II

(Non-legislative acts)

DECISIONS

COMMISSION DECISION

of 3 September 2013

State aid SA.32554 (09/C)

Restructuring aid for Hypo Group Alpe Adria implemented by Austria

(notified under document C(2013) 5648)

(Only the German text is authentic)

(Text with EEA relevance)

(2014/341/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 Member States and other interested parties to submit their comments pursuant to those provisions [1],

Whereas:

1. PROCEDURE

(1) In December 2008, Hypo Alpe Adria Group ('*HGAA*' or '*the bank*') received EUR 900 million in Tier-1 *Partizipationskapital* [2] from the Republic of Austria on the basis of the Austrian emergency bank support scheme ('*the bank support scheme*') [3].

(2) On 29 April 2009 Austria provided the Commission with a viability plan for HGAA.

(3) In its decision of 12 May 2009 in case N 254/2009 ('*the 2009 opening decision*') [4] the Commission instigated the formal investigation procedure pursuant to Article 16 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union [5], raising doubts about the compatibility with the internal market of the restructuring aid which Germany had granted to HGAA's majority stakeholder, BayernLB, in December 2008. In the same decision, the Commission questioned whether HGAA was fundamentally sound.

[1] OJ C 116, 23.4.2013, p. 13.
[2] Partizipationskapital has no voting rights.
[3] That scheme had been approved by Commission Decision of 9 December 2008 in case N 557/2008, OJ C 3, 8.1.2009, p. 2, *Maßnahmen nach dem Finanzmarktstabilitäts- und dem Interbankmarktstärkungsgesetz für Kreditinstitute und Versicherungsunternehmen in Österreich*.
[4] OJ C 134, 13.6.2009, p. 31.
[5] OJ L 83, 27.3.1999, p. 1.

(4) HGAA was nationalised on 23 December 2009. In that context several aid measures were temporarily authorised by the Commission in its decision of 23 December 2009 in Cases C 16/2009 and N 698/2009 ([6]) ('*the December 2009 rescue decision*') on the basis of Article 107(3)(b) of the Treaty on the Functioning of the European Union ('*the Treaty*') until the submission of a credible restructuring plan for HGAA to the Commission. In the same decision the Commission extended the formal investigation procedure in relation to additional aid measures granted by Austria in favour of HGAA.

(5) On 22 June 2010, the Commission further extended the formal investigation procedure in particular due to the failure of the revised restructuring plan for HGAA, which had been submitted on 16 April 2010, to demonstrate the restoration of viability, proper burden-sharing and a sufficient degree of mitigation of competition distortions. The Commission also prolonged the authorisation of the aid it had temporarily found compatible with the internal market in the December 2009 rescue decision, until it had concluded its examination of the restructuring plan for HGAA ('*the 2010 extension decision*') ([7]).

(6) On 29 December 2010, Austria notified an additional measure in favour of HGAA in the form of an asset guarantee amounting to EUR 200 million. That aid measure was authorised by Commission Decision of 19 July 2011 in cases SA.32172 (2011/NN) and SA.32554 (2009/C) ([8]) ('*the July 2011 rescue decision*').

(7) On 7 February 2011, the Commission informed Austria and Germany that Case N 698/2009 ([9]) concerning HGAA would be split procedurally from Case C 16/2009 concerning BayernLB. Subsequently, the procedure relating to HGAA was registered under Case SA.32554 (2009/C). This Decision only concerns Case SA.32554 (2009/C).

(8) On 21 April 2011, Austria submitted a new restructuring plan for HGAA.

(9) On 3 December 2012, Austria notified an additional aid measure in favour of HGAA in the form of a capital injection via ordinary shares by the Republic of Austria and a State guarantee on subordinated debt instruments to be issued by HGAA. The notification contained a catalogue of commitments for HGAA. Those measures were temporarily authorised by Commission Decision of 5 December 2012 in case SA.32554 (2009/C) ([10]) ('*the December 2012 rescue decision*'). The authorisation took place in light of certain commitments provided by Austria. However, Austria only partially respected those commitments.

(10) On 5 October 2012 Austria brought an action for the annulment of Commission Decision of 25 July 2012 in case SA.28487 (C 16/2009 ex N 254/2009) ([11]) (subsequently withdrawn and replaced by Commission Decision of 5 February 2013 ([12]) concerning BayernLB ('*the BayernLB decision*').

(11) For a detailed description of the procedure, reference is made to the 2009 opening decision, the December 2009 rescue decision, the 2010 extension decision, the July 2011 rescue decision and the December 2012 rescue decision.

(12) The various restructuring plans for HGAA and their amendments were discussed between the Austrian authorities and the Commission services in a series of meetings, phone conferences and other information exchanges between July 2010 and August 2013.

([6]) OJ C 85, 31.3.2010, p. 21.
([7]) OJ C 266, 1.10.2010, p. 5.
([8]) OJ C 31, 4.2.2012, p. 13.
([9]) Thereafter referred to as SA.32554 (2009/C) '*Restructuring Aid for Hypo Group Alpe Adria*'.
([10]) OJ C 59, 28.2.2013, p. 34.
([11]) Not yet published.
([12]) Not yet published.

(13) On 29 June 2013 Austria notified a restructuring plan providing for the liquidation of HGAA which was subsequently completed by submission of 27 August 2013.

2. **DESCRIPTION**

2.1. THE BENEFICIARY

(14) HGAA is an internationally active finance group with headquarters in Klagenfurt, Carinthia, from where its banking and leasing activities including the wind-down part are controlled and steered via Hypo Alpe Adria Bank-International (‘*HBInt*’). HBInt carries out central group functions including group controlling, group accounting, overall risk management, legal matters and compliance, liquidity management, security issuance and refinancing of HGAA’s subsidiaries.

(15) At the end of 2012, HGAA had an overall balance sheet total of EUR 33,8 billion and risk weighted assets (‘*RWA*’) of about EUR 21 billion.

(16) HGAA is 100 % owned by the Republic of Austria ([13]).

(17) As of 31 December 2008 HGAA was present via banking and/or leasing subsidiaries in twelve countries, namely in Austria, Slovenia, Italy, Germany, Hungary, Bulgaria, Croatia, Serbia, Bosnia and Herzegovina, Montenegro, Ukraine and in the former Yugoslav Republic of Macedonia (‘*FYROM*’).

(18) Currently, HGAA is active in Austria with HBA. It is also active in Slovenia (with HBS and the leasing company HLS), Croatia (with HBC and the integrated leasing company HAALC), Bosnia and Herzegovina (with the two banking entities HBFBiH and — in the Republika Srpska — HBRS including the leasing company HLRS), Serbia (with HBSE) and Montenegro (with HBM) (collectively ‘the South-Eastern European (‘*SEE*’) countries’).

(19) A wind-down process has been launched for many of the bank’s industrial stakes and financial subsidiaries. The Italian HBI stopped new business by 1 July 2013. Other subsidiaries in wind-down are the Croatian leasing company (HLC) and a Croatian wind-down unit derived from transferred banking assets (H-ABDUCO), the Austrian leasing company (HLA), the German leasing company (HLG), in Montenegro the leasing company (HLM) and a wind-down unit derived from transferred banking assets (HDM), leasing in Hungary (HLHU), leasing in Bulgaria (HLBG), leasing in FYROM (HLMK), leasing in Ukraine (HLUA), in Bosnia and Herzegovina the leasing company HETA BiH as well as a wind-down unit derived from transferred banking assets (BORA), HLSE and HRSE leasing in Serbia, and in Slovenia TCK and TCV which are two entities derived from transferred banking and leasing activities and HLI leasing in Italy ([14]). The Alpe Adria Privatbank in Lichtenstein has already been liquidated.

(20) The following recitals provide an overview of the entities which are still active.

(21) The Austrian subsidiary HBA is present in the segment retail, corporate and institutional. It offers all classical services of a universal bank. HBA which has a regional focus on Carinthia with branches in Vienna and Salzburg has a national market share of below […] (*) % when measured in assets and of […] % in deposits.

(22) In Slovenia the group is present with the bank HBS (market share of about […] % in assets and […] % in deposits). As for the leasing company, HLS, it focuses on mobile and selected immobile leasing activities.

([13]) See recital (4) and the December 2009 rescue decision.
([14]) The companies Norica and HBInt Credit Management (CM), each of which has external investors holding 49 %, are also in wind-down mode.
(*) Confidential information.

(23) The Croatian HBC is a universal bank (market share of around […] % in assets, […] % in deposits). HAALC is active in leasing and has a market share of around […] % in new financing volume.

(24) Two different banks are active in Bosnia and Herzegovina, HBRS in Republika Srpska (market share around […] % in assets and […] % in deposits) and HBFBiH in the Federation of Bosnia and Herzegovina (having a market share of […] % in assets). The leasing company HLRS, owned by HBRS, has a market share of around […] % on new finance volume.

(25) HBM in Montenegro has a market share of […] % in assets. The leasing business generated out of the bank has a market share of […] %.

(26) The Serbian HBSE focuses on the private and business segments (market share about […] % in assets and […] % in deposits).

2.2. THE AID MEASURES

December 2008 – Measures by BayernLB and State measures under the Austrian bank support package

(27) In 2008 HGAA received support by its shareholders at the time, BayernLB and the Republic of Austria.

— In December 2008, HGAA received EUR 700 million from its then majority shareholder, BayernLB, which itself had received State aid in the same month from the Free State of Bavaria.

— On 29 December 2008, HGAA received EUR 900 million in Tier-1 *Partizipationskapital* from the Republic of Austria and liquidity guarantees of EUR 1,35 billion for bond issues, both on the basis of the bank support scheme.

December 2009 – State recapitalisation and guarantees

(28) When HGAA was nationalised it received the following aid measures:

— a temporary asset guarantee of EUR 100 million by Austria under the conditions for distressed banks under the bank support scheme,

— a recapitalisation by Austria under the conditions for distressed banks under the bank support scheme in an amount of EUR 450 million,

January 2011 – Asset guarantee

(29) Following an additional need for write-downs, Austria granted HGAA an asset guarantee amounting to EUR 200 million from 31 December 2010 until 30 June 2013.

December 2012 – State recapitalisation and guarantee

(30) Following a decision by the Austrian supervisory authority, HGAA had to comply with an increased capital ratio of 12,04 % by 31 December 2012. To that end, HGAA received from the Austrian authorities

— a capital increase of EUR 500 million in the form of shares and

— a State guarantee on subordinated Tier-2 capital instruments with a nominal value of EUR 1 billion.

(31) For a detailed description of the bank and the aid measures authorised so far, reference is made to recitals 17 to 19 of the opening decision, recitals 13 to 15 and 27 to 40 of the December 2009 rescue decision, recitals 15 to 19 of the July 2011 rescue decision and recitals 10 to 12 of the December 2012 recue decision.

2.3. THE ADDITIONAL AID MEASURES NOT YET GRANTED

(32) The restructuring plan projects for the period 2013-17 additional capital needs for the wind-down unit amounting to approximately EUR 2,6 billion in the base case, EUR 4,7 billion in the pessimistic case and EUR 5,4 billion in the stress case. Under the assumption that the capital is provided in a liquid form the required additional liquidity needs of HGAA until 2017 would amount to EUR 2,5 billion in a base case and are estimated to reach EUR 3,3 billion in a stressed pessimistic case. (Should the measures not be granted in a liquid form liquidity measures in a higher amount might be necessary).

(33) Austria has sought, on a precautionary basis, the Commission's authorisation of State aid measures which may be necessary to satisfy any additional capital or liquidity needs so as to satisfy all regulatory requirements or cover losses. Any capital granted will be limited to the amount necessary to fulfil the regulatory minimum capital requirements which have to be confirmed by the competent supervisory authority.

2.4. THE CONTRIBUTION OF THE FORMER SHAREHOLDERS OF HGAA

(34) Before its nationalisation HGAA had the following owners: BayernLB (67,08 %), Land Carinthia via Kärntner Landesholding (12,42 %), Grazer Wechselseitige Versicherung AG ('*GRAWE*') (20,48 %) and Mitarbeiterstiftung Hypo Alpe Adria (0,02 %).

(35) All owners ceded their shareholders' rights by selling their shares to Austria for a symbolic price of one euro.

(36) BayernLB renounced all its shareholder's rights including an existing EUR 300 million Ergänzungskapital (Tier-2) in HGAA and relieved HGAA from the obligation to repay EUR 525 million of existing credit lines it had previously been granted ([15]).

