



FINANCIAL MARKET AUTHORITY ACT

(Finanzmarktaufsichtsbehördegesetz – FMABG)

Full Title: Federal Act on the establishing and organisation of the Financial Market Authority (Finanzmarktaufsichtsbehördengesetz – FMABG)

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Financial Market Authority

Article 1. (1) (constitutional law provision) For the purpose of conducting banking supervision, insurance supervision, securities supervision, and pension funds supervision, an institution under public law with its own legal personality shall be established bearing the name of the "Financial Market Authority" (FMA). It shall not be bound by any instructions in the performance of its duties.

(2) The FMA's head office shall be in Vienna. Its field of activity shall extend to the entire federal territory of Austria. It shall be authorised to bear the federal coat of arms.

(3) The provisions of the Commercial Code of 1994 (GewO 1994 - Gewerbeordnung 1994), as published in Federal Law Gazette No. 194/1994, shall not be applied to the FMA.

Article 2. (1) Banking supervision consists of the exercising of official tasks and powers that are set out in and assigned to the FMA:

1. in the Banking Act (BWG - Bankwesengesetz), published in Federal Law Gazette No. 532/1993 Article I,
2. in the Savings Bank Act (SpG - Sparkassengesetz), published in Federal Law Gazette No. 64/1979,
3. in the Building Society Act (BSpG - Bausparkassengesetz), published in Federal Law Gazette No. 532/1993 Article III,
4. in the Regulation Implementing the Mortgage Bank Act and the Mortgage Bond Act (Einführungsverordnung zum Hypothekenbank- und zum Pfandbriefgesetz), published in the Reich Law Gazette of 1938 I p.1574,
5. in the Mortgage Banks Act (HypBG - Hypothekenbankgesetz), published in the Imperial Law Gazette of 1899 p. 375,
6. in the Mortgage Bonds Act (PfandbriefG - Pfandbriefgesetz) published in the Reich Law Gazette of 1927 I p. 492,
7. in the Bank Bonds Act (Bankschuldverschreibungsgesetz) published in Imperial Law Gazette No. 213/1905,
8. in the Securities Deposit Act (DepotG - Depotgesetz) published in Federal Law Gazette no. 424/1969,
9. in the Financial Conglomerates Act (FKG - Finanzkonglomeratengesetz) published in Federal Law Gazette I no. 70/2004,
10. in the Payment Services Act 2018 (ZaDiG 2018 – Zahlungsdienstegesetz 2018), published in Federal Law Gazette I No. 17/2018,
11. in the Electronic Money Act of 2010 (EGeldG 2010 - E Geldgesetz 2010), published in Federal Law Gazette I no. 107/2010,
12. In the Rating Agencies Execution Act (RAVG - Ratingagenturenvollzugsgesetz), published in Federal Law Gazette I no. 68/2010,
13. in the Act on the Creation of a Wind-Down Entity (GSA - Gesetz zur Schaffung einer Abbaueinheit), published in Federal Law Gazette I No. 51/2014
14. in the Federal Act on the Recovery and Resolution of Banks (BaSAG - Bundesgesetz über die Sanierung und Abwicklung von Banken), published in Federal Law Gazette I No. 98/2014,
15. in the Deposit Guarantee Schemes and Investor Compensation Act (ESAEG - Einlagensicherungs- und Anlegerentschädigungsgesetz), published in Federal Law Gazette I No. 117/2015,
16. in Part 2 of the Central Securities Depositories Execution Act (ZvVG - Zentralverwahrer-Vollzugsgesetz), published in Federal Law Gazette I No. 69/2015,
17. in the Consumer Payment Accounts Act (VZKG - Verbraucherzahlungskontogesetz), published in Federal Law Gazette I No. 35/2016,
18. in the Act on the Enforcement of the Securities Financing Transactions Regulation (SFT-Vollzugsgesetz), published in Federal Law Gazette I no. 73/2016,
19. in the Financial Markets Anti-Money Laundering Act (FM-GwG - Finanzmarkt-Geldwäschegesetz), published in Federal Law Gazette I No. 118/2016,



20. in the PRIIPs Enforcement Act (PRIIP-VollzugsG - PRIIP-Vollzugsgesetz) published in Federal Law Gazette I No. 15/2018

(2) Insurance supervision consists of the exercising of official tasks and powers that are set out and assigned to the FMA:

1. in the Insurance Supervision Act 2016 (VAG 2016 - Versicherungsaufsichtsgesetz 2016), published in Federal Law Gazette I No. 34/2015,
2. in the Motor Vehicle Liability Insurance Act of 1994 (KHVG 1994 - Kraftfahrzeug-Haftpflichtversicherungsgesetz), published in Federal Law Gazette No. 651/1994,
3. in the Act on Compensation of Road Accident Victims (VOEG - Verkehrsofper-Entschädigungsgesetz), published in Federal Law Gazette I No. 37/2007,
4. in the Federal Law on the Liability under Civil Law for Damage caused by Radioactivity (AtomHG 1999 - Atomhaftungsgesetz 1999) published in Federal Law Gazette I No. 170/1998,
5. in the Financial Conglomerates Act (FKG - Finanzkonglomeratengesetz) published in Federal Law Gazette I No. 70/2004,
6. in the Rating Agencies Execution Act (RAVG - Ratingagenturenvollzugsgesetz), published in Federal Law Gazette I no. 68/2010,
7. in the Act on the Enforcement of the Securities Financing Transactions Regulation (SFT-Vollzugsgesetz), published in Federal Law Gazette I no. 73/2016,
8. in the Financial Markets Anti-Money Laundering Act (FM-GwG - Finanzmarkt-Geldwäschegesetz), published in Federal Law Gazette I No. 118/2016,
9. in the PRIIPs Enforcement Act (PRIIP-VollzugsG - PRIIP-Vollzugsgesetz) published in Federal Law Gazette I No. 15/2018.

(3) Securities supervision consists of the exercising of official tasks and powers that are set out and assigned to the FMA:

1. in the Securities Supervision Act of 2018 (WAG 2018; Wertpapieraufsichtsgesetz 2018) published in Federal Law Gazette I No. 107/2017,
2. in the Stock Exchange Act of 2018 (BörseG 2018; Börsengesetz 2018), published in Federal Law Gazette I No. 107/2017,
3. in the Capital Market Act (KMG - Kapitalmarktgesetz), published in Federal Law Gazette I No. 625/1991,
4. in the Act on Severance and Retirement Funds for Salaried Employees and Self-Employed Persons (BMSVG - Betrieblicher Mitarbeiter- und Selbständigenvorsorgegesetz) published in Federal Law Gazette I No. 100/2002,
5. in the Real Estate Investment Fund Act (ImmoInvFG - Immobilien-Investmentfondsgesetz), published in Federal Law Gazette I No. 80/2003,
6. in the Financial Conglomerates Act (FKG - Finanzkonglomeratengesetz) published in Federal Law Gazette I No. 70/2004,
7. in the Rating Agencies Execution Act (RAVG - Ratingagenturenvollzugsgesetz), published in Federal Law Gazette I No. 68/2010,
8. in the Investment Funds Act of 2011 (InvFG 2011 - Investmentfondsgesetz 2011), published in Federal Law Gazette I No. 77/2011 Article II,
9. in the Central Counterparties and Trade Repositories Act (ZGVG - Zentrale Gegenparteien-Vollzugsgesetz), published in Federal Law Gazette I No. 97/2012,
10. in the Financial Reporting Enforcement Act (RL-KG - Rechnungslegungs-Kontrollgesetz), published in Federal Law Gazette I No. 21/2013,
11. in the Alternative Investment Funds Manager Act (AIFMG - Alternative Investmentfonds Manager-Gesetz) published in Federal Law Gazette I No. 135/2013,
12. in Part 1 of the Central Securities Depositories Execution Act (ZvVG - Zentralverwahrer-Vollzugsgesetz), published in Federal Law Gazette I No. 69/2015,
13. in the Act on the Enforcement of the Securities Financing Transactions Regulation (SFT-Vollzugsgesetz), published in Federal Law Gazette I no. 73/2016,



14. in the Financial Markets Anti-Money Laundering Act (FM-GwG - Finanzmarkt-Geldwäschegesetz), published in Federal Law Gazette I No. 118/2016,
 15. in the Benchmarking Enforcement Act (RW-VG – Referenzwerte-Vollzugsgesetz) published in Federal Law Gazette I No. 93/2017,
 16. in the PRIIPs Enforcement Act (PRIIP-VollzugsG - PRIIP-Vollzugsgesetz) published in Federal Law Gazette I No. 15/2018.
- (4) The supervision of pension funds (Pensionskassen) consists of the exercising of official tasks and powers that are set out and assigned to the FMA:
1. in the Pension Funds Act (PKG - Pensionskassengesetz), published in Federal Law Gazette No. 281/1990,
 2. in the Company Pension Act (BPG - Betriebspensionsgesetz), published in Federal Law Gazette No. 282/1990,
 3. in the Act on the Enforcement of the Securities Financing Transactions Regulation (SFT-Vollzugsgesetz) published in Federal Law Gazette I No. 73/2016.
- (5) If the FMA becomes aware that, with respect to a legal entity pursuant to Article 1 of the Financial Market Stability Act (FinStaG - Finanzmarktstabilitätsgesetz), as published in Federal Law Gazette I No. 136/2008, that the conditions might exist as set out in Article 1 FinStaG, it shall inform the Federal Minister of Finance immediately of this fact.
- (6) Regardless of Article 70 para. 1b BWG, the FMA shall determine annual thematic focuses for inspections for each of the supervisory departments listed in paras. 1 to 4 and shall publish the thematic focuses on its website; the FMA shall also publish the thematic focuses of inspections identified in the annual inspection plan in conjunction with the Oesterreichische Nationalbank pursuant to Article 70 para. 1b no. 4 BWG on its website.

Liability for the Activities of the FMA

Article 3. (1) The Federal Government shall be liable in accordance with the provisions of the Public Liability Act (AHG - Amtshaftungsgesetz), as published in Federal Law Gazette no. 20/1949, for any damage caused by the FMA's bodies and employees in the enforcement of the federal acts specified under Article 2 including damages pursuant to Article 29 para. 1 of the Data Protection Act 2018 (DSG 2018 - Datenschutzgesetz 2018). Damages as defined in this provision are such that have been directly caused to the legal entity subject to supervision in accordance with this federal act. The FMA and its employees and bodies shall not be liable towards the injured party.

(2) In its activities, following due assessment of the circumstances, the FMA shall take any and all supervisory measures that are necessary, expedient and appropriate in each case. To this end, it shall ensure that financial market stability is maintained. In the performance of its duties, it may use the audit reports of the external auditors and bodies of the entities subject to its supervision as well as the inspection reports of the Oesterreichische Nationalbank (OeNB) within the scope of its inspection powers in accordance with the BWG, unless it has reasonable doubts about the correctness or completeness of said reports or about the professional know-how or diligence of the auditors or should have had such doubts if it had shown adequate diligence. The same shall apply to the audit reports of the auditors commissioned by the FMA itself with regard to the auditing activities pursuant to the federal acts specified under Article 2.

