/2014 on the Single Resolution Mechanism (“SRMR”),²⁴ in the event that an institution benefiting from the measures meets the conditions for the application of that Directive or of that Regulation, the Commission notes that the notified measures do not appear to violate intrinsically linked provisions of the BRRD and the SRMR.
- (58) In particular, aid granted by Member States to non-financial undertakings as final beneficiaries under Article 107(3)(b) TFEU in line by analogy with the Temporary Framework, which is channeled through credit institutions or other financial institutions as financial intermediaries, may also constitute an indirect advantage to those institutions.²⁵ Nevertheless, any such indirect aid granted under the measure does not have the objective of preserving or restoring the viability, liquidity or solvency of those institutions. The objective of the measure is to remedy the liquidity shortage faced by undertakings that are not financial institutions and to ensure that the disruptions caused by the COVID-19 outbreak do not undermine the viability of such undertakings, especially of SMEs. As a result, aid granted under the measure does not qualify as extraordinary public financial support under Article 2(1)(28) BRRD and Article 3(1)(29) SRMR.
- (59) Moreover, as indicated in recital (55) above, the measure introduces safeguards in relation to any possible indirect aid in favour of the financial institution involved, namely ÖHT, in order to limit undue distortions to competition. Such safeguards ensure that ÖHT, to the largest extent possible, passes on the advantages provided by the measure to the final beneficiaries.
- (60) The Commission therefore concludes that the measure does not violate any intrinsically linked provisions of the BRRD and the SRMR.

²³ OJ L 173, 12.6.2014, p. 190.

²⁴ OJ L 225, 30.7.2014, p. 1.

²⁵ Points 6 and 29 of the Temporary Framework.

5. 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

