

ПРОЦЕДУРИ, СВЪРЗАНИ С ИЗПЪЛНЕНИЕТО НА ПОЛИТИКАТА В ОБЛАСТТА НА КОНКУРЕНЦИЯТА

ЕВРОПЕЙСКА КОМИСИЯ

ДЪРЖАВНА ПОМОЩ — АВСТРИЯ

Държавна помощ C 16/09 — Нуро Group Alpe Adria (HGAA)

Покана за представяне на мнения съгласно член 108, параграф 2 от Договора за функционирането на Европейския съюз (ДФЕС)

(текст от значение за ЕИП)

(2010/C 266/05)

С писмо от 22 юни 2010 г., възпроизведено на езика, чийто текст е автентичен, на страниците след това резюме, Комисията уведоми Австрия за решението си да продължи разрешаването на помощта, временно приета за съвместима с вътрешния пазар, и за допълнително разширяване на процедурата, посочена в член 108, параграф 2 от Договора за функционирането на Европейския съюз.

Заинтересованите страни могат да представят мненията си относно мерките, по отношение на които Комисията разширява процедурата, в срок от две седмици от датата на публикуване на настоящото резюме и на писмото, което следва, на следния адрес:

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Тези мнения ще бъдат предадени на Австрия. Запазването в тайна на самоличността на заинтересованата страна, която представя мнението, може да бъде поискано писмено, като се посочат причините за това искане.

1. ПРОЦЕДУРА

С решение от 18 декември 2008 г. по дело N 615/08 Европейската комисия одобри спешна държавна помощ от Германия за мажоритарния собственик на HGAA — BayernLB, под формата на рискова гаранция в размер на 4,8 млрд. EUR и капиталова инжекция от 10 млрд. EUR, съгласно член 107, параграф 3 и буква б) от ДФЕС за период от шест месеца или до представянето на реалистичен и обоснован план за реструктуриране на банката. Тази помощ позволи на BayernLB да инжектира 700 млн. EUR в дъщерното си предприятие HGAA. През същия месец Австрия предостави капиталова инжекция за HGAA в размер на 900 млн. EUR съгласно механизма за банките в Австрия.

На 29 април 2009 г. Германия уведоми Комисията относно план за реструктуриране на BayernLB, включително на HGAA. На същата дата Австрия представи план за жизнеспособност за HGAA, който е необходим за банки, които като цяло са стабилни, съгласно механизма за банките в Австрия.

В своето решение от 12 май 2009 г. по дело N 254/09 („решение за откриване на официална процедура по разследване“) Комисията изрази съмнения относно съвместимостта с вътрешния пазар на отпуснатата на BayernLB помощ, относно това дали HGAA е банка, която като цяло е стабилна, както и относно съвместимостта с член 107, параграф 3, буква б) от ДФЕС на предоставената на HGAA помощ от Австрия.

На 18 декември 2009 г. Австрия уведоми за мерки за допълнителна помощ.

В решението си от 23 декември 2009 г. по дела C 16/09 и N 698/09 Комисията отчете мерките в полза на HGAA, описани в параграф 2, като временно съвместими с вътрешния пазар съгласно член 107, параграф 3, буква б) от ДФЕС до представянето на реалистичен план за реструктуриране и неговата оценка от Комисията, но най-много за срок от шест месеца. В същото време процедурата, посочена в член 108, параграф 2 от ДФЕС, беше разширена по отношение на тези допълнителни мерки.

През април 2010 г. Австрия представи план за реструктуриране на HGAA.

С оглед на текущата оценка на плана за реструктуриране и на помощта от страна на Комисията Австрия поиска продължаване на временното одобрение на мерките.

2. МЕРКИТЕ В ПОЛЗА НА HGAA

HGAA получи 700 млн. EUR от BayernLB и 900 млн. EUR за увеличаване на капитала от първи ред (Partizipationskapital), от Република Австрия, както и гаранции за ликвидност в размер на 1,35 млрд. EUR за издаване на облигации съгласно механизма за спешно подпомагане на банките в Австрия.

