DECISIONS

COMMISSION DECISION

of 19 September 2012

on the State aid SA.31883 (2011/C) (ex N 516/10) which Austria implemented and is planning to implement for Österreichische Volksbanken AG

(notified under document C(2012) 6307)

(Only the German text is authentic)

(Text with EEA relevance)

(2013/298/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 108(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments pursuant to those provision(s), [1]

Whereas:

1. PROCEDURE

(1) On 9 December 2008 [2] the Commission approved the Austrian bank support scheme, which was subsequently prolonged four times [3] and expired on 30 June 2011.

(2) In April 2009 Österreichische Volksbanken-AG ("ÖVAG") was recapitalised with EUR 1 billion under the Austrian bank support scheme. In addition, ÖVAG placed three issues of debt instruments which were State guaranteed under that scheme in the market, each of EUR 1 billion, on 9 February, 18 March and 14 September 2009 respectively. Austria provided those aid measures under the assumption that ÖVAG was a sound bank and submitted a viability plan on 29 September 2009.

(3) Further analysis by the Commission led it to conclude that the application of the criteria laid down in the Annex to the Commission 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 [4] ("Recapitalisation Communication") indicated that the bank could not be considered as sound in the meaning of that Communication at the moment of the recapitalisation. Therefore a restructuring plan was requested. Austria, while maintaining its position that the bank had been sound, submitted a restructuring plan for ÖVAG on 2 November 2010 ("initial restructuring plan"). That plan was subsequently supplemented by a number of information submissions.

(4) By letter dated 9 December 2011, [5] the Commission informed Austria that it had decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union ("the Treaty") in respect of the recapitalisation of EUR 1 billion and the guarantee of EUR 3 billion granted by Austria in favour of ÖVAG and requested Austria to submit an amended restructuring plan.

(5) The Commission Decision to initiate the procedure ("opening Decision") was published in the Official Journal of the European Union on 17 February 2012. The Commission called on interested parties to submit their comments.

(6) The Commission received no comments from interested parties.

(7) On 28 March 2012 Austria notified a restructuring plan, which was preceded by several submissions of information, in particular on 16 December 2011 and 1, 13 and 16 March 2012.

(8) The new restructuring plan and the aid measures were discussed between Austria and the Commission in a series of meetings, teleconferences and other information exchanges during the period from April 2012 until August 2012. The final version of the new restructuring plan was submitted on 4 September 2012 ("new restructuring plan").

[1] OJ C 46, 17.2.2012, p. 3.

[2] Commission Decision of 9 December 2008 in State aid case N 557/2008 – *Maßnahmen nach dem Finanzmarktstabilitäts- und dem Interbankmarktstärkungsgesetz für Kreditinstitute und Versicherungsunternehmen in Österreich*, OJ C 3, 8.1.2009, p. 2.

[3] The first extension of the scheme, including certain amendments, was approved on 30 June 2009 (OJ C 172, 24.7.2009, p. 4), the second extension on 17 December 2009 (OJ C 28, 4.2.2010, p. 6), the third extension on 25 June 2010 (OJ C 250, 17.9.2010, p. 4) and the fourth extension on 16 December 2010 (OJ C 20, 21.1.2011, p. 3).

[4] See point 13 and the Annex to the Commission Communication, OJ C 10, 15.1.2009, p. 2.

[5] Commission Decision of 9 December 2011 in the case SA.31883, Restructuring of Österreichische Volksbanken AG, OJ C 46, 17.2.2012, p. 3.

(9) On 4 September 2012 Austria submitted commitments, which are attached in the Annex to this Decision.

2. DESCRIPTION

2.1. Beneficiary and its difficulties

(10) ÖVAG is the central institute of Austria's Volksbanken (local credit co-operatives) providing them with centralized back-office services, liquidity management and financial products. Volksbanken are universal banks whose activities are local to regional in scope. Together with ÖVAG as their central institution they form the Volksbank group. 60,2 % of ÖVAG is owned by them through a common holding entity. Other owners are DZ Bank (23,8 %), ERGO Versicherungsgruppe AG (9,5 %) and Raiffeisen Zentralbank Österreich AG ("RZB", the central institute of the Raiffeisen group, the second Austrian cooperative group) (5,8 %). The remaining 0,6 % is in free float. ([6]) At the end of 2008 ÖVAG was the fourth-largest bank in Austria with a balance sheet total of EUR 52,9 billion ([7]), an Aa3 rating from Moody's and an A rating from Fitch. ([8])

(11) ÖVAG's main geographic market is Austria. The bank was also active in a number of Central and Eastern European countries (CEE), where its market shares were, except for Romania, small. To a limited extent ÖVAG is also active in Germany in corporate banking and real estate financing.

(12) Until recently, ÖVAG operated in five business segments: corporate banking, retail banking, real estate, financial markets and banking book/other operations. ÖVAG abandoned public finance and infrastructure financing in 2008 when it sold its stake in Kommunalkredit Austria AG ("KA") to the Republic of Austria for the nominal amount of EUR 1. More details of the previous business model of ÖVAG are provided in the opening Decision. ([9])

(13) The sources of ÖVAG's difficulties were manifold. As already identified in the opening Decision ([10]) the following factors contributed to ÖVAG's difficulties: its exposure to CEE countries through its retail banking subsidiaries grouped in VB International AG ("VBI"); its engagement in public finance and infrastructure financing; real estate activities; an investment portfolio containing among others instruments issued by Lehman Brothers and Icelandic banks; and reliance on wholesale funding. Those factors led to significant losses of ÖVAG in 2008 and 2009 and resulted in the support measures granted to the bank by Austria in 2009.

(14) ÖVAG had already initiated a restructuring process in 2009, which among others aimed at separating the bank from the activities which were the main source of its problems. Nevertheless, some of the risks stemming from the legacy portfolio affected the bank again in 2011. In particular they were:

(a) losses generated by the VBI subsidiaries and impairments on their book value in ÖVAG's accounts totalling EUR 380 million;

(b) impairments of EUR 300 million on ÖVAG's investments linked to the countries most affected by the sovereign crisis;

(c) write-down of the remaining participation capital which ÖVAG held in KA, at an amount of EUR 142 million;

(d) revaluation of Investkredit's ([11]) ("IK") book value by minus EUR 323 million in the context of the merger by absorption by ÖVAG.

(15) The impact of the losses listed in recital 14 led to the second rescue of ÖVAG by Austria, agreed with the original shareholders on 27 February 2012. Further, ÖVAG reviewed its initial restructuring plan and decided for a more profound restructuring.

2.2. The aid measures

2.2.1. *Aid measures of 2009*

(16) In 2009 the liquidity and capital position of ÖVAG was strengthened under the Austrian bank support scheme by means of a EUR 1 billion recapitalisation and State guarantees covering EUR 3 billion of debt instruments. Thanks to the implementation of the recapitalisation the tier-1 ratio of ÖVAG was increased to 9,2 % and the equity ratio to 12,5 % as of the end of 2009.

([6]) Those percentages describe the structure of the voting rights. They exclude treasury shares held by ÖVAG. Before the capital cut by 70 % and the planned capital increase by EUR 484 million ÖVAG held 1,63 % of its own shares.

([7]) Already down from EUR 78,6 billion total assets as per end 2007. Source: ÖVAG's annual report 2009.

([8]) Fitch takes into account the fact that ÖVAG is a member of the protection scheme of the Volksbanken Verbund. That is why ÖVAG has the same long- and short-term Issuer Default Rating as the whole group ('A' and 'F1' respectively).

([9]) Opening decision, recitals 7-12.

([10]) Opening decision, recitals 13-19.

([11]) Investkredit Bank AG is a subsidiary of ÖVAG, which provides corporate lending, factoring, project financing, trade and export financing. More information about it is provided in recital 7 of the opening Decision.

The recapitalisation of EUR 1 billion

(17) In April 2009, Austria subscribed participation certificates (*Partizipationsscheine*, "PS") of ÖVAG amounting to EUR 1 billion ("2009 recapitalisation"). By means of that instrument the State does not obtain voting rights but a preferential coupon and a conversion option. The instrument is perpetual and is treated as core tier-1 capital.

(18) The PS have, as laid down in the Austrian bank support scheme, a preferential coupon of 9,3 % p.a. In the sixth and seventh full financial year after the subscription of the instruments the coupon increases yearly by 50 basis points, in the eighth year by 75 basis points and from the ninth financial year onwards by 100 basis points, but only to the maximum of 12-month EURIBOR plus 1 000 basis points p.a. The payment of the coupon is subject to the bank showing a profit and ÖVAG's decision to distribute it. Coupons not paid in one year are not deferred to a later year. The PS absorb losses in proportion to the total loss-absorbing capital.

(19) The bank has the right to redeem all or tranches of the PS at any time. The redemption value in the first ten financial years from the subscription amounts to 100 % of the nominal value of the participation certificates, and thereafter to 150 %. ([12])

(20) The State has the right to convert the PS into ordinary shares of ÖVAG. Although until 1 January 2019 such a conversion is subject to agreement by the bank, the bank's consent to the conversion is not necessary in the following cases:

(a) the dividend for the financial year 2011 is not paid out fully or partially; or

(b) for two consecutive years after 31 December 2011 the dividend is not paid out fully or partially; or

(c) on 1 January 2012 the State still holds PS with a nominal value of at least EUR 700 million; or

(d) on 1 January 2015 the State still holds PS with a nominal value of at least EUR 400 million.

Guarantees covering new issuance of debt

(21) ÖVAG benefited from government guarantees under the Austrian bank support scheme and issued EUR 3 billion of State-guaranteed bonds in 2009.

Table 1

ÖVAG's State-guaranteed debt issues in 2009

Tranche	Nominal value	Date of issue	Maturity	Coupon	Total cost
1.	EUR 1 billion	9.2.2009	9.2.2012	3.000 %	157 basis points over 6M Euribor
2.	EUR 1 billion	18.3.2009	19.3.2013	3.375 %	194 basis points over 6M Euribor
3.	EUR 1 billion	14.9.2009	14.9.2012	2.250 %	155 basis points over 6M Euribor

Source: New restructuring plan, p. 36.

2.2.2. *Aid measures of 2012*

(22) The magnitude of the losses reported by ÖVAG for 2011 will lead to further State aid measures, which consist of a EUR 250 million capital injection by the State in form of ordinary shares ("2012 recapitalisation") and an asset guarantee with the effect of increasing the capital by EUR 100 million ("asset guarantee").

Capital increase by EUR 250 million

(23) The capital increase is to be conducted in two steps. First, the bank's capital is reduced by 70 % to offset the accumulated losses. That capital cut also reduces pro rata the PS which Austria injected in 2009. In a second step, ÖVAG receives fresh capital totalling EUR 484 million. EUR 250 million thereof is to be subscribed by Austria, the rest by the Volksbanken. Austria and the Volksbanken will subscribe the shares at the price of EUR 2,181 per share. As a result, the State will obtain a 43,4 % stake in the bank and become the second-biggest shareholder after the Volksbanken (50,2 %). The

([12]) That redemption value is increased by the percentage points by which the dividend on the PS capital fell short of the contractual value when distributable yearly profits would have sufficed for the payment but instead were retained, although the bank was not obliged to do so by regulatory or supervisory requirements.

stakes of the other shareholders, which do not participate in the capital injection, will be diluted: DZ-Bank 3,8 %, ERGO 1,5 %, RZB 0,9 %, free float 0,1 %.

