

## Cover sheet

## Problem:

The economic outlook has deteriorated sharply globally, in Europe and in Austria. Based on the “sub-prime” turbulence in the USA from summer 2007, the deterioration in the economic situation predicted by economic researchers and international organizations is now also noticeable in Austria.

These tendencies have been reinforced by the current developments in the USA. The US financial system has been shaken by massive turmoil in recent weeks. In early September 2008, Fannie Mae and Freddie Mac were nationalized in order to avert bankruptcy of the two largest mortgage financiers with unforeseeable effects on the economy as a whole.

When Lehman Brothers went bankrupt in mid-September 2008, the global situation worsened: Merrill Lynch was taken over by Bank of America, and the largest American insurance company, the American International Group (AIG), was nationalized for US \$ 85 billion. The fourth largest US bank Wachovia was also in turmoil in the US and had to sell a large part of its business to Citigroup.

The American government had previously decided on a USD 700 billion package to rescue the crisis-ridden banks in order to buy problem loans and securities from the banks and insurance companies and thus prevent further turbulence on the financial markets.

Europe is not spared from the financial crisis either. In Great Britain, Bank Lloyds TSB is taking over mortgage lender Halifax Bank of Scotland (HBOS) for 15 billion euros; Bradford and Bingley, a company heavily involved in mortgage finance, will be broken up, the inalienable parts nationalized. In continental Europe, the difficulties of the Belgian-Dutch-Luxembourgish FORTIS Group, the Belgian-French DEXIA and also Hypo Real Estate AG in Munich have recently made headlines. The latter could only be secured through rapid, concerted aid from the Federal Republic of Germany and the commercial banks combined with a high state guarantee. In addition, some countries have started to issue guarantees for the protection of all bank deposits. Germany, but also Ireland, deserve special mention because of their particular relevance for the Austrian market. Other countries, on the other hand, have proposed national rehabilitation concepts or are in the process of implementing them, such as the Netherlands or Denmark.

## Solution:

The solution to this problem is the creation of a legal basis, which enables the federal government, if necessary, to take efficient, comprehensive and, in particular, rapid measures to ensure the stability of the financial market in the sense of the draft in order to avoid a significant disruption in the economic life of Austria, to safeguard the macroeconomic To be able to set equilibrium and for the purpose of protecting the Austrian economy.

## Alternatives:

None

## Effects on employment and Austria as a business location:

Strengthening the financial sector as an important part of the Austrian economy will have a positive impact on the business location and employment.

## Impact on company costs due to information obligations:

None

## Financial impact:

The financial burdens associated with federal law could be considerable, but are necessary with a view to strengthening confidence in the financial sector. In addition, there will only be a budgetary burden through the concrete implementation of the measures.

Relationship to the legal provisions of the European Union:

The envisaged regulations take into account the higher-ranking European legal norms and are objectively justified with regard to the global problem.

Special features of the standard generation process:

With regard to the provisions of Art. 1, Art. 2 Sections 2 and 3 and Art. 7, the Bundesrat has no right to participate in accordance with Art. 42 Paragraph 5 of the Federal Constitutional Act (B – VG), Federal Law Gazette No. 1/1930 .

Explanations

general part

Even though the companies in the Austrian financial center have excellent creditworthiness and liquidity, in view of the current international financial crisis that has triggered in the USA, provisions must be made in order to be able to resolutely counter any adverse effects that may arise on individual Austrian financial companies. Furthermore, the present draft is intended to promote the trust of customers and creditors in Austrian financial companies.

Against this background, the draft provides for a number of measures that enable the federal government to quickly and effectively provide the necessary support to an affected company that is experiencing liquidity problems or other critical developments in the interests of the Austrian economy.

The protective purpose of the Interbank Market Strengthening Act and the Financial Market Stability Act is therefore the public interest in maintaining economic stability. In terms of specific measures, the draft provides on the one hand measures that either direct funds to the company concerned or facilitate the supply of funds by third parties, and on the other hand the Federal Minister of Finance is given the authorization to acquire company-law participations in order to safeguard the financial system. As a last resort, the law finally provides for the compulsory takeover of property rights.

These authorizations are only intended to be maintained for a temporary period.

Furthermore, company shares or company assets that have been acquired should be privatized again as quickly as possible.

Due to the resources and experience available there in investment management and privatization, processing could largely take place via ÖIAG, so that an amendment to the ÖIAG Act would also be necessary.