(3) If the government has made good the damage to the injured party pursuant to para. 1, it shall be entitled to demand reimbursement from the FMA's bodies or employees in accordance with the provisions of the AHG.

(4) The FMA shall support the Federal Government in public liability and reimbursement proceedings in accordance with paras 1 and 2 in any appropriate way. In particular, it shall provide any information and documents which concern the public liability and reimbursement proceedings and ensure that the government can make use of the know-how and knowledge of the FMA's bodies and employees about the supervisory measures relating to the subject of the proceedings.

(5) The external auditors appointed by the entities that are subject to supervision shall not be deemed bodies within the meaning of Article 1 para. 1 AHG, unless they perform audits pursuant to the federal acts specified under Article 2 for the FMA upon its separate order. The same shall apply to the auditing bodies of statutory audit institutions.



(6) A claim for damages as stipulated in provisions of federal law for actions taken by the FMA, its employees or its bodies within the scope of 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, shall be ruled out in the following cases:

1. actions taken to execute an instruction issued by or to fulfil a task assigned by the European Central Bank;
2. actions taken to prepare or carry out decisions by the European Central Bank;
3. cooperation, exchange of information or other support provided to the European Central Bank.

(7) A claim for damages on the basis of a provision contained within a federal act resulting from actions taken by the FMA, its bodies or its employees as well as actions by the resolution authority or its employees under Regulation (EU) No 806/2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010, published in OJ L 225 of 30.07.2014, p. 1, shall be ruled out in the following cases:

1. Acts conducted on the basis of an instruction from the Board pursuant to Article 2 no. 18a BaSAG;
2. Acts conducted during the preparation, or the execution, of decisions of the Board pursuant to Article 2 no. 18a BaSAG;
3. Acts relating to cooperation, the exchange of information or other assistance provided to the Board pursuant to Article 2 no. 18a BaSAG;

Bodies

Article 4. The bodies of the FMA shall be as follows:

1. the Executive Board;
2. the Supervisory Board.

Executive Board

Article 5. (1) The Executive Board of the FMA shall consist of two members.

(2) The members of the Executive Board shall be appointed by the Federal President upon the proposal of the Federal Government; re-appointment shall be permitted. The term of office shall be five years.

(3) Prior to the appointment of members of the Executive Board, the Federal Minister of Finance shall issue a tender for the position; the Civil Service Staffing Act of 1998 shall apply (Stellenbesetzungsgesetz 1998) as published in Federal Law Gazette I No. 26/1998. Based on the results of the tender procedure, the following shall name persons from the group of applicants for the proposal of the Federal Government pursuant to para. 2:

1. for the appointment of the first Executive Board of the FMA, the Federal Minister of Finance and the Oesterreichische Nationalbank (OeNB) shall name one person each;
2. For every subsequent appointment of members of the Executive Board, the institution that named the Executive Board member, whose termination of office (Article 7 para. 1) necessitates the appointment of a new Executive Board member, shall name one person.

The Federal Minister of Finance shall be responsible for filing a motion to the Federal Government to adopt a resolution on the appointment of the persons to be proposed by it; with respect to the Executive Board member named by the Oesterreichische Nationalbank, he shall be bound by the Oesterreichische Nationalbank's proposal.

(4) Only such persons may be appointed as Executive Board members that are experts in at least one of the areas of supervisory activity listed under Article 2 and who are not excluded from the right to be elected to the Austrian National Assembly. They may only exercise their function on a full-time basis.

Article 6. (1) The Executive Board shall be responsible for managing the overall operation and affairs of the FMA. The Executive Board shall represent the FMA both in and out of court.

(2) The Executive Board shall issue Rules of Procedure, which shall require approval by the Supervisory Board. The Rules of Procedure shall ensure that the FMA performs its duties in a legal, expedient, economic and efficient manner and that the employees of the FMA are deployed appropriately. In particular, the Rules of Procedure shall also regulate to what extent the Executive Board,



notwithstanding its responsibility for the activities of the FMA, may be allowed to be represented by employees of the FMA in the case of decisions to be reached, orders to be given or other official acts to be performed. The professional characteristics and different objectives of the various supervisory areas shall be adequately taken into consideration with respect to the organisational structures and the Rules of Procedures. Sectoral characteristics shall be taken into account as far as possible.

(3) The Rules of Procedure pursuant to para. 2 shall be made available in its current version for public inspection at the premises of the FMA together with a list of signatures of employees authorised by the Rules of Procedure to represent the FMA. The Rules of Procedure shall also be published on the FMA's website.

(4) The Executive Board shall prepare a Compliance Code, which shall require approval by the Supervisory Board. The Compliance Code shall define procedural guidelines on how to conclude private legal transactions between members of the Executive Board and the Supervisory Board as well as FMA employees, on the one hand, and the supervised institutions, on the other hand.

(5) The Executive Board shall report to the Supervisory Board on a quarterly basis about the general development of the financial market as well as the supervisory activities in the reporting period. In addition, the Executive Board shall report to the Supervisory Board on the planned supervisory policy and the core activities to be performed in the following reporting period.

Article 7. (1) The function of an Executive Board member of the FMA shall end:

1. upon expiry of their term of office;
2. with the Supervisory Board's consent to resign from the position for important reasons;
3. upon dismissal pursuant to para. 3.

(2) The intended resignation from the position shall be announced by the Executive Board member concerned in writing to the Supervisory Board, the Federal Minister of Finance and the OeNB at the earliest possible opportunity stating the reasons for resignation. If the Supervisory Board grants its consent, it shall notify the Federal Minister of Finance and the Oesterreichische Nationalbank without delay in writing, including the date from when the resignation of the Executive Board member concerned shall take effect. The Federal Minister of Finance shall arrange for the appointment of a new member of the Executive Board pursuant to Article 5. In the event, that the new Executive Board member only takes office following the former member having left office, a suitable substitute member is to be appointed by the Federal Minister of Finance without delay for the duration of the vacancy based on the proposal of the Supervisory Board; in this context, Article 5 shall not apply in this instance. The aforementioned provisions regarding the appointment of a new Executive Board member as well as for the appointment of a substitute member shall apply in the same manner in the event of a dismissal pursuant to para. 3.

(3) The Federal Minister of Finance shall dismiss a member of the Executive Board if an important reason exists, such as in particular:

1. a condition for appointment no longer being fulfilled, or
2. if it subsequently emerges that a condition for appointment had not been fulfilled, or
3. a gross breach of duty has occurred, or
4. permanent incapacity or if the member concerned is absent from work for a period of longer than half a year as a result of illness, an accident or an infirmity, or
5. If despite supervisory measures having been taken pursuant to Article 11 para. 2 breaches of duty have not been rectified or not been rectified in a lasting manner.

The Federal Minister of Finance shall hold a hearing with the OeNB prior to the removal of member that the latter has named; however, in the case of imminent danger, the Executive Board member concerned shall be immediately dismissed and the OeNB notified thereof at the same time.

Supervisory Board

Article 8. (1) The Supervisory Board of the FMA shall consist of the chairperson, the deputy to the chairperson, six additional members and two co-opted members. The chairperson, the deputy and the additional members of the Supervisory Board, except for the co-opted members, shall be appointed by the Federal Minister of Finance. The Oesterreichische Nationalbank shall name persons for the function of deputy chairperson as well as three additional members of the Supervisory Board. In addition, the Supervisory Board shall co-opt two members named by the Austrian Economic Chambers; however, they shall have no voting right. Only suitable and reliable persons who are not excluded from the right to be elected to the Austrian National Assembly may be appointed or co-opted as Supervisory Board members.



(2) The term of office for Supervisory Board members shall be five years; re-appointment shall be permitted.

(3) The function of a Supervisory Board member shall end:

1. upon expiry of their term of office;
2. upon resignation;
3. upon dismissal pursuant to para. 4.

In the event of a Supervisory Board member's function ending in accordance with no. 2 or 3, a new member shall be appointed or co-opted without delay for the remaining duration of the term of office of the former member; in the event that a member named by the Oesterreichische Nationalbank or the Austrian Federal Economic Chamber leaves prior to the end of their term of office, that institution shall name a new member without delay.

(4) The Federal Minister of Finance shall dismiss members of the Supervisory Board, if:

1. a condition for the appointment is no longer fulfilled;
2. it subsequently emerges that an appointment condition had not been fulfilled;
3. the member becomes permanently incapacitated from performing the function; or
4. in the case of a gross breach of duty existing.

The Federal Minister of Finance shall hold a hearing with the Oesterreichische Nationalbank or the Austrian Federal Economic Chamber, prior to the dismissal of the member named by the institution concerned; however, in case of imminent danger, the Supervisory Board member concerned shall be immediately dismissed and the Oesterreichische Nationalbank or the Austrian Federal Economic Chamber shall be notified respectively at the same time.

Article 9. (1) The chairperson of the Supervisory Board (or the deputy) shall convene a Supervisory Board meeting at least once every calendar quarter as well as without delay in important cases, providing an agenda. The meeting must take place within two weeks after it has been convened. Co-opted members shall only be entitled to participate in the meetings if issues pursuant to Article 10 para. 2 nos. 1 to 4, 8 or 9 are to be discussed or adopted by resolution.

(2) Every voting member of the Supervisory Board, the Executive Board as well as the Federal Minister of Finance may request that the Supervisory Board be convened without delay in important cases.

(3) The Supervisory Board shall be deemed to have quorum in the event that at least four voting members, including the chairperson or his deputy, are present. The Supervisory Board shall adopt its resolutions by means of a simple majority of votes. In the event of a parity of votes, the person chairing the meeting shall have the casting vote. Abstention shall not be admissible.

(4) Minutes of the Supervisory Board meetings shall be taken. They shall be signed by the person chairing the meeting; more detailed orders shall be given in the Rules of Procedure of the Supervisory Board.

(5) Circular resolutions shall only be permitted in justified exceptional cases, and if no Supervisory Board member files an objection. The co-opted members of the Supervisory Board may only file an objection against the adoption of a resolution by way of circular resolution, if resolutions to be adopted concern issues pursuant to Article 10 para. 2 nos. 1 to 4, 8 or 9 and the adoption of a resolution by way of a circular resolution is not required to prevent serious damage. Circular resolutions may be adopted only with a majority of votes of all voting members of the Supervisory Board. An abstention shall not be admissible. Circular resolutions shall be recorded in writing by the chairperson (deputy); the result of the adoption of the resolution shall be reported at the next Supervisory Board meeting.