Asset guarantee

(24) In addition to the capital injection of EUR 250 million, Austria will provide an asset guarantee of EUR 100 million, which will have the effect of increasing the capital of ÖVAG by the same amount, and which will be remunerated at 10 % p.a. (i.e. like a capital injection). The aim of the asset guarantee is to reduce the provisioning or write-down needs of the bank and to protect its capital base. The measure differs from standard impaired asset measures because the guarantee will be structured in such a manner that it will influence the loan-loss provisions the bank had already made for expected losses on the covered assets. The guarantee will therefore be given for (book) losses that have already occurred.

(25) ÖVAG will be able to draw the guarantee and request the recourse from the State (the guarantor) if it provides evidence that the debt is irrecoverable or that the debtor entered formal insolvency proceedings and only if and as far as the recourse is necessary to avoid that the Common Equity Tier 1 ([13]) ("CET1") ratio of ÖVAG group ([14]) falls below a level of 11 % by 31 December 2015. That CET1-threshold is lowered to 10 % if by the same date ÖVAG has sold its shares in Volksbank Romania S.A ("VBRO") or in VB Leasing International Holding GmbH ("VBLI") completely.

(26) Recourse under the guarantee will not be allowed before 31 December 2015. Incoming payments related to the covered assets are to be charged against any claim which the bank might have against the State, if they exceed the non-impaired and non-guaranteed value of the asset.

(27) The payment obligations of the State resulting from the guarantee being called will be deferred until 31 July 2016 without any interest charged for deferred payment. Any amounts drawn need to be repaid to the State as soon as the financial situation of the bank allows for it.

(28) The guarantee will be remunerated with a fee of 10 % p.a. ([15]) on the total amount granted from 30 September 2012 to 1 January 2016. For the amounts called upon, that remuneration will be replaced by a fee of 10 % p.a. which will be paid from the moment the amounts are called upon until the amount called upon is fully repaid to the State. The latter remuneration is linked to the bank making profits and complying with a CET1 ratio of 10 % and is not cumulative.

(29) The liability of the State under that guarantee will expire on 1 January 2016 with the exception of any claim that has been raised before that date.

2.3. **The new business model**

Overview

(30) According to the new restructuring plan ÖVAG will integrate closely with the Volksbanken. A system of joint liability ("Verbundmodell") will be established between ÖVAG and the Volksbanken. ÖVAG is reduced to the functions of a central institute of the Volksbanken sector. It will concentrate on providing services to the Volksbanken by pooling liquidity, assisting in the provision of larger-scale loans and offering treasury products for the Volksbanken and their clients. Thereby, its balance sheet total as well as the complexity of its business model will be reduced significantly. The activities which created the bank's problems or do not fall within the scope of activities of a Volksbanken central institute are in run-down or will be divested. The bank bundles those activities in an internal non-core segment.

(31) The balance sheet will be reduced from EUR 91 billion at the end of September 2008 ([16]) to EUR 19 billion in 2017, of which EUR [12-15] (*) billion will belong to the new core business (the remainder being non-core business in run-down). The risk-weighted assets ("RWA") will decrease from EUR 35,2 billion in 2008 to EUR [9-12] billion in 2017 in the base case.

The Verbundmodell

(32) The "Verbundmodell" is a system of joint liability with a well-regulated transfer of liquidity between its members ("Liquiditätsverbund"), combined with a joint financial protection of the creditors of all members ("Haftungsverbund"). At the same time the Verbundmodell provides for the maintenance of the legal independence of the associated banks while allowing its members to make use of the shared organisational infrastructure of the "network".

([13]) Common Equity Tier 1 as defined by the Basel Committee on Banking Supervision ("Basel III: A global regulatory framework for more resilient banks and banking systems", December 2010 (rev. June 2011) http://www.bis.org/publ/bcbs189.htm).

([14]) ÖVAG and its subsidiaries/participations, in particular VB Factoring Bank Aktiengesellschaft, VB Leasing Finanzierungsgesellschaft m. b. H. and Volksbank Invest Kapitalanlagegesellschaft m. b. H.

([15]) That fee will be a regular expense item of the bank and therefore does not depend on ÖVAG being profitable.

([16]) After the sale of its public finance subsidiary KA to Austria ÖVAG's balance sheet total was EUR 52,9 billion at the end of 2008.

(*) Contains business secrets, where possible, ranges were provided in [brackets]

(33) In that context, ÖVAG as the central institute is to ensure and to control the solvability and the liquidity of the co-operative banks which are part of the "Verbund" on the basis of consolidated accounts. Furthermore, ÖVAG is, amongst others, responsible for the representation of the interest of the group as a whole, for public relations on a group level and for support in certain back-office functions as for instance transactions in securities, logistics, setting of group standards for compliance and anti-money laundering. In addition, the bank will be assigned further functions ("Verbundfunktionen") that seem necessary from a regulatory point of view for the group as a whole or for efficiency reasons. They include in particular responsibility for compliance with those regulatory requirements which have to be respected collectively (for instance solvability, liquidity, internal capital adequacy process for the "Verbund", internal audit). They also include provision of support for the sales and marketing of (individualised) products.

(34) Pursuant to the Austrian Banking Act ([17]) the system of joint liability means that ÖVAG in its role as central institute is assuming liability for the entirety of obligations of the "Verbund" whereas the liability of the individual co-operative banks for the Verbund is limited to the part of their own funds exceeding the regulatory minimum required for the coverage of their own RWA. That "excess capital" of all co-operative banks of the "Verbund" by 31 December 2011 amounts to EUR [450-500] million if calculated on the basis of a ratio of 8 % CET1 and to EUR [600-650] million if calculated on the basis of 7 % CET1.

(35) Another important feature of the Verbundmodell is that of liquidity cooperation. That liquidity cooperation under the terms of the Austrian law means among others that the co-operative banks are obliged to keep 14 % of their deposits with ÖVAG as a minimum reserve. In addition, ÖVAG can pool collateral coming from the Volksbanken (mortgage loans) which then can be used for covered bond funding. Currently, the co-operative banks hold EUR [2,5-5] billion of assets which can potentially be used as such collateral. A further significant element to ensure a stable liquidity position of ÖVAG was the transfer of the online banking platform Livebank from one of the local Volksbanken to ÖVAG in 2011. This will on the one hand provide ÖVAG with direct access to retail deposits and thus reduce its reliance on wholesale funding, which was one of the sources of ÖVAG's problems. On the other hand it will allow for a centralised online banking appearance of the Volksbanken sector, in line with the Verbundmodell.

([17]) Bankwesengesetz (BWG).

The core segment

(36) The core segment consists of three divisions: Credit/Underwriting business, Financial Markets and Banking book/Other items. ÖVAG expects the total assets of the core segment to total EUR [12-15] billion in 2017 (EUR 16,8 billion at the end of 2012) and RWA of [4-6] billion by the end of 2017.

(37) The segment Credit/Underwriting Business comprises three units Credit Verbundbank, VB Factoring and Product Leasing ("Mobilienleasing") Austria ("VBLF"). ÖVAG considers that business part of its core business with the co-operative banks. The business activities are focused on Austria.

(38) Credit Verbundbank comprises the credit and syndicated loans business with the Verbundbanken ([18]). The services provided by the two subsidiaries VB Factoring and VBLF are considered as central functions for the "Verbund" as well. VBLF is one of the major providers of leasing services in the field of cars, trucks and office automation in Austria. Due to its inter-linkage with the co-operative banks VBLF will be part of ÖVAG's future business strategy. VB Factoring, a wholly-owned subsidiary of ÖVAG, provides services for the major part of the factoring business carried out by the co-operative banks.

(39) The division Financial Markets comprises in particular the units Group treasury, Volksbank investments, Immo KAG and Online Banking (Livebank). Financial Markets is responsible for the management of short- and long-term liquidity, trading of securities and foreign exchange trading as well as for controlling of liquidity and market price risks. In addition, it is a provider of products for the co-operative banks and for domestic and foreign institutional clients.

(40) The division Banking book/Other items consists of the units Capital Markets and Asset Liability Management. In addition, the activities of the company VB Services für Banken GesmbH (an outsourced service provider) and of various holding companies have been assigned to that segment.

([18]) Including syndicated loans provided together with IMMO Bank, which is the specialist for the residential property financing within the Volksbanken sector.

The non-core segment

(41) The non-core segment comprises the entirety of participations and former business areas which are no longer part of ÖVAG's core business. The total assets of that segment are budgeted with EUR 11,7 billion (RWA: EUR 11,0 billion) in 2012 and with EUR [3-5] billion (RWA: EUR [3-5] billion) in 2017. ÖVAG expects to reduce the RWA of that segment to less than EUR 1 billion by 2026. The portfolios assigned to that segment are in run-down or will be divested.

(42) The run-down part of the non-core segment includes in particular the corporate finance portfolio comprising considerable parts of the current Corporate Lending business CEE, the entirety of the Leveraged Finance divisions in Austria and CEE and the business lines International Project Financing and Corporate Banking as far as the latter is not related to the underwriting business with the co-operative banks. The Frankfurt branch will no longer be part of ÖVAG's core portfolio. Moreover, the real estate portfolio as a whole has been put into run-down and will cease to be part of the bank's business model. The real estate portfolio of Europolis, an asset management company active in the field of real estate, was already sold in 2010.

(43) Another part of that segment is VBLI, a leasing subsidiary which is 50 % owned by ÖVAG. ([19]) VBLI group conducts leasing business in eight CEE and South-East European countries. It also holds a minority stake of about 8 % in a leasing company in Hungary whose main stake holder is VR-Leasing. VBLI was a complementary business to the international credit business conducted by VBI. Due to the discontinuation of the international banking activities the bank intends to sell its participation in VBLI by 31 December [2013-2017]. In order to facilitate the sale, ÖVAG has already written down its participation in its IFRS accounts by [30-60] % to EUR [50-70] million. If a sale of VBLI by the end of 2014 does not seem realistic, all new business will be ceased by 31 December [2013-2017] and VBLI will be liquidated in compliance with the relevant legal framework. ([20])

(44) Another part of the non-core segment is VBRO, which was excluded from the sale of VBI in 2010. Based on its total assets VBRO is the seventh-largest bank in Romania. The bank has been active on the Romanian market with a strong focus on mortgage related credits for retail and smaller business clients, mainly denominated in foreign currencies. VBRO is currently being restructured by ÖVAG. In 2011, the branch structure was reorganised leading to a significant reduction in branches. The number of employees in the branch network was cut by 25 %. In the current environment, the acquisition of deposits and payment transaction services is prioritised, while new lending business is strongly reduced. The new business strategy aims at developing VBRO into a universal bank with a more balanced product mix and a reduction of the comparatively high percentage of mortgage loans in foreign currencies. It is planned to reduce VBRO's dependence on funding by its shareholders and improve the loan-to-deposit ratio. The plan also includes a determined work-out strategy for the non-performing loans. Although VBRO is planning to generate positive results throughout the restructuring period, the restructuring plan assumes more cautiously neutral results. ÖVAG plans to divest VBRO by the end of [2013-2017]. In order to facilitate the sale, ÖVAG has already written down its participation in its IFRS accounts to EUR [0-50]. If a sale of VBRO by the end of [2013-2017] should not seem realistic, all new business will be ceased by 31 December [2013-2017] and VBRO will be liquidated in compliance with the relevant legal framework. ([21]) Alternatively, parts of VBRO could be sold by 31 December [2013-2017] and only the remaining portfolios be liquidated in compliance with the relevant legal framework. ([22])

(45) Finally, the banking activities in Malta are to be divested by the end of [2013-2017]. If a sale by end [2013-2017] is not achieved, all new business will be ceased by 31 December [2013-2017] and the activities will be liquidated in compliance with the relevant legal framework. ([23]) Also the participation in RZB will be divested by the end of [2013-2017] at the latest. If the participation in RZB has not been sold by that date, a duly authorised Divestiture Trustee will take over the sales process. ([24])

Funding

(46) ÖVAG provided information regarding its liquidity position as of May 2012 and presented measures which address current and future funding needs.