Освен това HGAA получи следните мерки за помощ, разрешени временно с решението от декември 2009 г.:

- временна гаранция в размер на 100 млн. EUR от Австрия, съгласно условията, приложими за банки в затруднено положение съгласно механизма за спешно подпомагане на банките в Австрия,
- рекапитализация в размер на 200 млн. EUR от провинция Carinthia с дивидент от 6 %, чието първо изплащане е дължимо за финансовата 2013 година,
- допълнителна рекапитализация от Австрия, съгласно условията, приложими за банки в затруднено положение съгласно механизма за спешно подпомагане на банките в Австрия, с максимален размер от 350 млн. EUR,
- мерки за ликвидност в размер на приблизително 200 млн. EUR, предоставени от провинция Carinthia в контекста на съществуващите бизнес отношения.

3. ОЦЕНКА

В своите решения от 12 май 2009 г. и от 23 декември 2009 г. Комисията вече установи, че мерките в полза на HGAA, представляват държавна помощ.

Предоставянето на плана за реструктуриране не разсея първоначалните съмнения относно съвместимостта на мерките за помощ, изразени в двете предишни решения.

По отношение на възстановяването на жизнеспособността, Комисията има съмнения, че цялостният бизнес модел на банката е подходящ за възстановяване на жизнеспособността.

Освен това, предвид ниският рейтинг на HGAA и бъдещите високи разходи за финансиране, породени от изтичането на срока на гаранциите, представени от провинция Carinthia и на срока на подкрепата за финансиране от бившия собственик BayernLB, Комисията поставя въпроса дали HGAA не трябва да преориентира своя бизнес модел по-цялостно, което може по-специално да повлияе върху нейните финансови услуги в публичния сектор, които се характеризират с ниски маржове.

Освен това Комисията счита, че HGAA трябва да се справи със значителни проблеми, свързани с качеството на активите, предвид ниското качество на своя кредитен портфейл, което продължава да се влошава. Тя също така се съмнява, че основните проблеми по отношение на процесите на вземане на решения и управление на риска ще могат да бъдат отстранени своевременно.

Освен това Комисията се съмнява, че банката ще може да възнагради своя собствен капитал, както е посочено в съобщението за реструктурирането, което изисква адекватна възвръщаемост на собствения капитал в съответствие с рисковия профил на банката. Тя също така се съмнява, че банката е в състояние да предостави адекватно възнаграждение при нормални пазарни условия или своевременно да изплати капитала, предоставен от държавата.

Освен това Комисията поставя въпроса дали вложеният в HGAA капитал от страна на Австрия, съгласно механизма за банките в Австрия, е възнаграден по подходящ начин, поради факта, че към момента на инжектирането на капитала през декември 2008 г. Австрия счита банката за стабилна като цяло и по този начин HGAA се възползва от по-ниски лихви. Комисията припомня, че в своето решение от май 2009 г. е изразила съмнения относно оценката на Австрия, че банката е като цяло стабилна.

По отношение на мерките за избягване на нарушения на конкуренцията, Комисията припомня своите съмнения относно това дали предложените мерки са достатъчни за адекватно ограничаване на нарушенията, възникнали в резултат на помощта. По-конкретно, повечето от предприятията, които HGAA планира да продаде, изглеждат са съсредоточени в нерентабилни дейности, и затова са необходими за възстановяване на жизнеспособността. С други думи Комисията се съмнява, че няма да са необходими повече мерки за справяне с нарушенията на конкуренцията, възникнали в резултат на помощта.

ТЕКСТ НА ПИСМОТО

„The Commission wishes to inform your authorities that it has further extended the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union (TFEU) initiated on 12 May 2009 with its decision C(2009) 3811 final. The Commission also prolongs the authorisation of the aid it has temporarily found compatible with the internal market until it has concluded its examination of the restructuring plan.

1. PROCEDURE

- (1) By decision of 18 December 2008 the European Commission approved in case N 615/08 emergency State aid from Germany to BayernLB in form of a risk shield of EUR 4,8 billion and a capital injection of EUR 10 billion on the basis of Article 107(3)(b) TFEU for a period of six months or until the submission of a credible and substantiated restructuring plan for the bank ⁽¹⁾.

⁽¹⁾ Commission Decision of 18 December 2008 in case N 615/08 BayernLB, OJ C 80/4 of 3 April 2009.