Article 10. (1) The Supervisory Board shall supervise the organisation and management of the FMA. Article 95 paras. 2 and 3 of the Stock Corporation Act of 1965 (AktG - Aktiengesetz 1965) published in Federal Law Gazette no. 98/1965 shall be applied.

(2) Measures concerning the organisation and management of the FMA may not be transferred to the Supervisory Board. However, Supervisory Board approval shall be required for:

1. the financial plan to be drawn up by the Executive Board including the investment and staff plan;
2. Investments, which have not been authorised in the investment plan, as well as the taking out of loans which exceed EUR 75 000;
3. the acquisition, disposal and encumbrance of real estate;
4. the annual financial statement to be drawn up by the Executive Board;
5. the Rules of Procedure pursuant to Article 6 para. 2 and amendments thereto;



6. the Compliance Code pursuant to Article 6 para. 4 and amendments thereto;
7. the appointment of FMA employees to management functions directly subordinate to the Executive Board (second management level) as well as their dismissal and termination of employment;
8. the annual report to be drawn up pursuant to Article 16 para. 3;
9. the conclusion of collective labour agreements and works agreements.

(3) Prior to the adoption of collective labour agreements and works agreements (para 2 no. 9), a hearing shall be held with the body responsible for the representation of FMA employees.

(4) The voting members of the Supervisory Board shall be entitled to an appropriate remuneration, which shall be paid out of FMA funds. The level of remuneration shall be determined by the Federal Minister of Finance following a hearing with the Oesterreichische Nationalbank.

Article 11. (1) The Supervisory Board shall notify the Federal Minister of Finance without delay, if it learns of the occurrence of a ground for the dismissal of an Executive Board member pursuant to Article 7 para. 3, unless the provisions of para. 2 apply.

(2) If a member of the Executive Board violates provisions of this federal act, the federal acts that are conferred upon the FMA for enforcement pursuant to Article 2, or the provisions of the Rules of Procedure without constituting a gross breach of duty pursuant to Article 7 para. 3 no. 3, the Supervisory Board shall request in writing that the member concerned restore compliance with the statutory provisions without delay and henceforth refrains from breaches of duties. In the event of a repeated or continued violation, the Supervisory Board shall inform the Federal Minister of Finance with regard to Article 7 para. 3, unless this would be inappropriate in the light of the nature and severity of the breach.

Article 12. The Supervisory Board shall adopt Rules of Procedure, which require the approval of the Federal Minister of Finance. The Supervisory Board shall conclude the employment contracts with the Executive Board members and appoint the external auditor. In addition, the Supervisory Board shall be responsible for the approval of the acts of the members of the Executive Board in connection with the approval of the annual financial statement (Article 10 para 2 no. 4).

Financial Market Stability Board

Article 13. (1) A Financial Market Stability Board shall be established by the Federal Ministry of Finance to increase financial market stability and to reduce systemic and procyclical risks. The members and their deputies shall be appointed by the Federal Government following the proposal by the Federal Minister of Finance. The Federal Minister of Finance shall observe the nomination rights pursuant to para. 4.

(2) For the purposes of Articles 13 to 13b of this federal act and Article 44c of the National Bank Act of 1984 (NBG - Nationalbankgesetz 1984) as published in Federal Law Gazette No. 50/1984, the following definitions shall apply:

1. systemic risk: risk pursuant to Article 2 no. 41 BWG;
2. procyclical risk: Risk as defined in Article 136 of Directive 2013/36/EU;

(Note: nos. 3 and 4 were repealed in the amendment in Federal Law Gazette I No. 159/2015)

(3) The tasks of the Financial Market Stability Board shall include in particular

1. discussing facts relevant to financial market stability;
2. encouraging co-operation and the exchange of opinions among the institutions represented on the Board both in normal times and terms of crisis;
3. issuing of expert opinions, recommendations and requests in connection with marked changes with the intensity of systemic risk (Article 2 no. 41 BWG) or procyclical risks (Article 136 of Directive 2013/36/EU and for assessing potential significant adverse effects on financial market stability pursuant to Article 48 para. 2 no. 2 BaSAG or point b of Article 14 (2) of Regulation (EU) No 806/2014;
4. issuing of risk warnings and recommendations pursuant to Article 13a paras. 1 and 2 as well as their publication pursuant to Article 13a para. 4;
5. consultation about how to deal with warnings and recommendations of the European Systemic Risk Board (ESRB);
6. presenting a report to the Austrian National Council on an annual basis.



(4) The Financial Market Stability Board shall consist of:

1. two professionally qualified representatives of the Federal Ministry of Finance from the fields of economic policy and financial market supervision legislation as defined in para. 3, of whom one shall be nominated as the chairperson and the other as the deputy chairperson of the Board; the representatives shall collectively hold the necessary experience in macroeconomic, macroprudential issues as well as issues regarding legislation relating to financial market supervision to fulfil this task;
2. a professionally qualified representative of the FMA as defined in para. 3;
3. a professionally qualified representative of the Oesterreichische Nationalbank as defined in para. 3;
4. the chairperson of the Fiscal Advisory Council; and
5. an additional member of the Fiscal Advisory Council, who shall be nominated by the Federal Minister of Finance from within the ranks of the members of the Fiscal Advisory Council delegated by the Federal Government.

For each representative, the aforementioned institutions shall name a deputy who is professionally qualified as defined in para. 3. The deputies of the members from the Fiscal Advisory Council shall be nominated by the Federal Minister of Finance from within the ranks of the members delegated by the Federal Government and the delegated alternate members pursuant to Article 1 para. 6 of the Federal Act on the Establishment of the Fiscal Advisory Council. The representatives and their deputies shall not be bound by any instructions of the delegating institutions when exercising their mandates.

(5) The chairperson of the Financial Market Stability Board shall convene the Financial Market Stability Board at least four times per calendar year. The members of the Financial Market Stability Board may request the Board to be convened at short notice in the event of material reasons prevailing. The chairperson may also call in external experts for consultation at the meetings depending on the subject for discussion or the agenda.

(6) Resolutions of the Financial Market Stability Board shall be passed by a simple majority. In the event of a tie, the person chairing the meeting shall have the casting vote. Resolutions about reports to be presented pursuant to para. 10 must be passed unanimously.

(7) Following its establishment, the Financial Market Stability Board shall unanimously adopt a set of Rules of Procedure. The members of the Financial Market Stability Board shall be appointed for a three-year term, and may be re-appointed.

(8) The members of the Financial Market Stability Board and the consulted experts and staff made available to the Financial Market Stability Board pursuant to para. 11 shall

1. be bound to secrecy in relation to any facts that have only been revealed to them in their activity within the Financial Market Stability Board, and these facts shall be kept secret in the interest of public peace, safety and order, foreign relations, in the economic interest of a corporation under public law, for the preparation of a decision or in the predominant interests of the parties to administrative proceedings;
2. be obligated to maintain banking secrecy pursuant to Article 38 para. 1 BWG. Their being released from observing banking secrecy shall be the responsibility of the Federal Minister of Finance; Article 46 paras. 2, 3 and 4 of the Act on Rules and Regulations for Public Officials and Civil Servants of 1979 (Beamten-Dienstrechtsgesetz 1979), as published in Federal Law Gazette No. 333/1979, shall apply.

(9) The representative of the FMA, including in the FMA's function as the resolution authority, shall inform the Financial Market Stability Board on a regular basis about resolutions and other decisions that are of relevance for financial market stability, for the identification of systemic and procyclical risks and indications of systemic and procyclical risks and indications of material effects on financial stability pursuant to Article 48 para. 2 no. 2 BaSAG or point b of Article 14 (2) of Regulation (EU) No. 806/2014, and shall upon request provide any necessary technical explanations, data and documents.

(10) The Financial Market Stability Board shall submit a report in aggregated form within four months of the end of every calendar year to the Finance Committee of the National Council about the status and development of financial market stability as well as its activities in the past calendar year.

(11) The costs of the Financial Market Stability Board shall be borne by the Oesterreichische Nationalbank and the Oesterreichische Nationalbank shall also provide the necessary staff and bear the material expenses required for the organisational support and coordination of the Financial Market



Stability Board (Secretariat). The members of the Financial Market Stability Board shall not be reimbursed for their work.

Risk warnings and recommendations

Article 13a. (1) In the event that the Financial Market Stability Board detects risks in the financial sector, which may have detrimental repercussions on financial market stability, it shall address them in the form of risk warnings. Potential risks for financial market stability may include the formation and changing of systemic risk (Article 2 no. 41 BWG), procyclical risks (Article 136 of Directive 2013/36/EU) or significant adverse effects on financial market stability pursuant to Article 48 para. 2 no. 2 BaSAG or point b of Article 14 (2) of Regulation (EU) No 806/2014. Risk warnings shall be substantiated in detail.

(2) The Financial Market Stability Board may make the FMA aware by means of recommendations of risks pursuant to para. 1 and suggest measures, that are considered suitable and necessary for averting risks to financial market stability and for containing the origination of risks pursuant to para. 1.

(3) The FMA shall inform the Financial Market Stability Board as soon as possible, but at latest within three months, about how it intends to implement a recommendation pursuant to para. 2. The FMA shall inform the Financial Market Stability Board about the status of implementation on a regular basis. In the event that the FMA does not intend to implement the recommendation, it shall state the reasons for not doing so in detail.

(4) The Financial Market Stability Board may decide to publish recommendations to the FMA and risk warnings. It shall inform the FMA in advance about the intended publication of a recommendation, and give the FMA the opportunity to issue a comment. It shall refrain from a publication in the event that a publication would seriously endanger the stability of the financial markets.

Reporting

Article 13b. (1) The FMA shall make relevant data available about all companies in the financial industry (Article 2 no. 7 of the Financial Conglomerates Act (FKG - Finanzkonglomeratengesetz) as published in Federal Law Gazette I No. 70/2004) upon request to the Oesterreichische Nationalbank that are necessary for the performance of duties pursuant to Article 44c of the National Bank Act of 1984 (NBG - Nationalbankgesetz 1984) as published in Federal Law Gazette No. 50/1984. The Oesterreichische Nationalbank shall store this data in the database pursuant to Article 79 para. 4a BWG, and may also process it. Where expedient, this data may also be entered directly into the database directed by the FMA.

(2) If the data requested by the Oesterreichische Nationalbank is not available to the FMA, then the FMA may, for the purposes of para. 1 in co-ordination with the Oesterreichische Nationalbank and with the consent of the Federal Minister of Finance issue a regulation, addressing the following aspects in greater detail:

1. The group of entities obliged to submit the required data;
2. Reporting dates, structures, the contents of reports and reporting frequencies taking into consideration relevant recommendations and guidelines issued by the European Banking Authority (EBA) or the European Systemic Risk Board (ESRB).

(3) The reports pursuant to para. 2 must be submitted in a standardised format by electronic means. The submissions must meet certain minimum requirements to be announced by the FMA after consultation with the Oesterreichische Nationalbank.