([19]) The other shareholder is VR Leasing (a subsidiary of DZ Bank).
([20]) See point 6.3 of the Annex.
([21]) See point 6.3 of the Annex.
([22]) See point 6.3 of the Annex.
([23]) See point 6.3 of the Annex.
([24]) See point 6.4 of the Annex.

(47) As regards its previous reliance on unsecured wholesale funding, ÖVAG claims that it was mainly due to the subsidiaries which relied heavily on the funding provided by ÖVAG. That problem has already been addressed to some extent by the sale of VBI in 2011 (reduction of the financing needs by EUR 1,1 billion). Further, the restructuring of VBRO and its subsequent sale, together with the divestment of VBLI, are to free up a further EUR 2,4 billion of liquidity.

(48) The bank demonstrated that it has implemented measures which give it access to further sources of funding or ease its liquidity needs. The acquisition of Livebank (from one of the Volksbanken) gave ÖVAG access to EUR 470 million of retail funding, thereby reducing ÖVAG's past reliance on wholesale funding. The measures committed to by the minority shareholders ([25]) are to contribute to the reducton of the funding needs. Finally, the establishment of the Verbund-modell together with the regional Volksbanken allows ÖVAG to reduce its financing needs by EUR 2,7 billion ([26]). Additionally, it will be able to use some of the assets held by the associated Volksbanken as collateral for covered bonds if needed (currently EUR [2-4] billion).

2.4. **Contribution of other shareholders and hybrid investors**

(49) DZ Bank, Ergo and RZB did not participate in the capital injection, but committed to contribute to ÖVAG's rescue and restructuring in the following way:

(a) DZ Bank will maintain existing liquidity facilities for the subsidiaries owned in common with ÖVAG (for instance VBLI). Additionally, it will take over the business of ÖVAG's Frankfurt branch (EUR [400-500] million in terms of assets) and the related financing needs.

(b) ERGO will maintain its existing liquidity facilities with ÖVAG and agrees not to sell the financial instruments emanating from ÖVAG held by its insurance arm Victoria.

(c) RZB (will implement measures which will have a positive effect on the capital of ÖVAG in the volume of EUR 100 million and supply additional liquidity to ÖVAG in the amount of EUR 500 million.

([25]) See recital 49.
([26]) […].

(50) Further, all historic shareholders ([27]) participate in the losses of the past by way of the capital cut of 70 %. In addition, they have been significantly diluted in the last recapitalisation. ([28]) Furthermore, the Volksbanken contribute to the recent capital increase with fresh capital totalling to EUR 230 million.

(51) In order to ensure that the owners of the bank participate in the reconstitution of an adequate capital basis over the restructuring period, the bank will retain dividends and not pay coupons on hybrid capital which it is not legally obliged to pay. It is complemented by a strict limit on dividends which can be disbursed by the co-operative banks over the restructuring period, in order to support the build-up of capital in the "Verbund".

(52) ÖVAG provided information on a buy-back exercise regarding hybrid instruments issued by two subsidiaries of ÖVAG at a total amount of EUR 300 million. Between May and July 2012, ÖVAG offered to buy those instruments back from investors at around 40 % of their nominal value. The offered buy-back price was determined on the basis of the market value of the instruments plus a premium of not more than 10 percentage points, which was added to incentivise investors to participate in the buy-back. The transaction was settled in mid-July 2012. It resulted in almost 80 % of the instruments' nominal value being bought back and a profit for ÖVAG after deduction of transaction costs of EUR 129,9 million.

2.5. **Financial planning**

(53) Austria presented a detailed business plan for ÖVAG for the period 2012 to 2017. The plan includes a base case and a stress case scenario with the aim of demonstrating ÖVAG's ability to restore its long-term viability.

Base case

(54) The new restructuring plan is based on assumptions in respect of the evolution of the Euro area, its GDP growth, short-term and mid-term interest rates changes, which are largely in line with the expectations of important market players and international institutions like e.g. the IMF. Euro area inflation, oil prices and the EUR/USD and EUR/CHF exchange rates are part of the assumptions as well. The planning assumes a moderate recovery of GDP growth in 2013 and thereafter.

(55) As illustrated in Table 2, in the base case ÖVAG is expected to continuously improve its results until 2016.

([27]) See recital 10.
([28]) See recital 23.

Table 2

Key financial figures of ÖVAG – base case (in EUR million and %, respectively)

ÖVAG Group	2012P	2013P	2014P	2015P	2016P	2017P	2018P
Result (after tax)	[60-80]	[10-30]	– [30-10]	[40-60]	[130-150]	[90-110]	n.a.
Return on Equity after taxes	[3-5]	[1-3]	– [3-1]	[3-5]	[10-12]	[8-10]	n.a.
Balance sheet total	[20 000-30 000]	[26 000-28 000]	[22 000-24 000]	[20 000-22 000]	[19 000-21 000]	[18 000-20 000]	n.a.
RWA	[18 000-20 000]	[16 000-18 000]	[13 000-15 000]	[11 000-13 000]	[10 000-12 000]	[9 000-11 000]	[8 000-10 000]
CET 1	[9-10]	[10-11]	[11-12]	[11-12] (1)	[11-12] (1)	[12-13] (2)	[12-13] (2)
Capital ratio	[13-14]	[12-13]	[14-15]	[14-15] (1)	[15-16] (1)	[15-16] (2)	[14-15] (2)

Source: New restructuring plan of ÖVAG
(1) taking into account the effect of expiry of the asset guarantee;
(2) taking into account the effect of expiry of the asset guarantee and the redemption of the PS capital.

(56) The return on equity (RoE) of the bank increases over the restructuring period to a level of 8,0 % after-tax. The bank claims that the level of 8 % RoE after-tax represents a sufficient and market-oriented capital remuneration, given the business model of the core-bank with a low risk profile. In particular the bank is not involved in such volatile activities as investment banking or proprietary trading but concentrates on its role as central institute for the local co-operative banks.

Stress case

(57) ÖVAG provided a stress case scenario on a group level based on less favourable market assumptions. Among others, a further appreciation of the US dollar against the euro and the weakening of the Romanian leu against the euro, a slower increase of the interest rates than expected in the base case, a further deterioration of some sovereign ratings and a decline of the economic growth in the EURO area were assumed. According to the bank's estimations those developments in sum could lead to an additional use of capital of up to EUR [600-650] million and to a reduction of ÖVAG's CET 1 ratio for the overall risk to [6,0-7,0] % in 2017.

Table 3

Key financial figures of ÖVAG – stress case (in EUR million and %, respectively)

	2012	2013	2014	2015	2016	2017
CET1	[7-8]	[7-8]	[7-8]	[5,5-6,5]	[6-7]	[6-7]
Capital ratio	[11-12]	[10-11]	[10-11]	[8-9]	[9-10]	[8-9]

Sensitivity scenarios

(58) Furthermore, the bank provided sensitivity scenarios set up by an external consultant, in which the following additional adverse developments were assumed: delayed sale of VBRO at a […] price of EUR […] million, increase of its refinancing costs; inability to divest VBLI; lower quality of assets in the non-core segment (increase in RWA by 20 %, increase in risk-provisioning by 50 % and impairments on investments of EUR 100 million); increase in RWA by 10 % in the core segment; no increase in profits in 2016 and 2017.

(59) The consultant found that if all those stress conditions were jointly to materialise, ÖVAG would have a capital shortfall of EUR 195 million in 2017/2018, ([29]) which however would be covered by the regulatory excess capital of the co-operative banks (i.e. the "Haftungsverbund") amounting to EUR [650-750] million in 2017/2018. Thus, overall, that adverse scenario could be managed by the bank.

Cost reductions

(60) According to the financial projections of ÖVAG, its administrative costs will be reduced from EUR 166 million in 2012 to EUR 105,5 million in 2017, which represents a reduction by 36 %. However, in addition to the cost-optimisation measures (such as closing the Frankfurt branch and IK's representative offices in CEE; synergies resulting from the merger of

([29]) That figure includes the effect of the expiry of the asset guarantee in 2015 and the redemption of the PS of EUR 300 million.

ÖVAG and IK; reduction of personnel, building occupancy and consultancy expenses; outsourcing of IT infrastructure), that impact includes the effects of divestments and scaling-down of operations in the non-core segment. Therefore, the bank provided also information on the expected results of the cost-cutting measures in the core segment. There the cost optimisation measures should result in a reduction of the annual costs by EUR 15 million by the end of the restructuring period, which represents about 12 % of the total costs in 2012.

Redemption of PS in 2017/2018

(61) As part of the capital cut in 2012, the PS granted by Austria in 2009 was reduced to EUR 300 million. The bank intends to redeem 50 % of that amount in 2017 and the remaining 50 % at the beginning of 2018. If it proves necessary to do so to allow for that redemption, the Volksbanken will provide ÖVAG with the relevant means.

3. GROUNDS FOR INITIATING THE FORMAL INVESTIGATION PROCEDURE

(62) The Commission recalls that it opened the formal investigation procedure pursuant to Article 108(2) of the Treaty regarding the compatibility of the restructuring aid for ÖVAG with the internal market because it had, on the basis of the initial restructuring plan, serious doubts whether ÖVAG would be able to restore its long-term viability. ([30]) The Commission also expressed doubts whether adequate burden-sharing was ensured and the distortions of competition were sufficiently limited. ([31])

4. COMMENTS FROM AUSTRIA

(63) Austria underlines that ÖVAG is a bank of systemic relevance whose insolvency would have had massive negative implications for the Austrian banking system and the Austrian real economy. That assessment has been confirmed by a letter of Österreichische Nationalbank, the Austrian central bank.

(64) Austria does not deny the aid character of the measures described in section 2.2.

(65) Austria points out that the measures described in section 2.2.1 were granted in compliance with the approved Austrian bank support scheme. It maintains that ÖVAG was at the moment of the recapitalisation not a distressed bank in the meaning of the Recapitalisation Communication. Nevertheless, Austria has agreed to submitting a restructuring plan for the bank.

([30]) Opening decision, recitals 58-62.
([31]) Opening decision, recitals 65-69, 73 and 74.