- (2) In the same month, BayernLB's subsidiary Hypo Group Alpe Adria (HGAA) received EUR 700 million from BayernLB following large write-downs and losses. In addition, HGAA received EUR 900 million in Tier 1 *Partizipationskapital*⁽¹⁾ from the Republic of Austria on the basis of the Austrian emergency bank support scheme⁽²⁾.
- (3) On 29 April 2009, Germany notified a restructuring plan for BayernLB (including HGAA) to the Commission. At the same date Austria provided a viability plan for HGAA.
- (4) In its decision of 12 May 2009 in case N 254/09⁽³⁾ the Commission opened the formal investigation procedure, raising doubts about the compatibility of the restructuring aid to BayernLB with the internal market, in particular whether the restructuring plan was apt to restore the viability of BayernLB ("the opening decision"). In the same decision, the Commission questioned whether HGAA was fundamentally sound and it expressed doubts regarding the compatibility with Article 87(3)(b) of the EC Treaty, now Article 107(3)(b) TFEU, of the aid granted to HGAA by Austria.
- (5) Austria notified additional aid measures on 18 December 2009, including a temporary asset guarantee under the Austrian scheme, a capital injection and a provision of liquidity, see below point 19.
- (6) In its decision of 23 December 2009 in cases C 16/09 and N 698/09⁽⁴⁾ ("the rescue decision") the Commission extended the procedure in relation to the following measures in favour of HGAA which it at the same time found temporarily compatible with the internal market on the basis of Article 107(3)(b) TFEU until the submission of a credible restructuring plan and its assessment by the Commission, but at most for a period of six months: a temporary guarantee of EUR 100 million, a recapitalisation of EUR 200 million by Land Carinthia, a further recapitalisation for a maximum amount of EUR 350 million and the liquidity provided by the Land of Carinthia. The measures are described in detail in paragraph 19.
- (7) In view of the ongoing assessment of the restructuring plan and aid by the Commission, by letter dated 15 June 2010 Austria asked for a prolongation of the temporary approval of the measures.
- (8) Given the urgency to obtain a Commission Decision before the expiry of the authorisation of the measures, both Germany and Austria have exceptionally agreed that the authentic language for this decision should be English.

2. DESCRIPTION

- (9) For a detailed description of the beneficiary and the aid measures, reference is made to the opening decision and the rescue decision.

2.1. The beneficiary

- (10) HGAA is the sixth largest Austrian bank with a balance sheet of EUR 41 billion as of 31 December 2009, corresponding to roughly 15 % of Austrian GDP.
- (11) HGAA is fully owned by the Austrian State after the nationalisation of 23 December 2009.
- (12) HGAA is active in 12 countries (Austria, Italy, Slovenia, Croatia, Bosnia and Herzegovina, Serbia, Montenegro, Germany, Liechtenstein (in liquidation), Hungary, Bulgaria, the Former Yugoslav Republic of Macedonia and Ukraine). The business in Liechtenstein is in liquidation. The bank is active in both banking and leasing, but does not pursue both activities in all the countries mentioned above.
- (13) HGAA had pursued an aggressive growth strategy, in particular aimed at taking advantage of the rapidly growing markets in South-Eastern Europe. In the past decade, HGAA entered Bosnia-Herzegovina, Serbia, Montenegro, Bulgaria, the Former Yugoslav Republic of Macedonia and Ukraine. In addition to those markets, the group also entered Hungary and Germany during that period.
- (14) The bank has a substantial market shares in some of the South-Eastern European countries in which it is active: its market share in banking amounts to [> 10 %] (*) in Montenegro and [> 8 %] in Croatia, and its market share in leasing amounts to over [> 15 %] in Croatia and Slovenia, [> 20 %] in FYRoM and [> 30 %] in Montenegro. The expansion strategy of the bank was facilitated by the liability guarantees of the Land (federal State) Carinthia amounting to about EUR 19 billion at the end of 2009, which has enabled the bank to borrow money at favourable conditions⁽⁵⁾.
- (15) Following the prospect of large losses and write-downs, Austria acquired from each of the previous owners all shares by contract for the symbolic price of one Euro per owner in December 2009.
- (16) HGAA has a rating below investment grade from Moody's (Baa2/P2/E) with a negative outlook.