(37) In order to ensure liquidity for HGAA, BayernLB re-issued a liquidity line that had terminated in December 2009, amounting to EUR […]. Furthermore, it was agreed that the existing intra-group funding of EUR […] from BayernLB to HGAA would remain with HGAA until 31 December 2013. For 2014, BayernLB would leave funding amounting to EUR […] within HGAA, and for 2015 EUR […]. Those amounts are guaranteed by Austria in case HGAA is split up or another economically comparable measure is taken which does not ensure the viability of HGAA ([16]).

(38) In 2008 BayernLB had already injected capital amounting to EUR 700 million into HGAA, which has since been fully depleted as it was fully used to cover losses.

(39) GRAWE subscribed to EUR 30 million of non-convertible Tier-1 capital (*Partizipationskapital*) with a dividend of 6 % p.a. starting in 2013 in case of profits. Based on a decision by the Republic of Austria on 30 May 2011, the nominal amount of that capital has been reduced to EUR 9 million following a loss allocation (*Kapitalschnitt*).

(40) GRAWE also contributed EUR 100 million in terms of liquidity until 31 December 2013. The liquidity was fully collateralised (EUR 50 million by Austrian covered bonds, the remaining EUR 50 million by other assets eligible for issuing covered bonds).

([15]) The rescue of HGAA by Austria under those conditions implied that BayernLB had to write down the full book value of HGAA, amounting to EUR 2,3 billion and to renounce receivables from HGAA for funding already provided amounting to EUR 825 million.

([16]) In the meantime, HGAA has stopped interest and principal payments relating to certain loans by BayernLB in line with its interpretation of the Austrian own funds substitution law (*Eigenkapitalersatzgesetz*). BayernLB disputes that decision and has instigated a lawsuit with the aim of getting back the loans plus interest payments as originally agreed. […].

(41) Carinthia contributed to the rescue operation in December 2009 via

— a recapitalisation of EUR 200 million, which was made in two parts: (i) Carinthia converted EUR 50 million of Tier-2 capital into about EUR 31 million of Tier-1 *Partizipationskapital* and injected EUR 150 million in the form of *Partizipationskapital*. The *Partizipationskapital* has a profit-related dividend of 6 %, due for the first time for the business year 2013. The total amount of EUR 181 million of *Partizipationskapital* initially injected has in the meantime been reduced to about EUR 55 million via a capital cut (*Kapitalschnitt*);

— liquidity measures amounting to approximately EUR 200 million provided by Land Carinthia in the context of existing business relationships.

(42) The following table provides an overview of the original amounts of Partizipationskapital in HGAA (all in HBInt) and its current amount. It should be recalled that Partizipationskapital has no voting rights. All shares with voting rights are held by the Republic of Austria.

Table 1

Overview Partizipationskapital

Partizipationskapital by old shareholders		
	Original amount (in EUR)	After *Kapitalschnitt* and other measures (conversion etc.)
GRAWE	30 000 000	9 170 369
Land Carinthia	30 772 982	9 406 653
Land Carinthia	150 000 000	45 851 845
Intermediate sum	*210 772 982*	*64 428 867*
Republic of Austria	900 000 000	275 111 073
Total	**1 110 772 982**	**339 539 940**

(43) HGAA repurchased several hybrid and other capital instruments significantly below par or cancelled them altogether and thus increased its capital base: In April 2012 HGAA made a transaction which resulted in a Tier-1 increase of EUR 153 million. In August 2012 HGAA cancelled some hybrid instruments thus generating a further EUR 23,5 million in capital. In December 2012, HGAA offered a buy-back of other capital instruments resulting in an extraordinary profit of EUR […].

(44) In addition, the holders of own fund instruments (*Partizipationskapital* and other hybrid capital instruments) did not receive any profit-dependent dividends or coupons due to the losses of HGAA. For 2009 and 2010, HGAA could therefore retain more than EUR […].

2.5. THE CAUSES OF HGAA'S PROBLEMS

(45) HGAA's problems were mainly caused by an aggressive growth strategy based on cheap State-guaranteed funding.

(46) HGAA bet massively on a rapid growth and catch-up in the markets in the SEE countries. In particular in the period 2000 to 2007 HGAA entered a large number of new markets. As a result, the balance sheet size of HGAA increased to EUR 43,3 billion on 31 December 2008, up from EUR 9,8 billion on 31 December 2002.

Table 2

Expansion of HGAA, per country and business line



(47) The expansion strategy was made possible by favourable financing costs of HGAA due to State guarantees by Land Carinthia (*Ausfallshaftung*) which increased from EUR 4,9 billion by 31 December 2002 to EUR 20,7 billion by 31 December 2009. The access to cheap financing caused HGAA to neglect the generation of local deposits.

(48) The rapid balance sheet expansion in SEE markets, coupled with cheap State-guaranteed funding, generated short-term profits. From 2002 to 2006, HGAA made profits in every year except in 2004. However, the business model masked underlying risks of asset quality deterioration and refinancing, thus causing the bank to neglect the adequate overhaul and development of the procedures for internal control and risk management, which would have been required to cope with its changed needs following the expansion. With business volume considerations driving the bank's strategy, leading it to taking high risks in particular in projects in the real estate and tourism segments, economic and business risks were systemically misjudged. The lack of adequate control mechanisms also rendered the bank vulnerable to fraud, causing several criminal investigations. Over time its portfolio became, partly due to a lack of proper collateralisation, plagued with a significant portion of non-performing loans. In many cases underlying collateral proved difficult or impossible to sell, necessitating large write downs.

(49) In addition, by granting a significant part of its retail and small and medium-sized enterprises ('*SME*') loans in SEE countries in Euros or Swiss Francs, the bank exposed itself to additional repayment risks. With the subsequent appreciation in particular of the Swiss Franc against the local currencies, those risks have partly materialized.

(50) Although within the regulatory limits at the time, in view of its risk profile resulting from its target client base and asset portfolio, the bank was operating with insufficient capital. That factor became a problem almost as soon as fortunes reversed. A calculation contained in the submitted liquidation plan shows that without the aid measures the bank would have had as from 2013 a negative capital ratio, both for the Tier-1 ratio […] and the overall own funds ratio […]. That calculation is fictional in so far as there would have been the need for a drastic downsizing or a liquidation of the bank even before. According to Austria liquidation would have had systemic financial stability effects in Austria, in particular due to the liability guarantees assumed by Land Carinthia, which might have been triggered in such scenario, but also in those SEE countries where HGAA has a significant market share.

(51) The bank realized too late that its business model was dysfunctional and reacted too slowly, partly due to the complex group structure and the difficulty of managing such a large and heterogeneous group.

(52) Even in early […], the asset quality relating to new business continued to be problematic and the margins inadequate, when taking appropriate risk and capital costs into account.

(53) Previously submitted restructuring plans did not demonstrate HGAA's stand-alone viability.

(54) In addition, in the submissions by Austria on which this Decision is based ([17]) the base case scenarios of the restructuring plan show the group result being negative throughout the period 2013-17, whilst setting out an additional capital need of EUR […]. Even the 'management case', which does not contain adequate measures to limit potential distortions of competition, shows a return to a modest profitability (of […]) only in the year 2017, with losses before that. Moreover, potential costs for the prolongations of guarantees beyond 2013 are not included in that prognosis.

2.6. PARTIAL COMPLIANCE WITH COMMITMENTS

(55) In the December 2012 rescue decision the Commission authorised the measures notified by Austria in light of certain commitments made by the Member State which were intended to ensure that competition distortions would be limited as much as possible. The commitments aimed at limiting the bank's business activities, e.g. in terms of return levels, risk categories of customers and maturities thus contributing to limiting risky behaviour and therefore the possibility to expand business to the detriment of competitors.

(56) In January 2013 Austria informed the Commission that for economic reasons it had not been feasible for the bank to comply with all of those commitments for some of its subsidiaries. It referred in particular to the restriction as regards foreign currency loans, the restriction to limit public finance and corporate credit engagements to clients with a credit rating of […] which Austria claimed could not be implemented in the SEE countries and, for HBA, the restriction to limit public finance engagements to […].

3. **THE LIQUIDATION PLAN**

(57) On 29 June 2013 Austria submitted a liquidation plan under which HGAA will be liquidated in an orderly manner with the necessary time available to sell potentially viable assets while the remaining parts will be wound down over time.

(58) Under the liquidation plan, the balance sheet size of HGAA will decrease by 85 % from EUR 43,3 billion at the end of 2008 to EUR 6,56 billion in 2017. In the same period its RWA will decrease by 85 % to EUR 4,75 billion from EUR 32,8 billion at the end of 2008.

(59) To implement that liquidation, the liquidation plan presents a strategy for the bank's three remaining pillars, i.e. (i) the Austrian bank (HBA), (ii) the SEE network and (iii) the wind-down part.

(60) The liquidation process will be steered from the central group level, where meanwhile a number of improvements have taken place as regards – inter alia – risk management, reporting, collateral valuation and procedures relating to ratings ([18]).

(61) Overall, the liquidation plan puts the focus on completing the sale of HBA, which has already been instigated, and increasing the attractiveness of the SEE network with the aim of enabling a sale of all SEE entities by 30 June 2015 at the latest. To that end, Austria has given a number of commitments for any new business with the aim of ensuring an adequate balance of risk and profitability as long as the SEE entities have not been sold.

([17]) Kommunikation zur EU - Überarbeiteter Umstrukturierungsplan, Klagenfurt am Wörthersee, 29.6.2013.

([18]) The plan explains that a legally independent SEE holding may be created or that parts of HBInt may be split away (including refinancing lines) so as to allow the SEE entities to become independently operating entities.

(62) In particular, HGAA will in principle only disburse new retail mortgages with a loan to value-ratio of […]% or higher, the internal funding cost matrix will be commensurate with the funding situation of the relevant branch or subsidiary and […] will, apart from certain exceptions, only be provided to clients if that client has a […].

THE SALE OF HBA

(63) On 31 May 2013 a contract for the sale of all HBA shares was signed with Anadi Financial Holdings Pte. Ltd, with the closure of that sale being currently expected to take place before 31 December 2013 ([19]).

(64) Until the closure of the sale, HBA will continue to focus on its position as a regional bank in Carinthia with branches in Vienna and Salzburg. The size of the bank has already been reduced significantly and a problematic portfolio amounting to EUR 1,99 billion was hived off before 31 December 2011. The balance sheet of HBA as of 31 December 2012 amounted to EUR 4,15 billion (while the balance sheet by 31 December 2008 amounted to EUR 7,05 billion).

SEE NETWORK

(65) The business activity of the SEE network has already been significantly reduced by focusing on core markets and core competences in Slovenia, Croatia, Bosnia and Herzegovina, Serbia and Montenegro. In addition, the operational entities in those countries were relieved by a portfolio of EUR 2,4 billion and a further portfolio hive-off in the amount of EUR […] is planned in 2013, pending approval by local supervisory authorities. The balance sheet size of the total SEE network amounts to EUR 10,11 billion as of 31 December 2012 and will decrease further to less than EUR […] after the envisaged additional portfolio transfer has been completed, amounting to about […] % of the balance sheet size when compared to 31 December 2008 (EUR 14,8 billion).

(66) Furthermore, there has been a change in the business strategy of those entities' operation in the SEE countries, aiming at improving their saleability, with a focus on small-scale business and on retail and SME. Their funding strategy is also changing, with local SEE entities focusing on becoming more locally funded instead of relying too strongly on the funding provided by the group. New business is already now fully locally funded.

(67) In **Slovenia** the focus of the banking activities is on […] and […] clients […] with the aim of […]. […] will be reduced significantly with a planned exit from […] while the bank remains active in […].

(68) In **Croatia** the bank aims to […] with the objective of […]. For […], the aim is to focus more on […]. The focus of the […] is on […].

(69) In **Bosnia and Herzegovina** the focus will be increasingly on […] coupled with a stringent […], better […] and a […]. […] will be reduced with […] remaining the focus.

(70) In **Serbia** the focus is on […] with the aim of […]. As regards […], the focus is on […] as well as […]. The bank aims at […], even for performing portfolios […].

(71) In **Montenegro** the […] focus on a […], whereas focusses on […].

(72) The change in the focus and business strategy of the SEE banks aims at increasing the chances that the entities can be sold over time. The liquidation plan provides that the SEE network will be sold as a whole or in parts by 30 June 2015. Any sale will be done through open and transparent sale procedures where buyers will have the choice to acquire all or part of the network.

([19]) Should the closing not occur as currently expected, HGAA will continue to try selling HBA by 30 June 2014. Should such a sale not be possible by that date, HBA will be transferred to the wind-down unit.