(66) Further, Austria does not contest that the second recapitalisation measure agreed on 27 February 2012 and the asset guarantee ("the 2012 measures") constitute State aid within the meaning of Article 107(1) of the Treaty. However, it considers them compatible with the internal market on the basis of Article 107(3)(b) of the Treaty, as they are required to remedy a serious disturbance in the economy of a Member State and are compliant with the relevant Commission communications.

(67) In particular, Austria provided information and comparative market data on the basis of which it argues that the 2012 measures comply with the requirements of the Recapitalisation Communication and the Communication from the Commission on the application, from 1 January 2012, of State aid rules to support measures in favour of banks in the context of the financial crisis ([32]) ("2011 Prolongation Communication").

(68) As regards the 2012 recapitalisation measure, the company value of ÖVAG (a non-listed bank) prior to the 2012 recapitalisation was estimated on the basis of an appropriate market-based valuation approach, which was a peer group price-to-book (P/B) approach. On the basis of the observable market data for an appropriate peer group, ([33]) Austria determined a P/B-multiple, leading to a company value in the range of EUR [270-300] million to EUR [320-360] million. After the recapitalisation by the Volksbanken is taken into account, the company value would range from EUR [500-530] million to EUR [550-580] million and translate to a price per share of EUR [3-4]. Since Austria subscribed the shares at the price of EUR 2,2, the effective discount ranges from [35 % to 45 %]. Austria considers that the application of that discount adequately addresses the requirements stipulated in the point 8 of the 2011 Prolongation Communication that State capital injections should be subscribed at a sufficient dilution-adjusted discount.

(69) As regards the asset guarantee, Austria argues that it is a measure which aims solely at increasing ÖVAG's capital by EUR 100 million. Since it is comparable to recapitalisation and remunerated at 10 % p. a., it is compliant with the Recapitalisation Communication.

(70) Austria is of the opinion that the restructuring plan ensures that ÖVAG's long-term viability is restored, that ÖVAG provides a sufficient own contribution to the restructuring costs and that distortions of competition are limited by substantial structural and behavioural measures.

([32]) OJ C 356, 6.12.2011, p.7.
([33]) The selection of the peer group was based on objective criteria, such as comparable products range and geographic scope of activities.

(71) Austria has provided a number of commitments that are set out in the Annex and constitute an integral part of this Decision. In order to ensure that the commitments will be implemented, a monitoring trustee will be appointed. The activities of the monitoring trustee will apply throughout the restructuring period, which lasts until 2017. The commitments comprise several behavioural restrictions for ÖVAG such as dividend and coupon bans, ([34]) a ban on advertising the state aid received and a price leadership ban for its online platform "Livebank", ([35]) an acquisition ban ([36]) and a commitment to assess the remuneration of board members with the aim of creating an incentive structure for a sustainable development. ([37]) In addition, the commitments comprise the obligation to divest VBLI by [2013-2017], VBRO and the banking activities in Malta by [2013-2017] and the participation in RZB by [2013-2017]. ([38])

5. ASSESSMENT

5.1. Existence and the amount of aid

(72) As stated in Article 107(1) of the Treaty 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.

(73) The qualification of a measure as State aid requires that the following conditions are met: it must be financed by a Member State or through State resources; it must grant an advantage liable to favour certain undertakings or the production of certain goods; the measure must distort or threaten to distort competition; and the measure must have the potential to affect trade between Member States.

(74) The Commission recalls that it has already established in the decisions on the Austrian bank support scheme that liquidity guarantees and capital injections given under the scheme in 2009 constitute aid. That qualification is not disputed by Austria.

(75) Further, as regards the support measures agreed on 27 February 2012, the Commission considers the conditions recalled in recital 73 are also met for the recapitalisation of EUR 250 million and the asset guarantee of EUR 100 million.

(76) The 2012 measures are granted by Austria and thus are directly attributable to the State. The Commission thus concludes that they stem from State resources.

(77) The 2012 measures allow ÖVAG to obtain capital (and indeed the asset guarantee de-facto provides the bank with capital) in a financial and economic crisis situation where it would not have been able to find that capital at the same conditions on the market. The Commission notes that the minority shareholders of ÖVAG (ERGO Group, RZB and DZ Bank) decided not to participate in the recapitalisation of ÖVAG. The Volksbanken participated in the capital increase. However, as existing majority shareholders and given that they are commercially closely linked to ÖVAG, they were investing under different economic considerations than those of the State. Indeed, an insolvency of ÖVAG would have had severe consequences for the Volksbanken, potentially challenging their own survival. In this context they participated in the rescue of ÖVAG in order to secure their own commercial future. The 2012 measures must therefore be regarded as providing an advantage to ÖVAG. Moreover, that advantage is selective since it only benefits one bank.

(78) Given that ÖVAG is active in the financial sector, which is open to intense international competition, any advantage from State resources to the bank has the potential to affect intra-Union trade and to distort competition. The measures therefore constitute State aid within the meaning of Article 107(1) of the Treaty. That assessment is also not disputed by Austria.

(79) The 2009 and 2012 capital measures total EUR 1,350 million and represent 3,8 % of the bank's RWA at the end of 2008 (EUR 35,2 billion). In addition, EUR 3,0 billion of guarantees were obtained by the bank from Austria.

5.2. Legal basis of compatibility assessment

(80) On the basis of Article 107(3)(b) of the Treaty State aid can be found 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 create a serious disturbance in the economy of a Member State and that measures supporting banks are apt to remedy that disturbance. That assessment has been confirmed in the Recapitalisation Communication and the Commission Communication - Recapitalisation of financial institutions in the current financial crisis: limitation of the aid to the minimum necessary and safeguards against undue distortions of competition ([39]) ("Restructuring Communication"). The Commission still considers that the

([34]) See points 8.2 and 8.3 of the Annex.
([35]) See points 8.5 and 8.4 of the Annex.
([36]) See point 8.1 of the Annex
([37]) See point 8.6 of the Annex.
([38]) See points 6.1-6.4 of the Annex.

([39]) OJ C 195, 19.8.2009, p. 9.

requirements for State aid to be approved pursuant to Article 107(3)(b) of the Treaty are fulfilled in view of the reappearance of stress in the financial markets. The Commission confirmed that view in December 2011 by adopting the 2011 Prolongation Communication that prolongs the application of State aid rules to support measures in favour of banks in the context of the financial crisis.

(81) In respect to the Austrian economy, the Commission acknowledged in its approval of the Austrian scheme ([40]) and in the approval of State aid measures granted by Austria to individual banks ([41]) that there is a threat of serious disturbance in the Austrian economy and that State support of banks is suitable to remedy that disturbance. Therefore, the legal basis for the assessment of the aid measures should be Article 107(3)(b) of the Treaty. ([42])

(82) The compatibility of the recapitalisation measures, in particular as regards their remuneration, should first be assessed on the basis of the Recapitalisation Communication and the 2011 Prolongation Communication.

5.3. **Compliance with the Recapitalisation Communication and the 2011 Prolongation Communication**

(83) As regards the PS granted in 2009, it can be noted that it was granted in line with the terms laid down in the approved Austrian bank support scheme for such kind of instruments. The Commission notes in addition that the same holds true for the refinancing guarantees granted at that time. ([43])

(84) As regards the capital injection in 2012, according to the Annex of the Recapitalisation Communication and to the 2011 Prolongation Communication, capital increases for non-listed banks (such as ÖVAG) should, where there is no observable market price, be valued on the basis of an appropriate market-based valuation approach (including a peer group price-to-earnings (P/E) approach or other generally accepted valuation methodologies).

(85) The Commission notes that Austria provided calculations based on a price-to-book approach to determine the value of ÖVAG prior to the 2012 recapitalisation. The 2011 Prolongation Communication explicitly mentions only the price-to-earnings approach but it also refers to other generally accepted valuation methodologies. The Commission considers the choice of a price-to-book approach to be justified in the case at hand. First, the price-to-book approach is also an established market-based valuation method. Second, given the past volatility of ÖVAG's results, establishing the bank's value based on a more stable basis seems a correct approach.

(86) The Commission has critically reviewed the peer group selected by Austria and the established range of applicable P/B multiple and considers them reasonable.

(87) Further, the Commission then analysed whether shareholders of ÖVAG acquired an appropriate share in the bank in the course of the recapitalisation, assuming the lower-range end of the company values (EUR [270-300] million). The Commission considered that if it can be concluded that the State, who contributed to the recapitalisation of the bank, obtained an appropriate share in the bank even when the lowest company value is assumed, it can be concluded that the measures fulfil the Commission's requirements even if the company value is in fact higher than the lowest in the range. Before making that assessment it also needs to be considered that the new capital provider would receive a sufficient discount.

(88) In fact, according to points 8 and 9 of the 2011 Prolongation Communication capital injections should be subscribed at a sufficient discount to the share price after adjustment for the dilution effect which can be quantified by using generally accepted market techniques (TERP ([44])). That approach is applied to the 2012 recapitalisation measure.

(89) The Commission has accepted a discount of at least 25 % as acceptable in its recent decisional practice. ([45]) That level needs to be adjusted taking into account the size of the capital-strengthening measures in relation to the existing capital of the bank. The Commission notes in that respect that the State subscribed the capital with a discount of [35 % to 45 %]. ([46])

([40]) Commission Decision of 9 December 2008 in State aid case N 557/2008 – Maßnahmen nach dem Finanzmarktstabilitäts- und dem Interbankmarktstärkungsgesetz für Kreditinstitute und Versicherungsunternehmen in Österreich, OJ C 3, 8.1.2009, p. 2; extended by Commission Decision N 352/2009 of 30 June 2009 (OJ C 172, 24.7.2009, p. 4), further extended by Commission Decision N 663/2009 of 17 December 2009 (OJ C 28, 4.2.2010, p. 6), further extended by Commission Decision N 241/2010 of 25 June 2010 (OJ C 250, 17.9.2010, p. 4) and further extended by Commission Decision SA.32018 of 16 December 2010 (OJ C 20, 21.1.2011, p. 3).

([41]) See apart from the decisions on the Austrian bank support scheme Commission Decision in State aid case N 698/2009, Hypo Group Alpe Adria, OJ C 85, 31.3.2010, p. 21; Commission Decision in State aid case N 261/2010, Second restructuring aid for BAWAG, OJ C 250, 17.9.2010, p. 5; and Commission Decision in State aid case SA.32745, Restructuring of Kommunalkredit Austria AG, OJ C 239, 17.8.2011, p. 2.

([42]) It can also be noted that Austria granted the aid to ÖVAG under the Austrian bank rescue scheme which has been authorised by the Commission on the basis of Article 107(3)(b) of the Treaty.

([43]) See footnote 2 and footnote 3 of this decision.

([44]) Theoretical ex-rights price.

([45]) Commission Decision of 30 May 2012 in State aid case SA.34055, New recapitalisation scheme for credit institution in Portugal, not yet published.

([46]) Because of the application of TERP methodology, that discount already takes into account the dilution effect.

