EUROPEAN COMMISSION

Brussels, 16.12.2010
C(2010) 9313 final

COMP Operations

Subject: State aid SA.32018 (2010/N) – Austria
Fourth extension of Austrian bank support scheme

Sir,

I. PROCEDURE

(1) On 1 December 2010, Austria notified the fourth extension of its support measures to the banking and insurance industry until 30 June 2011.

(2) The original scheme, which consisted of a package of measures to ensure the stability of the financial system, was notified on 31 October 2008 and approved by the Commission on 9 December 2008[1]. The first extension of the scheme, including certain amendments, was adopted on 30 June 2009[2]. The second extension was approved on 17 December 2009[3]. The third extension was approved on 25 June 2010[4].

(3) The Commission notes that Austria accepts exceptionally that the decision be adopted in English.

II. DESCRIPTION

(4) In response to the exceptional turbulence in world financial markets Austria initially brought forward a package of measures ("the scheme") designed to restore stability of the financial system and to remedy a serious disturbance in the economy of Austria. The measures in that package were based on two Austrian laws, i) the *Interbankmarktstärkungsgesetz* (IBSG, law on enhancing inter-bank markets) and ii)

1 OJ C 3, 8.1.2009, p. 2.
2 OJ C 172, 24.7.2009, p. 4.
3 OJ C 28, 4.2.2010, p. 6
4 OJ C 250, 17.9.2010, p. 4.

Seiner Exzellenz Herrn Dr. Michael SPINDELEGGER
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the *Finanzmarktstabilitätsgesetz* (FinStaG, law on enhancing stability of the financial market). Primarily aimed at addressing the overall lack of trust between financial institutions, the IBSG with an initial budget of EUR 75 billion contained two main instruments: a clearing bank and the possibility of guaranteeing liability issuances of financial institutions. The aim of the FinStaG with an initial budget of EUR 15 billion is to remedy an ad-hoc problem of a financial institution. It provides mainly for the recapitalisation of financial institutions, the provision of loans, and guaranteeing of bank assets and liabilities. The measures are explained in detail in the Commission Decision of 9 December (N557/2008). An accompanying decree[5], which was published on 30 October 2008, contains further details in respect of that framework.

(5) The IBSG expires on 31 December 2010 and will not be prolongued.

(6) However, the Austrian authorities seek to prolong the entry window of the existing scheme under FinStaG for a period of six months until 30 June 2011. That request means that apart from the clearing bank all the forms of bank support measures covered by the scheme would remain available.

(7) The changes in the scope of the scheme, i.e. the expiration of the IBSG, lead to a reduction of the overall budget to EUR 15 billion (as compared to EUR 90 billion in the original scheme and EUR 65 billion in the most recent prolongation).

(8) The extended scheme takes into account the requirements set out in the Commission Communication of 1 December 2010 on the application, after 1 January 2011, of State aid rules to support measures in favour of banks in the context of the financial crisis.[6]

(9) All other conditions of the scheme, as approved by the Commission Decisions in cases State aid N557/2008, N352/2009, N663/2009 and N241/2010, respectively, remain unchanged and continue to apply for the modified scheme.

(10) Pursuant to point 41 of the Banking Communication[7] Austria has submitted a report on the use of the scheme, covering the period 1 May 2010 to 31 October 2010. During the reporting period, capital injections of roughly EUR 500 million have been provided to beneficiary institutions. Moreover, guarantees in the amount of EUR 1 billion have been granted.

(11) That report shows that several Austrian credit institutions participated in the scheme and as a result could maintain their activities and continue lending to the real economy. Thus, according to the report an aggravation of the financial crisis was prevented.

III. POSITION OF AUSTRIA

(12) Austria acknowledges that the liquidity situation on the Austrian market has improved since the beginning of the crisis. However, since the financial situation is still fragile, it is necessary to maintain part of the scheme (measures under FinStaG). Therefore,

5 "Festlegung näherer Bestimmungen über die Bedingungen und Auflagen für Maßnahmen nach dem Finanzmarktstabilitätsgesetz und dem Interbankmarktstärkungsgesetz", 30 October 2008, BGBl II, Nr. 382/2008.