Staffing

Article 14. (1) The Executive Board of the FMA shall be authorised to employ the required number of staff by employment contract. The Employees' Act (AngG - Angestelltengesetz), as published in Federal Law Gazette no. 292/1921, unless stipulated otherwise in Article 15, shall apply as well as other legislation applicable to employees in the private sector shall apply to the employment relationship of employees. The Executive Board shall also be authorised to terminate employment relationships in accordance with labour legislation, in particular by serving notice of termination of employment. The termination of employment and dismissal of function holders in the second level of management shall require the approval of the Supervisory Board. In the case of dismissal of second-level managers, the chairperson of the Supervisory Board shall be informed simultaneously.



(1a) Subject to para. 1b the Executive Board of the FMA shall issue a vacancy notice prior to the appointment of FMA employees in managerial functions directly subordinate to the Executive Board (second management level), in which the Civil Service Staffing Act shall be applied with the proviso that instead of referring to members of the management body it shall instead refer to the appointment of members of the second management level of the FMA. Subject to para. 1b the Executive Board of the FMA shall at least issue an internal vacancy notice prior to the appointment of FMA employees in managerial functions directly subordinate to the second management level (third management level). When appointing second management level FMA employees the Executive Board of the FMA shall inform the Supervisory Board about the outcome of the recruiting process in a timely manner prior to the approval of the appointment (Article 10 para. 2 no. 7).

(1b) In the following cases the Executive Board of the FMA may desist from issuing a vacancy notice when appointing FMA employees in second and third management level positions:

1. when the appointment of the FMA employee is merely a short-term and acting appointment in a second or third management level position.
2. when the appointment of the FMA employee is a reappointment to the same managerial function in the second or third management level and the person in question had in their previous term in the position always satisfied the job profile associated with the position in question, and had proven themselves in the long-term when performing the duties conferred upon them.

In such cases in which the Executive Board of the FMA intends to desist from issuing a vacancy notice when appointing FMA employees to the second or third management level pursuant to no. 2, it shall inform the supervisory board of this being the case in a timely manner in advance, and shall at the same time justify to the supervisory board, why the conditions stipulated in no. 2 exist for desisting from issuing a vacancy notice.

(2) The employees of the FMA shall be bound to secrecy toward anyone concerning any facts which have only been revealed to them as a consequence of their work, and these facts shall be kept secret in the interest of public peace, safety and order, extensive national defence, foreign relations, in the economic interest of a corporation under public law, for the preparation of a decision or in the predominant interest of the parties, unless they are required to deliver an official statement concerning any such facts to them. Furthermore, the bodies of the FMA and its employees shall be subject to observe banking secrecy and professional secrecy pursuant to Article 38 para. 1 BWG. The Executive Board of the FMA shall be responsible for releasing FMA employees from the secrecy obligation; Article 46 paras. 2, 3 and 4 of the Act on the Rules and Regulations for Public Officials and Civil Servants of 1979 (BDG - Beamten-Dienstrechtsgesetz 1979) published in Federal Law Gazette no. 333/1979, shall apply.

(3) The FMA shall provide an appropriate level of legal protection for its employees entrusted with supervisory activities in the event that claims for damages are made against them as a consequence of their supervisory activities.

(4) The Federal Government Equal Treatment Act shall apply to employees of the FMA as published in Federal Law Gazette No. 100/1993.

Transfer of employees from the Federal Ministry of Finance

Article 15. (1) As of 1 April 2002, the following regulation shall apply to employees of the Federal Government who on 1 March 2002 were assigned to work for the group V/D, as well as the departments V/4, V/5, V/6, V/10, V/12 and V/13 and the respective offices of the Federal Ministry of Finance:

1. Civil servants shall be assigned to permanently work for the FMA with effect from 1 April 2002;
2. Contractual employees shall be assigned by the Federal Minister of Finance within one month from 1 March 2002 by means of an employer statement to permanently work for the FMA from 1 April 2002, and shall hereby become employees of the FMA.

(2) For civil servants pursuant to para. 1 no. 1, a personnel unit will be established at the FMA as their office. This office shall be immediately subordinate to the Federal Minister of Finance and shall be headed by the Executive Board member of the FMA named by the Federal Ministry of Finance pursuant to Article 5 para. 3. This Executive Board member shall be bound by the instructions of the Federal Minister of Finance in exercising this function.

(3) The civil servants named under para. 1 no. 1 shall be entitled to an employment relationship with the FMA, provided that they declare their resignation from the federal civil service by 31 March 2007,



effective as of the first day of the month following their resignation and according to the provisions applicable to new employees at that time. The number of years in service with the Federal Government shall be considered for calculating any claims depending on the number of years in service.

(4) For the civil servants named under para. 1 no. 1, the FMA shall undertake to compensate the Federal Government for all expenses related to their activities including incidental expenses as well as make a contribution to cover old-age pension costs. This contribution shall amount to 31.8 % of the expenses for active pay. All payments subject to the deduction of a pension contribution shall be considered as active pay. The pension contributions retained from the salaries of civil servants shall be taken into account. In the event of a future change in the amount of the pension contribution of the federal government civil servants pursuant to Article 22 of the Salary Act of 1956 (GehG - Gehaltsgesetz 1956), published in Federal Law Gazette no. 54, the percentage of the contribution margin shall change to the same extent. Special pension contributions and remittance contributions made to the FMA after 31 March 2002 shall be immediately remitted to the Federal Government in full. Remittance contributions pursuant to Article 311 of the General Social Insurance Act (ASVG - Allgemeines Sozialversicherungsgesetz) shall be borne by the FMA. Other payments to the Federal Government shall be due on the 10th day of the respective month.

(5) For employees pursuant to para 1 no. 2, the legislation applicable to contractual employment relationships with the Federal Government shall continue to apply, in particular the Contractual Employees Act of 1948 (VBG - Vertragsbedienstetengesetz 1948) as published in Federal Law Gazette no. 86; the conclusion of special contractual provisions pursuant to article 36 VBG shall no longer be admissible. Employees pursuant to para. 1 no. 2, in the event that they declare their readiness to terminate their employment relationship in accordance with the legal provisions that shall continue to apply to them within one year of the collective labour agreement or a works agreement on an individual agreement based thereon taking effect, shall be entitled to take up an employment relationship with the FMA in accordance with the applicable legal basis for new employees. No entitlement to severance pay exists in connection with this type of termination of employment. The number of years of service obtained in their previous employment relationship shall be considered the calculation of any claims of a time-dependent nature.

(6) The Federal Government shall be liable in the same manner as a default guarantor (Article 1356 General Civil Code (ABGB - Allgemeines Bürgerliches Gesetzbuch)) for satisfying any claims of employees in relation to their salaries pursuant to para. 1 no. 2 and para. 3. The extent of the liability shall be limited to the amount which results from the salary position relevant to the named employees on the day prior to the day on which the termination of their employment with the federal civil service becomes effective, taking their assignment at that point in time into consideration including the number of years spent in service after that time as well as the planned regular advancements.

(7) Claims of the Federal Government against employees who become employees of the FMA pursuant to para. 1 no. 2 or para. 3, shall be transferred to the FMA with effect from the time when the employment relationship is established and shall be refunded by the FMA to the Federal Government.

(8) The entitlements to severance pay and anniversary bonuses for employees who become employees of the FMA pursuant to para. 1 no. 2 or para. 3 shall be assumed by the FMA.

(9) The FMA shall be obliged to make all documents available to the Federal Ministry of Finance that is required for preparing the preliminary budget and the federal financial statements with regard to the contribution pursuant to para. 4.

(10) The FMA, as employer, shall be entitled to enter into collective labour agreements for its employees.

Supervision of the FMA

Article 16. (1) The Federal Minister of Finance shall exercise the supervision of the FMA to ensure that the FMA fulfils its statutory tasks, that it does not violate laws and regulations when carrying out its tasks and that it does not overstep its scope of duties.

(2) The Federal Minister of Finance shall be entitled to gather information from the FMA on all matters relating to the supervision of the financial market for the purpose stipulated in para. 1. The FMA shall provide the Federal Minister of Finance with the requested information without unnecessary delay, at latest within two weeks. In the event that FMA regulations are issued, it shall inform the Federal Minister of Finance of its intention and submit the regulations prior to their being issued to the Federal Minister of Finance including the result of the hearing of the Oesterreichische Nationalbank.



(2a) The FMA shall submit the required data and information to the Federal Minister of Finance upon request without delay, which are necessary for the drafting of proposed rules and for complying with Articles 17 and 18 of the Federal Budget Act of 2013 (Bundeshaushaltsgesetz 2013), as published in Federal Law Gazette I No. 139/2009.

(3) The FMA shall submit a report on the past calendar year to the Finance Committee of the National Assembly and the Federal Minister of Finance within four months after the end of each calendar year. This report shall in particular include an overview of supervisory activities conducted and the status of the financial sector. The Finance Committee shall be authorised to summon the Executive Board of the FMA to attend committee meetings and gather information from it, unless statutory duties to observe secrecy preclude this.

(4) The Federal Minister of Finance is authorised to order the FMA to carry out audits pursuant to the federal acts listed under Article 2, about which the Executive Board shall report to the Supervisory Board without delay. The Executive Board shall report to the Federal Minister of Finance and the Supervisory Board on the performed auditing activities as well as the findings of the audit without delay.

Internal Audit

Article 16a. (1) The FMA shall establish an internal audit unit, which reports directly to the Executive Board and the purpose of which is exclusively to continuously and comprehensively review the legality, appropriateness and expedience of the activities of the FMA. The internal audit unit must be staffed in such a way that it takes into account the scope of the FMA's activities, so that it is able to perform its duties as intended. The duties of the internal audit unit shall not be permitted to be entrusted to persons for whom reasons for exclusion exist.

(2) Circumstances shall be considered as reasons for exclusion that make the orderly performance of the internal audit unit's duties appear improbable. In particular, reasons for exclusion shall be considered to exist, where:

1. the persons in question do not possess the necessary expertise and experience in the FMA's supervisory areas pursuant to Article 1 para. 1, or
2. the objective performance of this function may be compromised, in particular in the case where the persons in question are also appointed to audit the FMA's annual financial statements.

(3) Instructions made regarding the internal audit unit must be made jointly by both members of the Executive Board. The internal audit unit shall report to both members of the Executive Board. The internal audit unit shall also report on a quarterly basis on the audit areas and material findings from audits conducted to the Chair of the Supervisory Board and their deputy. The Chairperson of the Supervisory Board shall report to the Supervisory Board at its next meeting about the audit areas and the material findings of the conducted audits. The internal audit unit shall be invited at least once a year to a meeting of the Supervisory Board to report.