(90) On the basis of the range of the company evaluation, the Commission has calculated the theoretical shareholder structure of ÖVAG after the 2012 recapitalisation measure and compared it to the shareholder structure of the bank de facto agreed upon as a result of that measure. The Commission observes that the new shareholder structure of ÖVAG [47] as agreed upon by its shareholders gives the State, which contributed most to the recapitalisation of the bank, a slightly higher stake than determined by the Commission as being necessary for compliance with State aid rules. On that basis, the Commission concludes that the 2012 recapitalisation of ÖVAG is in line with the Recapitalisation Communication and the 2011 Prolongation Communication.

(91) As regards the compatibility of the asset guarantee, the Commission notes that the measure serves the purpose of allowing ÖVAG to reverse its already built loan loss provisions. In fact, the measure allows the capital base to be increased. However, unlike a typical impaired asset measure, it does not have an effect on the RWA of the bank due to the structure of the guarantee which aims at reducing only the loan loss provisions of the bank. In addition, the asset guarantee covers the first loss and is thus also different from a standard impaired asset measure. Moreover, any amount drawn must be repaid to the State. On that basis, as the guarantee is constructed, the effect of the measure is to temporarily increase and protect the capital base of ÖVAG and is therefore similar to a capital injection into ÖVAG and needs to be assessed as such. For all those reasons, the Commission finds that the measure resembles a capital injection.

(92) ÖVAG has received an asset guarantee amounting to EUR 100 million which will be remunerated with a fee of 10 % p.a. on the total amount granted and not called (minus cancellations) from 30 September 2012 until 1 January 2016. For the amounts called upon, that remuneration will be replaced by a fee of 10 % p.a. which will be paid from the moment the amounts are called upon until the amount called upon is fully repaid to the State. The latter remuneration is linked to the bank making profits and complying with a CET1 ratio of 10 % and is not cumulative. The Commission notes that both the remuneration structure and level are similar to the remuneration typically required for a capital injection for a distressed bank under the Recapitalisation Communication. The level of remuneration is also in line with point 29 of the Austrian scheme on emergency aid measures to distressed banks. [48]

5.4. **Compliance with Restructuring Communication**

(93) All the measures identified as State aid have been provided in the context of the restructuring of ÖVAG. The Restructuring Communication sets out the rules applicable to the granting of restructuring aid of financial institutions in the current crisis. According to the Restructuring Communication, in order to be compatible with the internal market under Article 107(3)(b) of the Treaty, the restructuring of a financial institution in the context of the current financial crisis has to lead to the restoration of the viability of the bank, include sufficient own contribution and burden-sharing and contain sufficient measures limiting distortions of competition.

5.4.1. *Viability*

(94) A restructuring plan must ensure that the financial institution is able to restore, when properly implementing it, its long-term viability (section 2 of the Restructuring Communication).

(95) According to the Restructuring Communication, long-term viability is achieved when a bank is able to compete in the marketplace for capital on its own merits in compliance with the relevant regulatory requirements. It must be able to cover all its costs and provide an appropriate return on equity taking into account its risk profile. The restructuring plan must identify the causes of the bank's difficulties and its weaknesses and explain how the restructuring is addressing them. In particular, successful restructuring entails withdrawal from all activities which would remain structurally loss-making in the medium-term.

(96) In line with points 9 to 11 of the Restructuring Communication, Austria submitted a comprehensive and detailed restructuring plan which provides complete information on the business model. The plan also identifies the causes of the difficulties faced by the bank.

(97) As regards its business model, ÖVAG will limit its scope of activity to its role as central institute of the local and regional Volksbanken. It will provide liquidity management services and intermediation in the access to capital markets to the associated Volksbanken, products which exceed the Volksbanken's capacity or expertise, and shared back-office facilities such as compliance, marketing or IT. As a consequence, ÖVAG will concentrate on its statutory activities and capitalise on its core competences, while withdrawing from those areas which have been at the origin of its financial difficulties or do not fall within the scope of the newly defined business model. In particular, ÖVAG ceases its real estate activities and the parts of its corporate financing and investment portfolios which are not necessary for its role as central institute, and divests all

[47] See recital 23.
[48] See reference in footnotes 2 and 3.

non-core subsidiaries. The Commission considers that the new business model of the bank is appropriate to ensure its long-term viability and sustainability.

(98) ÖVAG's difficulties were mainly attributable to the following factors: its exposure to CEE countries through its retail banking subsidiaries grouped in VBI; its engagement in public finance and infrastructure financing; its real estate activities and parts of its corporate portfolio; its investment portfolio; its reliance on wholesale funding.

(99) The Commission notes positively that ÖVAG already sold all but one (VBRO) of its VBI subsidiaries in 2011. The Commission recalls that in light of the unsuccessful attempt to divest VBRO and the amount of losses it generated in 2011, the Commission expressed doubts in the opening Decision as to whether the initial restructuring plan would allow the bank to solve its problems. The Commission notes that the new restructuring plan identifies the sources of VBRO's problems and addresses them by restructuring VBRO in such a way that the subsidiary does not negatively affect ÖVAG's profitability in the future and that its attractiveness for a potential investor is increased. ([49]) It notes in this respect that according to the restructuring plan, VBRO is planning positive results in the coming years. Further, ÖVAG has written down the value of VBRO in its accounts to [0-50], in order to facilitate the sales process. Thus the bank no longer faces possible losses if a high sales price for VBRO cannot be achieved. ÖVAG and Austria have provided a commitment that if VBRO has not been sold by the end of [2013-2017], no new business will be undertaken and it will be liquidated in compliance with the relevant legal framework. (Alternatively, parts of VBRO could be sold by 31 December [2013-2017] and only the remaining portfolios be liquidated in compliance with the relevant legal framework.) On that basis, the Commission is reassured that the risks stemming from VBRO are already reduced and will be dealt with within a foreseeable time-frame. In that context, the Commission notes that VBRO has reduced the number of branches and employees as well as its lending business.

(100) As regards ÖVAG's activities in the fields of real estate and of public finance and infrastructure financing, the Commission notes that the relevant subsidiaries (KA, Europolis) have been sold and losses on those stakes were recognised by ÖVAG in its accounts. The real estate activities remaining in ÖVAG have been allocated to the non-core portfolio and are being run down.

(101) The full cessation of the activities referred to in recitals 99 and 100 constitutes a necessary and appropriate measure to remove the Commission's concerns, because the divestments set an end to any future losses or risk exposure resulting from those subsidiaries. In addition, the measures free up management capacities, which can be reemployed in the core business of the bank.

(102) As regards the parts of the corporate financing and investment portfolios which proved to be sources of losses in the past, the Commission notes that the bank has recognised the necessary losses in its accounts. Further, the CDS ([50]) exposures have been settled or hedged. Finally, those operations which are not necessary for ÖVAG to perform its role as central institute have been allocated to the non-core portfolio and are being run down.

(103) As regards the past reliance on unsecured wholesale funding, the Commission notes that ÖVAG and its majority owners are implementing measures which will ensure a comfortable liquidity position of the bank. In particular, the establishment of the liquidity pool with the regional Volksbanken and the divestments of subsidiaries which depended heavily on the refinancing of ÖVAG should ease the funding needs of the bank by EUR 6,2 billion. Furthermore, with the acquisition of Livebank ÖVAG gained access to retail funding of currently EUR 470 million, significantly reducing its past reliance on wholesale funding. On the basis of the information provided in the context of the new restructuring plan, the Commission considers that ÖVAG is able to ensure a comfortable funding position, even with the approaching maturity of the remaining EUR 1 billion of State-guaranteed debt.

(104) According to point 13 of the Restructuring Communication, the bank must be able to generate an appropriate return on equity, while covering all costs of its normal operations and complying with the relevant regulatory requirements. The Commission considers that condition to be fulfilled, as explained in recitals 105-107.

(105) First, ÖVAG provided financial projections for the period 2012-2017, giving information on revenues, costs, risk provisions, profits and capital position of the bank. The Commission finds that the base case projections provided are based on reasonable underlying macroeconomic

([49]) See recital 44.

([50]) Credit Default Swaps.

assumptions. With the exception of the year 2014, ([51]) the bank expects to generate profits and continuously improve its yearly results over the restructuring period. Further, in 2017 the RoE will reach a level of 8,0 %, which appears to be an adequate level of remuneration for a bank with a risk profile such as that of ÖVAG. The bank's capital ratios remain above the minimum regulatory requirements over the whole restructuring period, with the CET1 ratio improving from [9-10] % in 2012 to [12-13] % ([52]) in 2017.

(106) Second, the new restructuring plan shows that ÖVAG is able to withstand a stress scenario. The assumptions of the stress scenario have been assessed as reasonable. As the stress scenario demonstrates that ÖVAG will exceed its regulatory capital requirements, the bank can be regarded as meeting the requirements of point 13 of the Restructuring Communication.

(107) Finally, ÖVAG will run down the non-core segment internally, without a legal separation. In that context, the Commission notes that ÖVAG has commissioned simulations in order to quantify a possible maximum impact of the risks from the non-core segment on its capital position. The sensitivity analysis provided by the expert ([53]) demonstrates ÖVAG's ability to sustain adverse developments in its non-core portfolio, so that the run-down of the balance sheet of ÖVAG should not undermine the long-term viability of the bank.

(108) ÖVAG also presented a strategy for partial exit of the State capital, which comprises the expiry of the asset guarantee in 2015 and redemption of EUR 150 million State PS in 2017 and of the remaining tranche of EUR 150 million immediately after 31 December 2017. To that end, ÖVAG will retain its profits over the restructuring period in order to build up its capital position. This building-up of capital should allow the bank to cope with the termination of the asset guarantee in 2015 and to redeem the State PS in line with the agreed timeline with its own capital means, while complying with the regulatory capital requirements. The Commission notes that in the context of financial projections in the base case, the bank provided information about its capital position until 2018, ([54]) demonstrating that the implementation of the exit strategy leads to CET1 and equity ratios of [12-13] % and [14-15] % respectively. The Commission welcomes the commitment of the associated Volksbanken to support ÖVAG in the completion of the exit strategy for the State PS. ([55]) According to the sensitivity analysis provided by the bank, if the adverse development in ÖVAG's non-core segment were to materialise, the associated Volksbanken would have sufficient own funds to allow ÖVAG to redeem the State PS while still complying with the regulatory requirements. The Commission considers that the exit strategy together with the adequate RoE achieved by the end of the restructuring period ensure that the State aid received by ÖVAG is terminated by means of repayment, expiry or remuneration on market terms.

(109) Consequently, the Commission considers that the new restructuring plan submitted by Austria for ÖVAG fulfils the requirements of the Restructuring Communication with regard to the restoration of long-term viability and thereby allays the doubts expressed in that respect in the opening Decision.

5.4.2. *Own contribution and burden-sharing*

(110) As stated in the Restructuring Communication, banks and their stakeholders need to contribute to the restructuring as much as possible in order to ensure that aid is limited to the minimum necessary. Thus banks should use their own resources to finance the restructuring, for instance by selling assets, while the stakeholders should absorb the losses of the bank where possible. The measures committed to by ÖVAG ensure that own resources are used and that original shareholders and private investors holding hybrid capital of the bank contribute to the restructuring.

