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# Austria: Finanzmarktstabilitätsgesetz (FinStaG)[1]

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**Abstract**

Following the adoption of a joint framework by euro area countries in response to the intensifying financial crisis in October 2008, Austria enacted a package of measures including the Financial Market Stability Act (Finanzmarktstabilitätsgesetz, or FinStaG). In addition to permitting nationalization under certain circumstances, FinStaG allowed the Austrian government to use six specific measures to recapitalize credit institutions operating in Austria and Austrian insurance companies. According to FinStaG, €15 billion ($22 billion) could be used for this purpose, though this amount was later increased. Eight institutions received support through FinStaG, and the government granted capital and liquidity support totaling €21 billion. It appears that recapitalization measures can still be instituted under FinStaG, but the blanket approval by the European Commission expired on June 30, 2011, at which point any measures would have to be considered on a case-by-case basis.

**Keywords:** FinStaG, Global Financial Crisis, recapitalization

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[1] This case study is part of the Yale Program on Financial Stability (YPFS) selection of New Bagehot Project modules considering the responses to the Global Financial Crisis that pertain to broad-based capital injection programs. Cases are available from the *Journal of Financial Crises* at https://elischolar.library.yale.edu/journal-of-financial-crises/.

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# Austria: Finanzmarktstabilitätsgesetz (FinStaG)

## At a Glance

Following the declaration of a joint action plan for European Union member states in October 2008, Austria enacted a number of measures in response to the Global Financial Crisis. Included in this response was the Financial Market Stability Act (Finanzmarktstabilitätsgesetz, or FinStaG), which provided the legal framework for recapitalization of individual credit institutions and insurance companies.

| Summary of Key Terms | |
|---|---|
| Purpose | To secure the macroeconomic balance and protect the Austrian national economy |
| Announcement Date: | October 26, 2008 |
| Operational Date | October 27, 2008 |
| Expiration Date | June 30, 2009; subsequently extended to June 30, 2011 |
| Legal Authority | Financial Market Stability Act (Finanzmarktstabilitätsgesetz, or FinStaG) |
| Authorized Amount | €15 billion; subsequently increased to €23.5 billion |
| Amount Used | €21 billion |
| Participants | Credit institutions operating in Austria and Austrian insurance companies |

Under FinStaG, the Austrian government could utilize six recapitalization measures to assist distressed or failing institutions. According to FinStaG, the government was authorized to spend €15 billion ($22 billion[3]) on these recapitalization measures, but this amount was subsequently increased to €23.5 billion. Each institution receiving assistance through FinStaG entered into a master agreement with the Austrian government dictating specific terms and conditions. Recapitalization measures were carried out by a separate entity, the Federal Corporation of Financial Market Participation (Finanzmarktbeteiligung), acting on behalf of the Austrian government. The FinStaG measures most frequently used during the crisis were the assumption of liabilities and the provision of capital, particularly participation capital.

The European Commission (EC) issued a blanket approval of measures under FinStaG in line with Article 87(3)(b) of the Treaty Establishing the European Community (EC Treaty), which permits State Aid that prevents serious disruptions to a member state's economy. This approval expired on June 30, 2011, after being extended multiple times. As a result, the minister of finance retains the powers granted under FinStaG, but any recapitalization measure would have to be individually approved by the EC. During the crisis, eight credit institutions received support through FinStaG. As of 2016, the Austrian government granted €21 billion in capital and liquidity support under FinStaG.

[3] Throughout 2008, approximately €0.7 = $1.