(4) The internal audit unit shall draw up an annual internal audit plan, and shall then conduct audits thereafter, with the reviewing of the efficiency of the FMA's effectiveness must constitute a fixed audit area in every one of these internal audit plans. The internal audit unit shall furthermore also conduct spontaneous ad hoc audit activities.

Financial Plan

Article 17. (1) The Executive Board of the FMA shall draw up a financial plan for every financial year including an investment and staff plan, which shall be submitted to the Supervisory Board for approval and shall form a binding basis for budget and staff management.

(2) The financial plan shall include all the FMA's expected revenues and expenses to be paid in the following financial year, listed separately and in the full amount (gross). The budgeted amounts shall be calculated; if this is not possible, they shall be estimated.

(3) The staff plan in the the annual financial plan shall determine the admissible number of employees of the FMA. In this context, only the kind and number of permanent posts necessary to tackle the tasks of the FMA may be provided for.

(4) The financial plan for the following financial year including an investment and staff plan as well as explanatory comments shall be presented to the Supervisory Board for approval no later than 31 October of the current financial year. The Supervisory Board shall reach a decision on the approval of the financial plan as soon as possible but no later than 15 December of the current financial year.



(5) The Executive Board shall report to the Supervisory Board on a quarterly basis on the adherence to the financial plan including the investment and staff plan. If the budgeted amounts are expected to be exceeded by more than 5 per cent per accounting group, the respective measures may only be taken after approval by the Supervisory Board.

(6) A binding basis stipulated in the financial plan, the investment plan or the staff plan shall neither establish nor revoke claims or liabilities.

(7) The Executive Board shall submit to the members of the Supervisory Board and the institutions liable to pay costs by way of their statutory interest group representative meaningful information on the major items of the financial plan as well as the investment and staff plan as soon as possible, as a rule two weeks prior the respective meeting of the Supervisory Board. In this context, the Executive Board shall specify information, if necessary, that has to be kept secret in line with official secrecy. The institutions liable to pay costs shall be entitled to comment on the submitted information by way of their statutory interest group representative as well as by specialist organisations existing within said interest groups. The Executive Board shall immediately notify the Supervisory Board of such comments.

Financial Statements

Article 18. (1) The FMA shall provide the annual financial statement for the preceding financial year in the form of an annual balance sheet and an income statement taking into account the timeframes pursuant to para. 3. Otherwise the provisions of the third book of the Business Code (UGB - Unternehmensgesetzbuch) published in the Reich Law Gazette 1897 p. 219 shall apply to the annual financial statement, unless stipulated otherwise in this federal act. The costs for banking supervision pursuant to Article 79 para. 4b BWG communicated by the Oesterreichische Nationalbank, provided that they do not exceed EUR 8 million, as well as pursuant to Article 3 para. 5 BaSAG in conjunction with Article 79 para. 4b BWG, provided that they do not exceed EUR 2 million, as well as pursuant to Article 6 para. 6 ESAEG, provided that they do not exceed EUR 500 000, and the costs of insurance supervision pursuant to Article 182 para. 7 VAG 2016, provided that they do not exceed EUR 500 000 Euro, shall be shown separately in the FMA's income statement under "other operating expenses".

(2) The financial statements and the statement of costs pursuant to article 19 para 1 shall be audited by an external auditor or an external auditing firm. Article 273 UGB shall apply.

(3) The Executive Board shall submit the audited financial statements including the statement of costs to the Supervisory Board for approval within five months after the end of the preceding financial year. The Supervisory Board shall adopt a resolution on the approval of the financial statements including the statement of costs in such a timely manner that the Executive Board is able to submit the financial statements including the statement of costs to the Federal Minister of Finance within six months after the end of the preceding financial year and is able to publish them pursuant to para. 6.

(4) The Supervisory Board shall approve the acts of the members of the Executive Board if the financial statements and the statement of costs have been approved, the management in the past financial year was of an orderly nature, and approval of the acts is not opposed by a breach of duty having occurred in the past financial year, which constitutes a ground for dismissal pursuant to Article 7 para. 3 nos. 3 or 5.

(5) The calendar year shall form the financial year of the FMA.

(6) The Executive Board shall publish the audited financial statements approved by the Supervisory Board on the FMA's website and arrange for a public announcement including the FMA's Internet address in the Wiener Zeitung or any other official bulletins available nationwide. The annual financial statements shall be available for inspection on the Internet until the publication of the next financial statements.

Supervision Costs

Article 19. (1) The FMA shall form a separate accounting group for each of the supervisory listed in Article 2 paras. 1 to 4. With regard to its internal organisation, it shall make provision for the most far-reaching direct allocation of the supervision costs (personnel and material expenses, write-offs and other expenses) to these accounting groups. Those costs that cannot be allocated directly to a certain accounting group shall be apportioned among the individual accounting groups pursuant to para 2. These accounting groups shall be:



1. accounting group 1 for the banking supervision costs;
2. accounting group 2 for the insurance supervision costs;
3. accounting group 3 for the securities supervision costs;
4. accounting group 4 for the pension company supervision costs;

Together with the annual financial statement pursuant to Article 18, a statement of costs broken down into accounting groups shall also be prepared. The costs for banking supervision pursuant to Article 79 para. 4b BWG notified by the Oesterreichische Nationalbank, provided that they do not exceed EUR 8 million, as well as pursuant to Article 3 para. 5 BaSAG in conjunction with Article 79 para. 4b BWG, provided that they do not exceed EUR 2 million, as well as pursuant to Article 6 para. 6 ESAEG, provided that they do not exceed EUR 500 000, shall be assigned to accounting group 1. The direct costs for insurance supervision pursuant to Article 182 para. 7 VAG 2016 notified by the Oesterreichische Nationalbank shall be assigned to accounting group 2, provided that they do not exceed EUR 500 000.

(2) The FMA shall, on the basis of the costs calculated for the accounting groups 1 to 4 for directly allocable costs, the FMA shall compute the ratios of the costs per accounting group in relation to each other. On the basis of these ratios, costs that cannot be directly allocated to a specific accounting group pursuant to para. 1 shall be apportioned among the individual accounting groups. The transfer to reserves permitted under Article 20 shall also be treated as not directly allocable costs.

(3) The sum of the costs allocated to an accounting group directly pursuant to para. 1 and on a pro rata basis pursuant to para. 2 shall constitute the total costs of the accounting group. The sum of the total costs of accounting groups 1 to 4 shall constitute the total costs of the FMA.

(4) The Federal Government shall contribute the amount of EUR 4 million per financial year towards the FMA. This contribution as well as any income flowing to the FMA that does not relate to the compensation for supervision costs or related prepayments, or that is received pursuant to para. 10 shall be deducted from the total costs of the FMA. The remain difference shall be apportioned to accounting groups 1 to 4, using the ratios set out in para. 2. The resulting amounts per accounting group, following the deduction of authorisation fees received pursuant to para. 10, represent the costs that are to be recovered by the FMA from the natural and legal persons that are subject to supervision by the FMA pursuant to the respective cost provisions in the laws listed in Article 2 by means notices of payment.

(5) Based on the respective annual financial statements, the FMA shall calculate the costs attributable to the individual entities liable to pay costs pursuant to para. 4 last sentence for the preceding financial year without delay. The calculated amount shall be offset against the advance payments received for the preceding financial year. The difference arising shall be prescribed for payment unless there is a credit balance in favour of the entity liable to pay costs; credit balances shall be paid out. For the following FMA financial year, the entities liable to pay costs shall be sent notifications about the prepayment in the amount of 105 % of the amount calculated in accordance with the first sentence; in the event that the costs for banking supervision notified by Oesterreichische Nationalbank pursuant to Article 79 para. 4b BWG and shown separately in the annual financial statement of the FMA have reached the amount of EUR 8 million, or the the direct costs for banking supervision notified by Oesterreichische Nationalbank pursuant to Article 3 para. 5 BaSAG in conjunction with Article 79 para. 4b BWG and shown separately in the annual financial statement of the FMA have reached the amount of EUR 2 million or the direct costs for banking supervision notified by Oesterreichische Nationalbank pursuant to Article 6 para. 6 ESAEG and shown separately in the annual financial statement of the FMA have reached the amount of EUR 500 000, or the direct costs of insurance supervision notified pursuant to Article 182 para. 7 VAG 2016 and shown separately in the annual financial statement of the FMA have reached the amount of EUR 500 000 Euro, then by way of derogation from the first part of this sentence the partial amount shall be prescribed in the prepayment in the amount of 100 % of the amount calculated. Based on these notifications of payment due, the entities liable to pay costs shall remit the prescribed amount in four equal instalments by 15 January, April, July and October of the respective year.

(5a) The FMA shall reimburse the Oesterreichische Nationalbank for the costs arising from its duties and activities in accordance with the BWG and Regulation (EU) No. 1024/2013. The amounts to be reimbursed shall be calculated on the basis of the costs of banking supervision notified for the respective preceding financial year pursuant to Article 79 para. 4b BWG and shall not exceed EUR 8 million. The reimbursement shall be effected no later than by the end of March of the following financial year.

(5b) The FMA shall reimburse the Oesterreichische Nationalbank for the costs arising from expert opinions pursuant to Article 182 para. 5 VAG 2016. The amounts to be reimbursed shall be calculated



on the basis of the direct costs notified for the respective preceding financial year pursuant to Article 182 para. 7 VAG 2016 and shall not exceed EUR 500 000. The reimbursement shall be effected no later than by the end of March of the following financial year.

(5c) The FMA shall reimburse the Oesterreichische Nationalbank for the costs arising from the latter's activity in the recovery and resolution of entities pursuant to Article 3 para. 5 BaSAG in conjunction with Article 79 BWG. The amounts to be reimbursed shall be calculated on the basis of the direct costs of supervision in accordance with BaSAG notified for the respective preceding financial year pursuant to Article 3 para. 5 BaSAG in conjunction with Article 79 para. 4b BWG and shall not exceed EUR 2 million. The reimbursement shall be effected no later than by the end of March of the following financial year.

(5d) The FMA shall reimburse the Oesterreichische Nationalbank for the costs arising from the latter's activity in the supervision of deposit guarantee facilities pursuant to Article 5 para. 2 ESAEG and Article 6 ESAEG. The amounts to be reimbursed shall be calculated on the basis of the direct costs of supervision in accordance with ESAEG notified for the respective preceding financial year pursuant to Article 6 para. 6 ESAEG and shall not exceed EUR 500 000. The reimbursement shall be effected no later than by the end of March of the following financial year.

(6) In its payment notices pursuant to para. 5, the FMA shall specify:

1. the amount of the costs of the respective accounting group attributable to the individual entity liable to pay costs based on the annual financial statement of the preceding financial year;
2. the prepayments made by the entity for the preceding financial year;
3. the amount of the negative or positive difference which will be prescribed for payment or released to be paid out;
4. the advance payments for the following financial year in the amount of 105 per cent of the amount pursuant to no. 1.