2.2. The measures

- (17) In December 2008, HGAA received EUR 700 million from its majority owner at the time, BayernLB, which itself had received State aid in the same month from the Free State of Bavaria.
- (18) 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 on the basis of the Austrian emergency bank support scheme.

⁽¹⁾ *Partizipationskapital* has no voting rights.

⁽²⁾ Commission Decision of 9 December 2008 in case N 557/08, OJ C 3, 8.1.2009, p. 2, Maßnahmen nach dem Finanzmarktstabilitäts- und dem Interbankmarktstärkungsgesetz für Kreditinstitute und Versicherungsunternehmen in Österreich, last prolonged by Commission Decision of 16 December 2009 in case N 663/09.

⁽³⁾ OJ C 134, 13.6.2009, p. 31.

⁽⁴⁾ OJ C 85, 31.3.2010, p. 21.

(*) Confidential information.

⁽⁵⁾ This stems from the previously prevailing State guarantees for new debt ("Ausfallhaftung") from the Land Carinthia which was abolished with a transitional period and a grandfathering clause in 2003.

(19) In addition, HGAA received the following aid measures temporarily authorised by the Commission's December 2009 decision:

- a temporary guarantee of EUR 100 million by Austria under the conditions for distressed banks under the Austrian emergency bank support scheme,
- a recapitalisation of EUR 200 million by the Land Carinthia with a dividend of 6 %, which will be due for the first time for the business year 2013,
- a further recapitalisation by Austria under the conditions for distressed banks under the Austrian emergency bank support scheme for a maximum amount of EUR 350 million,
- liquidity measures amounting to approximately EUR 200 million provided by the Land Carinthia in the context of existing business relationships.

3. THE RESTRUCTURING PLAN

- (20) According to the submitted restructuring plan the problems of HGAA are largely due to its aggressive growth strategy pursued in recent years which in particular aimed at taking advantage of the rapidly growing markets in South-Eastern Europe. The economic conditions of these countries have deteriorated significantly as a prolonged period of strong economic growth has given way to significant declines of real and nominal GDP. Moreover, losses and in particular the increasingly large share of non-performing loans were to a significant extent caused by a lack of [...] proper control mechanisms [...].
- (21) The submitted restructuring plan states that HGAA will continue doing business in Austria, with a strong focus on Carinthia, where it intends to pursue business in the areas of retail clients, SMEs and selective corporate and public finance. The bank envisages maintaining both banking and leasing activities in [most countries of the former Federal Republic of Yugoslavia]. However, it intends to terminate its leasing activities in [...]. Leasing and banking activities will be ended in [...]. In Austria, the bank also plans to discontinue its cross-border financing business and the financing of big ticket projects. HGAA moreover plans to cease its risky project finance activities and tourism projects as well as large tourism-based financing activities. Leasing activities will focus on small vehicle and other mobile assets. The new business for real estate is planned to focus on selective opportunities only.
- (22) The overall aim of the restructuring plan is to focus on small/retail business with less risk than before, which, according to the bank, will enable it to rely on historically grown competences, in which the bank has made profits in the past, including during the financial crisis. The plan provides for a balance sheet reduction amounting to [> 35] % by the end of the restructuring period and a

reduction of the risk weighted assets by [> 50] % compared to the 2008 balance sheet. The reduction is achieved mainly through putting some banks and leasing activities in a run off mode or divesting them as explained in paragraph 20.

- (23) The bank also plans to overhaul many of its procedures as regards credit and leasing decisions as well as its overall risk management framework. It intends to start an annual risk review, to assess the risks inherent to any new product it launches and has already started to apply a reworked method of calculating its risk absorption quality on a group level since June 2009. As a result of this process, HGAA claims having already identified its major risk types.
- (24) According to the plan the economic problems of HGAA were significantly influenced by the current financial crisis which affected markets in South-Eastern Europe particularly strongly. HGAA admits in that respect that quality of its assets has deteriorated significantly, with only [< 40] % of its gross exposure having an internal investment grade rating and with the share of problem loans⁽¹⁾ when compared to gross exposure increasing steadily since the beginning of 2008, reaching almost [> 15] % of the bank's gross exposure. In 2009, the amount of risk provisions of HGAA reached almost [> 150] % of the bank's net interest revenues of that year. It has to be noted that the leasing activities were to a significant degree responsible for the encountered asset problems.
- (25) The plan is based on the assumption of a significant turnaround in the markets in which the bank is active, forecasting a return to robust rates of growth in the South-Eastern European countries.