(73) Any part of the SEE network not sold by 30 June 2015 will immediately cease to undertake new business and be transferred to the wind-down unit ([20]).

THE WIND-DOWN UNIT

(74) The aim of the wind-down unit is to reduce all wind-down entities and portfolios as quickly as possible.

(75) The activities in Italy are already in wind-down. The aim is to steer an orderly wind-down process while avoiding an abrupt withdrawal of deposits ([21]).

(76) In addition, the wind-down part encompasses all other portfolios which have been identified to be wound down (including entities which have stopped new business including the subsidiaries in Macedonia, Ukraine, Bulgaria, Germany and Hungary), as well as stakes in industrial and touristic companies.

(77) In summary, the wind-down part includes in particular:

(i) HBI,

(ii) Non-strategic company stakes (industrial and touristic),

(iii) Wind-down financials, namely (a) the portfolio of HBInt as well as the existing wind-down portfolios and refinancing lines remaining in various entities (in particular in HBI and SEE countries); (b) the portfolios which have been removed from some subsidiaries such as HBI and SEE-network banks or leasing companies; (c) the wind-down leasing companies,

(iv) The vehicles Norica and HBInt Credit Management (CM) ([22]).

(78) Until 2017, the estimated cumulative capital needs (mainly due to write-downs of the book value of the entities to be sold, due to further losses on different portfolios and due to needed refinancing) amount to about EUR 2,6 billion in a base case and up to EUR 5,4 billion under an adverse stress pessimistic case. The liquidation plan also assumes additional liquidity needs depending on whether the capital would be provided in cash or via a guarantee. Under the assumption that the capital is provided in a liquid form the required additional liquidity needs of HGAA until 2017 would amount to EUR 2,5 billion in a base case and are estimated to reach EUR 3,3 billion in a stressed pessimistic case ([23]).

(79) However, as according to Austria different options are still being examined for the wind-down part, those estimates may still change. For instance, Austria has announced that it is exploring the option of installing an asset management company ('*AMC*'), which would enable HGAA to transfer wind-down assets to that entity, operating without a banking licence. Such a transfer would affect the point in time at which the capital needs would arise.

COMMITMENTS PROVIDED BY AUSTRIA

(80) Austria has undertaken to ensure that the liquidation plan submitted on 29 June 2013, as last modified by Austria's communication of 27 August 2013, is implemented in full, including the commitments set out in the Annex, and in accordance with the timetable laid down in that Annex.

([20]) See section IV of the Annex, point 3.2.2.
([21]) The […] is to be implemented according to the […] set out in the table contained in section V. point 3.4 of the commitment catalogue contained in the Annex. In order to ensure a […] refinancing by own means HBI […] should it be necessary to prevent the deposits from falling below the […] or to compensate for any such drop.
([22]) See footnote 14.
([23]) As explained in FN 16 […].

4. GROUNDS FOR INITIATING THE PROCEDURE

(81) 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 HGAA with the internal market because it had, on the basis of the earlier submitted restructuring plans, serious doubts whether HGAA would be able to restore its long-term viability. The Commission had also expressed doubts whether adequate burden-sharing was ensured and the distortions of competition were sufficiently limited.

(82) The Commission has repeatedly questioned the ability of HGAA to restore its viability ([24]), with serious doubts explicitly raised regarding the business model ([25]). The Commission has also raised doubts as to whether HGAA would be able to remunerate its capital sufficiently, which is a precondition for a bank to be considered viable ([26]). In its December 2009 rescue decision the Commission has already requested the Member State to consider the option of an orderly winding down of the bank ([27]).

(83) In assessing viability, the Commission raised in particular doubts relating to the funding strategy ([28]), asset quality ([29]) and internal control structures ([30]). In recital 37 of its December 2012 rescue decision the Commission raised doubts about the quality of HGAA's new business.

(84) As regards burden-sharing, the 2009 opening decision ([31]) and the December 2009 rescue decision ([32]) mention a possible lack of burden-sharing from BayernLB and HGAA's previous owners (GRAWE and Land Carinthia). The 2009 opening decision mentions in recital 102 a lack of burden-sharing from HGAA's hybrid capital owners.

(85) Recital 41 of the 2010 extension decision questions whether the injected capital into HGAA by Austria under the conditions of the Austrian scheme is sufficiently remunerated as the bank had been considered as fundamentally sound by Austria and thus benefitted from cheaper remuneration rates than would have been the case had it been considered as a distressed bank.

(86) On competition distortions, the Commission, based on the previous plans submitted by Austria, questioned whether the extent of the balance size reductions would be sufficient ([33]) and repeatedly called for measures which would address competition distortions ([34]). Against the background of an ever increasing aid amount the Commission has repeatedly called for additional measures for addressing competition distortions ([35]).

5. COMMENTS FROM INTERESTED PARTIES

(87) No comments from interested parties were received.

([24]) See for example the 2009 opening decision, recital 92; the December 2009 rescue decision, recital 66; the 2010 extension decision, recitals 31 to 39; the July 2011 rescue decision, recitals 39 to 43; the December 2012 rescue decision, recital 37.
([25]) See for example the 2010 extension decision, recital 31; the July 2011 rescue decision, recital 40.
([26]) See for example the 2010 extension decision, recital 39.
([27]) See recital 65 of the December 2009 rescue decision.
([28]) See for example recitals 34 and 38 of the 2010 extension decision.
([29]) See for example recital 66 of the December 2009 rescue decision, recitals 35 and 37 of the 2010 extension decision and recital 43 of the July 2011 rescue decision.
([30]) See for example recital 36 of the 2010 extension decision.
([31]) See the 2009 opening decision, recital 102.
([32]) See the December 2009 rescue decision, recital 67.
([33]) See the 2009 opening decision, recital 98.
([34]) See the 2009 opening decision, recital 98; the 2010 extension decision, recital 42.
([35]) See the July 2011 rescue decision, recital 44; the December 2012 rescue decision, recital 38.

6. COMMENTS FROM AUSTRIA

(88) Austria's comments deal mainly with the Commission's treatment of State aid to BayernLB. The Commission concluded in its Decision of 25 July 2012 in case SA. 28487 (C16/2009) ([36]) regarding restructuring aid to BayernLB that the guarantee by the Republic of Austria on the liquidity amounting to EUR 2,638 billion which BayernLB, in the context of the 2009 rescue operation, has agreed to leave in HGAA, constituted State aid to the benefit of BayernLB and has subsequently authorised the aid measure as being compatible with the internal market. On 5 October 2012 Austria brought an action for annulment ([37]) against that decision, arguing in particular that the Commission had failed to demonstrate why the measure should be considered compatible with the internal market and insisting that the measure does not constitute aid to the benefit of BayernLB.

(89) Austria undertakes to ensure that the commitments laid down in the Annex are complied with in full.

7. ASSESSMENT

The assessment of the restructuring aid has to consider all aid granted to HGAA since 2008.

7.1. EXISTENCE OF AID

(90) According to 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

(91) The qualification of a measure as State aid requires the following conditions to be met: (i) the measure must be financed through State resources; (ii) it must grant an advantage liable to favour certain undertakings or the production of certain goods; (iii) that advantage must be selective; and (iv) the measure must distort or threaten to distort competition and have the potential to affect trade between Member States. Those conditions being cumulative, they must all be present before a measure is characterized as State aid.

(92) Recitals 51 to 56 of the decision approving the bank support scheme confirm that any measure granted under that scheme constitutes State aid. The Commission furthermore recalls that it has already established in recitals 48 to 53 of the 2009 rescue decision, recital 25 of the July 2011 rescue decision and recital 16 of the December 2012 rescue decision that the conditions set out in Article 107(1) of the Treaty are met for the aid measures listed under a) and b) and that those measures therefore constitute aid. The Commission maintains its view as it will explain below.

a) **The measures provided by Austria under the bank support scheme**

(93) All measures granted under the bank support scheme, namely the EUR 900 million recapitalisation and the guarantees of EUR 1,35 billion received in 2008, constitute aid as set out in recitals 51 to 56 of the decision approving that scheme.

b) **The further measures granted by Austria**

(94) Outside the bank support scheme Austria has authorized a EUR 450 million recapitalisation, an asset guarantee of EUR 100 million (which has meanwhile been terminated), an asset guarantee of EUR 200 million, a capital increase of EUR 500 million in the form of shares and a guarantee on subordinated Tier-2 capital instruments with a nominal value of EUR 1 billion.

([36]) Replaced by Commission Decision of 5 February 2013 under the same case number; not yet published.
([37]) Registered as Case T-427/12.

(95) Both the capital injection and the guarantees are granted from State resources within the meaning of Article 107(1) of the Treaty. They are granted to a single undertaking and are therefore selective. They are granted under conditions which would not be available to HGAA on the markets, which is not disputed by Austria. Given that HGAA is an undertaking active in the financial sector, which is open to intense international competition, any advantage from State resources to HGAA has the potential to affect intra-Union trade and to distort competition. Those findings were already set out in recital 16 of the December 2012 rescue decision and are confirmed in the present Decision.

c) **The recapitalisation by BayernLB**

(96) BayernLB was itself recapitalised by the Free State of Bavaria in 2008 and used part of the funds to recapitalise its subsidiary HGAA. According to recital 124 of the BayernLB decision the full amount of the recapitalisation granted by the Free State of Bavaria constitutes aid to BayernLB. As the amount of aid in one measure cannot be double-counted, the Commission concludes that the recapitalisation of HGAA by BayernLB does not constitute State aid to the benefit of HGAA. Moreover, it seems that at the time of the recapitalisation of HGAA BayernLB was acting in order to safeguard its investment in its subsidiary, in line with market economy considerations, and that its decision to recapitalise HGAA cannot be imputed to a Member State.

d) **The contingent aid measures**

(97) Austria seeks authorisation of aid measures to satisfy potentially arising capital and liquidity needs which in a stress scenario might amount up to EUR 5,4 billion for capital and up to EUR 3,3 billion for liquidity. Those potential future aid measures for the wind-down of HGAA will be granted from State resources within the meaning of Article 107(1) of the Treaty. They are granted to a single undertaking and are therefore selective. As they are granted under conditions which would not be available to HGAA on the markets they constitute an advantage. Given that HGAA is an undertaking active in the financial sector, which is open to intense international competition, any advantage from State resources to HGAA has the potential to affect intra-Union trade and to distort competition.

Conclusion as to the total aid amount

(98) The total amount of aid granted to HGAA by Austria through the reinforcement of capital is EUR 3,15 billion (including the EUR 300 million of asset guarantees having the same effect as a capital injection). That amount represents around 9,6 % of HGAA's RWA in 2008. In addition, HGAA has received a total amount of EUR 1,35 billion in guarantees. Furthermore, Austria has requested the authorisation of potential aid measures which might become necessary to cover future capital needs within the wind-down of HGAA which in a stress case might go up to EUR 5,4 billion, leading to a total aid amount in terms of capital and asset guarantees of EUR 8,55 billion which equal 26 % of RWA. In addition, Austria requested the authorisation of liquidity measures amounting to EUR 3,3 billion.

7.2. COMPATIBILITY OF THE AID

7.2.1. **Application of Article 107(3)(b) TFEU**

(99) Article 107(3)(b) of the Treaty sets out that State aid may be considered to be compatible with the internal market where it is granted '*to remedy a serious disturbance in the economy of a Member State*'.

(100) On the basis of Article 107(3)(b) of the Treaty State aid can be found compatible with the internal market if it serves to 'remedy a serious disturbance in the economy of a Member State'. Despite a slow economic recovery that has taken hold since the beginning of 2010, the Commission still considers that the requirements for State aid to be approved pursuant to Article 107(3)(b) of the Treaty continue to be fulfilled in view of the persisting stress in financial markets. In July 2013 the Commission confirmed that view by adopting the Communication from the Commission on the application, from 1 August 2013, of State aid rules to support measures in favour of banks in the context of the financial crisis ([38]).

([38]) OJ C 216, 30.7.2013, p. 1, see in particular point 6.

(101) The Austrian Central Bank has already on an earlier occasion confirmed that HGAA was a bank with systemic importance for the financial market in Austria and in South-Eastern Europe and reiterated that view by letter of 3 December 2012. Without the aid measures the supervisory authorities might have closed HGAA due to the latter's breach of capital requirements.

(102) The closure under such conditions of a bank considered by a Member State to be of systemic importance, such as HGAA, could directly affect the financial markets and thus the entire economy of a Member State. In the light of the current fragile situation of the financial markets, the Commission therefore continues to base its assessment of State aid measures in the banking sector on Article 107(3)(b) of the Treaty.