(7) The FMA shall determine more detailed rules for prepayments and reimbursement of costs, in particular the deadlines for the notices of payment due and the periods for the payment, unless para. 5 or Article 26 stipulate otherwise, by issuing a regulation.

(8) A cost estimate on the basis of the accounting groups shall be made for the financial plan pursuant to Article 17, applying paras. 1 to 4.

(9) Apart from the amount pursuant to para 4, the Federal Government may contribute an additional amount to the costs in accordance with the funds provided for this purpose in the annual Federal Finance Act (BFG - Bundesfinanzgesetz) if this is necessary to cover supervision costs despite economic, economical and expedient business practices by the FMA. This amount shall also be deducted from the total costs of the FMA, prior to apportioning the costs of the FMA among the accounting groups (para. 4).

(10) For the authorisation of situations in accordance with fee items 44 and 45 and 50 to 59 of the Regulation on Federal Administration Fees 1983 (BVwAbgV – Bundesverwaltungsabgabenverordnung) as published in Federal Law Gazette No. 24/1983, in the version published in Federal Law Gazette II No. 146/2000, instead of federal administration fees, authorisation fees are to be paid to the FMA in accordance with the Regulation on Fees (Gebührenverordnung) to be issued by the FMA. This shall also apply to official acts pursuant to the fee items 1 to 5, provided that these official acts fall within the responsibility of the FMA. The fees may not exceed the average costs arising from the authorisation or other official acts, taking a share of the fixed costs into account. The authorisation fees shall be assigned in the respective accounting group with the aim of reducing costs taking into account the sub-accounting groups in the respective cost provisions of the laws listed in Article 2; more detailed rules shall be determined about its execution in the regulation to be issued pursuant to para. 7.

Article 20. (1) The FMA is authorised, in accordance with paras. 2 and 3, to establish a reserve to cover unforeseen costs. This reserve may only be used for covering extraordinary expenses arising from supervision activities.

(2) The transfer to the reserve may be effected for each financial year of the FMA for a maximum of 1 per cent of the total costs of the FMA on the basis of the last adopted annual financial statements for as long as and provided that the total reserve has not reached an amount of 5 per cent of the total costs shown in the last respective annual financial statement.

(3) The reserve shall be disclosed as a reserve in the annual financial statement.

(4) The financial plan shall provide for the reserve and its transfer accordingly.



Official Assistance

Article 21. (1) All bodies of the Federal Government, the provinces (Länder) and municipalities (Gemeinden) are obliged to assist the FMA within the scope of their statutory field of activity. This shall also apply to the Main Association of Austrian Social Security Institutions, provided that the information supplied is required for administrative proceedings and administrative penal proceedings to be conducted by the FMA.

(2) The courts, the Federal Minister of Finance within the scope of his duties pursuant to the federal acts listed under Article 2, the OeNB within the scope of its duties stated in federal acts and its duties within the scope of the European System of Central Banks (ESCB), the Austrian Takeover Commission, E-Control GmbH, the Federal Competition Authority as well as the competent exchange operating company in accordance with the BörseG 2018 shall cooperate with the FMA by providing mutual assistance.

(3) The FMA shall not provide official assistance to bodies of fiscal administration, in particular pursuant to Article 158 of the Federal Tax Code (BAO; Bundesabgabenordnung) as published in Federal Law Gazette no. 194/1961.

(4) The bodies of the public police service shall assist the FMA within the scope of their statutory field of activity at the FMA's request to safeguard its supervisory powers pursuant to Article 2 where otherwise the measures imposed risk being impeded.

(5) The Federal Financial Agency (Finanzprokuratur) may represent the FMA at its request for valuable consideration.

(6) In agreement with the FMA, the OeNB may use the auditing bodies of the FMA for the performance of audits within the scope of duties of the European System of Central Banks (ESCB) transferred to it under Community law if the procedure would thus be simplified or accelerated or if this would be more expedient, simpler, faster or less expensive.

Cooperation with the European Supervisory Authority

Article 21a. (1) Die FMA is authorised and obliged to engage in broad and mutual cooperation with:

1. The European Banking Authority (EBA) (Regulation (EU) No 1093/2010 of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC – OJ L 331, 15.12.2010, p. 12),
2. The European Securities and Markets Authority (ESMA) Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84), and
3. The European Insurance and Occupational Pensions Authority (EIOPA) (Regulation (EU) No 1094/2010 of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC – OJ L 331 15.12.2010, p. 48), and
4. the other members of the European System of Financial Supervision (ESFS) (Article 1 (3) of Regulation (EU) No 1092/2010 of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board).

(2) For the purposes of para. 1, the FMA shall upon request provide the members of the ESFS all information necessary to perform the duties under the EFSF. The FMA may also, for the purpose of cooperation in accordance with this paragraph or pursuant to Regulation (EU) No 1092/2010, use its powers exclusively for the purpose of such cooperation, even if the behaviour that is subject to an investigation does not constitute a violation of any provision under Austrian law.

Restriction of the legal effect of administrative decisions issued by the FMA

Article 21b. (1) As soon as a European Supervisory Authority adopts a decision pursuant to Article 17 (6), Article 18 (4) or Article 19 (4) of Regulations (EU) No 1093/2010, (EU) No 1094/2010 or



(EU) No 1095/2010 that is addressed directly to a financial institution within the meaning of Articles 17, 18 or 19 of Regulations (EU) No 1093/2010, (EU) No 1094/2010 or (EU) No 1095/2010, administrative decisions issued by the FMA on the same matter shall cease to be effective at that time.

(2) Provided that the FMA follows a recommendation, a requirement or a decision by the European Supervisory Authority or the European Commission pursuant to Articles 17, 18 or 19 of the Regulations (EU) No 1093/2010, (EU) No 1094/2010 or (EU) No 1095/2010, it may modify the administrative decision even to the detriment of the party or of stakeholders, if the prerequisites specified in Articles 17, 18 or 19 apply, by way of derogation from Article 68 para. 3 of the Allgemeines Verwaltungsverfahrensgesetz (AVG; General Law on Administrative Procedure).

Procedural Provisions

Article 22. (1) The FMA shall be competent for the enforcement of the administrative decisions that it issues, with the exception of administrative penal decisions. In addition, the FMA shall have the power to enforce all decisions, except administrative penalties, made by the parties to the ESFS under Article 28 of Regulations (EU) No 1093/2010, (EU) No 1094/2010 or (EU) No 1095/2010 each. The Administrative Enforcement Act of 1991 (VVG - Verwaltungsvollstreckungsgesetz 1991) as published in Federal Law Gazette No. 53 shall apply, unless otherwise stated in para. 2 and para. 11. The competent enforcement authority pursuant to the VVG shall act in place of the authority in the first sentence of Article 53 para. 1 VStG and the first sentence of Article 53a VStG.

Note: Para. 2 will be repealed at the end of 31 August 2019 (Amendment in Federal Law Gazette I 11/2018)

(2) Appeals against FMA administrative decisions and requests for submission do not have suspensory effect, except in relation to administrative penal matters. The Federal Administrative Court shall grant upon request suspensory effect to the appeal following a hearing with the FMA by means of a resolution, provided that compelling public interests do not prevent this, and after weighing up the interests of all concerned parties, with which the execution would be associated with a disproportionate disadvantage for the party lodging the appeal. In the event that suspensory effect is granted, then the execution of the contested administrative decision shall be suspended and the necessary orders to be taken. In the event that the conditions that were responsible for the resolution regarding suspensory effect have changed significantly, then a new decision shall be required if requested by a party.

(2a) The Federal Administrative Court shall rule upon appeals against administrative decisions issued by the FMA by means of a panel, with the exception of administrative penal matters in which neither a prison sentence nor a fine in excess of EUR 600 were imposed. With the exception of administrative penal matters, a ruling on the appeal shall be made within the time frame specified for decisions in the first instance, at latest however after six months; the time period shall commence as soon as the appeal has been received by the Federal Administrative Court.

(2b) Prior to an administrative decision being issued the right to waive the right of appeal may only be submitted in a legally effective way, when it is possible to deduce from the written declaration waiving the right to appeal that the party relinquishing their right to appeal was aware of the content of the anticipated administrative decision at the time of submitting the declaration. Where the declaration waiving the right to appeal is determined by means of meeting minutes, then such minutes shall be issued to the party relinquishing their right to appeal. In this case the explanatory notes to the administrative decision may be omitted. An appeal petitioned despite having waived the right of appeal is not permissible.

(2c) Para. 2b shall not apply to administrative decisions issued pursuant to Article 57 AVG and Article 116 BaSAG.

(3) Regulations of the FMA shall be announced in the Federal Law Gazette (BGBl. - Bundesgesetzblatt).

(3a) The FMA shall conduct a public review procedure for drafts of Regulations, Circulars, Guidelines and Minimum Standards, to allow interested persons the opportunity to comment on them. The FMA shall publish the start and end dates of the review procedure on its website, and to set the deadline for the submission of comments in a manner commensurate to the subject and scope of the regulations in question and the urgency of the proposed initiative. The FMA shall publish comments received during the review procedure on its website. In cases of particular urgency, the FMA may refrain fully from conducting a public review procedure prior to issuing a Regulation; in such instances the FMA shall explain the reasons for refraining from conducting such a review in the explanatory notes about the Regulation.



(4) The FMA shall permanently keep documents and records of general or fundamental significance. Administrative decisions issued by the FMA shall in any case be subject to this obligation to permanently keep documents and records. Other documents and records shall be kept for a minimum of seven years, with this period commencing at the end of the calendar year in which:

1. the legal relationship ended, in the case of permanent legal relationships;
2. the FMA was last active in the respective matter, in all other cases.

(5) By way of derogation from Article 9 para. 2 of the Administrative Penal Act (VStG - Verwaltungsstrafgesetz) the appointment of agents responsible for adhering to the provisions of the laws listed in Article 2, who are threatened with an administrative penalty, shall only become legally effective, once the FMA has received a written notification about the appointment as well as proof of consent of the appointed person. This shall not apply to the appointment of responsible agents upon the authority's request pursuant to Article 9 para. 2 VStG.

(5a) The FMA may prescribe by means of a regulation that the written notification pursuant to the first sentence of para. 5 may only be made only in electronic form and shall be required to conform with specific formats, technical minimum requirements and procedures for transmission. In so doing, the FMA shall observe the principles of economy and expediency, ensuring that the data is electronically available to the FMA at all times and that supervisory interests are not compromised. The FMA shall adopt appropriate arrangements to allow individuals subject to reporting requirements or, where applicable, individuals they have charged with submitting the reports on their behalf, to verify over an appropriate period of time whether the reporting data submitted by them or by the person charged with submitting the reports is correct and complete.