In the Banking Act, as a confidence-building measure in the light of current developments, an unlimited protection of deposits of natural persons is to be given instead of the deposit protection amount of currently 20,000 euros. It takes into account the fact that Austria only covers the minimum income with the amount secured so far in accordance with the European Union's Deposit Protection Directive, which does not seem appropriate, especially in crisis situations, in order to ensure the trust of savers in the security of their deposits over the long term.

Furthermore, the preventive character of the authorization of the financial market supervisory authority to impose capital surcharges on credit institutions under certain conditions is strengthened through clearer design.

In the Stock Exchange Act, the financial market supervisory authority is given the option of prohibiting or restricting short selling for a limited period of time.

Competency basis:

The present draft is based on Art. 10 Para. 1 Z 4, 5, 6 and 11 as well as Art. 51 B – VG.

special part

Re Article 1 (Interbank Market Strengthening Act - IBSG)

By enacting the Interbank Market Strengthening Act, the Federal Minister of Finance is empowered to assume federal guarantees in favor of a clearing house. This is intended to strengthen the banks' confidence in the interbank market so that any liquidity problems that could arise from the fact that banks are reluctant to lend excess liquidity to other banks are avoided. The revitalization of the interbank market thus increases overall liquidity, which ultimately benefits the entire Austrian economy.

By assuming federal liability for securities issues, medium-term refinancing, in particular for credit institutions, is to be stimulated.

In the case of sufficient collateral provided in Section 1 (3), care must be taken to ensure that, on the one hand, adequate security for the company and, on the other hand, the purpose of the federal law - namely the strengthening of the interbank market - is achieved.

The framework of liability provided for in Section 1 (5) can be used on a revolving basis.

Section 3, last sentence, ensures that the required budget may be covered by additional income from credit operations even during the period of the provisional budget from January 1, 2009, without the requirements of Section 41 (6) BHG in force from January 1, 2009 in the version of Federal Law Gazette I No. 20/2008 (for example that of Z 6) must be fulfilled.

Re Article 2 (Financial Market Stability Act - FinStaG)

To 1:

The provision defines the conditions under which measures can be taken in accordance with the present draft. By including the wording used in Article 87 (3) (b) of the EC Treaty and Article 13 (2) of the Federal Constitutional Law, consideration is also given to the provisions of European and constitutional law. Furthermore, it is made clear that neither a specific company nor other third parties have the right to take measures in the sense of the draft in a specific individual case or derive other rights from this federal law, as this - unlike deposit insurance, for example - is not individual legal protection, but serves to guarantee the stability of the financial sector, which is essential for the economy. Other third parties are, in particular, shareholders and creditors of the companies concerned.

To § 2:

Paragraph 1 first lists those measures that are available to the Federal Minister of Finance in the context of his private-sector activities. Some of these legal acts require the involvement of the organs of the company concerned or its owners. For example, the stock corporation law requirements for a capital increase must be observed.

In particular, when concluding the aforementioned legal transactions, it must be ensured that the remuneration for the management is appropriately adjusted so that a comprehensible financial contribution is made by the management and the shareholders for the company concerned.

Paragraph 2, on the other hand, opens up the possibility of compulsory acquisition of company shares as a “last resort”. This may be necessary if other measures under

company law fail due to the necessary involvement of company bodies or owners. This takeover of business shares can only take place against payment of compensation to the previous owners. In the interest of the Austrian capital market, in the case of a listed company, reference was made to the provision of Section 26 (1) Takeover Act, so that the greatest possible protection for investors is guaranteed. In the case of other companies, the determination of the compensation will have to be based on the standard of this provision. Such encroachments on property rights have to be carried out by means of ordinances, since such interventions in a listed company with a corresponding free float due to a lack of knowledge of the respective shareholders cannot actually be carried out by means of a notice, but at least not within the required period of time.

Paragraph 3 finally stipulates that measures according to this draft are not intended to bring about a permanent takeover of property rights in the financial sector. Once the purpose aimed for by the measure has been achieved (Section 1), privatization is planned. In particular, the capital market situation must be taken into account in order to prevent a sale under unfavorable conditions.

According to Paragraph 4, a maximum limit for the total volume of the measures (assumption of liabilities and payment of federal expenses) is to be provided. This should enable budgetary planning and at the same time - especially in connection with § 1 - sufficiently legally determine the enforcement behavior. The framework of liability can be used on a revolving basis. In order to achieve the desired safeguarding of financial market stability, the draft also grants the Federal Minister of Finance the greatest possible flexibility in setting measures. A determination of maximum amounts for the individual case is therefore omitted.