7.2.2. **Compatibility of the aid measures**

(103) All measures identified as State aid have been provided in the context of the restructuring and liquidation of HGAA. The Communication on the return to viability and the assessment of restructuring measures in the financial sector in the current crisis under the State aid rules ([39]) ('*Restructuring Communication*') sets out the rules applicable to the granting of restructuring and liquidation aid to 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 (i) lead to the restoration of the viability of the bank, (ii) include sufficient own contribution by the beneficiary (burden-sharing) and ensure that the aid is limited to the minimum necessary and (iii) contain sufficient measures limiting the distortion of competition.

Restoration of viability

(104) As the Commission has indicated in the Restructuring Communication, the Member State needs to provide a comprehensive restructuring plan which shows how the long-term viability of the entity will be restored without State aid within a reasonable period of time and within a maximum of five years. According to point 13 of 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. For a bank to do so, it must be able to cover all its costs and provide an appropriate return on equity, taking into account the risk profile of the bank. Point 14 of the Restructuring Communication stipulates that long-term viability requires that any State aid received is either redeemed over time or is remunerated according to normal market conditions, thereby ensuring that any form of additional State aid is terminated.

(105) Previously submitted restructuring plans for HGAA did not allow for the conclusion that a return to viability of the whole group is feasible.

(106) The Commission furthermore notes that the cheap funding stemming from the guarantees offered by Carinthia will come to an end over time and that the rapid catch-up process of the SEE economies has stopped.

(107) As a result, the bank is unable to adequately remunerate its capital or to repay the State capital and thus achieve a return to viability by the end of the restructuring period. Thus, it does not seem possible to restore viability for HGAA on a stand-alone basis. The Commission therefore concludes that its doubts as regards the restoration of viability have not been allayed.

(108) As set out in point 9 of the Restructuring Communication any restructuring plan should include a comparison with alternative options, including a break-up or absorption by another bank. In case a bank cannot be restored to viability, the restructuring plan should indicate how it can be wound up in an orderly fashion. Point 21 stipulates that an orderly winding-up or the auctioning off of a failed bank should always be considered where a bank cannot credibly return to long-term viability.

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

(109) The Austrian authorities have submitted a liquidation plan which provides for such an orderly wind-down strategy. The submitted plan sets out the sale of the operational entities, the Austrian HBA (for which a sales contract is already signed) and the SEE network, via an open procedure by end June 2015 at the latest. All the remaining parts are put into a controlled and orderly wind-down process. In that context Austria commits that as from 1 July 2013 the Italian entity HBI will not undertake new business. Should a sale of the operational SEE units not be feasible by 30 June 2015, they will also stop new business and be wound down. As a result, by 30 June 2015 at the latest HGAA will cease to be an active undertaking in the financial sector.

(110) The sale of the operational entities will be done through unconditional, transparent and open procedures, which will allow all interested market participants to make an offer for the entities. Such competitive procedures ensure that the best bid constitutes the market price, thus excluding aid to the buyer ([40]). Where the Commission finds that there is aid to a buyer, the Commission will assess the compatibility of that aid separately.

(111) As regards the issue of whether the entities to be sold might constitute an economic continuity of HGAA and the aid measures might therefore constitute aid to those entities, the Commission first notes that it is not yet clear whether the SEE network will be sold as a whole to a single buyer or whether various buyers will acquire parts of the current network.

(112) For a finding of economic continuity, inter alia, the following factors may be taken into consideration: the subject-matter of the transfer, the price of the transfer, the identity of the shareholders or the owners of the undertaking which takes over and of the initial undertaking or the economic logic of the operation ([41]).

(113) The Commission observes firstly that the aid granted was not assigned to tackle the problems of the individual operational entities in Austria or SEE countries but of HGAA as a group. None of the subsidiaries in the SEE countries or HBA represents the core of HGAA's business and the entities to be sold only represent a part of HGAA's assets. Furthermore, the business model of the entities to be sold is different from the business model of HGAA, which was an international banking group reliant on cheap financing largely based on State guarantees from Carinthia and focussing on rapid expansion benefitting from the catch-up potential of emerging markets. In the future, the funding of the subsidiaries in the SEE countries will no longer be dependent on State guarantees but will be based on local (and thus more expensive) funding, which will require a more prudent approach as regards margins and risk management. Whilst HGAA focussed rather on large-scale business and key clients, the entities to be sold will focus on SME business. In practice the entities to be sold will be oriented towards a different client base.

(114) The Commission furthermore notes that the sale of the operational entities is designed to maximise the value of HGAA's assets before its liquidation in the interest of its creditors.

(115) On the basis of the subject-matter, of the fact that the shareholders of HGAA and the entities to be sold will not be identical, and of the economic logic of the sales operation, the Commission considers that once the operational entities are sold and HGAA has ceased to exist there will be no continuation of the economic activity of HGAA.

(116) The liquidation plan sets out that some assets will be taken out of the operational entities to be sold. That removal will both improve the entities' funding ability and improve the average asset quality of the remaining balance sheet, thus contributing to the marketability of the respective entities.

([40]) See point 20 of the Restructuring Communication and 49 of the Communication on the application of State aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis ('*the Banking Communication*'), OJ C 270, 25.10.2008, p. 8.

([41]) See Joined Cases T-415/05, T-416/05 and T-423/05 *Greece and Others* v *Commission* [2010] ECR I-4749, paragraph 135.

(117) Point 21 of the Restructuring Communication points out that the creation of an autonomous 'good bank' from a combination of the 'good' assets and liabilities of an existing bank may also be an acceptable path to viability, provided any such new entity is not in a position to unduly distort competition. In that regard, the creation of a SEE holding or the regrouping of certain assets away from HBInt to the SEE holding with the aim of creating a viable and marketable SEE banking unit would be an acceptable solution ([42]).

(118) The problem of asset quality, stemming from both the legacy portfolio and more recent risky engagements, could not be solved on a going concern basis because of increasing risk costs and impairments. Therefore the Commission considers that the liquidation plan presented by Austria to increasingly transfer problematic assets into the wind-down unit as the appropriate strategy.

(119) As regards the funding envisaged in the liquidation plan, the entities to be sold will increasingly concentrate on local funding and seek to reduce their dependency on wholesale funding provided by HGAA. The Commission welcomes that change in funding strategy. It notes that there will be an on-going funding commitment of HGAA to the entities to be sold.

(120) Furthermore, the liquidation plan provides for a significant reduction in the leasing activities of HGAA, which have been a major source of HGAA's problems in the past as leasing activities have a relatively low profitability compared to their risks and funding requirements. That reduction will also positively contribute to the marketability of the operational entities.

(121) The Commission concludes that the viability of HGAA cannot be restored and that the orderly wind-down strategy for HGAA as put forward by Austria is an appropriate means to deal with HGAA given that it is not possible to restore the viability of the bank as such.

Own contribution and burden-sharing

(122) The Restructuring Communication indicates that an appropriate contribution by the beneficiary is necessary in order to limit the aid to a minimum and to address distortions of competition and moral hazard. To that end, it provides that (i) both the restructuring costs and the amount of aid should be limited and (ii) a significant own contribution is necessary.

(123) The Restructuring Communication further provides that, in order to keep the aid limited to the minimum, the bank should first use its own resources to finance the restructuring. The costs associated with the restructuring should not only be borne by the State but also by those who invested in the bank. That objective is achieved in particular by absorbing losses with available capital.

(124) First, all previous shareholders of HGAA have sold their shares to the Republic of Austria for a symbolic price of one euro which reduced the risk that the aid measures benefit the former shareholders. The former owners have also provided HGAA with capital or liquidity, which have been used to cover losses and to improve the liquidity situation.

(125) The majority shareholder of HGAA at the time of that sale was BayernLB. In total, BayernLB has contributed about EUR 1,5 billion in capital whilst renouncing further ownership rights, not even any prospect of further remuneration. BayernLB also contributed about EUR 4,3 billion in liquidity to HGAA. Furthermore, BayernLB faced a significant write-down loss when selling its HGAA shares which contributes to addressing moral hazard in line with point 22 of the Restructuring Communication.

([42]) The Commission notes positively that Austria commits to ensure that the loan-to-deposit ('*LTD*') ratio of the entities not earmarked for wind-down will be geared to a successful sale either by steering the credit process or by measures to synthetically or effectively reduce the LTD ratio, see commitments section III, point 4.1.8.

(126) The Commission therefore considers that the amount of burden-sharing from the former owner BayernLB is significant and adequate.

(127) That conclusion will not be affected by the final outcome of the on-going lawsuit on the repayment of the outstanding loans to BayernLB. If BayernLB were to lose the lawsuit, the amount of burden-sharing would be even higher. If BayernLB were to win the lawsuit, the amount of burden-sharing as assessed in this Decision would not change.

(128) The contribution of GRAWE consists of both capital and liquidity measures. The originally capital injection of GRAWE into HGAA amounting to EUR 30 million has in the meantime been reduced to about EUR 9 million through a decision by the Republic of Austria as the bank's sole shareholder to allocate the capital for loss absorption (*Kapitalschnitt*). GRAWE also provided liquidity to HGAA.

(129) Based on the above considerations, the Commission concludes that the burden-sharing of GRAWE is sufficient.

(130) As regards the Land Carinthia, the Commission observes that the Land Carinthia has contributed to burden-sharing by injecting capital which has been significantly reduced in the meantime through the *Kapitalschnitt*.

(131) Based on the above considerations, the Commission concludes that the burden-sharing of Land Carinthia is sufficient.

(132) The fact that the remuneration on the Partizipationskapital for GRAWE and Land Carinthia is higher than the remuneration for the capital injected by BayernLB is justified because BayernLB provided a different kind of capital instrument. In contrast to GRAWE and Land Carinthia, they provided no Partizipationskapital, but simply renounced all rights deriving from capital instruments and some liquidity. Thus BayernLB provided a higher degree of burden-sharing which seems appropriate as BayernLB had been the dominant owner of HGAA before the acquisition of the bank by Austria.

(133) Another open issue is whether the injected Partizipationskapital capital into HGAA by Austria under the conditions of the bank support scheme is sufficiently remunerated. It has to be recalled that under the bank support scheme there were two different interest rates to be paid depending on whether the aided bank had been a distressed or a fundamentally sound bank. HGAA was considered as fundamentally sound by Austria and thus paid lower remuneration rates than if it would have done had it been considered a distressed bank.

(134) On that issue, the Commission observes that all the remaining Partizipationskapital remains with HBInt, and thus with the wind-down part of HGAA. Given that the wind-down part is no longer active on the market and that the viability of HGAA cannot be restored (so that HGAA will be liquidated), the Commission finds that the low remuneration can be accepted in the present case.

(135) The Mitarbeiterstiftung Alpe Adria was the smallest owner of HGAA with a 0,02 % stake. Its stake was also sold for one euro when the Republic of Austria acquired HGAA in December 2009. Given the complete loss of any shareholders' rights without any consideration, the Commission considers the degree of burden-sharing is sufficient, in particular given its relative small size compared with the other owners.

(136) As regards the hybrid capital holders, HGAA has taken a number of steps to ensure their burden-sharing by buying back those instruments significantly below par or cancelling them altogether which has generated a significant capital effect.

(137) Furthermore, the Commission notes that many of the hybrid capital instruments as well as the Partizipationskapital instruments only yield dividends or coupon payments in case of profits. Given the lack of profitability of the bank in recent years, the holders of those instruments have not received such payments. In addition, there will be restrictions on dividend and coupon pay-outs in the future. As a result, the Commission considers that there is sufficient burden-sharing from the holders of those instruments.

(138) For those reasons, the Commission concludes that the liquidation plan of HGAA provides for an appropriate burden-sharing.

Limiting competition distortions

(139) Finally, section 4 of the Restructuring Communication requires that the restructuring plan contains measures limiting distortions of competition. Such measures should be tailor-made to address the distortions on the markets where the beneficiary operates after restructuring. In the present case it needs to be ensured that the entities which will remain active on the market before they will be finally sold do not use the State resources received in a manner which is detrimental to competitors and do not act in a distortive manner.

(140) To that end, Austria commits to the business restrictions set out in section 4 of the Annex which will ensure that until the sale competition distortions resulting from the existence and the activities of the operational entities are kept as much as possible to the minimum.

(141) The nature and form of competition measures depend on two criteria: first, the amount of the aid and the conditions and circumstances under which it was granted and, second, the characteristics of the markets on which the beneficiary will operate.

