EUROPEAN COMMISSION

Brussels, 30.06.2010
C(2010)4487 final

**Subject: State aid N 261/2010 (ex PN 9/2010) - Austria
Second restructuring aid for BAWAG P.S.K.**

Sir,

The Commission wishes to inform you that, having examined the information supplied by the Austrian authorities on the measures referred to above, it has decided not to raise objections to the notified measures.

## I. PROCEDURE

(1) On 6 October 2009 Austria pre-notified State aid measures in form of a EUR 400 million asset guarantee and a EUR 550 million capital injection, provided by the Republic of Austria to BAWAG P.S.K.

(2) From September until December 2009 several teleconferences and other information exchanges between the Austrian authorities and the Commission services took place.

(3) On 18 November 2009 Austria notified the aid measures to the Commission. On the same day Austria submitted an updated restructuring plan for the bank.

(4) By decision of 22 December 2009 in case N 640/2009[1] ("decision N 640/2009") the Commission authorised the EUR 400 million asset guarantee and the EUR 550 million capital injection, for reasons of financial stability, for a period of 6 months.

[1] Commission Decision of 22.12.2009 in case State aid N 640/2009, OJ C55, 5.3.2010, p.3.

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(5) On 22 March 2010 Austria submitted to the Commission a modified restructuring plan for the bank.

(6) Between March and June 2010 several meetings, telephone conferences and information exchanges between Austria and the Commission services took place. Austria requested the prolongation of the deadline for the divestiture of Stiefelkönig until […][*].

(7) On 20 June 2010 Austria notified to the Commission that the whole EUR 400 million asset guarantee would be withdrawn as of 22 June 2010. On 21 June 2010 Austria notified several commitments regarding burden-sharing and measures limiting distortions of competition as well as an update of the modified restructuring plan for BAWAG P.S.K.

(8) Also on 21 June 2010 Austria informed the Commission that it exceptionally accepts this decision to be adopted in English language.

## II. DESCRIPTION

### 1. The beneficiary

(9) BAWAG P.S.K. was created in 2005 through the merger of two Austrian banks, BAWAG and P.S.K., the formerly State-owned postal bank. The resulting bank is the fifth largest banking group in Austria. Through the merger with P.S.K. the bank benefits from grandfathered State guaranteed liabilities. The bank concentrates its business on retail and commercial customers. It also plays an important role regarding Austrian payment transactions.

(10) In 2005 and 2006, BAWAG P.S.K. (hereinafter referred to as "BAWAG") experienced heavy losses caused by risky investments made in the United States' securities market (so called "Caribbean Transactions" and "Refco"). Subject to several commitments by Austria, the Commission approved a EUR 900 million State guarantee and the restructuring plan by decision of 27 June 2007 in case C 50/2006[2] ("decision C 50/2006"). The bank has until now, with one exception[3], implemented the 2007 restructuring plan which lasts until the end of 2011.

(11) The EUR 900 million guarantee facilitated the sale of the bank to its current owners. Since May 2007 the vast majority of the bank is indirectly owned by a consortium under the lead of the US-based investment company Cerberus. The Austrian Postal Operator (Post AG), the Austrian arm of insurance company Generali, the mortgage lender Wüstenrot and a group of Austrian investors hold together indirectly a minority stake.

(*) Confidential information

2 Commission Decision of 27.6.2007 in case State aid C 50/2006, restructuring aid for BAWAG P.S.K., OJ L 83, 26.3.2008, p. 7.

3 By the Commission decision C 50/2006 BAWAG P.S.K. was obliged to divest Stiefelkönig Schuhhandelsgesellschaft m.b.H. by the end of 2009. The bank did not comply with this condition. According to the bank, this was not possible due to market circumstances. The bank requested an extension of the deadline.

(12) Apart from Austria, BAWAG is currently present in a number of countries, for example in Hungary, Slovenia and Malta. The BAWAG group inter alia consists of the following financial institutions and participations: BAWAG P.S.K., Österreichische Verkehrskreditbank AG (Vienna), easybank AG (Vienna), BAWAG P.S.K. Wohnbaubank AG (Vienna), BAWAG Banka d.d. (Ljubljana, Slovenia), BAWAG Malta Bank Limited (Sliema/Malta), BAWAG P.S.K. Invest GmbH (Vienna), BAWAG P.S.K.-Leasinggruppe, BAWAG P.S.K.-Immobilienkonzern. In addition, the bank has a number of participations in the real economy and other financial sector companies.

(13) As of 31 December 2009 (after the State capital injection) BAWAG had a balance sheet total of EUR 41.225 billion and its Tier 1 capital ratio was 10.0 % on a consolidated level (end of 2008: 6.6%). As of 31 December 2009 its own capital ratio was 13.6% (at the end of 2008: 9.8%). In July 2009 the bank successfully placed EUR 80 million Tier 2 capital on the market. In August 2009 the bank received EUR 205 million of capital through a shareholder contribution. For the year 2009, the bank reported a profit before tax of EUR 45.6 million and a consolidated loss after tax and minorities of EUR 22.1 million (year 2008: loss before tax of EUR 614.5 million, consolidated loss after tax and minorities of EUR 547.5 million). BAWAG has a strong liquidity position. The bank's rating is Baa1 with stable outlook[4].

## 2. Implementation of Commission decision C 50/2006

(14) BAWAG is a bank under restructuring. It already received State support in 2006, approved by decision C 50/2006. Following this decision and conditions attached to it, the bank had to divest a range of assets, namely more than 50% stakes in P.S.K. Versicherung AG and BAWAG Versicherung AG (merged), real estate properties valued at EUR 24 million, a 3.11% shareholding in Austrian Airlines and a 42.56% shareholding in ATV Privat-TV Services AG.

(15) In addition to the obligations and conditions laid down in decision C 50/2006, the bank has divested further substantial assets. These additional divestments concerned real estate with a transaction volume of EUR […] million, shares in Istrobanka a.s., Bratislava, and BAWAG CZ, Praha, with a transaction volume of EUR […] million as well as real economy shareholdings (e.g. L. Bösendorfer Klavierfabrik GmbH, Austrian Lotteries). In 2008, the bank sold its 26% in a pension insurance joint venture. The bank also completed the sale of the bank's insurance broker franchise and its stake in A-Trust.

(16) Since decision C 50/2006 the bank has thus liquidated assets with a transaction volume of about EUR 2 billion, which has reduced its balance sheet total and its presence in Central and Eastern Europe, in Austria's industry and on the real estate market. BAWAG's balance sheet total was reduced from EUR 57.9 billion on 31.12.2005 to EUR 41.2 billion on 31.12.2009 (i.e. by approximately 29%).

[4] Source: Moody's, November 2009.