Paragraph 4, last sentence, ensures that the necessary budget funds may be covered by additional income from credit operations even during the period of the provisional budget from January 1, 2009, without the requirements of § 41 Paragraph 6 BHG, which applies from January 1, 2009 in the version of Federal Law Gazette I No. 20/2008 (for example that of No. 6) must be fulfilled.

An increase in the amount of the framework is possible if the authorization granted to the Federal Minister of Finance in accordance with Section 3 of the Interbank Market Strengthening Act is not or not fully used.

To 3:

The formal requirement of written form expressly mentioned in Paragraph 1 serves for legal security, so that it is recommended for all measures according to § 2.

According to Paragraphs 2, 3, 4 and 6, the Federal Minister of Finance can use ÖIAG or other companies wholly owned by the Confederation to implement measures aimed at securing the stability of the financial market and to leverage synergy effects. In order to ensure the necessary flexibility in the design of the specific agreements, the regulation of § 66 BHG can be deviated from.

According to Paragraph 5, the Federal Minister of Finance can instruct ÖIAG to set up a subsidiary to which the implementation of measures under this federal law can also be delegated. If this option is used, the subsidiary's area of activity must be limited to such measures.

The order to found a company can also contain more detailed provisions on the content of the articles of association.

The establishment of a subsidiary could prove to be organizationally expedient under certain circumstances in order to separate the current portfolio of investments from that which is included in the catalog of measures in this draft.

To § 4:

The envisaged disposal and seizure restrictions are necessary to ensure that the funds used by the federal government are actually available for capitalization purposes. The legal prohibition of disposal includes not being able to do so and not just not being allowed to, so that it has an absolute effect.

To § 5:

With regard to the state aid measures, an exemption from fees is objectively required and justified.

To § 6:

Due to the importance and effects of the measures in this draft, as well as taking into account the scope for discretion, an obligation to report to the main committee of the National Council was to be provided.

Re Article 3 (amendment to ÖIAG-G 2000)

Item 1 adapts the ÖIAG's catalog of tasks in line with the additional tasks assigned to it with this draft.

Item 3 obliges ÖIAG or a wholly owned subsidiary to fulfill the orders of the Federal Minister of Finance within the framework of the Financial Market Stability Act (FinStaG). Furthermore, detailed provisions on the implementation of these measures are standardized.

Paragraph 3 represents the equivalent of the obligation contained in Paragraphs 1 and 2 to comply with a federal mandate and ensures that ÖIAG or a wholly owned subsidiary can meet these mandates with sufficient resources. Insofar as the company cannot finance these tasks from its own resources, it is made possible in particular by assuming liabilities or payments from the federal government.

Re Article 4 (Amendment of the Banking Act)

On Section 70 Paragraph 4a:

The redesign of the capital add-on is intended to result in a clear design as a preventive supervisory instrument that can be used to reduce risks that are not adequately covered. The assessment will be based in particular on Sections 39 and 39a; an add-on can also be used if the regulations from Pillar I are complied with. The stipulation of a capital add-on is also possible without taking any other supervisory measure beforehand if, due to the circumstances of the case, an immediate stipulation of additional own funds is necessary within a reasonable period to ensure or restore the appropriate recording and limitation of risks and the legal status is. It is made clear that a previous order for the establishment of the lawful condition according to § 70 Abs. 4 Z 1 is not necessary in this case.

The numerical limitation does not apply in order to enable the FMA to make a risk-adequate assessment of all individual cases; the qualitative determination of the add-on is preferable with regard to the function of the risk limitation.

The new version of Paragraph 4a does not affect the possibility of the FMA taking supervisory measures as additional measures to Paragraph 4.

The capital add-on is a supervisory means of preventive regulatory intervention that can be used immediately depending on the risk situation in the credit institution. It does not serve to penalize credit institutions. The text of Article 136, Paragraph 2, last sentence of Directive 2006/48 / EC does not contradict this definition, since it only stipulates that the capital add-on can be prescribed if other measures alone do not lead to a sufficient improvement the risk situation within a reasonable period of time. The guideline therefore ranks the supervisory means according to their fundamental suitability for remedying inadequate risk limitation. An order regarding the time of

their use is just as little as a limitation of the prescribed amount. On the basis of Directive 2006/48 / EC, it is therefore permissible that, in suitable constellations, additional own funds can be prescribed immediately and without prior recourse to other measures. Paragraph 4a now follows this idea and aims to make the use of the capital add-on instrument more efficient. As in the past, the administrative authority is obliged to weigh up the suitability of this instrument with regard to the risk situation of the credit institution before prescribing additional own funds. Additional own funds should then be prescribed if no other measure of a comparable extent can be expected to (re) ensure the recording and limitation of banking and banking risks and the legal status within a reasonable period of time. This also takes into account the principle of using the least expedient means in each case. As in the past, the FMA must take quantitative, qualitative and time-related factors into account when prescribing additional capital adequacy.