(142) The Commission recalls that HGAA has received State aid amounting to EUR 3,15 billion in capital and asset guarantees and EUR 1,35 billion in liquidity guarantees and, for purposes of the wind-down process, might receive additional State aid up to EUR 5,4 billion in capital and EUR 3,3 billion in liquidity in the future.

(143) The total aid amount in capital and asset guarantees would amount to EUR 8,55 billion which is equivalent to approximately 26 % of HGAA's RWA of EUR 32,8 billion as of 31 December 2008. The amount of aid granted is therefore significant very large, requiring appropriate measures.

(144) Point 35 of the Restructuring Communication stipulates that structural measures such as divestitures should favour the entry of competitors while allowing for the exit process to take place within an appropriate time frame that preserves financial stability.

(145) The Commission observes that the liquidation plan provides for an orderly wind-down where by 30 June 2015 at the latest HGAA will cease to exist as an active economic actor on the markets and will just wind down the activities which have not been sold by that time.

(146) As regards the continued activity of the SEE entities until their sale, Austria has submitted a number of commitments as regards the new business to be pursued by those entities, avoiding any possible distortion of competition in the period until the sale.

(147) In that respect, the Commission in particular positively takes note of the restrictions on new business to which Austria and HGAA committed: After taking into account risk costs and funding costs a minimum return of […] % p.a. should be realised on new business. That minimum return on new business will ensure that operational entities do not enter into anti-competitive pricing practices while at the same time contribute to their long-term profitability. In the same spirit, the bank commits to limitations on the maturities of new business so that maturity transformation only contributes in a limited way to profitability. […] ([43]) […]. As regards […], Austria provided an additional commitment to limit the […] business to customers rated […] or better and not to exceed a total volume of EUR […]. That commitment mitigates the risks associated with currency devaluation and restricts the volume in which the bank can be active in that market segment. In summary, those restrictions both serve to ensure long-term viability and limit the competitive capacity of the respective entities.

(148) The Commission further views positively the commitments regarding an improved risk management, in particular as regards the annual re-rating of all exposures exceeding EUR […] and the commitment that in retail and public finance the bank will only do business with customers rated […] ([44]). Those commitments ensure that the business conduct will be prudent and the affected entities will abstain from a risky business strategy. Business will be conducted so that profitability needs are balanced with the necessary risk control considerations. At the same time, the commitments also preclude an aggressive market expansion strategy.

(149) The Commission notes positively the two-fold purpose of the commitments set out in recitals 147 and 148. Firstly, they contribute to increasing the saleability of the business as no overly risky business is conducted, and secondly, they diminish competition distortions by restricting aggressive behaviour and thus limiting new business.

(150) Under the liquidation plan all operational parts of HGAA will be either wound down or sold. Austria has provided a firm commitment as regards the sale of HBA and the SEE network (in parts or as a whole) in that the sale has to be done by 30 June 2014 respectively 30 June 2015 at the latest. After that date, all new business has to stop and HGAA will exit the market, either because all activities are in a wind-down process or because they have been sold to a third party in a transparent way. As such, the sales/wind-down process of HGAA contributes significantly to limiting the competition distortions of competition resulting from the aid, because HGAA as such will disappear from the markets.

(151) The Commission considers that the still fragile situation on the financial markets in particular in the SEE countries justifies the prolonged deadline of 30 June 2015 for the sale of the entities in those countries. It notes that the Austrian activities have already been sold and that if the sale is not completed by 30 June 2014 those activities will also be wound down.

(152) Overall, the Commission notes that by 2017 the remaining balance sheet size and the RWA of HGAA will decline by about 85 % (provided the sale succeeds as planned).

(153) In addition to those far-reaching measures, the Commission notes a ban on advertising State support and a ban on aggressive commercial practices to which Austria committed. It also welcomes an acquisition ban, which ensures that the State aid will not be used to take over competitors, but to serve its intended purpose, namely to finance the liquidation process.

(154) The Commission deplores Austria's partial compliance with the commitments it entered into within the framework of the 2012 December rescue decision. The Commission considers, however, that the breach of some of those commitments which lasted for a restricted period of time is counterbalanced by the complete break-up and liquidation of the bank.

([43]) […].
([44]) This relates to a 1-year default probability of […] % or less.

(155) Taking into account the commitments and in light of the appropriateness of the own contribution and burden-sharing as set out in recitals 122 to 138, the Commission considers that there are sufficient safeguards to limit potential distortions of competition despite the high amount of aid granted to HGAA.

CONCLUSIONS

(156) In view of the commitments made by Austria it is concluded that the wind-down strategy is in line with the Restructuring Communication, the liquidation aid is limited to the minimum necessary and competition distortions are sufficiently addressed. The liquidation aid is thus compatible with the internal market pursuant to Article 107(3)(b) of the Treaty,

HAS ADOPTED THIS DECISION:

Article 1

1. The following measures constitute State aid:

(a) the recapitalisation in the amount of EUR 900 million under the bank support scheme;

(b) the recapitalisation in the amount of EUR 450 million under the bank support scheme;

(c) the guarantees of EUR 1,35 billion under the bank support scheme;

(d) the asset guarantee of EUR 100 million;

(e) the asset guarantee of EUR 200 million;

(f) the recapitalisation in the amount of EUR 500 million;

(g) the State guarantee on subordinated Tier-2 capital instruments with a nominal value of EUR 1 billion;

(h) the contingent capital for the wind-up of HGAA up to a maximum amount of EUR 5,4 billion;

(i) The contingent liquidity support up to a maximum amount of EUR 3,3 billion.

2. The State aid referred to in paragraph 1 is compatible with the internal market, in the light of the commitments set out in the Annex.

Article 2

Austria shall ensure that the liquidation plan submitted on 29 June 2013 and complemented by submission of 27 August 2013 is implemented in full, including the commitments set out in the Annex.

Article 3

This Decision is addressed to the Republic of Austria.

Done at Brussels, 3 September 2013.

For the Commission
Joaquín ALMUNIA
Vice-President

ANNEX

Preliminary remarks

The following commitments are provided by Austria exclusively to the European Commission (**hereinafter: 'the Commission'**) as sole addressee and only for the purposes of case SA.32554 (ex C 16/2009). Third parties may not rely on these commitments to derive any claims to a certain conduct by Austria and/or the Hypo Alpe Adria group of credit institutions (hereinafter: 'HGAA').

The commitments provided to the Commission by Austria in the commitments letter dated 30 November 2012, which are set out in the Annex to the Commission's approval decision dated 5 December 2012, C(2012) 9255 final, are replaced by the commitments set out under sections B.III.3 and B.III.4.

Save as otherwise provided below, all commitments apply to each of the operational entities listed in section B.II.1 only until the relevant entity has been reprivatised in accordance with section B.IV.3.

Commitments

I. *Implementation of the restructuring plan; Monitoring Trustee*

Austria will ensure that the restructuring plan is fully implemented within the relevant deadlines. Austria undertakes that the implementation of the restructuring plan and the fulfilment of the commitments will be monitored by a Monitoring Trustee. The appointment, duties, obligations and discharge of the Monitoring Trustee must follow the procedures set out in section C.

II. *Definitions*

1. Operational entities

The '**operational entities**' to be reprivatised in accordance with section B.IV.3 are the following companies (including, in each case, the companies solely controlled by them, either directly or indirectly):

1.1. HBA

Hypo Alpe-Adria-Bank AG, Klagenfurt, Austria ('HBA').

1.2. SEE/SEE network

— Hypo Alpe-Adria-Bank d.d., Ljubljana, Slovenia ('HBS').

— Hypo Leasing d.o.o., Ljubljana, Slovenia ('HLS') or its legal successor created under the internal HGAA restructuring, provided that it is put up for sale. This company's activity is limited to […] and […] leasing.

— Hypo Alpe-Adria-Bank d.d., Zagreb, Croatia ('HBC') and its subsidiary Hypo Alpe-Adria-Leasing d.o.o., Croatia ('HAALC'), whose business activity is limited to […].

— Hypo Alpe-Adria-Bank d.d., Mostar, Bosnia and Herzegovina ('HBFBiH').

— Hypo Alpe-Adria-Bank a.d., Banja Luka, Republic of Serbia ('HBRS') and its subsidiary Hypo Alpe-Adria-Leasing d.o.o., Banja Luka, Republic of Serbia ('HLRS'), whose business activity is limited to […] leasing.

— Hypo Alpe-Adria-Bank a.d., Podgorica, Montenegro ('HBM').

— Hypo Alpe-Adria-Bank a.d., Belgrade, Serbia ('HBSE').

2. Wind-down part

In the wind-down part, the non-strategic business lines and portfolios of HGAA and Hypo-Alpe-Adria Bank S.p.A., whose head office is in Udine, Italy ('HBI'), are to be wound down in accordance with the restructuring plan, while preserving capital and minimising loss of value. All companies/entities not explicitly listed under the preceding section II.1 shall be included in the wind-down part. The wind-down part is to include inter alia:

2.1. Wind-down participations

Non-strategic shareholdings

2.2. Wind-down financials

— Portfolio of HBInt. and refinancing lines to subsidiaries (in particular SEE, HBI) remaining in HGAA.

— Sub-portfolios belonging to individual subsidiary banks (HBA, HBI, SEE network banks) and to HLS transferred in the wind down.

— Wind-down leasing companies (HLHU, HLUA, HLBG, HLG, HLC, HLMK, HLA, HLM, HETA, HLI, HRSE and HLSE).

— Minority companies (Credit Management, Norica).

2.3. HBI

Hypo Alpe-Adria-Bank S.p.A., Udine, Italy ('HBI').

III. *General commitments*

1. Pursuit of a prudent, sound and sustainable business policy

Austria will ensure that, while the restructuring plan is being implemented, HGAA pursues a prudent, sound and sustainable business policy, reviews the appropriateness of its internal incentive schemes under statutory and regulatory rules, and makes sure that its incentive schemes do not result in incentivising to undertake unsuitable risks.

2. Profit transfer

Austria will ensure that each operational entity (i.e. HBA and the SEE network), until their respective reprivatisation, transfers any annual profit to its respective owners only to the extent that this is allowed by law and does not result in failing to meet the regulatory own capital ratios of the operational entity concerned applicable at the time of the profit transfer, or in any economic disadvantage for the company. This commitment shall also apply mutatis mutandis to any intermediate (holding) companies, HBI until it is completely wound down, and HBInt. as long as it is controlled by Austria.

3. Own contribution

The coupon ban set out in Austria's commitments letter dated 30 November 2012 and in No 11 in the Annex to the Commission's approval decision dated 5 December 2012, C(2012) 9255 final, is replaced by the following commitment:

3.1. No dividend or coupon payments that are not required by law

3.1.1. Austria will ensure that HGAA, during the implementation of the restructuring plan, does not make any dividend or coupon payments on its issued Tier 1 and Tier 2 capital instruments (including shares, shareholdings, hybrid capital and additional capital) issued before the final approval decision is adopted, unless HGAA is legally obliged to do so, even without releasing reserves, or with the prior agreement of the Commission services.

3.1.2. The capital instruments referred to above do not include those capital instruments, shares and/or shareholdings held by Austria, unless a dividend or coupon payment on the capital instruments held by Austria would also result in a payment obligation to third parties.

3.1.3. The dividend ban under point 3.1.1 does not apply to dividend payments by the temporary 'minority companies' that do not engage in advertising, […] and […], (i.e. two SPVs in which external investors hold a 49 % stake; the activity of the SPVs is limited to holding certain securities and paying out income from the securities to HBInt and the minority companies in the form of dividends, see section 5.3.4 of the restructuring plan) where failure to make these payments would result in the winding up of one of these companies, which would have an adverse impact on HGAA's total capitalisation.

3.2. No calling in or repurchase of capital instruments that are not required by law

3.2.1. Austria will ensure that HGAA, during the implementation of the restructuring plan, does not call in, repurchase or otherwise terminate before maturity capital instruments within the meaning of point 3.1.1 above, unless HGAA is legally obliged to do so, even without releasing reserves, or with the prior agreement of the Commission services.

3.2.2. With the prior agreement of the Commission services, this excludes the calling, repurchasing and other ways of early termination of capital instruments, if:

— they do not result in a permanent reduction in HGAA's regulatory capital ratios, and

— payments by HGAA to creditors in connection with the early termination (e.g. repurchase price, indemnity) do not exceed the market value of the instruments at the time of termination, if necessary plus:

  — a premium of not more than 10 % of the market value, and/or

  — a payment no more than the discounted cash value of the interest due on the instrument until its original maturity date.