(17) In addition, the bank was obliged to divest Stiefelkönig[5] by the end of 2009. BAWAG did not fulfil this condition. The bank explained that due to present market conditions and a bankruptcy of a competitor (and potential buyer) BAWAG was not able to sell Stiefelkönig. However, the bank implemented the following measures in follow-up to the 2007 Commission Decision:

- The discount brand "Turboschuh" was closed in 2009 and all 37 outlets were sold to either competitors or mostly apparel retailers both in Austria and in Slovenia.
- The mono brand shops Geox located in Bavaria and Baden-Württemberg were transferred to Geox in the beginning of 2010.
- Some Stiefelkönig shops were closed or sold.
- The central warehouse was sold in late 2008.

(18) Austria requested a prolongation of the deadline for the divestiture of Stiefelkönig until […].

## 3. The notified aid measures

(19) On 18 November 2009, Austria notified two aid measures for BAWAG:

- a EUR 550 million capital injection
- a EUR 400 million guarantee covering payment claims of BAWAG against some subsidiaries.

Since BAWAG was still in the process of restructuring following decision C 50/2006, the measures were not covered by the Austrian support scheme for credit institutions approved by Commission decision of 9 December 2008 in case N 557/2008[6] ("decision N 557/2008"), but had to be notified individually. On 22 December 2009 the Commission approved the aid measures for BAWAG for reasons of financial stability for six months.

### 3.1 The capital injection

(20) In order to strengthen the bank's capital base, participation capital[7] totalling EUR 550 million (nominal value as of 23 December 2009) was issued by BAWAG and subscribed

[5] According to information provided by BAWAG, the participation in Stiefelkönig is designed as follows: BAWAG P.S.K. owns 100% of P.S.K. Beteiligungsverwaltung which owns 100% of FCH Beta Finanzierungsvermittlung GmbH which owns 100% of Stiefelkönig Schuhhandels GmbH. The Stiefelkönig Schuhhandels GmbH owns the following subsidiaries: Stiefelkönig d.o.o. (Serbia), Stiefelkönig d.o.o. (Croatia), Stiefelkönig Schuhhandels GmbH Deutschland (Germany), Stiefelkönig spol. S.r.o. (Slovakia), Stiefelkönig trgovinas cevlji d.o.o. (Slovenia).

[6] Commission Decision of 9.12.2008 in State aid case N 557/2008 – *Maßnahmen nach dem Finanzmarktstabilitäts- und dem Interbankmarktstärkungsgesetz für Kreditinstitute und Versicherungsunternehmen in Österreich*, OJ C 3/1 of 8.1.2009, p. 2, prolonged by Commission Decision of 30.6.2009 in State aid case N 352/2009, OJ C 172/1 of 24.7.2009, p. 3, prolonged by Commission Decision of 17.12.2009 in State aid case N 663/2009, OJ C 28/2 of 4.2.2010, p. 6.

[7] Participation capital is a form of own funds of credit institutions which is defined in the Austrian Banking Act. It is regarded by the Austrian regulator as Tier 1 capital.

by Austria on 23 December 2009. The amount of the capital injection corresponds to approximately 2.4% of risk weighted assets (RWA).

(21) The participation capital provided by Austria to BAWAG has no fixed maturity. However, it contains features aiming at incentivising the bank to repay it quickly: as of 2014 a step-up clause applies increasing the initial coupon of 9.3% post tax per year. In 2014 and 2015 the coupon will be increased by 50 basis points per year; in 2016 by 75 basis points and as from 2017 by 100 basis points per year. In total, the dividend is limited to a maximum of 12 months EURIBOR plus 1000 basis points. From 2019 onwards, the redemption value of the capital will increase to 150% of the nominal value.

(22) Subject to certain conditions, Austria has a right of conversion of the participation capital into ordinary shares. Inter alia, this right can be exercised (1) if the regulatory minimum capital (Tier 1) falls below the legal requirements for a period of at least 90 days, (2) if payment by Austria is necessary to avert a bankruptcy of BAWAG, (3) in case of bankruptcy of BAWAG, or (4) if BAWAG does not (fully) pay the agreed remuneration in two subsequent business years, starting in the business year 2009.

## 3.2 The asset guarantee

### 3.2.1 The portfolio ("structured credit book")

(23) In the period from 2003 to 2005, BAWAG built a sizeable investment in products collectively known as the "structured credit book", which contains a variety of asset-backed securities (ABS). This portfolio reached an amount of up to EUR 3.4 billion. The structured credit book contained a variety of asset-backed securities (ABS), such as Collateralised Debt Obligations (CDO), Collateralised Loan Obligations (CLO), Constant Proportion Debt Obligations (CPDO), Residential Mortgage-Backed Securities (RMBS), Commercial Mortgage-Backed Securities (CMBS), Leveraged Super Seniors (LSS) and derivatives of those, such as CDO of ABS, $CDO^2$ (CDO of CDO or "CDO-squared"), $CLO^2$ ("CLO squared"). The underlying exposures of these products are both European and US entities.

(24) All assets in the structured credit book were in place at the time of the ownership change in May 2007 and approximately 97% of these assets were rated (AAA) or (AA) by the rating agencies. Nevertheless, the new management decided to run it off and to actively mitigate the risk, which in the light of the mentioned rating classification was considered reasonable.

(25) On 19 December 2008, BAWAG sold and transferred the remaining structured credit book to its subsidiary BV Vermögensverwaltungs GmbH. The payment of the purchase price of EUR 2.2 billion has been deferred until 31 December 2018. On 25 June 2009, a part of this portfolio, totalling EUR 1.1 billion (book value under Austrian GAAP[8] as of 25 June 2009), was re-acquired by BAWAG. The bank simultaneously created four indirectly wholly-owned special purpose subsidiaries (SPVs) and sold the re-acquired portfolio to them. Each subsidiary holds a part of the original structured credit book. In return for the assets, BAWAG holds a deferred forward sale receivable with a notional value of EUR 1.1 billion against the book value plus interest with a maturity of 31 December 2013.

[8] Generally Accepted Accounting Principles.

(26) BAWAG's purchase price receivables (including interest against the four SPVs) replaced the structured securities on the bank's single balance sheet and will replace, for regulatory purposes, the structured securities on BAWAG consolidated balance sheet.

(27) The bank has continued to take efforts to further reduce risk in the structured credit book, including asset restructuring, security sales and adjusting the hedging strategy of the overall portfolio. In the course of the year 2009 the book value of the portfolio decreased to about EUR 1.3 billion[9].

### 3.2.2 The guarantee

(28) On 23 December 2009 Austria implemented in favour of BAWAG an abstract guarantee of up to EUR 400 million for the payment of the receivables from the four SPVs. The objective of the guarantee was to enable the bank to spread over time potential losses which might be incurred in the portfolio and to prevent changes of the regulatory capital which would result from erratic fluctuations of market prices. Initially it was intended that the guarantee would be in place until 2014. On 20 June 2010 Austria informed the Commission that the entire guarantee would be withdrawn as of 22 June 2010.