On Section 93 (3):

The maximum amount of secured deposits for natural persons of EUR 20,000 has been removed; for legal persons, see paragraph 4.

On Section 93 (4):

The increase in deposit protection serves to strengthen the population's confidence in the Austrian financial system on the one hand and to protect savers individually on the other. An increase for legal persons is therefore not necessary for social reasons, and an excessive burden on the system is avoided.

On Section 93a (1):

The Austrian system of deposit protection is based on the pay-as-you-go system, which means that in the event of a guarantee, the affiliated credit institutions have to make proportional contributions at the sectoral level and - if these cannot meet the requirements at the cross-sectoral nationwide level. These contributions are capped at the top for the individual credit institute in order not to cause them to have disbursement problems themselves. By increasing this maximum contribution, the efficiency of the security schemes is increased without at the same time creating an unmanageable risk overflow to the other credit institutions.

On Section 93a (2):

Deposit guarantee schemes that make contributions at the federal level in the event of a guarantee generally have a right of recourse against the first affected guarantee scheme. In order not to allow this entitlement to rise excessively once the secured upper limit is no longer applicable, it will be left at the previous level.

On Section 93a (3):

The sureties or guarantees from the federal liability for loans or bonds taken out by the security scheme should be settled within an economically justifiable framework by the member institutions of the first affected security scheme; in particular, the solvency of the credit institutions should not be jeopardized by repayment obligations to the federal government. There is therefore both a limitation at the level of the individual institute with the annual contribution to be calculated in accordance with Paragraph 1 (1.5% of the assessment basis) and a limitation of the repayment claim itself to two annual contributions within a period of five years.

Re Article 5 (Amendment of the Stock Exchange Act)

To § 48c:

The violation of an ordinance issued in accordance with Section 48d (12) is, like market manipulation, an administrative offense. With regard to the special effects of the acts covered by Section 48c, in particular on the financial market, a range of

penalties of up to € 75,000 is appropriate and also permissible in the sense of the delimitation between administrative authority and criminal court jurisdiction made, for example, in Section 53 (1) b) of the Financial Criminal Law .

Re Section 48d Paragraph 12:

Restrictions on short sales give the FMA an additional instrument to ensure financial market stability, which can be used quickly if necessary. A similar instrument is provided in Section 4 of the German Securities Trading Act, whereby the Austrian legality principle requires more precise determinations than the German legal situation. This also ensures that interventions in the market are limited to the extent necessary.

Re Section 48t Paragraph 1 Item 2:

The sanction for late delivery of securities to the settlement system is being increased significantly in order to generally reduce the economic incentive to carry out short sales in securities.

Re Article 6 (Amendment of the Financial Market Authority Act)

Re 1:

It is possible that an affected company does not inform the Federal Minister of Finance about the need for recapitalization measures. For such cases, the federal government should be enabled to initiate recapitalization measures based on a report from the FMA.

To Z 2:

This provision excludes damage that only affects the assets of third parties as a reflex effect of the supervisory behavior.

Re Article 7 (Federal Finance Act 2008)

Re 1 and 2:

With this addition, the Federal Minister of Finance is authorized to enter into further financial debts. If necessary, the funds raised can be made available by the Austrian Federal Financing Agency as a liquidity aid for credit institutions and insurance companies beyond the end of the financial year 2008 if such measures are appropriate and in particular in accordance with the measures taken by the federal government in accordance with the Federal Interbank Market Strengthening Act and the Financial Market Stability Act are in accordance with the objectives of Art. 13 Para. 2 B-VG.

Re 3:

These provisions supplement the Federal Finance Act 2008 with those budget estimates against which the federal government's expenditure is to be offset in accordance with the Financial Market Stability Act (estimate 1/54748, 1/54749 for expenditure to meet obligations from liabilities that the federal government has assumed; estimate 1 / 54858 for other federal expenditure).

The provisions inserted with the present amendment apply - like all other provisions of the Federal Finance Act 2008 - for the duration of the (automatic) budget provisional for 2009.