**Summary Evaluation**

What little scholarship and evaluation exists on FinStaG focuses largely on the design of the recapitalization framework and potential reforms that should take place in preparation for future crises, rather than on gauging the recapitalization measures' success during the financial crisis. For example, criticisms of the program argue that the use of participation capital gave the Austrian government insufficient control.

| Austria Context 2008–2009 | |
|---|---|
| **GDP (SAAR, nominal GDP in LCU converted to USD)** | \$432.2 billion in 2008<br>\$401.3 billion in 2009 |
| **GDP per capita (SAAR, nominal GDP in LCU converted to USD)** | \$51,920 in 2008<br>\$48,153 in 2009 |
| **Sovereign credit rating (five-year senior debt)** | As of Q4, 2008:<br>Fitch: AAA<br>Moody's: Aaa<br>S&P: AAA<br>As of Q4, 2009:<br>Fitch: AAA<br>Moody's: Aaa<br>S&P: AAA |
| **Size of banking system** | \$451.0 billion in total assets in 2008<br>\$441.2 billion in total assets in 2009 |
| **Size of banking system as a percentage of GDP** | 104.4% in 2008<br>110.0% in 2009 |
| **Size of banking system as a percentage of financial system** | Data Not Available. |
| **Five-bank concentration of banking system** | 81.7% of total banking assets in 2008<br>75.5% of total banking assets in 2009 |
| **Foreign involvement in banking system** | 28.0% of total banking assets in 2008<br>26.0% of total banking assets in 2009 |
| **Government ownership of banking system** | Data Not Available. |
| **Existence of deposit insurance** | Up to \$133,333 in 2010 |
| *Sources: Bloomberg; World Bank Global Financial Development Database; Organisation for Economic Co-operation and Development.* | |

# I. Overview

## Background

In response to the intensifying financial crisis, euro area countries convened at a summit in October 2008. The meeting resulted in a joint action plan, released on October 12, that called in part for national governments to work with central banks and supervisors to "provid[e] financial institutions with additional capital resources so as to continue to ensure the proper financing of the economy" and to allow for "an efficient recapitalisation of distressed banks" (EC 2008a). In Austria, this resulted in the passage of the Financial Market Stability Act (Finanzmarktstabilitätsgesetz, or FinStaG) on October 26, 2008, as part of a broader Financial Market Stability Package that also contained the Interbank Market Support Act (Interbankmarktstärkungsgesetz, or IBSG).[4] The package was approved by the European Commission (EC) under Article 87(3)(b) of the EC Treaty, which permits State Aid that remedies a serious disturbance in a member state's economy (EC 1957).

Before Austria passed FinStaG, on October 17, Constantia Privatbank had to be bailed out by a group of five Austrian banks with assistance from the government. Though the bank had a relatively small balance sheet, it was judged to be of systemic importance to the Austrian economy due to its €10 billion fund management business. The five banks provided €400 million in liquidity to the bank, which was backed by a government guarantee. Austria's central bank also provided €50 million in liquidity. The Constantia bailout predated FinStaG but demonstrated the need for a legal framework for recapitalizing distressed banks in the context of the financial crisis (Komarek and Groendahl 2008).

## Program Description

FinStaG allowed the Austrian government to issue guarantees, assume liabilities, and recapitalize distressed or failing banks. The legislation authorized the federal minister of finance to use six specific recapitalization measures, outlined in Figure 1 below.

Recipients of these measures had to be credit institutions authorized under the Austrian Banking Act (Bankwesengesetz, or BWG) or domestic insurance companies. FinStaG also permitted nationalization if an institution was at risk of failing and causing serious damage to the Austrian economy. FinStaG initially authorized €15 billion for these measures, but any leftover money from the €75 billion allocated for use under IBSG, which was passed alongside FinStaG, could also be used (IBSG and FinStaG 2008). The legal limit was increased multiple times; in 2016, it reached €23.5 billion (BMF 2017).

[4] Whereas FinStaG permitted assistance to specific institutions, IBSG instituted a broad guarantee scheme and clearing bank available to all credit institutions operating in Austria and Austrian insurance companies, with the aim of stimulating the interbank market. See Simon (2020) for details.

FinStaG did not specify an expiration date for the use of its recapitalization measures. However, the European Commission's approval of the law under Article 87(3)(b) of the EC Treaty was granted only until June 30, 2009 (Kalss 2010, 538). This approval was subsequently extended multiple times until expiring on June 30, 2011, at which point each individual measure taken under FinStaG would have to be approved separately by the EC (BMF 2015b).