(29) The guarantee of EUR 400 million could be drawn in case of losses incurred by the SPVs due to reductions in the value of the portfolios which would lead to an impairment of the receivables held by BAWAG (i.e. once the losses endanger the full payment of the receivable). This meant that the drawing of the guarantee was only possible if the loss-bearing capacity (equity and expected net income) of the relevant SPV was exceeded.

(30) The guarantee was capped at a maximum amount of EUR 400 million which decreased over the term of the guarantee according to the following schedule:

- From approval of the measure until 31 December 2010: EUR 400 million;
- From 1 January 2011 until 31 December 2011: EUR 300 million;
- From 1 January 2012 until 31 December 2012: EUR 200 million;
- From 1 January 2013 until 31 March 2014: EUR 100 million.

(31) BAWAG could compensate the reduction of the guarantee shown above by creating corresponding risk provisions at the same amount, i.e. EUR 100 million per year. These provisions would compensate for the decrease of the guarantee. Thus, the total amount of the provisions and the guarantee would be kept stable at EUR 400 million. However, if the bank decides not to build provisions, the maximum guarantee amount would be reduced by the amount not provisioned for.

(32) For the provision of the guarantee the bank paid an annual remuneration of 50 basis points plus the CDS spread of BAWAG for the outstanding guarantee amount. The minimum remuneration to be paid by the bank was fixed at 300 basis points per year.

(33) If the guarantee had been drawn, the bank would have had to pledge to Austria high-quality securities (in particular Austrian government bonds) equivalent to 60% of the drawn amount. The collateral provided by the bank serves as additional safeguard for Austria in

[9] In December 2008, the total notional outstanding amount was about EUR 3.08 billion.

case of BAWAG's insolvency. The net payment obligation of Austria, which could have occurred only in case of the bank's insolvency, would thus have been in practice the unsecured 40% of the total potential drawings under the guarantee. For this amount (i.e. up to EUR 160 million, if the maximal amount of the guarantee had been drawn), Austria had an option for conversion into shares of BAWAG in case of payments becoming necessary. The payment obligations of Austria which result from any drawing of the guarantee were deferred until 30 June 2014 and would have expired on that day unless there had been a threat of insolvency or the insolvency of the bank had already occurred.

## 4. The modified restructuring plan of 21 June 2010

(34) On 22 March 2010 Austria provided a modified restructuring plan in accordance with point 82 of decision N 640/2009. On 21 June 2010, Austria notified an updated version of the modified restructuring plan for BAWAG.

(35) According to the modified restructuring plan of 21 June 2010, BAWAG concentrates on Austrian retail and corporate customers. Its business strategy is to continue to take advantage of its retail distribution network in Austria to gather retail deposits in a cost-efficient way that can be deployed into attractive and customer-focused asset generation platforms allowing the bank to deliver growing and stable profits. The bank also intends to invest certain amounts in international corporate, Central and Eastern Europe and commercial real estate.

(36) The bank concentrates on the following business fields:

- Austrian Retail: The bank is currently one of the leading retail banks in Austria with the goal to become the “primary customer bank” providing current accounts and savings products and cross-selling consumer credit (i.e. mortgages) and commission-based products by capitalising on a multi-channel distribution network with a recognised customer service, simple “mass market” products, automated processes and low cost operations.
- Austrian Corporate: The bank intends to build up a strong commercial bank focused on establishing profitable customer relationships by meeting customer needs for credit, cash management, treasury, investment and insurance products and services.
- International Corporate: The bank will invest temporarily in recession-resilient, strong cash flow-generating and higher yielding assets (loans and bonds), particularly in Europe where the bank has market, risk and operational expertise. BAWAG is currently disposing of liquidity to be deployed. With this measure, the bank aims at profiting from higher margins available in foreign markets compared to the margins offered in Austria for the same risk category.
- Central and Eastern Europe: The bank intends to carry out selective investments in Central and Eastern Europe following the bank’s client relationships with blue chip corporates to the regions, whereas all services will be provided exclusively from Austria.
- Commercial Real Estate: The bank intends to leverage on its already existing portfolio and expertise in neighbouring countries, Austria and also Western Europe with the aim to increase the real estate business.

(37) According to the base case mentioned in the modified restructuring plan of 21 June 2010, the profit and loss accounts (IFRS, in EUR million) of BAWAG P.S.K. group for 2010 until 2014 are as follows (figures for 2008 and 2009 are actual figures):

| **P&L BAWAG P.S.K. Group – IFRS (EUR million)** | **A 2008** | **A 2009** | **2010** | **2011** | **2012** | **2013** | **2014** |
|---|---|---|---|---|---|---|---|
| Net Interest Income | 652.5 | 564.3 | […] | […] | […] | […] | […] |
| Net Commission Income | 143.9 | 154.8 | […] | […] | […] | […] | […] |
| Gains and losses | -406.3 | 139.0 | […] | […] | […] | […] | […] |
| Other operating result | 14.1 | 29.9 | […] | […] | […] | […] | […] |
| **Total revenues** | **404.2** | **888.0** | […] | […] | […] | […] | […] |
| Personnel expenses | -375.1 | -338.5 | […] | […] | […] | […] | […] |
| General & administrative expenses | -242.3 | -178.7 | […] | […] | […] | […] | […] |
| Depreciations | -87.5 | -80.4 | […] | […] | […] | […] | […] |
| **Total expenses** | **-704.9** | **-597.7** | […] | […] | […] | […] | […] |
| Loan Loss Provisions, accruals, provisions, others | -281.4 | -236.7 | […] | […] | […] | […] | […] |
| Result at equity | -32.5 | -8.0 | […] | […] | […] | […] | […] |
| Subtotal LLP, accruals and at equity | -313.8 | -244.7 | […] | […] | […] | […] | […] |
| **Profit before tax** | **-614.5** | **45.6** | […] | […] | […] | […] | […] |
| Taxes and deferred taxes | 89.3 | -59.2 | […] | […] | […] | […] | […] |
| **Profit after tax** | **-525.2** | **-13.7** | […] | […] | […] | […] | […] |
| Minorities | -22.2 | -8.5 | […] | […] | […] | […] | […] |
| **Consolidated profit after tax and minorities** | **-547.5** | **-22.1** | [50-110] | [60-110] | [150-210] | [200-260] | [270-340] |

(38) According to the bank, capital and liquidity are its main pillars to drive profitability. The improved capitalisation enables the bank to deploy its surplus liquidity into the market.