6 http://ec.europa.eu/competition/state_aid/legislation/banks_en.pdf

7 Communication from the Commission – The application of State aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis ("Banking Communication"), OJ C 270, 25.10.2008.

Austria requests a prolongation of the modified scheme for another six months until 30 June 2011.

(13) Austria undertakes to maintain the commitments made since the introduction of the scheme which have been taken into account by the Commission in its decision of 25 June 2010 (N 241/2010).

(14) Furthermore, Austria undertakes to submit a restructuring plan for any bank which benefits from a recapitalisation after 31 December 2010, independently of whether the beneficiary pursuant to the rules set out in the Recapitalisation Communication[8] is considered to be fundamentally sound or distressed. Austria undertakes that the restructuring plan to be submitted shall comply with the principles set out in the Restructuring Communication[9] in order to re-establish the individual bank's long-term viability without reliance on State support, while containing adequate burden-sharing measures and measures to limit distortions of competition.

(15) In addition to the existing commitments concerning reporting obligations, Austria undertakes to submit to the Commission a concise mid-term review on the operation of the guarantee scheme by 15 April 2011 at the latest. Also, Austria commits to report comprehensively on the cost of comparable guaranteed and non-guaranteed debt issuances (instrument, volume, rating, currency and any other relevant parameters).

(16) The Austrian Central Bank confirms in a letter of 30 November 2010 the view of the Austrian authorities that a prolongation of the scheme (measures under FinStaG) is necessary to ensure financial stability in Austria. Its reasons for this view are the continued uncertainty on financial markets and the risk of negative spill-over effects possibly affecting Austrian financial institutions. The volatility of financial markets has been shown in the context of the sovereign crises. As further setbacks in the recovery process or renewed shocks cannot be excluded, it is necessary to prolong the Austrian support scheme for another six months.

IV. ASSESSMENT

(17) In its decision of 9 December 2008, the Commission concluded that the scheme constitutes State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union ("TFEU"). However it found that the measures were compatible with the internal market under Article 107(3)(b) TFEU, because they were apt to remedy a serious distortion of the Austrian economy. To this end, the Commission had assessed the appropriateness, necessity and proportionality of the measure.

(18) The Commission observes that the prolongation of the modified scheme is a response to the financial difficulties that Austria, as most Member States, continues to experience. Since one objective of the measures is to provide short- and medium-term financing as well as capital to financial institutions which are unable to obtain such

8 Communication on the recapitalisation of financial institutions in the current financial crisis: limitation of aid to the minimum necessary and safeguards against undue distortions of competition ("Recapitalisation Communication"), OJ C 10, 15.01.2009, p. 2.

9 Commission Communication on the return to viability and the assessment of restructuring measures in the financial sector in the current crisis under the State aid rules ("Restructuring Communication"), OJ C 195, 19.08.2009.

funds on the financial markets, it is important to ensure the availability of the scheme as long as the global financial crisis continues.

(19) Although access to funding for banks has gradually improved in most funding markets over the past year and is no longer a systematic and generalised problem, markets have not yet fully returned to entirely normal functioning. Against this background and taking into account the residual fragility of the recovery process it is necessary to ensure financial stability as confirmed by the Central Bank of Austria.

(20) However, the improvement of liquidity conditions has led to a modification of the scheme in that the measures contained in the IBSG are not longer needed and will therefore be discontinued.

(21) As regards the specific features of the scheme, in assessing the request for the prolongation the Commission has to balance its positive effects for financial stability, the distortions of competition that the extension entails and the delay in the return to a contain minimum exit incentives, and a gradual alignment to market conditions should take place in order to minimise negative spill-over effects on competitors and other Member States. The Commission considers that the conditions of the scheme comply with those requirements.