To carry out the recapitalization measures authorized by FinStaG, the Austrian government established the Federal Corporation of Financial Market Participation (Finanzmarktbeteiligung AG, or FIMBAG). FIMBAG was a subsidiary of Austrian Industry Holding plc (Österreichische Industrieholding AG, or ÖIAG), an existing investment and privatization agency owned by the government (BMF 2015a). FIMBAG was also responsible for monitoring beneficiary institutions for compliance with the conditions established by their individual agreements with the government and reporting back to the Federal Ministry of Finance (Kalss 2010, 539). Once the purpose of instituting any of these measures was achieved, in accordance with FinStaG, FIMBAG was required to privatize any shares or interests acquired by the government (IBSG and FinStaG 2008).

**Figure 1: Recapitalization Measures Available under FinStaG**

| Option | Instrument |
|---|---|
| 1 | Assumption of liability (including, but not limited to, guarantees, suretyships, collateral promises) for obligations of the affected legal entity |
| 2 | Assumption of liability (including, but not limited to, guarantees, suretyships, collateral promises) for obligations to the affected legal entity |
| 3 | Granting of loans and supply of own funds to credit institutions pursuant to sections 23 and 24 of the Banking Act (Bankwesengesetz, or BWG) and to insurance companies pursuant to section 73b of the Insurance Supervision Act (Versicherungsaufsichtsgesetz, or VAG) |
| 4 | Acquisition of shares or partnership interests or convertible bonds in connection with capital increases |
| 5 | Acquisition of existing shares or partnership interests by legal transaction |
| 6 | Acquisition of partnership or company assets by way of a merger according to section 235 of the Stock Corporation Act (Aktiengesetz, or AktG) |

*Source: IBSG and FinStaG 2008.*

## Outcomes

According to the Austrian Ministry of Finance, eight credit institutions received some support under FinStaG.[5] These eight institutions included some of the largest banks operating in Austria, measured by total assets (TheBanks.eu 2021); three of the banks, Erste Group, BAWAG, and Raiffeisen Zentralbank, were among the five largest banks in the country (Banks around the World 2018). Of the six measures available, the most frequently used were provision of capital in the form of participation capital or shareholder contributions and assumption of liability by the government. Under FinStaG, the Austrian

[5] The eight institutions were: Aviso Zeta AG (formerly Constantia Privatbank), BAWAG P.S.K. Bank für Arbeit und Wirtschaft und Österreichische Postsparkasse AG, Erste Group Bank AG, Hypo Alpe-Adria Bank International AG, KA Finanz AG, Kommunalkredit Austria AG, Österreichische Volksbanken AG, and Raiffeisen Zentralbank AG/Raiffeisen Bank International AG (BMF 2015b).

government acquired shares in three of the banks, Österreichische Volksbanken, Kommunalkredit Austria, and Hypo Alpe-Adria-Bank International. Two of those, Kommunalkredit and Hypo Alpe-Adria, were nationalized following their failures in 2008 and 2009, respectively (BMF 2015b).

The most recent publicly available data, published in April 2017, calculates that under FinStaG, the government granted capital and liquidity support totaling €21 billion. After taking repayments into account, the net total was calculated as €17 billion. As of the end of 2016, €7.4 billion was used for subscription of capital and other capital measures. Federal guarantees under FinStaG amounted to another €7.4 billion, with claims under those guarantees equaling €1.3 billion[6] (BMF 2017).

## II. Key Design Decisions

**1. Part of a Package: The Financial Market Stability Act was part of a package of measures including the Interbank Market Support Act, and FinStaG consisted of six measures, including recapitalization.**

The Financial Market Stability Act was passed alongside the Interbank Market Support Act as part of the Austrian Financial Market Stability Package. This package of measures was introduced in response to the joint call from euro area countries for national legislation aimed at restoring financial market stability (BMF 2008).