(39) Implementation of the measures mitigating the competition distortions laid down in decision C 50/2006 and additional divestments going beyond this, supported the reduction of the bank's consolidated balance sheet from EUR 57.9 billion (end of 2005) to EUR 41.2 billion (end of 2009). This corresponds to a reduction by approximately 29%. This had a positive impact on the bank's liquidity surplus which increased in 2009 to over EUR 8 billion, of which securities that can be quickly monetized (e.g. Repo, ECB tender, etc.) are a major part. The asset-side business continues to be fully self-funded (deposit-to-loan ratio at the end of the year 2009 of 100%). Approximately EUR 6 billion can be used for deployment into the market.

(40) The main framework for BAWAG's business plan is formed by:

i. The envisaged minimum Tier 1 capital ratio of 8 % and the related RWA constraints over the planning horizon;
ii. as well as the deployment of the bank's current surplus liquidity;
iii. and the replacement of funding run-offs.

## III. POSITION OF AUSTRIA

*Divestments*

(41) Austria requested the prolongation of the deadline for the divestiture of Stiefelkönig until […] and committed to the measures below.

(42) Austria commits that BAWAG divests, or procures the divestiture of FCH beta Finanzierungsvermittlung GmbH (Stiefelkönig Schuhhandels Gesellschaft m.b.H.) including all brands and rights, the whole branch network in Austria and abroad, and all holdings, in particular:

- Stiefelkönig d.o.o. (Serbia),
- Stiefelkönig d.o.o. (Croatia),
- Stiefelkönig Schuhhandels GmbH Deutschland (Germany),
- Stiefelkönig spol. S.r.o. (Slovakia),
- Stiefelkönig trgovinas cevlji d.o.o. (Slovenia),

and all connected business and activities as a going concern […] by […]. To carry out the divestiture, BAWAG commits to find a purchaser and to enter into a final binding sale and purchase agreement for the sale (signing) by […]. If BAWAG has not entered into a final binding sale and purchase agreement for the sale (signing) by […], BAWAG shall grant a Divestiture Trustee an exclusive mandate to sell FCH beta Finanzierungsvermittlung GmbH (Stiefelkönig Schuhhandels Gesellschaft m.b.H.) at no minimum price by […].

(43) Austria commits that BAWAG divests, or procures the divestiture of, the 10% holding in MKB BANK as a going concern by […]. To carry out the divestitures, BAWAG will find the purchaser and enter into a final binding sale and purchase agreement for the sale (signing) by […]. BAWAG may postpone the sale until no later than […], if it shows that the proceeds obtained by the transactions would be lower than the book value of the respective holding at the time of the sale in the individual accounts drawn up by BAWAG in accordance with the Austrian Company Code, or would produce losses in the group accounts in accordance with the IFRS accounting standards. The sale by […] has to take place […]. If BAWAG has not entered into the final binding sale and purchase agreement for the sale (signing) by […], BAWAG shall grant a Divestiture Trustee an exclusive mandate to sell the above listed holdings at no minimum price by […].

*Use of liquidity by BAWAG*

(44) Austria commits to ensure that BAWAG will adhere to the following limitations of investment:

(i) Based on the modified restructuring plan of 21 June 2010, BAWAG will limit its investments into debts of international corporate, including the purchase of loan portfolios, until […] to a total outstanding volume of maximum EUR […] billion. Maximum non-investment grade-lending will not exceed […]% of the total outstanding volume; however, following investment, these percentages could be negatively affected by early redemption of the portfolio or by rating downgrades. Such deviations would be corrected as quickly as possible. Individual investments in investment-grade companies will not exceed EUR […] million on an unsecured basis per company/group. Individual investments in non-investment-grade companies will not exceed EUR […] million on an unsecured basis per company/group. Investments in global multinationals or European companies will comprise at least […]% of the portfolio. In addition, a further total outstanding volume of maximum EUR […] million can be dedicated to Central and Eastern Europe under the same individual investment limits, and in defensive sectors such as energy, infrastructure and telecommunications. For all these investments the risk framework as presented to the Commission will apply.

(ii) Based on the modified restructuring plan of 21 June 2010, BAWAG will limit its investments in international commercial real estate, including the purchase of loan portfolios, until […] to a total outstanding volume of EUR […] billion dedicated to Western Europe with a maximum of 40% for any single country. Individual investments in investment-grade companies will not exceed EUR […] million per company/group. Individual investments in non-investment-grade companies will not exceed EUR […] million per company/group.

(iii) BAWAG will notify the monitoring trustee, on a timely basis, when it intends to amend the applicable risk framework in response to changes in the market environment, provided however that the above single party concentration limits and total overall portfolio size of new business do not change. Furthermore, distribution among the portfolios shall not be changed by more than 10%.Any change beyond this 10% limit can only be implemented after the Commission's agreement.

*Premature redemption of P.S.K.'s liabilities covered by the guarantee of the Republic of Austria*

(45) Austria commits to ensure that BAWAG will prematurely, with the effect of […], redeem liabilities of Österreichische Postsparkasse Aktiengesellschaft in the amount of at least EUR 150 million with current maturity until 2025 or beyond, originating from issues of instruments by Österreichische Postsparkasse Aktiengesellschaft, covered by the guarantee of the Republic of Austria in accordance with § 1 (2) of P.S.K. Law of 1969 in the relevant version.

*Acquisition ban*

(46) Austria commits to ensure that BAWAG will refrain from acquiring any financial institutions or other businesses in actual or potential competition with BAWAG until […]. This ban does not cover any participation in capital increases in current holdings which are pro rata to the current participation of BAWAG. Notwithstanding this prohibition, BAWAG may, after obtaining the Commission’s approval, acquire businesses, in particular if this is essential in order to safeguard financial stability or competition in the relevant markets.

*Coupon ban*

(47) Austria commits to ensure that until 30 June 2014 BAWAG must not release reserves in order to pay coupons on the hybrid financial instruments unless, after having taken all legal steps, these payments are owed on the basis of contracts existing on 1 January 2009.

*Dividend ban*

(48) Austria commits to ensure that for the business years 2010 and 2011, BAWAG must not pay dividends to its shareholders. For the business year 2012 and the following business years, the dividends are limited to 17.5 % of distributable profits, as long as the full amount of EUR 550 million State capital has not been repaid.[10]

*No reference to State support in advertising*

(49) Austria commits that BAWAG will refrain from advertising invoking the aid measures as an advantage in competitive terms.

*Monitoring Trustee*

(50) A monitoring trustee will be appointed who is to report on a three-monthly basis to the Commission on compliance by Austria and by BAWAG with the commitments listed in recitals (41) to (49) of this decision, and on the implementation of the restructuring plan. The monitoring trustee shall be independent, possess the necessary qualifications and shall not be subject to a conflict of interests throughout the exercise of his mandate.

