



## Bank Recovery Plan Regulation

*(Bankensanierungsplanverordnung – BaSaPV)*

### Full title

Regulation of the Financial Market Authority (FMA) on the content and level of detail of recovery plans of banks (Bankensanierungsplanverordnung – BaSaPV)

Original Version: Federal Law Gazette II No. 25/2015

Amendment: Federal Law Gazette II No. 76/2016

### Preamble/Promulgation clause

Based on Article 4 paras. 1 and 2 in conjunction with Article 4 para. 3 of the Bank Recovery and Resolution Act (Bundesgesetz über die Sanierung und Abwicklung von Banken - BaSAG), published in Austrian Federal Law Gazette I No. 98/2014, the following shall be determined by regulation:

### Text

#### Scope of application

**Article 1.** (1) This regulation is applicable to entities as defined in Article 1 para. 1 nos. 1 and 4 BaSAG, which are not subject to direct supervision by the European Central Bank pursuant to Article 6 (4) of Council Regulation (EU) No. 1024/2013 (see Article 6).

(2) By way of derogation from para. 1 this regulation shall not be applicable to entities, in the event that the specifications pursuant to Article 4 paras. 1 and 2 BaSAG have been established by means of a legally binding administrative decision.

#### Definition of terms

**Article 2.** For the purposes of this Regulation the following definitions shall apply:

1. Category 1 entities:

- a) Institutions pursuant to Article 2 no. 23 BaSAG, which are obliged to draw up a recovery plan pursuant to Article 8 para. 1 BaSAG, and whose total assets on the basis of the most recent audited annual financial statement do not exceed EUR 350 million; or
- b) EU parent undertakings pursuant to Article 2 no. 84 BaSAG, which are obliged to draw up a group recovery plan pursuant to Article 15 para. 1 BaSAG, if their consolidated



total assets on the basis of the most recent audited annual financial statement do not exceed EUR 350 million.

2. Category 2 entities:

a) Institutions pursuant to Article 2 no. 23 BaSAG, which are obliged to draw up a recovery plan pursuant to Article 8 para. 1 BaSAG and are not category 1 institutions, as long as

aa) their total assets on the basis of the most recent audited annual financial statement do not exceed EUR 5 billion,

bb) their foreign business on the basis of the most recent audited annual financial statement does not exceed 30% of the balance sheet totals on either the assets or liabilities side, and

cc) their interbank business on the basis of the most recent audited annual financial statement does not exceed 50% of the balance sheet totals on either the assets or liabilities side; or

b) EU parent undertakings pursuant to Article 2 no. 84 BaSAG, which are obliged to draw up a group recovery plan pursuant to Article 15 para. 1 BaSAG and are not category 1 institutions, as long as

aa) the total assets of the group on the basis of the most recent audited annual financial statement do not exceed EUR 5 billion,

bb) the foreign business of the group on the basis of the most recent audited annual financial statement does not exceed 30% of the balance sheet totals, and

cc) the interbank business of the group on the basis of the most recent audited annual financial statement does not exceed 50% of the balance sheet totals.

3. Category 3 entities:

a) Institutions that are obliged to draw up a recovery plan pursuant to Article 8 para. 1 BaSAG and do not qualify for category 1 or 2; or

b) EU parent undertakings that are obliged to draw up a group recovery plan pursuant to Article 15 para. 1 and do not qualify for category 1 or 2.

4. Category 4 entities: Central institutions of institutional protection schemes pursuant to Article 113 (7) of Council Regulation (EU) No. 575/2013, which are obliged to draw up a



group recovery plan pursuant to Article 6 para. 2 in conjunction with Article 15 para. 1 BaSAG.