4. ASSESSMENT OF THE AID

4.1. Existence of aid

- (26) As stated in Article 107(1) TFEU, 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, save as otherwise provided in the Treaty.
- (27) The Commission recalls that it has already established that the measures granted to HGAA constitute State aid with its Decisions of 12 May 2009 and 23 December 2009.

4.2. Compatibility of the Aid

- (28) The Commission must assess the continuation of all emergency aid measures as restructuring aid, on the basis of the submitted restructuring plan and against the conditions of the Restructuring Communication⁽²⁾.

⁽¹⁾ Defined as a high likelihood that the borrower cannot repay the loan, or if the payments are more than 90 days overdue. Taking into account the lower payment morale in some of the markets where HGAA operates, the bank has replaced the 90 days criterion with a 180 days criterion in some countries.

⁽²⁾ Commission Communication on the return to viability and the assessment of restructuring measures in the financial sector in the current crisis under the State aid rules (OJ C 195, 19.8.2009, p. 9).

- (29) A restructuring plan needs to ensure that the bank is able to restore long-term viability without continued State aid. The restructuring plan also needs to provide for adequate burden sharing, and limit the aid to the minimum necessary. Finally, proportionate measures need to be taken to limit the distortions of competition caused by the aid.
- (30) The original doubts expressed in decision of 23 December 2009 have not yet been allayed by the submission of the restructuring plan described above. Therefore the Commission continues to have doubts as regards the compatibility of the aid.
- (31) As regards the restoration of viability the Commission firstly has doubts as regards the overall business model of the bank, i.e. whether the presented plan of maintaining some parts of the business in South-Eastern Europe (while divesting or winding down others) combined with the Austrian activities will enable the bank to create sufficient profits to ensure long-term viability.
- (32) Importantly, the plan does not show in a satisfactory manner that HGAA will indeed, as claimed, concentrate on activities where it has also made profits in the past, including during the financial crisis.
- (33) The Commission furthermore questions whether the largely unregulated leasing activities would not need to be scaled down further, given that they seem to have been one of the main sources of HGAA's problems in the past.
- (34) In addition, given HGAA's low rating and prospective high funding costs in light of the expiration of the guarantees from the Land Carinthia and funding support from its former owner BayernLB, the Commission questions whether HGAA will not have to reorient its business model more profoundly, which might in particular affect its public finance business, which is characterised by relatively low margins.
- (35) Furthermore, the Commission considers that HGAA has to cope with significant problems given the low and still deteriorating quality of its asset portfolio. In that regard it can be considered as a difficult task to overhaul many of the basic decision-making processes and its overall risk management processes. The Commission doubts whether such a large task can be implemented timely, given the complexity of HGAA in many countries while avoiding further problem exposures. The Commission also considers that a significant part of the problems encountered by HGAA were not mainly the result of the deterioration of the economic situation in South-Eastern Europe but rather of deep-rooted management problems.
- (36) The Commission recalls that it noted in the rescue decision of 23 December 2009 that the external report commissioned by HGAA and BayernLB has found serious problems in the credit monitoring procedures of HGAA as well as in its collateral valuation. As a result the previously projected potential losses could well increase still further, in particular if the benign view concerning loss-given-default ratios were not to materialise. Moreover, the Commission doubts that the scenarios applied by the external consultants at that time were sufficiently prudent in relation to "a protracted global recession" as specified in point 13 of the Restructuring Communication. Therefore, the Commission continues to have these doubts in relation to the return to long-term viability of the rescued HGAA.
- (37) In addition to these previously expressed doubts the Commission is concerned about the seemingly [...] deterioration of asset quality and considers that this could constitute a major threat to HGAA's viability, which is not addressed by the restructuring plan.
- (38) Moreover, the Commission questions whether the unsatisfactory rating of HGAA can be improved sufficiently over the course of the restructuring period in order to enable the bank to raise both capital and funding on the markets, which is a crucial prerequisite for the proposed business model of the bank. The Commission notes in this respect that the expiry of the liability guarantees of the Land Carinthia entails the risk of rising long-term funding costs for the bank. Furthermore, the Commission has to examine whether the submitted underlying economic assumptions included in the plan are prudent enough.
- (39) In addition, the Commission doubts that the bank would be able to remunerate its own capital as required under points 13 and 14 of the Restructuring Communication which requires an appropriate return given the risk profile of the bank and a remuneration at normal market conditions or the repayment of capital over time.
- (40) As regards burden sharing, the Commission recalls its doubts as to whether the burden sharing of the owners (in particular BayernLB, Land Carinthia, GRAWE) has been appropriate.
- (41) In addition, the Commission questions whether the injected capital into HGAA by Austria under the Austrian bank scheme is appropriately remunerated as the bank had been considered as fundamentally sound by Austria and benefitted therefore from cheaper remuneration rates. The Commission recalls that it has questioned that assessment at the time Austria submitted its viability report for the bank and in the opening decision.
- (42) As regards measures for addressing competition distortions, the Commission recalls its doubts that the proposed measures are sufficient to adequately limit the distortions created by the aid. In particular, most of business HGAA plans to divest seems to concern loss-making activities and be necessary for restoring viability. In other words, the Commission doubts whether not more measures are needed to address the distortions of competition caused by the aid.