(51) No later than two weeks after the adoption of this Decision, the Austrian authorities shall submit a list of one or more persons, as agreed with BAWAG, whom they propose to appoint as the monitoring trustee(s) to the Commission for approval. The Commission shall have the discretion to approve or reject the proposed trustee(s) based on the criteria outlined in recital 50. If the Commission rejects all proposed trustee(s), BAWAG and the Austrian authorities will, within one week of being informed of the rejection, propose at least two new candidates which again need to be approved or rejected by the Commission. If all further proposed trustee(s) are rejected by the Commission, the Commission shall nominate a trustee, whom BAWAG shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

*Divestiture Trustee*

(52) If the divestments have not been achieved by the relevant target date, and if no alternative measures have been approved by the Commission, the Austrian authorities shall, no later than two weeks after the target date, submit a list of one or more persons, as agreed with BAWAG, whom they propose to appoint as the divestiture trustee(s) to the Commission for approval. The divestiture trustee shall be independent, possess the necessary qualifications and shall not be subject to a conflict of interests throughout the exercise of his mandate. The Commission shall have the discretion to approve or reject the proposed divestiture

[10] The dividend ban does not affect the remuneration payments of BAWAG to Austria for the EUR 550 million State participation capital.

trustee(s). If the Commission rejects all proposed divestiture trustee(s), BAWAG and the Austrian authorities will, within two weeks of being informed of the rejection, propose at least two new candidates which again need to be approved or rejected by the Commission. If all further proposed trustee(s) are rejected by the Commission, the Commission shall nominate a trustee, whom BAWAG shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

(53) The divestiture trustee will sell the divestment businesses concerned at no minimum price. The divestiture trustee shall review and assess potential purchasers. The divestiture trustee shall include in the sale and purchase agreement such terms and conditions as it considers appropriate for an expedient sale. In particular, the divestiture trustee may include in the sale and purchase agreement such customary representations and warranties and indemnities as are reasonably required to effect the sale. The divestiture trustee shall protect the legitimate financial interests of BAWAG, subject to BAWAG's unconditional obligation to divest at no minimum price.

(54) In addition, all fees and expenses of the monitoring and divestiture trustees will be borne by BAWAG in a way that does not impede the independent and effective fulfilment of their mandate.

## IV. ASSESSMENT

### 1. Existence of State aid

(55) As laid down in Article 107(1) TFEU[11], any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.

(56) The Commission recalls that it has already concluded (in recitals 41-46 of the Commission decision N 640/2009 temporary approving the aid measures at stake) that the capital injection and the asset guarantee both constitute State aid.

(57) The Commission observes that it has no reason to change its previous assessment. Consequently the Commission concludes that the capital injection and the asset guarantee obtained by BAWAG constitute State aid within the meaning of Article 107(1) TFEU.

### 2. Compatibility of the aid

#### 2.1. Application of Article 107(3)(b) TFEU

(58) Article 107(3)(b) TFEU empowers the Commission to find that aid is compatible with the internal market if it is intended "to remedy a serious disturbance in the economy of a Member State". The Commission has acknowledged that the global financial crisis can

[11] With effect from 1 December 2009, Article 87 of the EC Treaty has become Article 107, of the TFUE; the two sets of provisions are in substance identical. For the purposes of this Decision references to Articles 107 and 108 of the TFEU should be understood as references to Articles 87 and 88 of the EC Treaty when appropriate.

create a serious disturbance in the economy of a Member State and that measures supporting banks are apt to remedy this disturbance. This assessment has been confirmed in the Banking Communication[12], the Recapitalisation Communication[13], the Impaired Asset Communication[14] (IAC) and the Restructuring Communication[15] adopted by the Commission. In respect of the Austrian economy this analysis was confirmed in the Commission's various approvals of the measures undertaken by the Austrian authorities to combat the financial crisis, in particular in the approval[16] and prolongations[17] of the Austrian rescue package. Therefore, as indicated in the decision N 640/2009 temporarily approving the aid measures granted to BAWAG, the legal basis for the assessment of these aid measures should be Article 107(3)(b) TFEU.

## 2.2. Compatibility of the aid measures

### 2.2.1. Analysis under the Impaired Asset Communication

(59) In the IAC the Commission has provided guidance on the treatment of asset relief measures by Member States under Article 107(3)(b) TFEU. Impaired assets correspond to categories of assets on which banks are likely to incur losses. The IAC defines asset relief as any measure whereby a bank is dispensed from the need for severe downward value adjustments of certain asset classes.

(60) The Commission approved the EUR 400 million asset guarantee on 22 December 2009 in decision N 640/2009. On 20 June 2010 Austria informed the Commission that the entire guarantee will be withdrawn as of 22 June 2010.

(61) Under the asset guarantee granted to BAWAG from 23 December 2009 until 22 June 2010 Austria guaranteed the deferred sale receivables that BAWAG can claim from its special purpose subsidiaries. As the equity of these subsidiaries is relatively low, an impairment of the assets by the subsidiaries would almost certainly lead to an impairment of the receivables. Seen in this context, the measure in effect guaranteed the underlying assets and provided BAWAG with an asset relief similar to that described in the IAC.

(62) The guarantee granted to BAWAG was designed mainly to protect the bank against a faster impairment rate than foreseen in the provision accretion schedule. BAWAG was immunized from the risk of a devaluation in the near future of the assets included in its

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12 Communication on the application of State aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis, OJ C 270 of 25.10.2008, p. 8.

13 Communication from the Commission – The recapitalisation of financial institutions in the current financial crisis: limitation of aid to the minimum necessary and safeguards against undue distortions of competition, OJ C 10 of 15.1.2009, p. 2.

14 Communication from the Commission on the treatment of impaired assets in the Community banking sector, OJ C 72 of 26.3.2009, p. 1.

15 Commission communication on the return to viability and the assessment of the restructuring measures in the financial sector in the current crisis under the State aid rules, OJ C 195 of 19.8.2009, p. 9.

16 Commission Decision of 9.12.2008 in State aid case N 557/2008 – *Maßnahmen nach dem Finanzmarkt-stabilitäts- und dem Interbankmarktstärkungsgesetz für Kreditinstitute und Versicherungsunternehmen in Österreich*, OJ C 3/1 of 8.1.2009, p. 2.

17 First prolongation by the Commission Decision of 30.6.2009 in State aid case N 352/2009, OJ C 172/1 of 24.7.2009, p. 3; second prolongation by the Commission Decision of 17.12.2009 in State aid case N 663/2009, OJ C 28/2 of 4.2.2010, p. 6.

structured credit book. The guarantee helped BAWAG to spread the potential losses over time and in this way relieved the bank from maintaining capital for both expected and unexpected losses from the assets. On this basis the Commission concluded already in decision N 640/2009 that the guarantee has the effects of an asset relief measure and hence falls within the scope of the IAC. The Commission has no reason to change its assessment on this issue.