### Proportionality

**Article 3.** (1) Recovery plans and group recovery plans of entities pursuant to Article 1 must conform to the requirements set pursuant to Articles 8 to 10 and Articles 15 and 16 BaSAG and the Annex to Article 9 BaSAG with the following restrictions:

1. Category 1 entities:

- a) Article 9 para. 2 BaSAG shall be applied with the proviso that the recovery plan has to contain a systemic scenario;
- b) Article 10 para. 1 BaSAG shall be applied with the proviso that the recovery plan has to contain the following indicators:
  - aa) Common Equity Tier 1 capital ratio pursuant to point (a) of Article 92 (2) of Regulation (EU) No 575/2013,
  - bb) Tier 1 capital ratio pursuant to point (b) of Article 92 (2) of Regulation (EU) No 575/2013.
  - cc) Total capital ratio pursuant to point (c) of Article 92 (2) of Regulation (EU) No 575/2013,
  - dd) Liquidity coverage requirement (liquidity coverage ratio) pursuant to Article 412 (1) of Regulation (EU) No 575/2013,
  - ee) Return on total assets or return on equity,
  - ff) Growth rate of non-performing loans.

In the event that the indicators pursuant to subpoints aa, bb and cc correspond to one another, it shall suffice to include the indicator pursuant to subpoint cc; if only the indicators pursuant to subpoints aa and bb correspond to one another, it shall suffice to include the indicators pursuant to subpoints bb and cc. If only the indicators pursuant to subpoints bb and cc correspond to one another, it shall suffice to include the indicators pursuant to subpoints aa and cc.

2. Category 2 entities:

- a) Article 9 para. 2 BaSAG shall be applied with the proviso that the recovery plan has to contain a systemic and an idiosyncratic scenario;



- b) Article 10 para. 1 BaSAG shall be applied with the proviso that the recovery plan has to contain the indicators pursuant to point (b) of no. 1.

3. Category 3 entities:

- a) Article 9 para. 2 BaSAG shall be applied with the proviso that the recovery plan has to contain a systemic and an idiosyncratic as well as a combined system-idiosyncratic scenario;
- b) Article 10 para. 1 BaSAG shall be applied with the proviso that the recovery plan has to contain the indicators pursuant to point (b) of no. 1 as well as an additional indicator from each of the following areas: liquidity, profitability and asset quality.

(2) Category 3 entities may submit a reasoned application that only the scenarios and indicators listed in para. 1 no. 2 must be contained in their recovery plan. The application is to be accepted, if such a reduction is deemed appropriate on the grounds of the type, scope and complexity of the entity making the application's business activities, its shareholding structure, its legal form and its risk profile.

(3) Category 4 entities shall be excluded in any case from the application of the simplified obligations pursuant to para. 1.

### **Submission date for the recovery plan**

**Article 4.** The following provisions shall apply for the date of submitting the recovery plan to the FMA:

1. The recovery plan shall be submitted for the first time by category 1 entities no later than 30 November 2015.
2. The recovery plan shall be submitted for the first time by category 2,3 and 4 entities no later than 30 September 2015.

### **Frequency of updating of recovery plan**

**Article 5.** The following provisions shall apply for the frequency of updating the recovery plan:

1. Category 1 entities are required to update and submit the updated recovery plan to the FMA every two years. The FMA may request that this updating process be carried out by the institution on an annual basis.
2. Category 2, 3 and 4 entities are required to update and submit the updated recovery plan to the FMA at least once a year.



## References

**Article 6.** Where references are made in this regulation to European legal acts, then the following version shall apply:

1. in the case of Council Regulation (EU) No. 1024/2013:

Council Regulation (EU) No 1024/2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).

2. in the case of Council Regulation (EU) No. 575/2013:

Council Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, (OJ L 176, 27.6.2013, p. 1), as amended by the corrigendum in OJ L 321, 30.11.2013, p. 6.

## Entry into force

**Article 7.** (1) This regulation shall enter into force on the following day after publication.

(2) Articles 1 and 2, Article 3 para. 1 no.1 point b) and para. 3, Article 4 no. 2 as well as Article 5 para. 2 in the version of the regulation published in Federal Law Gazette II No. 76/2016 shall enter into effect on 15 April 2016.