



EUROPEAN COMMISSION

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C(2021) 5416 final

SENSITIVE* : *COMP Operations*

**Subject: State Aid SA.63708 (2021/N) – Austria
COVID-19: Fifth amendment of the existing aid scheme SA.56981**

Excellency,

1. PROCEDURE

- (1) By electronic notifications of 25 June 2021, Austria notified further amendments (the “notified amendments”) to the State aid measure SA.56981 - *COVID-19: Austrian guarantee scheme on bridge loans*. The Commission had approved the measure by Decision of 17 April 2020¹ (“the initial Decision”), which was subsequently amended by SA.57520, SA.57640, SA.60599 and SA.61210² (collectively the “existing aid scheme”), under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak (“Temporary Framework”)³. Austria submitted additional information on 7 and 8 July 2021.

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¹ Commission Decision C(2020) 2537 final, SA.56981, of 17 April 2020.

² Commission Decision C(2020) 3956 final, SA.57520, of 9 June 2020 (first amendment Decision); Commission Decision C(2020) 5030 final, SA.57640, of 17 July 2020 (second amendment Decision); Commission Decision C(2021) 233 final, SA.60599, of 12 January 2021 (third amendment Decision) and Commission Decision C(2021) 762 final, SA. SA.61210, of 2 February 2021 (fourth amendment Decision).

³ 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 Commission Communications C(2020) 2215 (OJ C 112I, 4.4.2020, p. 1), C(2020) 3156 (OJ C 164, 13.5.2020, p. 3), C(2020) 4509 (OJ C 218, 2.7.2020, p. 3), C(2020) 7127 (OJ C 340I, 13.10.2020, p. 1) and C(2021) 564 (OJ C 34, 1.2.2021, p. 6).

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- (2) The existing aid scheme consists of two parts, namely
- Part 1: the Austria Wirtschaftsservice GmbH (“aws”) – guarantee scheme for small and medium-sized enterprises (“SMEs”) active in all sectors; and
- 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.
- (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 1/1958⁴ and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE NOTIFIED AMENDMENTS

- (4) Following the 5th Amendment of the Temporary Framework, Austria wishes to extend the duration of the existing aid scheme until 31 December 2021, with the effect that, aid can be granted until 31 December 2021 at the latest.
- (5) The amended Temporary Framework also increased the overall aid ceiling per undertaking, as referred to in its section 3.1, point 22(a), from EUR 800 000 to EUR 1.8 million per undertaking. The aid ceiling for undertakings active in the fishery and aquaculture sector increased from EUR 120 000 to EUR 270 000; and for undertakings active in the primary production of agricultural products from EUR 100 000 to EUR 225 000 (point 23(a) of the Temporary Framework).
- (6) Against this background, Austria also notified an increase in the aid ceiling per undertaking. Aid can be granted, depending on the sector, up to the maximum ceilings referred to in point 22(a) and point 23(a) of the Temporary Framework. Where an undertaking is active in several sectors to which different maximum amounts apply Austria will ensure, by appropriate means, such as separation of accounts, that the relevant ceiling is respected for each of those activities and that the overall maximum amount of EUR 1.8 million is not exceeded per undertaking. Where an undertaking is active in the sectors covered by point 23(a), the overall maximum amount of EUR 270 000 for undertakings active in the fishery and aquaculture sector and EUR 225 000 for undertakings active in the primary production of agricultural products should not be exceeded per undertaking.
- (7) Apart from the notified amendments, Austria confirms that no further amendments are proposed to the existing aid scheme and that all other conditions of that scheme remain unaltered.
- (8) The legal bases of the existing aid scheme as described in recitals (9) to (11) of the initial Decision will remain valid. Austria has already adopted the amendments of the basic laws⁵ and submitted draft amendments of the relevant

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

⁵ Garantiesgesetz 1977, KMU-Förderungsgesetz, Garantiesgesetz 1977 COVID-19-HaftungsrahmenV and KMU-Förderungsgesetz COVID-19-HaftungsrahmenV.

directives⁶. Austria confirmed that those contain suspensory clauses and, therefore, aid will not be granted before the notification of the Commission's approval decision to Austria.

3. ASSESSMENT

3.1. Lawfulness of the measure

- (9) As described in recital (8), the amendments of the basic laws have already been adopted. However, the Commission notes that the relevant directives for the existing aid scheme were notified in draft status and that due to the suspensory clauses aid will not be granted before the notification of the Commission's approval decision to Austria. The Commission therefore considers that the Austrian authorities have respected their obligations under Article 108(3) of the TFEU by notifying the amendments before putting them into effect.

3.2. Existence of State aid

- (10) 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.
- (11) The existing aid measures concerned constitute State aid in the meaning of Article 107(1) TFEU for the reasons set out in recitals (25) to (30) of the initial Decision. The notified amendments do not alter that conclusion. The Commission therefore refers to that initial assessment and concludes that the existing aid scheme, as amended, constitutes State aid in the meaning of Article 107(1) TFEU.

3.3. Compatibility

- (12) The existing aid scheme is compatible with the internal market pursuant to Article 107(3)(b) TFEU, since it meets the conditions of section 2 and sections 3.1 and 3.2 of the Temporary Framework for the reasons set out in recitals (31) to (42) of the initial Decision. The Commission therefore refers to the respective assessment of the initial decision.
- (13) The notified amendments do not affect that conclusion. First, the prolongation of the duration of the existing aid scheme until 31 December 2021 (recital (4)) is in line with points 22(d) and 25(c) of the Temporary Framework. Second, the increased aid ceiling (recital (6)) is in line with points 22(a) and 23(a), section 3.1 of the Temporary Framework. For undertakings active in several sectors the maximum aid ceiling will respect the conditions set out in point 23bis of the Temporary Framework (recital (6)(5)).

⁶ aws-Garantierichtlinie gemäß Garantiesetz 1977, aws-Garantierichtlinie gemäß KMU-Förderungsgesetz und Richtlinie der Bundesministerin für Landwirtschaft, Regionen und Tourismus für die Übernahme von Haftungen für die Tourismus- und Freizeitwirtschaft 2014-2020.

- (14) Apart from the notified amendments, Austria confirms that no further amendments are proposed to the existing aid scheme and that all other conditions of the scheme remain unaltered.
- (15) The Commission therefore considers that the notified amendments are necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State pursuant to Article 107(3)(b) TFEU, since they meet all the relevant conditions of the Temporary Framework. The Commission therefore considers that the notified amendments do not alter the Commission's conclusion on the compatibility of the existing aid scheme in the initial decision.

4. CONCLUSION

The Commission has accordingly decided not to raise objections to the scheme, as amended, on the grounds that it is compatible with the internal market pursuant to Article 107(3)(b) 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