*Eligibility of assets*

(63) The Commission has previously established in decision N 640/2009 that all assets covered by the guarantee fulfil the eligibility criteria set out in section 5.4 of the IAC.

*Transparency and disclosure*

(64) As regards transparency and disclosure, the Commission notes that BAWAG provided to the Commission a report on the valuation of the structured assets covered by the guarantee. The report was conducted by Deloitte and validated by the Austrian supervisory authority, FMA. In this regard the asset guarantee is in line with section 5.1 of the IAC.

*Management of assets*

(65) With regard to management of assets, the Commission notes that the structured assets were transferred to the indirect subsidiaries. The only objective of these companies is to manage the structured assets and run them off. This ensures a functional and organisational separation of the assets in accordance with section 5.6 of the IAC.

*Valuation*

(66) On 19 February 2010 Austria submitted to the Commission a report from Deloitte on the valuation of the structured credit portfolio. The final report on the valuation of the bank's asset portfolio, which was prepared in cooperation with the Commission's external experts from Société Générale, was submitted on 11 May 2010. The report shows that the expected losses from the portfolio had been adequately provisioned by BAWAG. This conclusion is also confirmed by stress testing results. The confirmation by the Austrian supervisory authority was submitted to the Commission on 9 June 2010.

*Burden-sharing*

(67) As regards burden-sharing, section 5.2 of the IAC points out that the bank ought to bear the losses associated with the impaired assets to the maximum extent. This would typically imply to write down the portfolio to the real economic value and to guarantee the assets only up to this value. In this respect the Commission positively notes that BAWAG complied with this provision of the IAC. The bank has written down the portfolio to the real economic value which was confirmed by the valuation of the guaranteed assets conducted by the independent experts of Deloitte and Société Générale.

(68) In addition, a correct remuneration is essential to meet the burden-sharing requirements of the IAC. According to the IAC the measure should be remunerated in accordance with the

capital relief effect. The validation of the valuation report sent by the FMA on 9 June 2010 confirmed that the existence of the guarantee leads to a preferential regulatory treatment of the RWA, which is calculated as EUR 1.862 billion + 150% * EUR 400 million = EUR 2.462 billion, or an own funds equivalent of EUR 197.0 million. This implies that the effect of the guarantee was at least EUR 148.96 million, as long as the guarantee was partially active. According to this calculation BAWAG should have paid a remuneration amounting to at least EUR 9.31 million p.a.[18]

(69) As remuneration for the provision of the guarantee, Austria received an annual remuneration in monthly instalments of 50 bp plus the CDS spread of BAWAG P.S.K. for the outstanding guarantee amount. The minimum remuneration to be paid by the bank was fixed at 300 bp per year. Therefore BAWAG paid a sufficient remuneration for the provision of the guarantee for the period it was in place.

(70) The guarantee granted to BAWAG contained also some specific features which should be mentioned in the context of burden-sharing. The guarantee required BAWAG to build up provisions year by year. Additionally, any amounts drawn by BAWAG needed to be partially collateralized with high-quality securities. Both features contributed to the burden-sharing of the costs related to the impaired assets and reduced the exposure of the State. Therefore, burden-sharing was achieved for the asset guarantee through guaranteeing of the assets at their real economic value, correct remuneration and the design of the guarantee.

(71) On the basis of the foregoing the Commission concludes that the asset guarantee provided to BAWAG from 23 December 2009 to 22 June 2010 was in line with the IAC.

### 2.2.2. Analysis under the Recapitalisation Communication

(72) The conditions applicable to a capital injection are laid down in the Recapitalisation Communication. In addition the decision N 663/2009 approving the prolongation of the Austrian rescue package provides a benchmark for the assessment of a recapitalisation measure.

(73) At the time the capital injection was granted, BAWAG was a bank in the process of restructuring. Therefore the recapitalisation had to be notified individually and the aid could not be granted within the Austrian rescue package. Nevertheless the conditions for recapitalisation measures apply.

(74) According to the Austrian rescue package an appropriate remuneration of a recapitalisation measure paid by a bank amounts to an annual dividend of 9.3% combined with the redemption of the capital at par. Alternatively the bank can pay a dividend of 8%, but the redemption rate is then at least 110%, i.e. 10% above par. Both remuneration mechanisms contain a step-up clause: the dividend increases in each case by 50 basis points in the sixth and seventh year, by an additional 75 basis points in the eighth year and by an additional 100 basis points from the ninth year. The total dividend is, however, restricted to the maximum value of the 12-month EURIBOR rate plus 1000 basis points.

(75) According to the notification BAWAG initially pays as remuneration a dividend of 9.3 % on the nominal value after tax per year, which is in line with the conditions of the Austrian

[18] Calculated as 6.25% on EUR 148.96 million, which is the minimum capital relief effect that the bank is enjoying while the measure is active, even if the guarantee is partially cancelled.

rescue package. The Commission positively notes that the measure also includes a step-up clause as from 2014 (sixth year of the measure). In 2014 and 2015 the dividend will be increased by 50 basis points per year; in 2016 by 75 basis points and as from 2017 by 100 basis points. In total, the dividend is limited to a maximum value of 12 months EURIBOR plus 1000 basis points per year. From 2019 onwards, the redemption value of the capital will increase to 150% of the nominal value. A dividend ban applicable until 31 December 2011 committed by Austria provides further incentives to repay the State as soon as possible. For the business year 2012 and the following business years as long as the full amount of EUR 550 million has not been repaid BAWAG can pay dividends limited to 17.5% of distributable profits, in line with the Austrian scheme.

(76) Based on the above the Commission concludes that the conditions of the Recapitalisation Communication as approved in the Austrian rescue package are fulfilled.

### 2.2.3 Compatibility under the Restructuring Communication

(77) The Restructuring Communication sets out the State aid rules applicable to the restructuring of financial institutions in the current crisis. This Communication does not set out criteria for the conditions under which a bank may need to present a restructuring plan, but builds on the criteria laid down in the Recapitalisation Communication and the IAC. The EUR 550 million capital injection amounts to 2.4% of BAWAG's RWA. Point 4 of the Restructuring Communication refers to the Recapitalisation Communication and the IAC and states that banks that received aid exceeding the 2% RWA threshold should submit a restructuring plan.

(78) Moreover, at the time the aid measures assessed in this decision were granted BAWAG was under restructuring. The Restructuring Communication states in point 27 that additional aid during the restructuring can be provided if it is justified for reasons of financial stability and it is limited to the minimum necessary to restore viability. Pursuant to point 16 of the Restructuring Communication such measures cannot be approved under a scheme but must be authorised *ex ante* individually. This circumstance triggered the obligation to provide a restructuring plan. The Commission already noted in the decision in case N 531/2009[19] that where additional aid is needed in the restructuring phase the feasibility of the implementation of the existing restructuring plan must be reassessed.