3.2.3. With the prior agreement of the Commission, the specific determination of the market value within the meaning of the above will correspond to:

— in the case of publicly traded instruments: the average price of the instrument or comparable instruments in the month before publication of the offer to repurchase the instruments in question;

— in the case of other instruments: the value established in another, suitable way and verified by an independent third party using valuations of the instrument or comparable instruments.

4. Behavioural commitments/restrictions on new business

4.1. Replacement of the commitments dated 30 November 2013 (Annex to the Commission's approval decision dated 5 December 2012, C(2012) 9255 final)

The commitments provided to the Commission by Austria in the commitments letter dated 30 November 2012, which are set out in the Annex to the Commission's approval decision dated 5 December 2012, C(2012) 9255 final, are replaced by the following commitments.

4.1.1. HGAA will limit new business in the public finance segment to […] and corporate credit engagements to […] or less, with a 1-year probability of default of […] or less for both public and corporate finance. In addition, all engagements above […] in the corporate segment must be […] % collateralised in compliance with HGAA's internal credit policy parameters. Exceptions to the above restrictions are permissible if the local regulator requires certain financial instruments to be held. Furthermore, Treasury Bills issued by the Republic of Serbia and the Federation of Bosnia and Herzegovina with a maximum tenor of […] will be exempt from the above restrictions, if the acquisition of these securities […].

4.1.2. HGAA will disburse new retail mortgages only with a loan-to-value (LTV) ratio of […] % or lower. New retail mortgages with a maximum LTV ratio of […] % is permissible if the debt-to-income ratio of the respective client – defined as total monthly obligations with HGAA and other financial institutions (established through local credit bureaus) divided by monthly net income – is less than or equal to […] %. In addition, any new mortgage granted must be eligible for inclusion in the cover pools under the local legislation on mortgage bonds/securitisation where such legislation exists.

4.1.3. The internal funding cost matrix for every new engagement (within the meaning of section 4.2) must be commensurate with the funding situation of the branch/subsidiary for the entire term structure. At the very minimum, this should be:

EURIBOR 3 m + […] % for engagements up to […] years,

EURIBOR 3 m + […] % for engagements from […] years ([…]),

EURIBOR 3 m + […] % for engagements above […] years ([…]),

to be increased for countries with a particularly weak credit stance […]. In addition to the group-wide maturity restrictions in public finance and corporate finance (see point 4.1.1), no engagements exceeding […] years may be undertaken in those countries. The funding add-ons may be lowered in cases where assets fulfil the legal and asset criteria for securitisation and are intended to be used directly for securitisation (e.g. mortgages, financial leases, SME loans, and public finance) based on usable collateral as verified by the Monitoring Trustee (between […] and […] bps depending on the amount of collateralisation, […] bps for over-collateralisation).

4.1.4. After properly calculating the funding cost (in accordance with point 4.1.3) and risk cost (the total expected loss on the uncovered amount, after applying an additional haircut of […] % on the collateral), an annual return on equity of a least […] % for any new credit engagement must be ensured (fees may be taken into account in the calculation). The Commission may, by service letter, lift the requirement for an additional haircut of […] % for the purpose of calculating the risk costs once the Monitoring Trustee provides a reasoned opinion that the bank's existing collateral valuation system as a whole is appropriate and already includes appropriate haircuts.

4.1.5. The return on equity within the meaning of the above paragraph must in principle be calculated on the basis of the regulatory capital requirements allocated to the specific loans. However, the methodology currently applied by HGAA for calculating the capital requirements for a specific loan is based on an economic approach, in line with risk-cost calculation. The European Commission may, by service letter, allow HGAA to continue to use the economic approach for the calculation of capital requirements for specific loans upon verification by the monitoring trustee that (i) the methodology is sound, and (ii) provided that HGAA has established that an equivalent return on regulatory capital requirement of […] % would hold both at target portfolio and effective portfolio level.

4.1.6. […] may be provided to clients only if the client […]. The exceptions to this are:

— […];

— […] are restricted to a nominal volume of EUR […] annual new business; every […] granted in […] must have a credit rating of at least […] or better (in accordance with HGAA's internal credit rating master scale).

4.1.7. HGAA will ensure an annual re-rating and complete financial documentary follow-up of each client with an exposure of more than EUR […] equivalent, to be verified by risk management at group head office.

4.1.8. The Republic of Austria commits to ensuring that the loan-to-deposit (LtD) ratio of the operational entities will be geared towards a successful sale, either by steering the credit process or by other measures to reduce the LtD ratio (artificially or effectively). The Republic of Austria is aware that LtD ratios in excess of 100 % can act as an impediment to the successful sale of an entity.

4.1.9. HGAA will replace or re-train credit officers and relationship managers where flaws in the credit process have been discovered or where credits have been disbursed at sub-standard profitability levels.

4.1.10. HGAA shall not acquire any shareholdings in companies or parts of companies (hereinafter: 'shareholdings'), save as otherwise provided below. With the prior agreement of the Commission, HGAA may acquire shareholdings where special circumstances require it to do so in order to maintain or secure financial stability or effective competition. HAA may acquire shareholdings without the prior agreement of the Commission where: (i) the respective acquisition price is less than […] % of HGAA's balance-sheet total at the time of the Commission decision, and (ii) the sum of all the acquisition prices paid by HGAA over the whole restructuring period (i.e. until the sale of the SEE network is complete, see IV) is less than […] % of HGAA's balance-sheet total at the time of the Commission decision. Excluded from the prohibition on acquisitions are shareholdings managed or acquired in the course of HGAA's normal business operations in connection with non-performing loans or similar banking operations.

4.1.11. HGAA shall not use the aid for promotion purposes.

4.1.12. The implementation of the above measures will be monitored on a quarterly basis by an external Monitoring Trustee (see section C below) who reports to the Commission.

4.2. Scope of the commitments ('Restrictions on new business') pursuant to 4.1.1-4.1.6

The restrictions set out in 4.1.1-4.1.6 shall apply only to new business as defined below:

4.2.1. Definition of the Corporate, Public Finance and Retail segments

The Corporate and Public Finance segments correspond in principle to HGAA's current business segment definitions, with the following changes:

4.2.1.1. The Corporate segment is defined as:

privately owned companies (with the exception of financial institutions) which meet the following size criteria in terms of turnover and/or exposure:

— Annual turnover of EUR […] or above; or

— Gross exposure of at least EUR […], except in Croatia, with a threshold of EUR […]. HGAA is to provide the Monitoring Trustee with evidence that the current exposure threshold distinguishing the retail segment from the corporate segment in Croatia indeed lies at EUR […] at present and that changing the threshold would entail excessive costs.

4.2.1.2. Public Finance segment:

The Public Finance segment is defined as:

— 'sovereigns', i.e. entities that are able to exercise sovereign powers by issuing generally binding laws or other binding regulations (States, ministries, state/government authorities, social security institutions, etc.);

— exposure explicitly guaranteed by sovereigns;

— 'sub-sovereigns', i.e. regional and local authorities (federal states, provinces, counties, towns, municipalities) and the political entities of the Republic of Bosnia and Herzegovina, namely the Republic of Serbia and the Federation of Bosnia and Herzegovina; and

— public-sector entities (PSEs [1]), provided that they enjoy a direct sovereign/sub-sovereign guarantee.

Any entity or agency that is not a sovereign/sub-sovereign as defined above and does not have a sovereign/sub-sovereign guarantee must be treated as a corporate (institutional) client in accordance with the rules on the Corporate (institutional) segment.

4.2.1.3. Retail segment:

The Retail segment is defined as:

— private individuals

— all forms of SME, i.e. privately held companies, freelancers and agricultural entities, regardless of their legal form, which meet all the following size criteria in terms of turnover and exposure:

— annual turnover of less than EUR […], and

— gross exposure of less than EUR […], except Croatia with a threshold of EUR […] (subject to the provision of evidence as stipulated in the second indent under 4.2.1.1 above).

4.2.2. New business within the Corporate and Public Finance segments

4.2.2.1. General definitions

In principle 'new business' within the meaning of the restrictions on new business under points 4.1.1 to 4.1.6 is defined according to HGAA's existing risk reporting standards and therefore encompasses either:

— risk-relevant [2] credit/leasing transactions with a completely new client (or with a group of connected clients — GoB) - i.e. **'new client business' (NCB)**; or

— increases in credit/leasing exposure with existing clients (on a product basis) - i.e. **'exposure-increasing business' (ExIB)**; and

— credit/leasing exposure renewals (prolongations) with existing clients (on a product basis) going beyond a tenor of […] – i.e. 'exposure-prolonging business' - (ExPB) [3].

4.2.2.2. Additional criteria

— Within the context of ExIB, new business must be considered at the level of individual transactions. So if a client intends to increase its cash exposure and in turn reduce its guarantee exposure by the same amount, the increased cash exposure still counts as new business.

— **Finance leasing must be treated as credit financing.** New business (NCB and ExIB) must therefore be fully compliant with the new business requirements under points 4.1.1 to 4.16 above.

— **Operating leasing** must be treated as new business within the meaning of points 4.1.1-4.1.6, having regard to the following considerations:

— **Minimum rating** of […] and maximum tenor as per the restrictions on new business must be observed.

(1) Entities directly controlled by the sovereign/sub-sovereign or economically connected to the sovereign/sub-sovereign.
(2) The term 'risk-relevant business' is defined as per the Group Credit Principles and therefore includes any credit/leasing business involving counterparty and/or del credere risks.
(3) Even though prolongations with a maximum tenor of […] are not subject to the restrictions on new business under points 4.1.1-4.1.6, such transactions must nevertheless adhere strictly to HGAA risk policies and other relevant regulations.

— **Full collateralisation is to be assumed as long as** the residual value is fully covered by the carrying value, provided that the residual value is sufficiently conservative; this will be the case where the residual value corresponds to a highly probable sales value (after deduction of sales costs) of the underlying item in the financial records of the booking entity.

— Any credit engagement involving uncommitted credit lines should adhere to the new lending standards under points 4.1.1-4.1.6.

— **Intragroup transactions** (e.g. refinancing of local banks, leasing and other participations) and business arising out of **HGAA's liquidity management requirements** shall be accounted for in the **Financial Institutions segment**.

4.2.2.3. Limitations

The following risk-relevant transactions **are not subject to** the restrictions on new business under points 4.1.1-4.1.6:

— **Transactions with financial institutions in the context of HGAA's liquidity book,** i.e.

— FX spot transactions (i.e. intra-day settlement limits);

— FX outrights und swaps with a maximum tenor of […], provided that a netting and collateral agreement (ISDA and CSA), stipulating a threshold (substantive unsecured exposure) of maximum EUR […], is in place;

— Money-market loans, deposits and (reverse) repo transactions, **each** with a maximum tenor of […], where the maximum amount per counterparty is limited to a total of EUR […] and the total amount granted at any time is limited to a maximum of EUR […].

— Financial derivatives (interest-rate swaps) with a maximum tenor of […], provided that a netting and collateral agreement (ISDA and CSA), stipulating a threshold (substantive unsecured exposure) of maximum EUR […], is in place.

HGAA must ensure that individual counterparty limits for financial institutions business are approved by the group head office risk management, with a maximum tenor of […].

— **New financing and prolongations, roll-overs, restructurings and reprogrammings granted to non-performing clients** (and all customers within the remit of Group/Local Task Force Rehabilitation and/or Credit Rehabilitation) with the aim and the clearly documented prospect of bringing them back to performing status and/or enabling a final recovery of the exposure, as long as the maturity of the new financing in this context is limited to […]. Any such transaction should be adequately documented, including quantitative evidence that it is the best way of preserving value for HGAA rather than merely a delay in the recognition of losses. The assumptions used for this quantitative assessment should be sufficiently conservative.

— **Prolongations, roll-overs, restructurings or reprogrammings** of existing performing exposures [1] or existing performing clients (GoBs), which are objectively justified, in the interest of HGAA, and not granted a tenor of more than […]. Any such transaction should be adequately documented, including quantitative evidence that it is the best way of preserving value for HGAA rather than merely a delay in the recognition of losses. The assumptions used for this quantitative assessment should be sufficiently conservative.

[1] According to HGAA's exposure measurement methodology, this means that the unutilised part of existing committed framework loans will not be considered new business.