(111) The new restructuring plan does not contain any elements that suggest that the aid exceeds the means required to cover the costs which are triggered by the restoration of viability. The aid received is required to ensure that ÖVAG will have reasonable capital buffers above the minimum requirements stipulated by the

([51]) For the year 2014 in the group's accounts prepared in accordance with International Financial Accounting Standards, ÖVAG expects a loss after taxes of EUR [10-30] million, which is mainly due to an extraordinary item, the sale of VBLI at the price of EUR [40-70] million, which is assumed to be below its IFRS book value of EUR [90-120] million. In the accounts of ÖVAG as a single entity prepared in accordance with Austrian Generally Accepted Accounting Principles the book value of VBLI has already been written down to EUR [40-70] million. Therefore, ÖVAG's result for the year 2014 under Austrian GAAP is not expected to be affected by the sale proceeds and will be positive.

([52]) Taking into account the expiry of the asset guarantee in 2015 and the redemption of EUR 150 million of the State PS capital in 2017.

([53]) See recitals 58 and 59.

([54]) See recital 55.

([55]) See recital 60.

CRD IV/CRR ([56]) framework in the base case and will be able to comply with those requirements in a stress scenario. The commitments provided by the bank and Austria ensure that the reversible aid measures (PS and asset guarantee) are terminated as soon as the capital position of the bank allows for it, starting from the end of 2015. ([57])

(112) In respect of the contribution to covering the restructuring costs through internal resources generated by ÖVAG, the Commission notes that the bank has carried out and will continue to implement cost-cutting measures. ([58]) In the core segment those cost-cutting measures will result in a reduction of the annual costs by EUR 15 million by the end of the restructuring period, which represents about 12 % of the total costs in 2012. In ÖVAG as a whole (including the non-core segment), the cost will be reduced even more significantly (EUR 105,5 million in 2017 compared to EUR 166 million in 2012, which represents a reduction by 36 %). ([59])

(113) Further, the restructuring costs are financed by proceeds from the divestments of stakes in profitable non-core entities (RZB, retail subsidiaries in Austria (already implemented in 2009-2010), VBLI).

(114) Point 24 of the Restructuring Communication states that an adequate remuneration of the State capital is also a means of achieving burden-sharing. In that context the Commission recalls that it established in recital 90 that the State, which contributed to the 2012 recapitalisation, obtained an appropriate stake in the bank. That stake was based on a company value determined objectively by means of a market-based P/B approach. Further, as established in recital 89 the 2012 recapitalisation measure is subscribed at a sufficient discount, which is a form of an ex-ante remuneration of the capital injection. Therefore, the Commission considers the level of remuneration appropriate in association with the other burden-sharing measures.

(115) As regards the remaining State PS of EUR 300 million, the Commission recalls that State PS was provided to ÖVAG in the context of the Austrian bank support scheme and the remuneration of the instrument was fixed in line with that scheme. The Commission observes that in the sixth and seventh full financial year after the subscription of the instruments the coupon increases yearly by 50 basis points, which translates to a coupon of 9,8 % in 2016 and 10,3 % in 2017. ([60]) Further, it notes that the redemption of those instruments in 2017 and 2018 will require repayment of 100 % of the nominal increased by the percentage points by which the coupon on the PS fell short of the contractual value when distributable yearly profits would have sufficed for the payment but instead were retained by the bank. ([61]) Based on the financial projections of the bank, it can be reasonably expected that the amount of redemption paid to the State in 2017 and 2018 will include the remuneration of the PS capital attributable to the last years of the restructuring period. Therefore, the Commission considers that ÖVAG will pay remuneration on the State PS, which is adequate to the risk profile of ÖVAG.

(116) As regards the asset guarantee, the Commission notes that the bank will pay a fee of 10 % p.a. on the amount of the guarantee, i.e. EUR 100 million. Accounting-wise, the fee is a regular expense item and does not depend on the bank's profitability. Also, any amounts called under the guarantee are remunerated at the level of 10 % until their repayment. Given the reliable character and the level of the fee, the Commission considers that the remuneration of the asset guarantee, which has in fact the character of a temporary capital increase, is adequate.

(117) Moreover, in order to ensure that the owners of the bank participate to the maximum extent in the reconstitution of an adequate capital basis over the restructuring period, Austria committed that the bank will retain dividends and not pay any coupons which it is not under law obliged to pay until the end of the restructuring period or beyond if the State PS is not repaid by then. Thereby, in line with point 26 of the Restructuring Communication, ÖVAG should not use State aid to make payments on own funds if there are insufficient profits to make such payments.

(118) The Commission further observes that ÖVAG offered to buy hybrid instruments back from private investors at the price corresponding to around 40 % of their nominal value. ([62]) The offered buy-back price was determined on the basis of the market value of the instruments and contained a premium of not more than 10 percentage points, which was added to incentivise investors to participate in the buy-back. The offer was accepted for almost 80 % of the instruments' total nominal value, which after taking the costs of the transaction into consideration left ÖVAG with a profit of EUR 130 million. The still outstanding instruments are subject to the coupon ban explained in recital (117).

([56]) The term 'CRD IV/CRR' (Capital Requirements Directive IV/Capital Requirements Regulation) refers to the proposal of the European Commission, how to transpose Basel III rules into European Union law. Basel III, on the other hand, is a global regulatory standard on bank capital adequacy, stress testing and market liquidity risk, developed and agreed upon in response to the deficiencies in financial regulation revealed by the recent financial crisis. Among others, it sets quantitatively and qualitatively stricter capital requirements for banks. The gradual phasing-in of the new requirements is to start in 2013

([57]) See recitals 25-27.

([58]) See recital 60.

([59]) However, that impact includes the effects of divestments and scaling-down of operations in the non-core segment.

([60]) See recital 18.

([61]) See recital 19.

([62]) See recital 52.

Therefore, the Commission considers that an adequate burden-sharing from ÖVAG's private hybrid investors is ensured and the requirements of the Restructuring Communication in that respect are met.

(119) Another aspect concerns ERGO Group, RZB and DZ Bank, the minority shareholders of ÖVAG. The Commission notes first that they have been diluted significantly in the 2012 capital increase. Second, as explained in recital 49, they committed to support the restructuring of the bank by leaving the previously provided liquidity facilities at the disposal of ÖVAG and subsidiaries that are held in common with it, taking over portfolios of assets and supporting ÖVAG in its efforts to divest those subsidiaries that are held in common with it (VBRO and VBLI), thereby accelerating the reduction of the non-core activities.

(120) Therefore the cost reductions, divestment of profitable non-core subsidiaries and assurance of an adequate remuneration for both the capital measures and asset guarantee represent sufficient own contribution by ÖVAG to the costs of its restructuring. The losses borne by the hybrid capital holders, dilution of the original shareholders and the measures by which they contribute to the restructuring of ÖVAG, as well as profit retention, ensure appropriate burden-sharing. As the new restructuring plan can be considered as providing for an appropriate own contribution and burden-sharing, the doubts expressed in the opening Decision in that respect are allayed.

5.4.3. *Measures to limit distortions of competition*

(121) The Restructuring Communication requires that the restructuring plan proposes 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.

(122) Point 31 of the Restructuring Communication states that when assessing the amount of aid and the resulting competition distortions, the Commission has to take into account both the absolute and relative amount of the State aid received as well as the degree of burden-sharing and the position of the financial institution on the market after the restructuring. In that respect, the Commission recalls that ÖVAG has received State capital equivalent to 3,8 % of RWA. In addition, ÖVAG has obtained liquidity guarantees amounting to 5,4 % of the bank's balance sheet. The amount of aid to the beneficiary is, therefore, significant. Consequently significant measures are necessary in order to limit potential distortions of competition even when considering the appropriate own contribution and burden-sharing of the beneficiary and its shareholders over the restructuring period.

(123) In the new restructuring plan the projected balance sheet reduction has been further increased compared to the initial restructuring plan. ÖVAG will reduce its balance sheet on the basis of a comparison with the assets at the end of 2008 by 67 %, from EUR 55,8 billion to EUR 18,4 billion in 2017. If total assets of the core segment only are taken into account (EUR [12-15] billion in 2017) the reduction amounts to [60-80] %. In terms of RWA, the bank will reduce its size by 71 % (EUR 35,2 billion in 2008 vs. EUR 10,1 billion in 2017). EUR [4-6] billion of these RWA of EUR 10,1 billion relate to the core segment, which translates into a reduction of RWA by [70-90] % when only the core segment is considered.

(124) To that end, ÖVAG is in the course of divesting a significant number of domestic and foreign subsidiaries. Those divestments need to be completed by the date specified in the commitments in the Annex, or the relevant subsidiaries have to stop new business. An overview of the largest divestments is given in Table 4:

Table 4

Major divestments

Name	Balance sheet, in EUR billion	RWA, in EUR billion
Austrian retail subsidiaries	5,1	2,0
Europolis	1,7	0,1
Sale of VBI in 2011	9,1	6,0
VBLI	2,1	1,6
VBRO	1,7	1,6
Malta	0,2	0,1

(125) Those divestments include all of the bank's international subsidiaries. The Commission considers that the divestment of KA, which necessitated a rescue by the State in 2008, contributed to the stabilisation of ÖVAG. Therefore, KA cannot be considered as measure to limit the distortion of competition. Furthermore, the balance sheet size and the volume of RWA taken as the reference point for the calculation of the reduction of the bank's size do not contain KA. ([63])

([63]) ÖVAG's balance sheet and RWA, which were taken as the reference point, are the values as per 31 December 2008, while KA was sold to Austria in November 2008.

(126) Furthermore, ÖVAG will liquidate its Frankfurt branch.

(127) Altogether, the Commission considers the reduction of the balance sheet total of the bank by more than half to be sufficient to adequately limit the distortions of competition stemming from the aid.

(128) In addition to those far-reaching structural measures, Austria and ÖVAG also agreed to several behavioural constraints. The bank has committed to observe acquisition and advertisement bans, a ban on proprietary trading and price leadership ban relating to Livebank, its online banking platform. That should ensure that State aid is not used to fund anti-competitive behaviour. ([64])

(129) Furthermore, Austria gave a commitment that ÖVAG will not, in its own name, conduct any business on the asset side with any third parties outside the Volksbanken sector and their clients. It may only act within the Volksbankenverbund. ([65]) Coupled with the divestments of profitable subsidiaries (VBLI, retail banking subsidiaries in Austria), that strict limitation of ÖVAG's scope of activities in its core markets offers an opportunity for other players to expand their market presence.

(130) Based on the considerations in recitals 122-129 and in view of the conclusion that the own contribution and burden-sharing are appropriate, the Commission considers that the scale and nature of measures proposed by Austria and ÖVAG are sufficient to limit distortions of competition caused by the aid to ÖVAG. Therefore the doubts raised in that respect in the opening Decision are allayed.

5.5. **Monitoring**

(131) Pursuant to section 5 of the Restructuring Communication, regular reports are required to allow the Commission to verify that the new restructuring plan is being implemented properly. Austria will ensure that ÖVAG appoints a monitoring trustee who will assist the Commission in its obligation to verify the correct implementation of the decision. The Trustee will provide semi-annual monitoring reports. The first report should be submitted not later than six months after the approval of the restructuring plan. The Commission therefore finds that proper monitoring of the implementation of the restructuring plan is ensured.