(79) According to the Restructuring Communication, in order to be compatible with Article 107(3)(b) TFEU, the restructuring of a financial institution in the context of the current financial crisis has to:

(i) Lead to a restoration of the viability of the bank;
(ii) Include sufficient own contribution by the beneficiary (burden-sharing);
(iii) Contain sufficient measures limiting the distortion of competition.

*Restoration of long-term viability*

[19] Commission Decision of 7 October 2009 in case N 531/2009 – Assumption of risk shield for WestLB, OJ C 305, 16.12.2009, p. 4 http://ec.europa.eu/community_law/state_aids/comp-2009/n531-09.pdf

(80) The Restructuring Communication sets out in points 9 to 11 that the Member State should provide a comprehensive and detailed restructuring plan which provides complete information on the business model. The plan should also identify the causes of the difficulties faced by a financial institution and alternatives to the restructuring plan proposed. The information submitted by the Austrian authorities meets these requirements.

(81) In assessing a restructuring plan, the Commission must assess whether the bank is able to restore long-term viability without State aid. With respect to BAWAG, any restructuring plan should demonstrate that it has taken measures to deal with the source of its difficulties, that its business model is viable and that it is able to withstand a realistic stress scenario. It should also indicate, as noted in point 14 of the Restructuring Communication, how the State aid is redeemed or that it is remunerated according to normal market conditions.

(82) Therefore the Commission requested Austria to submit a modified restructuring plan which takes into account both the changes to the economic conditions, which could not have been anticipated in the initial restructuring plan approved by decision C 50/2006, as well as the fact that further State aid has become necessary in the meantime.

(83) The restructuring plan submitted by Austria identifies the main causes of the difficulties for the bank, which were mainly attributable to value markdowns on BAWAG's structured credit book containing a variety of asset-backed securities. BAWAG required a EUR 400 million asset guarantee which was temporarily in place from 23 December 2009 until 22 June 2010 and a EUR 550 million capital injection to deal with the potential losses incurred in the structured credit book and their subsequent effect on its capital position. The guarantee enabled BAWAG to spread potential losses which might be incurred in the portfolio over time and to prevent changes of the regulatory capital which might have resulted from erratic fluctuations of market prices. The capital injection strengthened the bank's capital basis, as currently expected by markets.

(84) In view of the above, to assess whether plan will allow the restoration of BAWAG's long-term viability, the Commission needs therefore also to assess whether the plan deals with the problems deriving from the structured portfolio. In this respect, the Commission notes that BAWAG had already decided in 2007 to run off the structured credit book and to actively mitigate the risk. BAWAG's exposure to further losses has been limited. The bank has continuously taken efforts to further reduce risk in the structured credit book including asset restructuring, security sales and adjusting the hedging strategy of the overall portfolio. In the course of the year 2009 the book value of the portfolio decreased from EUR 3.08 billion to about EUR 1.3 billion. Finally the bank built provisions for further potential losses which might incur in the portfolio.

(85) The report on the evaluation of the guaranteed asset portfolio which was prepared in cooperation with the Commission's external experts from Société Générale and validated by the Austrian financial regulator shows that the expected losses from the portfolio have been adequately provisioned by BAWAG. This conclusion was also confirmed by stress testing results. Therefore the Commission can conclude that BAWAG has taken sufficient actions to address the cause of its problems and that any further negative development in the structured asset portfolio should not be able to threaten its viability.

(86) As regards its business model, BAWAG intends to continue to take advantage of its retail distribution network in Austria to gather retail deposits that can be deployed into customer-focused asset generation platforms allowing the bank to deliver stable profits. It will provide a full range of banking products to its core customer segments, retail, private SME and mid-cap. It will continue to provide current accounts and savings products, to cross-sell consumer credit for Austrian retail customers and to provide credit, cash management, treasury, investment and insurance products and services for Austrian corporate customers.

(87) BAWAG has a strong liquidity position. BAWAG will deploy its surplus liquidity by investing in loans in the following segments: international corporate, international commercial real estate, and Central and Eastern Europe in defensive sectors. However, Austria provided a ring-fencing commitment for the bank's investments aiming at reducing potential risk-taking. The bank's investments in international corporate will be limited to maximum EUR […] billion and its investments in international real estate to maximum EUR […] billion. A volume of maximum EUR […] million can be dedicated to investments in Central and Eastern Europe. In all three fields the individual investments in investment-grade companies may not exceed EUR […] million on an unsecured basis per company/group and investments in non-investment-grade companies may not exceed EUR […] million on an unsecured basis per company/group.

(88) The Commission considers that BAWAG's business strategy, which consists of retail and corporate activities in BAWAG's core markets, can be considered viable. It can be also stated that this business model is conservative and risk averse and does not expose the bank to excessive risk.

(89) According to points 9 and 12 to 15 of the Restructuring Communication, the restructuring plan should also demonstrate how the bank will restore its long-term viability without State aid as soon as possible. In particular, the bank should be able to generate an appropriate return on equity, while covering all costs of its normal operations and complying with the relevant regulatory requirements.

(90) The Commission considers that the restructuring plan submitted by Austria meets those requirements as BAWAG has provided financial projections for the period 2009-2014, giving information on revenues, costs, profits and capital position for each business unit. The Commission notes that the projections provided are based on reasonable underlying macroeconomic assumptions.

(91) In the restructuring plan of 21 June 2010, BAWAG assumes that projected total revenues in a base case will increase from EUR […] million in 2010 to EUR […] million in 2014 and a projected consolidated profit after tax and minorities of EUR [50-110] million in 2010 increase to EUR [270-340] million in 2014. BAWAG plans to have a Tier-1 ratio of […]% at the end of 2010. According to the plan, this ratio will slightly increase to […]% at the end of 2014.

(92) The modified restructuring plan of 21 June 2010 also contains a stress case scenario. In that scenario, the bank inter alia assumes that business volumes and revenues would decrease, and loan loss provisions would increase, compared to the base case. The Commission

considers the generated scenario as reasonable. The stress scenario demonstrates that BAWAG would have capital ratios which are above the regulatory capital requirements. Therefore BAWAG can be regarded as meeting the requirements of paragraph 13 of the Restructuring Communication.

(93) Moreover, the Commission notes positively that BAWAG has appropriately been remunerating the asset guarantee and the capital injection. Projected profits will allow the bank to remunerate the capital injection also in the future. The participation capital provided by Austria to BAWAG has no fixed maturity. However, the step-up clause starts applying in 2014, increasing the initial coupon of 9.3% post tax per year. A commitment regarding the dividend ban applicable until the end of 2011 and the dividend restriction limiting the dividend to 17.5% of distributable profit until the participation capital has been repaid provides further strong incentives to repay the State as soon as possible. According to the modified restructuring plan of 21 June 2010, it is BAWAG's intention to redeem EUR […] million within the planning horizon 2010 – 2014 and to redeem the remaining participation capital in the following […] years or, if feasible, to fully replace the remaining portion by other capital market instruments.