(6) The FMA may

1. desist from imposing a fine on a natural or legal person or both, where the breach is not significant,
2. desist from imposing a fine on a person responsible pursuant to Article 9 of the Administrative Penal Act 1991 (VStG; Verwaltungsstrafgesetz 1991), published in Federal Law Gazette I No. 52/1991, when an administrative penalty has already been imposed on the legal person for the same breach and no particular circumstances exist that prevent the possibility of refraining from imposing a fine.

(7) For administrative offences in accordance with the Federal Acts listed in Article 2, instead of the limitation period set out in Article 31 para. 1 VStG a limitation period of 18 months shall apply, provided that those Federal Acts do not stipulate otherwise.

(8) When several administrative offences are committed by a single act or several acts pursuant to one or several of the Federal Acts listed in Article 2 or if a single act falls under several penalties that do not exclude one another, then only a single administrative penalty shall be imposed. This administrative penalty shall be determined in accordance with the penalty that carries the largest fine.

(9) Where an administrative penalty was imposed pursuant to para. 8 and where a further administrative penalty is intended to be imposed, that could have been imposed already in the earlier procedure after the time at which it was committed, then an additional fine shall be imposed. This fine shall not be allowed to exceed the maximum amount of the fine, that is prescribed for the act that is to be punished. The total of the fines shall not be allowed to exceed those fines that are permissible in accordance with para. 8, and which would be imposed in the case of a joint fine. If in the case of a joint fine no higher fine were to be imposed that the fine issued in the previous procedure, then an additional fine shall be desisted from.

(10) Where several administrative offences of the same or different type have been committed, this shall constitute an aggravating factor for the calculation of the fine.

(11) Instead of the amount stated in Article 5 para. 3 VVG, the amount of EUR 30 000 shall replace the amount for the enforcement of an administrative decision in accordance with the Federal Acts listed in Article 2, provided that those Acts do not stipulate otherwise.

(12) The FMA shall communicate observations of a fundamental nature or of special significance in its fields of supervision to the Federal Minister of Finance and the Oesterreichische Nationalbank. Moreover, the FMA must also communicate administrative decisions to the Oesterreichische Nationalbank where knowledge of such administrative decisions is necessary for the Oesterreichische Nationalbank to fulfil its statutory duties.



Late charges

Article 22a. If a company that is subject to the FMA's supervision pursuant to Article 1 or any other person or body does not comply with

1. the obligations and orders pursuant to:
 - a) Article 44 BWG;
 - b) Article 71 paras. 2 and 4 WAG 2018,
 - c) Article 72 paras. 2 and 4 WAG 2018,
 - d) Article 21 para. 8 PKG,
 - e) Article 30a para. 1 PKG,
 - f) Article 36 paras. 2 and 3 PKG,
 - g) Article 116 para. 3 second sentence VAG 2016,
 - h) Article 248 paras. 1 to 5 VAG 2016,
 - i) Article 249 para. 1 second sentence VAG 2016,
2. Submission obligations based on an order issued pursuant to:
 - a) Article 70 para. 1 nos. 1 and 2 BWG;
 - b) Article 90 para. 3 nos. 1 to 4 and 9 WAG 2018;
 - c) Article 33 para. 3 nos. 1 and 2 PKG;
 - d) Article 79 para. 3 no. 3 VAG 2016;
 - e) Article 248 para. 8 VAG 2016; or
 - f) *(Note: repealed in Federal Law Gazette I No. 34/2015)*
3. an order where a time limit has been set pursuant to:
 - a) Article 33b PKG;
 - b) Article 275 VAG 2016;
 - c) Article 277 VAG 2016;
 - d) Articles 278 to 280 VAG 2016;
 - e) Article 282 para. 2 VAG 2016;
 - f) Article 283 VAG 2016;

in time, the FMA may prescribe the entity or the other person or body, at the same time as requesting the delay to be made up, in the event that this request is unsuccessful, or if an earlier such request has not been complied with, to pay a late charge of up to EUR 7,000 to the Federal Government. In this case, the extent of the delay as well as the obstruction of the supervision of the business practices and the extra costs incurred shall be taken into account, that have arisen as a result of the delayed submission. The prescription of late charges may be carried out repeatedly until the grounds for delay cease to exist.

Unauthorised Business Activities and Violations in conjunction with Combatting of Money Laundering and Terrorist Financing

Article 22b. (1) For the purpose of pursuing transgressions listed in Article 98 paras. 1 and 1a BWG, Article 99 para. 1 ZaDiG 2018, Article 29 para. 1 E-Geldgesetz 2010, Article 60 para. 1 no. 1 AIFMG, Article 94 WAG 2018, Article 105 para. 1 nos. 1 and 2 and Article 107 para. 8 BörseG 2018, Article 4 para. 1 no. 1 ZvVG, Article 47 PKG, Article 4 para. 1 RW-VG and Article 329 VAG 2016, the FMA shall be authorised to obtain the necessary information from natural and legal persons as well as from other bodies having a legal personality, and to process the necessary information; this right also included the power to access books, documents and electronic data carriers on-site as well as to allow extracts to be obtained of them.

(2) Other provisions relating to professional secrecy in other federal acts than those mentioned in para. 1 shall remain unaffected by the provisions of this federal act.

Article 22c. (1) The FMA may provide information or make disclosures about measures or sanctions imposed for violations pursuant to Article 98 para. 1a BWG, Article 99 para. 1 ZaDiG 2018, Article 29 para. 1 E-Geldgesetz 2010, Article 60 para. 1 no. 1 AIFMG, Article 94 WAG 2018, Article 105 para. 1 nos. 1 and 2 and Article 107 para. 8 BörseG 2018, Article 47 PKG, Article 329 VAG 2016 only in accordance with nos. 1 to 3:



1. In the event of an official act being performed during pending proceedings, the FMA shall not mention the names of the parties involved, unless they are already publicly known or the general public has a predominant interest in learning these names.
2. In the event of sanctions being imposed, the FMA may provide information on or make public the names of the persons or companies upon which the sanctions have been imposed, the names of those companies for which persons are responsible upon whom sanctions have been imposed as well as the nature of the sanctions imposed. Any legal acts issued by the FMA by means of an administrative decision after proceedings have been completed shall be considered as sanctions within the meaning of this provision.
3. The FMA shall not provide information about or make public official acts if:
 - a) providing the information or making it public would pose a serious threat to the stability of financial markets; or
 - b) providing the information or making it public would lead to disproportionately large damage being incurred by an involved party affected by the information or the act of making it public; or
 - c) the conduct of proceedings or taking of measures which are in the interest of the public may be thwarted, hampered, delayed or jeopardised by providing this information.

(2) Any person about whom information has been made public or provided may file a request for review with the FMA of the legality of making the information public or providing it pursuant to para. 1, which shall be carried out in proceedings culminating in an administrative decision. In this case, the FMA shall announce the initiation of such proceedings in a similar manner. If within a review conducted, it is found that information has been made public or provided unlawfully, the FMA shall correct the information made public or provided or, upon request of the person concerned, retract it or remove it from its website. If a complaint against an administrative decision, which has been announced pursuant to para. 1, is granted suspensory effect in proceedings conducted before public-law courts, the FMA shall make this known in the same manner. The information made public or provided shall be corrected or, upon request of the person concerned, either be retracted or removed from the website as soon as the administrative decision has been repealed.

Article 22d. (1) If the suspicion exists of a transgression pursuant to Article 98 paras. 1 and 1a BWG, Article 99 para. 1 ZaDiG 2018, Article 29 para. 1 E-Geldgesetz 2010, Article 60 para. 1 no. 1 AIFMG, Article 94 WAG 2018, Article 105 para. 1 nos. 1 and 2 BörseG 2018, Article 4 para. 1 no. 1 ZvVG, Article 47 PKG, Article 4 para. 1 RW-VG, or Article 329 VAG 2016, then the FMA shall, regardless of the initiation of penal proceedings, issue a procedural instruction that requests the entity conducting the suspicious business operations to restore the state referred to in the law within an appropriate timeframe, which is to be specified by the FMA. If an entity requested to comply in this way does not comply with the instruction within the defined period, the FMA shall order measures that are necessary for restoring the state referred to under law, such as partially closing down operations or closing down operations as a whole, by issuing an administrative decision.

(2) If the conditions for issuing an administrative decision no longer exist, and it is expected that the company wishing to conduct the activities will adhere to the licencing provisions in the future, the FMA shall at the entity's request revoke the measures taken by administrative decision pursuant to para. 1 second sentence at the earliest possible opportunity.

Article 22e. The FMA shall act in the public interest in the enforcement of Articles 22b to 22d.

Article 22f. A natural person's right to object against a publication of personal data by the FMA that is made in the enforcement of one of the Federal Acts listed in Article 2 pursuant to Article 21 of Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119, 04.05.2016, p. 1, shall be excluded, in the case that in deciding about the type and nature of the publication the interests of the natural person that need to be protected shall be required to be taken into account and where the natural person is provided the right to check the legality of the publication in a procedure to be concluded by means of an administrative decision.

Administrative Decisions in response to Requests for Information (*Auskunftsbescheide*)

Article 23. (1) Provided that the legal assessment of specific situations is not conferred to the European Central Bank or the Single Resolution Board, the FMA shall upon request (para. 4) advise by means of an administrative decision in response to a request for information (*Auskunftsbescheid*) about the assessment under supervisory law of specific situations (para. 2), where a particular interest exists with



regard to the significant effects under supervisory law. Until the administrative proceedings for the issuing of an administrative decision in response to a request for information (*Auskunftsbescheid*) has been concluded, the responsibility for a correct legal assessment of the circumstance that is subject of the proceedings, in particular with reference to the (non-)applicability of specific legal regulations remains fully with the applicant.

(2) Legal enquiries about situations in relation to the Federal Acts listed in Article 2 paras. 1 to 4 shall be the subject matter of administrative decisions in response to a request for information (*Auskunftsbescheid*), in particular with regard to new kinds of business models and where applicable the accompanying licensing obligations. The situations shall address

1. situations that have not yet been realised at the point of time of the submission of the request for information, or
2. situations that have already been realised at the point of time at which the request for information was submitted, but where the request for information however relates to a legal situation that is materially amended in the future, provided that such an amendment has already been published at the point in time at which the request for information is made.

(3) The following parties shall be authorised to submit the request for information (para. 1):

1. natural or legal persons,
2. associations of persons (personal bodies) that do not have a legal personality in their own right,
3. persons that have their own justified interest in the outcome of the assessment in accordance with supervisory law, in the case that the underlying situation in the request for information is intended to be performed by a legal person that does not yet exist or by an association of persons (body of persons).

(4) The request for information shall contain the following items:

1. a complete and self-contained description of the situation that has not yet been realised at the point of time of the request for information being made;
2. a submission about the party making the request for information;
3. a description of the legal issue;
4. the formulation of specific legal enquiries;
5. the submission of a legal interpretation containing a detailed statement of reasons about the formulated legal enquiries.