6. **CONCLUSION**

(132) The Commission finds that the measures in the new restructuring plan, together with the commitments in the Annex, ([66]) will enable ÖVAG to ensure its long-term viability, are sufficient with respect to burden-sharing and own contribution, and are appropriate and proportional to offset the competition distorting effects of the aid measures examined in the present Decision. The restructuring plan submitted fulfils the criteria of the Restructuring Communication and the aid measures can therefore be considered compatible with the internal market.

HAS ADOPTED THIS DECISION:

Article 1

1. The following measures implemented or planned by Austria constitute State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union:

(a) the recapitalisation measures of EUR 1 billion and EUR 250 million to Österreichische Volksbanken AG by Austria;

(b) the liquidity guarantees granted by Austria to Österreichische Volksbanken AG in the amount of EUR 3 billion;

(c) the asset guarantee to Österreichische Volksbanken AG by Austria with the capital relief effect of EUR 100 million.

2. The State aid referred to in paragraph 1 is compatible with the internal market, within the meaning of Article 107(3)(b) of the Treaty on the Functioning of the European Union, subject to the conditions set out in Article 2.

Article 2

Austria shall ensure that the restructuring plan submitted on 4 September 2012 is implemented in full, including the commitments set out in the Annex to this Decision.

Article 3

This Decision is addressed to the Republic of Austria.

Done at Brussels, 19 September 2012.

For the Commission

Joaquín ALMUNIA

Vice-President

([64]) Since Livebank is the only part of ÖVAG's business where it is taking deposits, no price leadership ban is necessary for any other market segment.

([65]) See point 4.1 of the Annex.

([66]) In case of conflict between the text of the decision and the Annex, the conflict has to be resolved with regard to the text of the decision.

ANNEX

List of commitments in state aid procedure SA.31883 Österreichische Volksbanken AG

Pursuant to Article 7(4) of Council Regulation (EC) No 659/1999, as amended, the Republic of Austria ("Austria") hereby provides the following commitments concerning Österreichische Volksbanken-Aktiengesellschaft ("ÖVAG") in order to enable the European Commission ("the Commission"), by decision under Article 107(3)(b) of the Treaty on the Functioning of the European Union, to find aid granted to ÖVAG compatible with the internal market.

The commitments will take effect upon the date of adoption of the decision.

This text should be interpreted within the general framework of Community law and with reference to Council Regulation (EC) No 659/1999, as well as with regard to the decision to which the commitments are attached as commitments and/or conditions and obligations.

1. **General**

1.1. Austria is to ensure that the restructuring plan ("restructuring plan") for ÖVAG submitted on 4 September 2012 is correct and fully implemented.

1.2. Austria is to ensure that the commitments ("commitments") listed below are fully observed during the implementation of the restructuring plan.

1.3. The restructuring phase will end on 31 December 2017. The following commitments apply during the restructuring phase, unless otherwise provided.

2. **Core segment and winding-up segment**

2.1. ÖVAG has set up an internal winding-up segment to which certain assets are assigned in order to wind them up. The winding-up segment is to be managed as a segment in its own right with separate accounting in the sense of its own reporting procedure.

3. **Reduction of the balance sheet total and RWA**

3.1. **[Reduction of balance sheet total – group]** Starting from ÖVAG's audited balance sheet total of EUR 48 116 million on 31 December 2009, the group's total balance sheet assets are to be reduced to EUR [26 000-28 000] million by 31 December 2013, to EUR [22 000-24 000] million by 31 December 2014, to EUR [20 000-22 000] million by 31 December 2015, to EUR [18 000-20 000] million by 31 December 2016, and to EUR 18 390 million by 31 December 2017.

3.2. **[Reduction of RWA – group]** Starting from the group's total risk-weighted assets (from total risk) of EUR 29 505 million on 31 December 2009, these assets are to be reduced to EUR [16 000-18 000] million by 31 December 2013, to EUR [14 000-16 000] million by 31 December 2014, to EUR 11 682 million by 31 December 2015, to EUR [10 000-12 000] million by 31 December 2016, and to EUR [10 000-12 000] million by 31 December 2017.

3.3. **[Reduction of balance sheet total – core segment]** The total balance sheet assets in the core segment are to be reduced to EUR [15 000-17 000] million by 31 December 2013, to EUR [15 000-17 000] million by 31 December 2014, to EUR [14 000-16 000] million by 31 December 2015, to EUR [13 000-15 000] million by 31 December 2016, and to EUR [13 000-15 000] million by 31 December 2017. These amounts may be exceeded by 2 %, as long as this is the result of increased syndicate operations with the primary level, higher regulatory requirements for retaining liquidity or a greater need for refinancing the primary institutions than originally planned. Thorough justification must be provided to the monitoring trustee in cases where these amounts are exceeded.

3.4. **[RWA reduction – core segment]** The total risk-weighted assets in the core segment (total risk) are to be reduced to EUR [5 500-6 500] million by 31 December 2013, to EUR [5 000-6 000] million by 31 December 2014, to EUR [5 000-6 000] million by 31 December 2015, to EUR [5 000-6 000] million by 31 December 2016, and to EUR [5 000-6 000] million by 31 December 2017. These amounts may be exceeded by 2 %, as long as this is the result of increased syndicate operations with the primary level, higher regulatory requirements for retaining liquidity or a greater need for refinancing the primary institutions than originally planned. Thorough justification must be provided to the monitoring trustee in cases where these amounts are exceeded.

3.5. **[Reduction of balance sheet total – winding-up segment]** The total balance sheet assets in the winding-up segment are to be reduced to EUR [10 000-12 000] million by 31 December 2013, to EUR [6 000-8 000] million by 31 December 2014, to EUR [6 000-8 000] by 31 December 2015, to EUR [5 000-7 000] million by 31 December 2016, and to EUR [4 000-6 000] million by 31 December 2017.

3.6. **[RWA reduction – winding-up segment]** The total risk-weighted assets in the winding-up segment (total risk) are to be reduced to EUR [11 000-13 000] million by 31 December 2013, to EUR [8 000-10 000] million by 31 December 2014, to EUR [5 000-7 000] million by 31 December 2015, to EUR [5 000-7 000] million by 31 December 2016, and to EUR [4 000-6 000] million by 31 December 2017.

3.7. Deadlines in the winding-up segment are to be extended only if there is a realistic, factual and plausible possibility that an extension will make the financing easier to use in the future. Extensions are to be granted only three times and for a maximum of one year in each case. Justified exceptions with longer extension periods are to be disclosed to the monitoring trustee and adequately justified in each individual case. At the end of the restructuring period all winding-up activities must still be brought to a close as quickly as possible.

3.8. When calculating the amounts in Nos 3.1 – 3.6, changes due to amended legal provisions resulting from the application of the CRD IV/CRR are not to be taken into account.

4. **Restriction of business activities**

4.1. Only association-related business is to be carried out in the core business. In this connection, "association-related business" means that ÖVAG (i) is to act as a central organisation for the Volksbanken and is therefore to provide services to the directly affiliated institutions, and (ii) is to provide or procure products and services for the Volksbanken and their customers. ÖVAG is not to undertake in its own name or for its own account any credit or other lending business with third-party customers.

5. **Discontinuation of business areas**

5.1. [**Discontinuation of business areas]** ÖVAG is to implement the business model outlined in the restructuring plan, and in this connection to discontinue the business areas as described in the restructuring plan, with the following business areas in particular being discontinued completely:

5.1.1. "Renewable energy" business area. The business area includes project financing in the "renewable energy" area in Austria, Germany and countries in Eastern Europe. This does not include financing provided by the primary level Volksbanken in order to take over syndicate shares, in so far as the primary bank takes on a share of the financing in proportion to its size.

5.1.2. "Model financing" business area. The "model financing" business area concerns providing loans for purchasing and renovating dwellings in central locations using financial support available to creditworthy private individuals. This does not include financing provided by the primary level Volksbanken in order to take over syndicate shares, in so far as the primary bank takes on a share of the financing in proportion to its size.

5.2. **[Trade for own account]** ÖVAG is to further refrain from conducting dedicated proprietary trading. This means that ÖVAG is to carry out only trading activities indicated in its trading book that are necessary either a) for accepting, transferring and executing its customers' sales and purchase orders (i.e. trading with financial instruments as a service), or b) for hedging customer business or interest and liquidity management in the treasury sector or c) so that the economic transfer of balance sheet items to the restructuring unit or to third parties can be carried out. It is to be ensured in any case that these items are entered into only within the overall limit of EUR 3 million value-at-risk / one-day holding period / confidence level of 99 %, and where there is no danger to ÖVAG's risk-bearing capacity or liquidity situation. Under no circumstances will ÖVAG carry out business activities that serve purely to make a profit apart from the above-mentioned purposes.

6. **Sales**

6.1. **[Sales]** ÖVAG is to sell off the following entities completely ("signing") by no later than the stated deadlines:

6.1.1. Sale of all shares in the leasing subsidiary VBLI by 31 December [2013-2017];

6.1.2. Sale of all shares in Malta/IK Malta Volksbank by 31 December [2013-2017];

6.1.3. Sale of all shares in Volksbank Rumänien by 31 December [2013-2017];

6.1.4. Sale of all shares in RZB by 31 December [2013-2017];

6.2. The buyers of the entities stated in Nos 6.1.1 - 6.1.4 must be persons that are legally and economically independent of the Republic of Austria and VB Holding / the primary level banks

6.3. If the shares mentioned in Nos 6.1.1 to 6.1.3 are not sold by the deadlines laid down there, ÖVAG will take all the measures available to it to end new business in these entities and to wind them up. ÖVAG will do everything in its power to reach an agreement with its joint partners early enough (6.1.1 and 6.1.3) to end the new business by the stipulated deadlines.

6.4. If the shares mentioned in No 6.1.4 have not been sold by the deadline stipulated there, an official sales agent is to organise the sale.

7. **Measures by DZ Bank, ERGO and RZB**

7.1. Austria is to ensure that Deutsche Zentral-Genossenschaftsbank (DZ Bank), ERGO Gruppe and Raiffeisen Zentralbank Österreich AG (RZB) implement the planned measures, as laid down in the restructuring agreement ("restructuring agreement") reached on 26 April 2012 between the Republic of Austria and DZ Bank AG, ERGO Versicherung AG and ERGO Versicherungsgruppe AG, Raiffeisen Zentralbank Österreich AG, Volksbanken Holding eingetragene Genossenschaft, Österreichischer Genossenschaftsverband and ÖVAG.

8. **Other rules of conduct / Corporate Governance**

8.1. **[Ban on acquisitions]** ÖVAG commits to refrain from making acquisitions. This applies to both the purchase of companies with their own legal structure, and shares in companies, as well as asset bundles that represent a commercial transaction or a *branch of activity*. This does not apply to acquisitions that must be made in order to maintain financial and/or association-related stability, or in the interests of effective competition, provided that they have been approved beforehand by the Commission. This does not apply either to acquisitions that belong, in terms of the management of existing obligations of customers in financial difficulty, to a bank's normal ongoing business. The obligation is to apply until the restructuring phase ends.

8.2. **[Dividend ban]** ÖVAG will not pay dividends in the period up to and including the financial year ending 31 December 2017. The payments pursuant to No 10 are not affected by this, provided this is separable in a legal sense.