— **Additional financings provided to clients on the group/local watch-list** with the aim and the clear, documented prospect of stabilising their financial situation (including hedging of interest-rate and FX risks), thus preventing an event of default and enabling them to return to performing status as long as this kind of financing is not granted beyond a tenor of […]. Any such transaction must be adequately documented, including quantitative evidence that it is the best way of preserving value for HGAA rather than merely a delay in the recognition of losses. The assumptions used for this quantitative assessment should be sufficiently conservative.

— Transactions

  — which are **fully** covered in **cash**, fully enforceable for collateral purposes for the entire duration of the loan contract, unencumbered by pledges in existing credits, provided the client's rating is not worse than […], OR

  — which are fully covered by a guarantee from a financial institution (bank guarantee), provided the guarantor's rating is no worse than […].

— **Exposure increases** due to **fluctuations in FX rates**, **market values** of derivatives and **pricing** of bonds.

— **Conversion of existing FX loans** to EUR loans, if the client's accounting currency is EUR, Kuna or Convertible Mark, the total exposure is converted at the prevailing FX-rate, and the collateral terms for HGAA are the same or better.

— Business for which an offer (term sheet) mutually agreed by the responsible local risk and sale unit was sent to and accepted by HGAA clients before 1 January 2013, provided that HGAA is legally bound to disburse and this can be properly documented.

— Business conducted using **funds from development banks and supranational financing institutions** (e.g. EIB, EBRD, HBOR, SID, etc.) as well as subsidised loan programmes offered by sovereign/sub-sovereign agencies, provided that, as far as collateralisation is concerned, the cut-off rating […] and a maximum tenor of […] must be observed. Such subsidised loan programmes must have credit-risk mitigating features […], which is to be confirmed by the Monitoring Trustee prior to HGAA's participation.

— **Internal financings** (i.e. refinancing lines) provided to other HGAA entities for **repossession** of collaterals and assets in the process of court auctions or sales.

— **Reclassification of leases**, i.e. from operating leases to financial leases, if the asset risk of the operating lease can be fully converted into counterparty risk (in other words, all of the risks and rewards incidental to ownership of the leased asset are transferred from the lessor to the lessee.

— **Fulfilment of existing contracts and commitments** (e.g. real estate under construction, activation of leases to go), provided the contract or local legislation does not allow for the possibility of cancelling the commitment in part or in whole, for example under one of the covenant clauses.

4.2.3. New business in the Retail segment

In accordance with point 4.2.2.1 and in compliance with the principles of due and prudent risk reporting, 'new business' for the retail segment is defined as follows:

(i) A risk-relevant credit or leasing transaction (e.g. a loan or a credit line) which is considered a retail lending or leasing product and which is **newly granted to an existing or new customer** (or GoB), ***OR***

(ii) For **limit-based retail products** already held by a retail client, such as overdrafts, credit cards and retail SME (working capital) credit lines, the difference between the newly granted (higher) limit and the old (lower) limit, ***OR***

(iii) For **amortising retail products** already held by a client, such as all forms of instalment loans, the difference between the newly/granted (higher) loan amount and the old (lower) loan amount.

4.2.3.1. Further definitions and considerations

(i) Until HGAA is in a position to report on incremental exposure increases as outlined in 4.2.3(ii) and (iii), exposure increases with existing clients (on a product basis) are considered **new business**. For clarification: a decrease in the instalment frequency (e.g. from monthly to quarterly) is considered new business.

(ii) **Marginal/insignificant** exposure increases (up to EUR […]) caused by transaction fees, capitalised interest/fees, etc., in particular relating to the transactions listed under 4.2.3.2 (e.g. currency switches, restructurings, consolidations, prolongations, etc.) are **not considered new business at any time**.

(iii) Within the context of exposure-increasing retail business, the existence or otherwise of new business must be determined at the level of individual transactions, so exposure increases on one product (held by the client) are not to be netted against exposure decreases on another product. Netting of client loans against client deposits is not permissible either.

(iv) **Finance leasing** shall be treated as credit financing, and is therefore new business pursuant to 4.2.3, and subject to the restrictions on new business.

(v) **Operating leasing** shall be treated as new business if it is caught by 4.2.3, and is therefore subject to the restrictions on new business.

(vi) **Reclassification of leases** (e.g. from operating leases to finance leases) is not considered new business, unless it increases the risk exposure of the bank in regulatory or economic terms.

4.2.3.2. Limitations/Exclusions

The following risk-relevant transactions are to receive **specific treatment**:

— All offers on retail loans made to clients before 1 January 2013 **are not subject to the restrictions on new business**, provided that they are accepted by the client within the acceptance period as determined by the laws in the relevant country. Offers made after 1 January 2013 must comply with the commitments under point 4.1.

— Retail loans made **using funds from development banks and supranational financing institutions** (e.g. EIB, EBRD, HBOR, SID, etc.) and subsidised loan programmes supported by sovereign/sub-sovereign lending or insurance agencies or public funds are not subject to the restrictions on new business.

— **Restructuring of retail loan or lease contracts**, if they were provided to natural persons (private clients) with a maximum amount of **EUR** […], **are not considered new business**, **as long as the exposure is not increased**. The following principles must be observed:

  — Restructuring should always be net-present-value neutral (NPV-neutral);

  — In the course of a restructuring, exposure to a client may NOT be increased;

— No new money may be disbursed to the customer during the restructuring process or under the restructured obligation;

— Restructuring of a retail client may take place only if the client demonstrates the ability and willingness to repay the restructured obligation;

— Clients being sued (by a third party), subject to legal enforcement measures, or otherwise having limited legal capacity because of a statutory procedure may not be restructured.

If the client is not a natural person (private client) but an SME (business client) and hence not subject to the above eligibility criterion, the restructuring rules (recovery maximisation) and maturity limitations for corporate clients will apply.

— **Cross-segment migration of existing exposure without any exposure increase is not considered new business**. This in particular affects exposure on project financing (e.g. construction of apartments) made by the corporate segment, which is ultimately covered/paid back by retail clients, for example when they take up loans for the purchase of the apartments. In this case, the exposure has effectively migrated from the corporate segment to the retail segment. However, the following limitations apply:

— The maximum permissible LTV is […] %, and

— The maximum annual volume of new business is limited to […] % of the annual volume of new retail mortgage business within each country.

— Increases in the total exposure of retail loans due to **interest, fees or other forms of debt capitalisation** (mostly in the context of non-performing loans or restructurings) **are not considered to be new business**.

— **Debt consolidation** for retail clients (within HGAA booking entities or groups of accounts) is considered to be part of restructuring if the related exposure is limited to EUR […] (EUR […] in Croatia, if accepted by the Monitoring Trustee, see 4.2.1.3). If the exposure is larger, the maturity limitations for corporate clients will apply.

However, if the new consolidated loan is granted in the form of a retail loan, and the exposure is (substantially) higher than the sum of exposures of the consolidated loans, the difference in exposure is deemed to be new business, in accordance with 4.2.3(ii) and (iii). Until the reporting capabilities are in place, however, 4.2.3.1(i) applies.

— 'Loan top-ups' on retail loans are **not to be considered new business**, if the option to top up was explicitly granted in the original loan agreement, could not be cancelled by HGAA and was subject only to the client meeting certain loan covenants, although without the client having to go through a standard loan appraisal. In the case of other forms of top-ups on retail loans, the difference between the old loan amount and the new loan amount is considered to be **new business** in accordance with 4.2.3(ii) and (iii). Until the reporting capabilities are in place, however, 4.2.3.1(i) applies.

— 'Currency switches', i.e. a retail client switching from a foreign-currency denominated loan (or foreign-currency indexed loan) to a local-currency denominated loan, without a substantial increase in exposure (up to EUR […]), **are not considered new business**. In the event of a substantial increase in exposure, the difference between the old loan amount and the new loan amount is considered **new business** in accordance with 4.2.3(ii) and (iii). Until the reporting capabilities are in place, however, 4.2.3.1(i) applies.

— Retail loans granted for the re-marketing or re-leasing of repossessed assets/collaterals **are not considered new business**, although the following limitations apply:

— For the re-marketing of apartments and other real estate, the maximum permissible LTV is […] % and the maximum annual volume of new business is limited to […] % of the annual volume of new retail mortgage business within each country.

— For vehicles and equipment, the maximum annual volume of new business is limited to […] % of the annual volume of new retail vehicle and equipment business within each country.

— Fulfilment of existing contracts and commitments (e.g. real estate under construction, activation of leases to go) **is not considered to be new business**.

IV. *Reprivatisation of the operational entities*

1. Reduction in balance sheet totals and market presence

1.1. On 31 December 2008 HGAA was active as an international financial group with 384 branches in twelve countries (Austria, Italy, Slovenia, Croatia, Bosnia and Herzegovina, Serbia, Montenegro, Bulgaria, Germany, the Former Yugoslav Republic of Macedonia, Ukraine, Hungary) in banking (retail, corporate, public), leasing (retail, corporate, real estate, motor vehicles, equipment) and shareholdings with a balance-sheet total of EUR 43,34 billion and risk-weighted assets (RWA) of EUR 32,83 billion.

1.2. Soon after HGAA was nationalised, it withdrew from all new business in Bulgaria, the Former Yugoslav Republic of Macedonia, Ukraine, Hungary and Germany and ceased all non-strategic activities. The subsidiaries in these countries were put into wind-down and are now being resolved in an orderly fashion. The strategic new positioning has resulted in the closure of twelve of the former total of eighteen branches in the 'wind-down countries' of Bulgaria, the Former Yugoslav Republic of Macedonia, Ukraine, Hungary and Germany.

1.3. HGAA's remaining market activities on 31 December 2012, i.e. the 'operational entities' within the meaning of section B.II.1, and the HBI, had a combined balance-sheet total of approximately EUR 17,54 billion and RWA of EUR 11,02 billion, which corresponded to merely some 40,5 % of HGAA's group balance-sheet total and 33,6 % of RWA on 31 December 2008. Of these amounts,

— HBA had a balance-sheet total on 31 December 2012 of some EUR 4,15 billion, representing approximately 59 % of its balance-sheet total on 31 December 2008 (EUR 7,05 billion) and only 10 % of HGAA's group balance-sheet total on 31 December 2008 and RWA of EUR 1,23 billion (HBA on 31 December 2008: EUR 3,392 billion);

— HBI had a balance-sheet total on 31 December 2012 of EUR 3,28 billion, corresponding to approximately 65 % of its balance-sheet total on 31 December 2008 (EUR 5,02 billion) and only 8 % of HGAA's group balance-sheet total on 31 December 2008, and RWA of EUR 2,54 billion (HBI on 31 December 2008: EUR 4,198 billion);

— the SEE network had a balance-sheet total on 31 December 2012 of EUR 10,11 billion, corresponding to 68,5 % of its balance-sheet total on 31 December 2008 (EUR 14,775 billion) and only 23 % of HGAA's group balance-sheet total on 31 December 2008, and RWA of EUR 7,2 billion (SEE at 31 December 2008: EUR 12,623 billion);

The classification of HBI as a wind-down entity in the second half of 2013 reduces the combined balance-sheet total of the operational entities (HBA and SEE network) by a further 19 % compared with the existing data, corresponding to only approximately 33 % of HGAA's group balance-sheet total and 26 % of RWA on 31 December 2008.

1.4. The remaining operational entities are to be privatised as quickly and efficiently as possible in accordance with section B.IV.3. After the operational entities have been completely privatised, HGAA's balance sheet will still contain business to be wound down.

2. Maintaining profitability until reprivatisation

Austria commits that HGAA will conduct the business of the operational entities with the objective of restoring and maintaining their long-term profitability in accordance with the provisions of the restructuring plan and its annexes (including this list of commitments). This commitment does not stand in the way of the restructuring of the operational entities and/or the transfer of individual assets or portfolios to the wind-down part, provided this is necessary to restore, maintain or optimise the prospects of reprivatisation.

3. Earliest possible reprivatisation

Austria undertakes that the operational entities will be reprivatised at the earliest possible opportunity in accordance with this section. References in this section B.IV.3. to the reprivatisation of the operational entities include the authorised reprivatisation of parts of the operational entities, if necessary.

3.1. Reprivatisation

The reprivatisation of an operational entity is deemed to have taken place if the Republic of Austria has sold 100 % of the shares or all the assets of the operational entity concerned to one or more purchasers not controlled by the Republic of Austria. Reprivatisation also includes the sale of all the shares held directly or indirectly by Austria in the operational entities as part of an IPO under normal market conditions.