(22) The renewed prolongation is in line with the requirements set out in the Commission Communication of 1 December 2010 on the application, after 1 January 2011, of State aid rules to support measures in favour of banks in the context of the financial crisis. In particular, that Communication requires the presentation of a restructuring plan whenever recapitalisation measures are granted. The Commission recalls that at the beginning of the crisis it has established a distinction between distressed and fundamentally sound financial institutions. That distinction was based on the concern in late 2008 that sound banks, whilst catering for capital needs resulting from significant impairments and temporary difficulties to raise capital on markets, would avoid having recourse to the State when faced with the requirement to restructure and thus decrease their lending to the real economy. At present, banks have reduced capital needs and face fewer difficulties to raise capital on the markets. Therefore, what matters today seems to be whether financial institutions still need State capital injections or whether they can raise capital on the market.

(23) As a result, banks which have recourse to State capital or impaired assets relief as of 2011 should be required to submit to the Commission a restructuring plan as described in the Restructuring Communication showing the bank’s determination to undertake the necessary restructuring efforts and return to viability without undue delay.

(24) The Commission notes that Austria confirms that all the commitments made in relation to the Scheme will continue to apply, including those related to presenting every six months a report on the operation of the Scheme. Furthermore, the Commission notes that Austria committed to submit individual restructuring plans within six months for all beneficiaries of recapitalisations.

(25) On the basis of the above, the notified prolongation of the scheme does not alter the Commission's previous assessment in the decision of 9 December 2008 and the prolongation decisions of 30 June 2009, 17 December 2009 and 25 June 2010. On the basis of these considerations, the prerequisites for the compatibility of schemes with Article 107(3)(b) TFEU that have been established by the Banking Communication, the Recapitalisation Communication and the Commission's subsequent decisional practice continue to apply. The Commission considers that the notified extension of the

scheme until 30 June 2011 complies with the requirements set out above and is compatible with the internal market.

(26) As regards the combination of this scheme with other aid measures, as indicated in the Annex to the Restructuring Communication, any restructuring plan should contain all State aid received as individual aid or under a scheme during the restructuring period and all such aid needs to be justified as satisfying all criteria prescribed by the Restructuring Communication (i.e. return to viability, own contribution by the beneficiary and limitation of competition distortion). This means that the Commission needs to take a view in its final decision as to whether any aid granted during the restructuring period satisfies the criteria required for the authorisation of restructuring aid. To this end an individual ex ante notification is necessary.

(27) Furthermore, the Commission recalls that, based on paragraph 16 of the Restructuring Communication, should further aid not initially foreseen in a notified restructuring plan be necessary for the restoration of viability, this cannot be granted under an approved scheme but needs to be subject to individual ex ante notification and any such further aid will be taken into account in the Commission’s final decision on that bank.

(28) In addition to the above, Austria agrees to provide the Commission with a concise mid-term review of the operation of the scheme by 15 April 2011, and to complement its future reports on the operation of the scheme with updated data on the cost of comparable (nature, volume, rating, currency, etc.) non-guaranteed and guaranteed debt issuances[10]. That information will allow the Commission to assess the appropriateness, necessity and proportionality of possible further prolongations of the scheme beyond 30 June 2011 and the conditions for such prolongations. Any further prolongation will require the Commission's approval and will have to be based on a review of the developments in financial markets and the scheme's effectiveness.

V. DECISION

The Commission finds that the notified measures constitute a State aid scheme within the meaning of Article 107(1) TFEU. Since the above-mentioned aid measures fulfil the conditions under Article 107(3)(b) TFEU, they are compatible with the internal market. The Commission has accordingly decided not to raise objections.

The Commission recalls that, according to the commitment given by Austria, the scheme including the measures taken within its framework is limited in duration until 30 June 2011.

The Commission notes that Austria accepts exceptionally that the decision be adopted in English.

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[10] See point 23 of the Commission decision of 28 April 2009.

Your request should be sent by registered letter or fax to:

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B-1049 Brussels
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Yours faithfully,
For the Commission

Joaquín ALMUNIA
Vice President