5. CONCLUSION

- (43) All measures in favour of HGAA constitute State aid. The Commission still doubts the compatibility of the aid measures as regards the restoration of long-term viability, burden sharing and measures to limit distortions of competition.
- (44) In light of the doubts regarding the compatibility of the aid with the Restructuring Communication, in particular the failure of the current revised restructuring plan to demonstrate the restoration of viability, proper burden sharing and a sufficient degree of mitigation of competition distortions, the Commission needs to further investigate the measures and thus to extend the formal investigation procedure pursuant to Article 108(2) TFEU.
- (45) However, the Commission has established that it can authorise emergency measures temporarily if needed for reasons of financial stability⁽¹⁾, when it cannot take a final decision due to doubts on compatibility of the measures as restructuring aid. In light of the ongoing fragile situation of the financial markets the Commission bases its assessment on Article 107(3)(b) TFEU as the breakdown of a systematically relevant bank can directly affect the financial markets and indirectly the entire economy of a Member State.
- (46) The Austrian Central Bank has confirmed that HGAA is a bank with systemic relevance for the financial market in Austria but also in certain countries in South Eastern Europe. Therefore the Commission prolongs the authorisation of the aid it has temporarily found compatible with the internal market until it has concluded its examination of the restructuring plan.

6. DECISION

In view of the above, the Commission has decided:

- to further extend the procedure as laid down in Article 108(2) TFEU initiated with its decision C(2009) 3811 final of 12 May 2009 and extended with its decision C(2009) 10672 final of 23 December 2009, and
- to prolong the authorisation of the aid it has temporarily found compatible with the internal market by Decision C(2009) 10672 final until it has concluded the examination of the restructuring plan for Hypo Group Alpe Adria.

The Commission requests Austria to provide all information necessary for the Commission to assess the compatibility of the aid measures. Austria is requested to forward a copy of this letter to HGAA immediately.

The Commission warns Austria that it will inform interested parties by publishing this letter and a meaningful summary of it in the *Official Journal of the European Union*. It will also inform interested parties in the EFTA countries which are signatories to the EEA Agreement, by publishing a notice in the EEA Supplement to the *Official Journal of the European Union*, and will inform the EFTA Surveillance Authority by sending a copy of this letter. All such interested parties will be invited to submit their comments within one month of the date of such publication.“

⁽¹⁾ Commission Decision of 13 November in case C 15/08, *Hypo RealEstate*, not yet published, and Commission Decision of 31 March 2009 in case C 10/09 *ING* (OJ C 158, 11.7.2009, p. 13).