8.3. **[Hybrids]** Until 31 December 2017, ÖVAG may not make any payments in respect of profit-related equity instruments (such as hybrid financial instruments and profit participation certificates (Genussscheine), in so far as those payments are not owed on the basis of a contract or the law. If ÖVAG's balance sheet were to indicate a loss before the adjustment of reserves and retained earnings, the above-mentioned instruments must also participate fully in the loss pursuant to the possibilities under supervisory and civil law. In this connection, ÖVAG is to undertake not to draw on reserves in the case of losses until 31 December 2017.

8.4. **[Ban on price leadership]** In the area of deposit services, the Live Bank is prohibited until 31 December 2015 from offering better interest rate conditions (for all maturities) than its competitor with the third-best conditions on the Austrian market for direct online banking without the Commission's prior approval.

8.5. **[Advertising]** ÖVAG must not use the granting of the aid measures or any advantages arising therefrom for advertising purposes.

8.6. **[Remuneration of bodies, employees and essential agents]** ÖVAG must verify the incentive effect and appropriateness of its remuneration systems and ensure, using the possibilities under civil law, that they do not result in exposure to undue risks, are oriented towards sustainable, long-term company objectives, and are transparent.

8.7. **[Other rules of conduct]** ÖVAG is to continue expansion of its risk-monitoring operations and to conduct a commercial policy that is prudent, sound and oriented towards sustainability.

9. **ÖVAG and primary institutions**

9.1. **[Remuneration for liquidity reserves]** Pursuant to Section 25(13) of the Austrian Banking Act, ÖVAG is to pay a remuneration for the liquidity reserve to the primary institutions of no more than the three-month Euribor rate plus [40-70] basis points ("bp") for their deposits. On 1 January 2014 and 1 January 2015 the cost rate will be reduced in each case by [5-10] bp, and by a further [3-7] bp on 1 January 2016 and 1 January 2017, so that the conditions are the same as the three-month Euribor rate plus [20-40] bp from 1 January 2017. With the Commission's explicit approval other fund transfer pricing components can also be used, provided it can be demonstrated that the profit from reducing the conditions for interest paid on the liquidity reserves as described here, is at least achieved.

9.2. **[Fees]** ÖVAG is to retain all the fees it charges for business brought in through the LiveBank's website.

9.3. **[Distribution of dividends to the primary institutions]** Dividends may be distributed to the primary institutions within the framework laid down in the restructuring agreement, provided that the limit of EUR [7-10]

million mentioned there under No 7.2 is reduced to EUR [5-8] million and only to the extent that, where dividends are to be distributed under No 7.2, sufficient profits were made and also new, external base capital was raised (net, after the deduction of repayments) to at least cover (compensation for profits not retained) the amount distributed (to equity investors and to the Federal Government).

10. **Remuneration of the aid measures**

10.1. **[Remuneration of the asset guarantee]** The asset guarantee of EUR 100 million provided by Austria is to be remunerated with a non-profit-related bonus of 10 % p.a.

10.2. **[Remuneration of the participation capital]** The participation capital provided by the State is to be remunerated as laid down in the agreement on principle.

11. **Exit strategy for asset guarantee, participation capital and share capital**

11.1. **[Return of the asset guarantee]** The asset guarantee of EUR 100 million provided by Austria is to be set up in terms of its maturity in such a way that it ends immediately after 31 December 2015.

11.2. **[Repayment of the participation capital]** ÖVAG undertakes to take every suitable measure to relieve the Republic of Austria of half of the burden of its position as a participant (EUR 150 million) in the first half of 2017 and of the entire burden by immediately after 31 December 2017 at the latest. The primary banks are to play a part in realising this, as far as the minimum regulatory requirements allow.

11.3. **[Exit strategy]** Austria does not consider itself as the long-term owner of ÖVAG and will therefore attempt to sell the subscribed shares again as quickly as possible, taking into account budgetary interests and the provisions of the Austrian Banking Act and Section 2(3) of the Austrian Financial Market Stability Act.

12. **Monitoring trustee**

12.1. Austria is to ensure that the full and correct implementation of ÖVAG's restructuring plan and the full and correct implementation of all commitments within this commitments document are continuously monitored by an independent, sufficiently qualified monitoring trustee who is obliged to maintain confidentiality.

12.2. The appointment, duties, obligations and discharge of the monitoring trustee must follow the procedures set out in the "Trustee" Annex.

12.3. Austria is to ensure that, during the implementation of the decision, the Commission or the trustee has unrestricted access to all information needed to monitor the implementation of this decision. The Commission or the trustee may ask ÖVAG for explanations and clarifications. Austria and ÖVAG are to cooperate fully with the Commission and the monitoring trustee with regard to all enquiries associated with monitoring of the implementation of this decision.

Annex to the list of commitments – The Monitoring Trustee

A. **Appointment of the monitoring trustee**

(i) The Republic of Austria undertakes to ensure that ÖVAG appoints a monitoring trustee to carry out the duties of a monitoring trustee ("trustee") as set out in paragraph C(x) of this Annex. The mandate applies to the entire duration of the restructuring; i.e. until 31 December 2017. At the end of the mandate, the trustee must submit a final report.

(ii) The trustee must be independent of ÖVAG. The trustee must possess, for example as an investment bank, consultant or auditor, the specialised knowledge that is required in order to carry out its mandate, and must at no time be exposed to any conflict of interest. The trustee is to be remunerated by ÖVAG in a way that must not impede the independent and effective fulfilment of its mandate.

(iii) Austria undertakes to ensure that ÖVAG submits the names of two or more persons to the Commission for approval as monitoring trustee no later than four weeks after notification of the decision.

(iv) These proposals must contain sufficient information about those persons to enable the Commission to verify whether the proposed trustee fulfils the requirements set out in paragraph A(ii), and must in particular include the following:

a) the full terms of the proposed mandate with all the provisions which are necessary to enable the trustee to fulfil its duties;

b) the draft of a work plan describing how the trustee intends to carry out its assigned duties.

(v) The Commission has the discretion to approve or reject the proposed trustees and to approve the proposed mandate subject to any modifications that it deems necessary in order to enable the trustee to fulfil its obligations. If only one name is approved, ÖVAG will appoint the person or institution concerned as trustee or cause that person or institution to be appointed, in accordance with the mandate approved by the Commission. If more than one name is approved, ÖVAG is free to decide which of the approved persons should be appointed as trustee. The trustee will be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

(vi) If all the proposed trustees are rejected, Austria undertakes to ensure that ÖVAG submits the names of at least two further persons or institutions within two weeks of being informed of the rejection, in accordance with the requirements and procedure set out in paragraphs A(i) and A(iv).

(vii) If all further proposed trustees are also rejected by the Commission, the Commission will nominate a trustee which ÖVAG will appoint or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

B. **General duties and obligations**

(viii) The trustee is to assist the Commission to ensure ÖVAG's compliance with the commitments and to assume the duties of a monitoring trustee specified in the commitments document. The trustee is to carry out the duties under this mandate in accordance with the work plan, as well as revisions of the work plan that have been approved by the Commission. The Commission may, on its own initiative or at the request of the trustee or ÖVAG, issue orders or instructions to the trustee in order to ensure compliance with the commitments. ÖVAG is not entitled to issue instructions to the trustee.

C. **Duties and obligations of the trustee**

(ix) The duty of the trustee is to guarantee full and correct compliance with the obligations set out in the commitments, and full and correct implementation of ÖVAG's restructuring plan. The Commission may, on its own initiative or at the request of the trustee, issue any orders or instructions to the trustee or ÖVAG in order to ensure compliance with the commitments attached to the decision.

(x) The trustee

a) is to propose to the Commission in its first report a detailed work plan describing how it intends to monitor compliance with the commitments attached to the decision;

b) is to monitor the full and correct implementation of ÖVAG's restructuring plan, in particular

(I) the reduction of the balance sheet total and the RWA

(II) the restriction of business activities;

(III) the discontinuation of predefined business areas;

(IV) The sales process for shares in the predefined business areas;

c) is to monitor compliance with all other commitments,

d) is to assume the other functions assigned to the trustee in the commitments attached to the decision;

e) is to propose measures to ÖVAG that it considers necessary to ensure that ÖVAG fulfils the commitments attached to the decision;

f) is to submit a draft written report to the Commission, Austria and ÖVAG within thirty days after the end of each six-month period. The Commission, Austria and ÖVAG can submit comments on the draft within five working days. Within five working days of receipt of the comments, the trustee is to prepare a final report, incorporating the comments as far as possible and at its discretion, and submit it to the Commission. Only afterwards the trustee is also to send a copy of the final report to Austria and ÖVAG. If the draft report or the final report contains any information that may not be disclosed to ÖVAG, only a non-confidential version of the draft report or the final report is to be sent to ÖVAG. Under no circumstances is the trustee to submit any version of the report to Austria and/or ÖVAG before submitting it to the Commission.

g) The report is to focus on the duties set out in the mandate by the trustee and compliance with the obligations by ÖVAG, thus enabling the Commission to assess whether ÖVAG is being managed in accordance with the obligations. If necessary, the Commission may specify the scope of the report in more detail. In addition to these reports, the trustee is to report promptly in writing to the Commission if it has reason to suppose that ÖVAG is failing to comply with these obligations, sending a non-confidential version to ÖVAG at the same time.

D. **Duties and obligations of ÖVAG**

(xi) ÖVAG is to provide and to require its advisors to provide the trustee with all such cooperation, assistance and information as the trustee may reasonably require to perform its tasks under this mandate. The trustee is to have unrestricted access to any books, records, documents, management or other personnel, facilities, sites and technical information of ÖVAG or of the business to be sold that are necessary to fulfil its duties under the mandate. ÖVAG is to make available to the trustee one or more offices at its business premises and all employees of ÖVAG are to be available for meetings with the trustee in order to provide it with all the information it needs to perform its duties.

(xii) Subject to ÖVAG's approval (this approval may not to be unreasonably withheld or delayed) and at its expense, the trustee may appoint advisors (in particular for corporate finance or legal advice), if the trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the mandate, provided that any costs and other expenses incurred by the trustee are reasonable. Should ÖVAG refuse to approve the advisors proposed by the trustee, the Commission may approve their appointment instead, after hearing ÖVAG's reasons. Only the trustee is entitled to issue instructions to the advisors.

E. **Replacement, discharge and reappointment of the trustee**

(xiii) If the trustee terminates its functions under the commitments or if there are any other significant grounds, such as a conflict of interest on the part of the trustee,

a) the Commission can, after hearing the trustee, require ÖVAG to replace it, or

b) ÖVAG, with the approval of the Commission, can replace the trustee.

(xiv) If the trustee is removed in accordance with paragraph E(xiii), it may be required to continue in its function until a new trustee is in place to whom the trustee has effected a full handover of all relevant information. The new trustee is to be appointed in accordance with the procedure referred to in paragraphs A(i) to A(vi).

(xv) Besides removal in accordance with paragraph E(xiii), the trustee is to cease its activities only after the Commission has discharged it from its duties. This discharge is to take place when all the obligations with which the trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the trustee if it is subsequently found that the relevant remedies have not been fully and properly implemented.