FinStaG authorized the federal minister of finance to use the six specific measures described in Figure 1.

According to the Austrian Federal Ministry of Finance, the assumption of liability and the provision of capital through participation capital or shareholder contributions were the options most frequently used by the government to recapitalize institutions under FinStaG (BMF 2015b).

The Ministry of Finance also pointed out that by assuming liability, the government "allowed the distressed institutions to reduce their risk provisioning, thereby freeing capital" (BMF 2015b). Guarantees under FinStaG were also used during the nationalization of some banks during the crisis (BMF 2017).

**2. Legal Authority: FinStaG permitted the federal minister of finance to recapitalize certain institutions and provided the basic legal framework for recapitalization.**

FinStaG allowed the federal minister of finance to "secure the macroeconomic balance and protect the Austrian national economy" through recapitalization measures in order to

[6] Both option 1 and 2 allowed government guarantees. It is not clear which of the two options this figure refers to, but it is likely that the majority of guarantees were for obligations to credit institutions (option 2).

"remedy a considerable economic disruption in Austria" (IBSG and FinStaG 2008). FinStaG provided the basic legal framework for the recapitalization scheme.

**3. Legal Authority: The European Commission ruled that the recapitalization scheme constituted State Aid but was permitted under Article 87(3)(b) of the EC Treaty.**

On October 31, 2008, a little less than a week after FinStaG was enacted, Austria notified the European Commission of its passage. In a letter dated December 9, the EC notified the Austrian government that though the recapitalization scheme under FinStaG (as well as the guarantees through IBSG) constituted State Aid under Article 87(1) of the EC Treaty, it was permitted under Article 87(3)(b) of the Treaty (GTA 2008). Article 87(3)(b) permits State Aid "to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State" (EC 1957). This decision was consistent with an earlier communication published by the EC, which stated that Article 87(3)(b) could be used as a legal basis for aid measures like general schemes to address the financial crisis (EC 2008b).

**4. Governance: The recapitalization scheme authorized by FinStaG was also governed by a requirements ordinance issued by the minister of finance.**

FinStaG stipulated that the federal minister of finance, with the federal chancellor, "shall have the authority to enact an ordinance determining the details of the conditions and obligations imposed for measures taken pursuant to this Federal Act" (IBSG and FinStaG 2008). In line with this, the federal minister of finance released an ordinance that stipulated the detailed provisions governing the scheme authorized by FinStaG (Kalss 2010, 539).

**5. Administration: The Austrian government established a new company to administer the program.**

In accordance with FinStaG, the Austrian government established a new separate company, FIMBAG, as a subsidiary of the ÖIAG, the Austrian investment and privatization agency owned by the state. FIMBAG was authorized to carry out measures under FinStaG and was required to monitor compliance with the master agreements (BMF 2015a).

The relationship between the Austrian government and FIMBAG was contractualized by an Assumption Agreement. Under the agreement, FIMBAG agreed to monitor compliance, as mentioned above, and fulfill certain reporting requirements to the federal government (Kalss 2010, 539).

**6. Timing: FinStaG had no statutory time limit, but the general scheme was approved by the European Commission only for a certain amount of time.**

FinStaG, unlike IBSG, did not specify an end date for the recapitalization scheme. However, when the EC issued its State Aid decision, it approved new measures under the scheme only until June 30, 2009 (Kalss 2010, 538). Austria applied for and received four extensions of this deadline, until June 30, 2011 (GTA 2008). After June 30, 2011, any new support measure adopted for an individual institution under FinStaG would have to be separately examined and approved by the EC (BMF 2015b).

**7. Program Size: FinStaG authorized €15 billion to be used for recapitalization measures; this amount was subsequently increased to €23.5 billion.**

Under FinStaG, the federal government could not use more than €15 billion for recapitalization measures. This budget could be augmented if there were funds left over from the €75 billion that was allocated for IBSG (IBSG and FinStaG 2008). This cap was later increased multiple times; in 2016, a €1.5 billion increase brought the legal limit to €23.5 billion (BMF 2017).