3.2. Date of reprivatisation

Reprivatisation is deemed to have taken place on the day on which a binding purchase contract for the acquisition of the operational entity governed by the law of obligations ('purchase contract') is signed. Where parts of an operational entity are sold to several purchasers, the effective date of privatisation is the day on which the last purchase contract is concluded. In the event of an IPO, the effective date of a timely privatisation is the day on which the last share held directly or indirectly by Austria is placed on the market. However, the entities sold through an IPO are no longer bound by the commitments in section B.III with effect from the day on which […] shares are placed on the market.

3.3. Reprivatisation deadline

HBA must be reprivatised by 31 December 2013 and the SEE network by 30 June 2015.

3.4. Execution deadline

The sale of HBA must take place by […]. Execution of contracts for the sale of the SEE network must take place by […].

3.5. Extension of the execution deadlines

In the event of delays due to the absence of the necessary sale authorisations by a supervisory or competition authority, the Commission may agree to extend an execution deadline for the sale of the SEE network in accordance with 3.4 by a further […]. Austria will submit an application in good time, in any event at least two weeks before the original execution deadline expires, and provide the Commission with confirmation from the Monitoring Trustee that the delay is due entirely to the authorising authority(ies) and confirmation that HGAA has taken all reasonable steps in order to bring about execution of the sale contract within the original deadline.

3.6. Change of purchaser

If it transpires, after the timely reprivatisation but before the execution deadline has expired, that the purchaser of an entity is unable to fulfil the execution conditions or cannot fulfil them by the execution deadline, the sale may take place to a third party with the Commission's agreement, provided that sale can be executed within the execution deadline for the first sale.

3.7. Failure to meet the reprivatisation or execution deadlines

If a reprivatisation deadline under 3.3 or an execution deadline under 3.4 read in conjunction with 3.5 is not met, the entity concerned must cease new business from the day following the day on which the deadline expires. From that date, the provisions of this list of commitments that apply to the wind-down part shall apply to the entity concerned.

4. Sale procedure

4.1. Austria undertakes that HGAA will initiate the sale procedures needed to re-privatise the operational entities in a timely fashion and conduct them quickly in order to allow the earliest possible reprivatisation.

4.2. Reprivatisation of the operational entities will take place either as part of an IPO under normal market conditions or, where allowed by law and possible without infringing commercial secrets, as part of an open, transparent and unconditional sale procedure involving the usual representations and warranties. This does not preclude the holding of negotiations with specifically identified interested parties before or during such a procedure.

V. *Wind-down part*

1. Wind-down of existing business that preserves capital and value

1.1. Austria commits that HGAA, with effect from the date of adoption of the final approval, will wind down exclusively the business in its wind-down part on that date in a way that preserves capital and value.

1.2. The assets in the wind-down part will be actively and effectively sold, liquidated or wound down.

1.3. In principle the assets must be sold as quickly as possible. HGAA undertakes to sell these assets as soon as it is possible to achieve at least the asset book value as sale proceeds, unless the sale price is considered clearly inappropriate on the basis of an incontestable, objective valuation.

1.4. All assets that cannot be sold under 1.3 will expire at term.

2. No new business in the wind-down part

2.1. Austria commits that, with effect from the date of adoption of the final approval, no new business will be concluded in the wind-down part. Save as otherwise provided for below under 2.2 und 2.3, from that date all HGAA companies, with the exception of the operational entities, will wind down only their existing business on that date.

2.2. Prolongations with existing customers remain allowed in the wind-down part too if there is a realistic and plausible prospect, supported by evidence, that a prolongation will improve the future serviceability or future utilisation of the financing. Prolongations will not be granted for longer than […]; justified exceptions with longer extension periods are to be disclosed to the Monitoring Trustee and adequately justified in each individual case. Even at the end of the restructuring period all wind-up activities must be resolved as quickly as possible.

The following continue to be admissible:

— transactions which are necessary in the context of liquidity management in the wind-down part, i.e. central bank transactions;

— management of the cover pools in the wind-down part, where no new asset business is transacted, save as provided by the rule in indent 4;

— derivative transactions which are necessary in order to manage interest-rate, currency and credit risks in the existing portfolio, e.g. asset swaps, provided that they reduce HGAA's overall market risk position;

— transactions that are necessary for regulatory or other legal reasons, including the acquisition, holding and sale of securities authorised for the management of HGAA's cover pools and liquidity;

— business concluded by the wind-down entity for its own refinancing, including new issues and buying back of debt;

— the purchase of moveable and immovable assets in the context of court-supervised and extra-judicial auctions and private transfer to take possession of securities;

— fulfilment of existing contracts and commitments (e.g. real estate under construction, activation of leases to go, reclassification of finance leases as operating leases and vice versa);

— re-leasing of assets (short to medium-term), where it is not possible to sell the assets in the short term and preserve value, in order to reduce or avoid costs (maintenance, etc.).

In addition, transactions with HGAA group companies remain authorised (provided that their purpose is the prolongation of refinancing lines) and transactions with buyers of HGAA assets (shareholdings, portfolios, etc.), which are carried out in connection with the reprivatisation and are necessary for the successful sale of the entities/assets concerned (e.g. seller financing, extension by HGAA of collateral granted — such as guarantees — in favour of the buyer, etc.).

2.3. In the case of engagements whose performance is affected, the wind-down entity may, as part of the recovery and resolution, make adjustments to the transaction with the respective debtor of the reference commitment concerned, provided that these measures can be regarded as preserving value or reducing risk without causing distortions of competition, which must be substantiated in writing to the Monitoring Trustee in every case. Adjustments to the transaction are changes to the engagement, for example interest-rate adjustments, deferrals, rescheduling of maturity, assumption of an obligation, prolongations and debt conversion, e.g. through the conclusion of new credit agreements for the same amount, changes to collateral or changes to financial ratios or waiving the legal effects of financial ratios. The adjustments referred to in this paragraph may have a maturity extension of […]; adjustments exceeding this may be undertaken only with the approval of the Monitoring Trustee.

2.4. Furthermore, (financing of) expenditure on direct enhancements of assets to be sold is authorised, if by so doing it is possible to significantly increase the chances of marketing. This concerns in particular legal fees and administrative charges (e.g. for corrections to the local land register) and, in individual cases, structural/technical changes to individual assets, for which agreement by the Monitoring Trustee is required.

3. Wind-down of HBI

In order to prevent market distortion during the resolution of Retail-Bank HBI and deposit outflows, and to cushion against HBI's resulting additional liquidity requirements, the following provisions will apply to HBI:

3.1. HBI will not transact any new business, save as otherwise provided below.

3.2. HBI's assets will be gradually reduced through sales of portfolios or individual assets, further restructuring transactions (i.e. transfers of portfolios and/or assets to the wind-down entity) and also by the amortisation of existing assets.

3.3. The wind-down of the liabilities on HBI's balance sheet will follow the wind-down of the assets on its balance sheet and will be determined by the latter. HBI's liabilities will therefore be reduced proportionally to the reduction on the asset side.

3.4. At present, the following key steps are planned for the wind-down of HBI:

— reduction in the current balance-sheet total of approximately EUR 3 billion by around […] % by the end of 2013 through further portfolio transfers to the local wind-down entity (HLI);

— reduction in the balance-sheet total of the remaining amounts receivable by contractual maturity of around EUR […] to some EUR […] by the end of 2018;

— […]

[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]
[…]	[…]	[…]	[…]	[…]	[…]	[…]

3.5. In order to secure […] own refinancing by HBI in the wind-down stage and avoid the need for additional liquidity, HBI may […], provided this is necessary in order to prevent or offset an undershoot of the existing […].

3.6. HBI will offer/take deposits only at nominal interest rates below the average of the best reference rates offered in the same period by HBI's five leading unassisted competitors […] for comparable products.

3.7. […].

3.8. Save as otherwise provided above, the provisions concerning the wind-down part in V.1 and V.2 shall apply mutatis mutandis to the wind-down of HBI.

2. **Monitoring Trustee**

I. *Appointment*

1. Austria will ensure that HGAA appoints, in accordance with the following provisions, a Monitoring Trustee (hereinafter: 'Trustee') who must carry out the tasks and duties referred to in section C.II.

2. The Trustee must be independent of HGAA, at no time become exposed to a conflict of interest, and possess the specialist knowledge required to carry out his mandate. The Trustee is to be remunerated by HGAA in a way that does not impede the independent and effective fulfilment of his mandate. The cost of the Trustee will, as far as is legally permissible, be borne by HGAA, otherwise it will be borne by Austria.

3. With the agreement of the Commission, the Trustee already appointed in fulfilment of the commitments in point 12 of the Annex to the Commission's approval decision of 5 December 2012, C(2012) 9255 final, […], will continue to act as Trustee. In the event that the Commission instead requires another Trustee to be appointed, the following will apply:

3.1. Austria undertakes that HGAA will submit the names of one or more persons as Trustee within an appropriate time frame. The proposals must contain sufficient information about those persons with regard to their suitability (section C.I.2). The appointment of a proposed Trustee by HGAA is subject to the approval of the Commission, which may withhold its approval only if the proposed Trustee is manifestly unsuitable.

3.2. If the Commission rejects all the trustees proposed by HGAA, Austria undertakes to ensure that HGAA submits the names of one or more further persons within four weeks of being informed of the rejection, in accordance with the requirements and procedure set out in sections C.I.2 und C.I.3. If all further proposed trustees are also rejected by the Commission, the Commission will nominate a trustee whom HGAA will then appoint.

II. *Duties and obligations of the Trustee*

1. The duty of the Trustee is to monitor the full and timely implementation of HGAA's restructuring plan and compliance with the commitments, and to perform the Trustee's specific duties set out in the list of commitments (for example in section D.I). The Commission may request explanations or clarifications from the Trustee.

2. The Trustee will report quarterly to the Commission on the implementation of the restructuring plan and compliance with the commitments. To this end, the Trustee will submit a draft written report on the implementation of the restructuring plan and compliance with the commitments to the Commission, Austria and HGAA after the end of each quarter. If necessary, the Commission may specify the scope of the report in more detail.

3. The Commission, Austria and HGAA may submit comments on the draft within two weeks of receiving it ('deadline for comments'). Within four weeks of the deadline for comments, the Trustee will submit the final report to the Commission, incorporating any comments. The Trustee is also to send a copy of the final report to Austria and HGAA.

III. *Duties and obligations of Austria and HGAA*

Austria will ensure that, during the implementation of the final approval, the Commission and the Trustee are to have unrestricted access to all information required to monitor the implementation of the final approval. HGAA will support the Trustee by preparing and making information available quickly. The Commission and the Trustee may ask HGAA and Austria for explanations and clarification. Austria and HGAA will cooperate fully with the Commission and the Trustee with regard to monitoring of the implementation of the final approval.

IV. *Replacement and discharge of the Trustee*

1. If the Trustee does not fulfil his duties and obligations or does not (any longer) fulfil the suitability criteria (section C.I.2.), the Trustee may be removed by HGAA with the agreement of the Commission or, in the event of a corresponding justified request by the Commission, after hearing the Trustee, the Trustee must be removed by HGAA. If the Trustee is removed, he must be replaced by a new Trustee. The new Trustee is to be appointed in accordance with the procedure referred to in section C.I..

2. If the Trustee is removed, he may be required to continue in his function until a new Trustee is in place. The removed Trustee must hand over all relevant information to the new Trustee. The activity of the removed Trustee will end only once he has been discharged from his duties by HGAA with the agreement of the Commission.

2. **Final provisions**

I. *Reporting on further aid*

1. The Republic of Austria undertakes not to grant further aid to companies in the HGAA Group that are not included in the wind-down part unless the aid serves regulatory requirements and this is confirmed by the regulator. The Republic of Austria further undertakes to notify the Commission immediately of all further aid measures in favour of HGAA until the restructuring plan has been fully implemented.

II. *Settlement of legal disputes*

1. In the event of a conflict between Austria's commitments and HGAA's legal obligations, Austria undertakes that HGAA will notify the Trustee without delay and propose an alternative to resolve the conflict.

2. After receiving a sufficiently documented alternative proposal from HGAA, the Trustee will examine as rapidly as possible, in consultation with the Commission, whether the alternative proposal is appropriate, having regard to the final approval and the specific HGAA legal obligation in question. If the proposal is suitable, the Commission services will take the further necessary steps in accordance with the relevant procedures.

III. *Consultation clause*

In response to a sufficiently documented application by Austria, the Commission may, in consultation with the Trustee, grant an extension to the deadlines laid down in the commitments, provided that a certain result is promised within that deadline, or lift, change or replace one of more of the duties and conditions in these commitments.