(94) Based on the above assessment the Commission considers that the modified restructuring plan of 21 June 2010 fulfils the requirements of the Restructuring Communication with regard to the restoration of long-term viability of the bank. The modified restructuring plan of 21 June 2010 shows that BAWAG will in all likelihood be profitable in the long-run despite the changed economic and financial situation.

*Own contribution / Burden-sharing*

(95) The Restructuring Communication states that an appropriate contribution by the beneficiary is necessary in order to limit the aid to the minimum and to address distortions of competition.

(96) In order to keep the aid limited to a minimum, the banks should first use their own resources to finance the restructuring. Accordingly, the costs associated with the restructuring should not only be borne by the State but also by those who invested in the bank by absorbing losses with available capital, by providing further capital and by the banks paying an adequate remuneration for State interventions.

(97) In July 2009 the bank successfully placed EUR 80 million Tier 2 capital on the market, and in August 2009 the bank received EUR 205 million of capital through a shareholder contribution.

(98) The Commission observes that the restructuring costs are limited to the costs which are necessary for the restoration of BAWAG's viability. The Commission notes that the recapitalisation was used by BAWAG to improve its core Tier-1 capital ratio. This measure, by improving BAWAG's capital position, has increased its ability to absorb losses which might incur in the structured credit book and to show higher capital ratios, as expected currently by the markets. The guarantee which was temporarily in place allowed BAWAG to spread, for regulatory purposes, over time the losses from the portfolio as well

as to increase its capital ratios. This measure has furthermore removed (temporarily) a source of volatility on its balance sheet.

(99) BAWAG will not be able to use the aid received to expand its business activities through acquisitions as it is limited in this respect by the commitments provided by the Austrian authorities with regard to the acquisition ban. BAWAG will refrain from acquiring any financial institutions or other businesses in actual or potential competition with BAWAG until […].

(100) As regards the limitation of the aid to the minimum, the Commission observes that BAWAG has been adequately remunerating the Austrian authorities for the aid measures it has received. That necessarily limits the amount of aid granted to BAWAG. With regard to the recapitalisations, BAWAG has paid the State a coupon of 9.3% which will increase as from 2014 due to a step up clause. As regards the guarantee, the Commission notes that BAWAG paid an adequate fee (see recital 69). It should also be mentioned that the structured portfolio was guaranteed by the State at the real economic value which was correctly estimated by BAWAG. Furthermore the bank built appropriate provisions and was obliged to provide high-value collateral for any drawing of the guarantee.

(101) Finally, the Commission notes that the Austrian authorities have committed that BAWAG will not release reserves in order to pay coupons on hybrid financial instruments, unless after having taken all legal steps, these payments are owed on the basis of contracts existing on 1 January 2009. As a result, subordinated debt holders will receive limited remuneration, thus contribute to the restructuring. Furthermore, for the business years until 31 December 2011 the dividend ban applies and for the business years as from 1 January 2012 until the participation capital has been repaid the bank must observe the dividend reduction limiting the dividend to 17.5 % of distributable profits. It can be considered that these measures committed by Austria limit the granted aid to the minimum necessary and provide for an appropriate participation of shareholders and the holders of hybrid instruments in the restructuring, thus, burden-sharing.

*Measures limiting the distortion of competition*

(102) The Restructuring Communication requires that the restructuring plan includes measures limiting distortions of competition and ensuring a competitive banking sector. Moreover, they should also address moral hazard issues and ensure that State aid is not used to fund anti-competitive behaviour. The Restructuring Communication indicates that the Commission has to take into account in its assessment the amount of aid, the degree of burden-sharing and the position the financial institution will have on the market after the restructuring. On the basis of that analysis, suitable measures limiting distortions of competition need to be put into place.

(103) There are several aspects which need to be taken into account when assessing the distortions of competition caused by the State aid granted to BAWAG, and which reduce the distortions created. First, the main factor behind BAWAG's difficulties was its exposure to value fluctuations of the structured portfolio, which is in run-off since 2007, rather than excessive risk-taking and losses in its core business model. BAWAG ceased investments in

structured assets already in 2007 and has been successfully running off the structured portfolio. Second, BAWAG pays an adequate remuneration for the State aid it has received. Third, with regards to the guarantee, the Austrian authorities temporarily guaranteed the portfolio at its real economic value while the remuneration it received for the capital relief was in line with the IAC. The distortion that is caused by the new aid is therefore relatively limited.

(104) As part of the measures to limit distortions of competition, BAWAG will divest its 10% holding in the Hungarian MKB BANK, by the end of […]. MKB BANK is a profit-making universal bank. At the end of 2009, MKB BANK had a balance sheet total (IFRS, consolidated) of approximately HUF 3107 billion. This corresponds to approximately EUR 11 billion.

(105) Furthermore, based on an agreement with Austria in the framework of receiving State support, in 2009 the bank prematurely redeemed EUR 200 million of grandfathered State guaranteed liabilities taken over with the merger with P.S.K. Austria committed to ensure that BAWAG will repay an additional amount of EUR 150 million of grandfathered State guaranteed liabilities in […]. This commitment concerns liabilities which would otherwise expire only in 2025 or thereafter, thereby pre-maturely releasing the State from its liability.

(106) On the basis of the above considerations the Commission concludes that distortions of competitions caused by the aid granted to BAWAG are adequately limited by the committed measures.

### 2.2.4. Conclusion on the restructuring plan

(107) On the basis of the above, the Commission concludes that the modified restructuring plan of 21 June 2010 for BAWAG P.S.K. is capable of restoring the long-term viability of the bank, includes sufficient measures of burden-sharing and measures to limit distortions of competition. The Commission therefore considers that on the basis of this restructuring plan the capital injection is compatible with the internal market under Article 107(3)(b) TFEU.

## V. DECISION

Based on the above assessment and the commitments provided by the Republic of Austria the Commission raises no objection against the modified restructuring plan of 21 June 2010 for BAWAG P.S.K. Bank für Arbeit und Wirtschaft und Österreichische Postsparkasse Aktiengesellschaft, and the EUR 550 million capital injection implemented by Austria in favour of BAWAG P.S.K. Bank für Arbeit und Wirtschaft und Österreichische Postsparkasse Aktiengesellschaft on 23 December 2009.

The Commission raises no objection against the prolongation until […] of the deadline to divest FCH beta Finanzierungsvermittlung GmbH (Stiefelkönig Schuhhandels Gesellschaft m.b.H.) as described in recital 42 of this decision.

The Commission notes that the Republic of Austria has exceptionally accepted that the decision be adopted in English language.

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

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Yours faithfully,
For the Commission

Joaquín ALMUNIA
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