**8. Eligible Institutions: The government could recapitalize credit institutions operating in Austria and Austrian insurance companies under FinStaG.**

FinStaG stipulated that the government could recapitalize credit institutions operating in Austria as defined by the Banking Act, which included branches of foreign banks, and domestic insurance companies as defined by the Insurance Supervision Act (IBSG and FinStaG 2008).

**9. Capital Characteristics: Participation capital allowed the government to increase institutions' equity without receiving voting rights.**

Participation capital, which was introduced in Austria 30 years before the crisis, was used to provide equity to credit institutions and insurance companies. In the context of the financial crisis, participation capital was seen as "a surrogate for the equity which was destroyed by the financial crisis and cannot be recovered through a relevant issuance of share capital," (Kalss 2010, 541). Participation capital did not grant the Republic of Austria any position or membership rights under stock corporation law, giving the government no direct influence over the beneficiary institution. According to Kalss (2010, 540), the preference for participation capital stemmed from the banks' influence on the writing of FinStaG and their input during individual negotiations for institutional recapitalization.

**10. Term: Conditions for recapitalization were established by a master agreement between each beneficiary institution and the Austrian government.**

Though FinStaG provided the legal framework for recapitalization, once it was deemed necessary to use measures for a specific institution, the Austrian government and the relevant institution signed a master agreement dictating specific terms and conditions (Kalss 2010, 539). FinStaG gave the minister of finance the power to set conditions for the use of recapitalization measures. These conditions could regulate the orientation of the institution's business policies (for example, providing loans to small and medium-sized enterprises), payment of executives and employees, the use of the funds, and distribution of dividends, and more (IBSG and FinStaG 2008). Guidelines for these master agreements were established by the minister of finance's ordinance (see "Key Design Decision No. 3"), but these guidelines were flexible enough to be tailored to each recapitalization intervention (Kalss 2010, 538–39).

**11. Dividends/Pricing: Specific conditions were established for participation capital based on a determination of whether the beneficiary institution was sound or distressed.**

In determining the terms and conditions for participation capital, the beneficiary institution had to be judged either sound or distressed. This judgment was made in line with the EC's Recapitalisation Communication and depended upon a variety of factors, including the volume of recapitalization, equity base, and risk profile of the institution (Kalss 2010, 544). Sound banks were charged an interest rate in line with market conditions but not less than 9.3% annually. For distressed institutions, the minimum interest rate was 10% (Petrovic and Tutsch 2009).

If a sound bank was able to raise 30% of the capital privately, the minimum interest rate would no longer apply. Of this 30%, a maximum of one third could be raised from existing shareholders (Kalss 2010, 544).

**12. Exit Strategy: Once the purpose of recapitalization was achieved, the government had to privatize any shares and interests.**

According to FinStaG, the government was required to privatize any shares or interests in a credit institution or insurance company it acquired once the economic disruption triggering the recapitalization measures had been remedied. The law also stated that in privatizing shares or partnership interests, "the situation on the capital market shall be taken into account" (IBSG and FinStaG 2008).

# III. Evaluation

FinStaG has received little attention from scholars, and most scholarship focuses on the design of the framework rather than on its specific outcomes. In her detailed explanation of the Austrian response to the financial crisis, Kalss (2010, 548) notes that the use of state participation capital under FinStaG "permits flexibility but also limits the possibility to exercise influence. Experience has shown that influence and control are generally exercised, and work better, on a more informal level." In its assessment of Austria's financial stability, the International Monetary Fund also notes that the recapitalization framework established by FinStaG could be strengthened, for example, by increasing the budget for recapitalization and by giving FIMBAG a more prominent role in negotiations with distressed institutions to give the government more oversight over restructuring plans (IMF 2013).

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