(5) The administrative decision in response to a request for information shall be required to contain the following items:

1. the underlying situation for the assessment under supervisory law,
2. the assessment under supervisory law,
3. the underlying regulations for the assessment.

(6) A legal right shall exist that the assessment under supervisory law contained in the administrative decision in response to a request for information shall form the basis of the assessment of a situation that is subsequently actually realised, where the realised situation does not deviate or only deviates marginally from the situation set out in the administrative decision in response to a request for information. Such a legal right shall exist for:

1. applicants pursuant to para. 3 nos. 1 and 2 and their universal legal successors,
2. Partners of associations of persons (personal bodies) without their own separate legal personality as their universal legal successors with regard to administrative decisions in response to a request for information (*Auskunftsbescheide*) that are addressed to the associations of persons (personal bodies),
3. the legal person or the association of persons (personal bodies) without their own separate legal personality, that apply within one month of the commencement of their legal existence, where the request for information was submitted by a person pursuant to para. 3 no. 3.

(7) The legal right (para. 6) shall lapse in the case that the FMA's legal assessment changes as a consequence of the repealing or amendment of the regulations underlying the administrative decision in response to a request for information (*Auskunftsbescheid*) including the interpretations of the European Supervisory Authorities for ensuring the consistent application of binding Union legislative acts. The assessment under supervisory law (para. 5 no. 2) shall not be considered binding, where it is proven to be incorrect to the detriment of the party.



(8) Applications shall pay a contribution towards the administrative costs for the processing of the request for information (para. 1). The obligation of the applicant to pay shall exist with effect from the request for information being received. The FMA shall collect the contribution towards administrative costs and shall determine more detailed regulations about the respective amount and the deadlines for payment of the contribution towards administrative costs by means of a Regulation; the amount of the contribution towards administrative costs shall be determined in the Regulation by means using lump sum amounts, split into at least three subcategories ranging between EUR 1 500 and EUR 10 000 based on the complexity of the situation to be assessed and the associated outlay for the legal assessment. In the event that the request for information is submitted by several parties, they shall be considered as the joint and several debtors.

(9) The contribution towards administrative costs shall only be EUR 500 in the event that the request for information

1. is rejected pursuant to Article 13 para. 3 AVG,
2. is withdrawn pursuant to Article 13 para. 4 AVG, or
3. is withdrawn prior to the start of processing.

Exemption from Fees and Duties

Article 24. The FMA is exempted from the stamp and legal fees, federal administration fees as well as court fees and judicial administrative fees. The FMA shall be considered a credit institution for the purpose of value added tax and capital gains tax.

Transitional and Final Provisions

Article 25.

1. (referring to article 1)

The FMA shall be deemed established as of the effective date of the appointment of the first Executive Board and Supervisory Board. The official competence of the FMA shall commence on 1 April 2002. The Federal Minister of Finance shall hand over to the FMA any and all files on the enforcement of the federal acts stipulated under article 2, provided that the competence of the Federal Minister of Finance has been transferred to the FMA; and where and until hand-over has not yet taken place, the Federal Minister of Finance shall ensure that the FMA has access to these files from 1 April 2002 onwards. Tenancy agreements and contracts for work that have been concluded by the Federal Minister of Finance in the area of enforcement of the federal acts listed in Article 2 and which are valid on 31 March 2002 shall be transferred from the Federal Minister of Finance to the FMA.

2. (referring to Article 5)

The Federal Minister of Finance shall take any actions necessary for the appointment of the first Executive Board of the FMA at the earliest possible opportunity.

3. (referring to Article 6)

The first Executive Board shall issue Rules of Procedure at the earliest possible opportunity, and at latest by 28 February 2002, and shall submit them to the Supervisory Board for approval. In the event that the Executive Board is delayed in doing so, the Supervisory Board shall issue the Rules of Procedure as the earliest possible opportunity.

4. (referring to Article 8)

The Federal Minister of Finance shall appoint the members of the first Supervisory Board no later than four weeks after the proclamation of this federal act; the Oesterreichische Nationalbank shall name members pursuant to Article 8 para. 1 no later than two weeks after the proclamation of this federal act.

5. (referring to Articles 10, 14 and 15)

The Office Committee (Dienststellenausschuss) established on 31 March 2002 at the Federal Ministry of Finance shall serve as works council until a works council has been elected, however, at the latest until 31 March 2002. Moreover, the civil servants assigned to permanently work for the FMA (Article 15 para. 1 no. 1) shall continue to be part of the fields of activity of the Central Committee (Zentralausschuss) at the Federal Ministry of Finance.

6. (referring to Article 12)

The first Supervisory Board shall ensure without delay that the Rules of Procedure are adopted and shall ensure that employment contracts are concluded with the first Executive Board members.

7. (referring to Article 17)



The financial plan for the FMA's 2002 financial year, shall be drawn up without delay, at the latest by 28 February 2002.

Article 26. (referring to Article 19)

(1) The entities liable to pay costs shall make prepayments for the FMA's 2002 and 2003 financial years. In this context, those natural and legal persons shall be liable to pay costs who held a licence to operate banking, insurance, financial services or pension company business on 30 November 2001 and 31 October 2002, respectively.

(2) The following prepayment amounts shall be allocated to the individual accounting groups:

1. for the FMA's 2002 financial year:
 - a) Accounting Group 1: EUR 7.050 million;
 - b) Accounting Group 2: EUR 2.0325 million;
 - c) Accounting Group 3: EUR 2.4150 million;
 - d) Accounting Group 4: EUR 0.2400 million;
2. for the FMA's 2003 financial year:
 - a) Accounting Group 1: EUR 11.750 million;
 - b) Accounting Group 2: EUR 2.845 million;
 - c) Accounting Group 3: EUR 3.340 million;
 - d) Accounting Group 4: EUR 0.340 million;

(3) The prepayment amounts that can be allocated to the individual accounting groups shall be apportioned among the entities liable to pay costs as follows:

1. for Accounting Group 1, pursuant to Article 69a BWG;
2. for Accounting Group 2, pursuant to Article 271 VAG 2016;
3. for Accounting Group 3, pursuant to article 7 WAG and the Cost Regulation of the Austrian Securities Authority (BWA - Bundes-Wertpapieraufsicht), with Article 7 WAG to be applied subject to the provision that 80 per cent is assigned to institutions subject to reporting obligations, 10 per cent to issuers with the exception of the Federal Government and 10 per cent to investment service providers;
4. for Accounting Group 4, pursuant to Article 35 PKG, with the balance-sheet date 31 December 2000 being relevant to the advance payments for the 2002 financial year, and the balance-sheet date 31 December 2001 being relevant to the 2003 financial year for calculating the costs pursuant to Article 35 para. 1 nos. 2 to 4 PKG.

The calculated individual amounts shall be prescribed for payment by the entities liable to pay costs pursuant to para. 4.

(4) The notices of payment due for the entities liable to pay costs in accounting groups 1, 2 and 4 shall be issued by the Federal Minister of Finance, and for entities liable to pay costs in accounting group 3 shall be issued by the BWA; the cost notices for the 2003 financial year shall be issued by the FMA at latest by 15 December 2012..

(5) The payment of prepayment amounts for the 2002 financial year shall be remitted in three installments on 15 April, 15 July and 15 October 2002 into the account set up by the BMF for the FMA at the Oesterreichische Nationalbank, which shall be listed in the notices of payment due.

(6) The Federal Government shall make an advance payment for the amount to be paid by it for the financial year 2002 pursuant to article 19 para 4 in the amount of EUR 750,000 by 10 October 2001, to the account indicated in para 5, out of which the costs of the FMA incurred during 2001 shall be covered. The payments of the remaining amount to be paid by the Federal Government for the 2002 financial year shall be made from 1 January 2002 onwards.

(7) The FMA shall be entitled to continue to use the movable property of the Federal Government (tangible assets of the supervisory authority) used on 31 March, 2002 for the purposes of banking, insurance and pension funds supervision free of charge until 31 December, 2002.

(8) Until the Regulation on Fees of the FMA pursuant to Article 19 para. 10 is issued, for the authorisation of circumstances in accordance with fee items 44 and 45 and 50 to 59 of the Regulation on Federal Administration Fees 1983 (BVwAbgV - Bundesverwaltungsabgabenverordnung) as published in Federal Law Gazette No. 24/1983, in the version published in Federal Law Gazette II No. 146/2000, instead of federal administration fees, authorisation fees in the amount of fee items 50 to 59 BVwAbgV are to be paid to the FMA.



(9) For the calculation of the prepayment amounts for the 2004 financial year, the costs of the FMA in the 2002 short financial year (from 1 April to 31 December, 2002) shall be increased by one third.

(10) The FMA shall be obliged to remit to the Federal Government the amount computed, based on the respective financial statements, from the depreciation of the depreciable fixed assets taken over from BWA by 31 July of the following year, into an account to be named by the Federal Ministry of Finance.

(11) The FMA may, following the promulgation of the federal act in Federal Law Gazette I No. 141/2006, determine the appropriate fees in the Regulation on Fees for the cases contained in this federal act that require a licence.

Article 26a. (Repealed)

Article 26b.

1. (Regarding Article 5 para. 2 in the version of Federal Law Gazette I No. 108/2007) Article 5 para. 2 shall first be applicable for appointments made after 31 December 2007.

2. (Regarding Article 15 in the version of Federal Law Gazette I No. 108/2007) Civil servants pursuant to Article 15, who at the time of entry into force of the federal act as published in Federal Law Gazette I No. 108/2007 who are entrusted to perform duties at the FMA in the Banking Supervision department in relation to on-site inspections or analysis, may be granted the right to be released from work to perform an activity at the Oesterreichische Nationalbank. Article 78c BDG 1979, Federal Law Gazette no. 333/1979, shall be applied to said release from work subject to the provision that:

- a) only a complete release from work may be granted;
- b) the application to be released from work must be made within three months of the entry into force of the federal act in the version published in Federal Law Gazette I No. 108/2007;
- c) the OeNB must reimburse the FMA for the payments referred to in Article 78c para. 4 BDG 1979 for the civil servants concerned. Article 15 para 4 shall continue to be applicable to these civil servants.

3. (regarding Article 19 in the version of the federal act published in Federal Law Gazette I No. 108/2007) The amount to be reimbursed shall first be reimbursed for the 2008 financial year on the basis of the notified direct costs notified in 2009 pursuant to Article 79 para. 4b BWG during the 2010 financial year.

Article 26c. Until 31 December 2013 the area of banking supervision also includes the performing of supervisory duties and exercising of powers, which are defined and assigned to the FMA in the Alternative Investment Funds Manager Act (AIFMG - Alternative Investmentfonds Manager-Gesetz), as published in Federal Law Gazette I No. 135/2013.

Article 26d. By way of derogation from Article 22 para. 5 appointments of responsible agents pursuant to Article 9 para. 2 VStG, which are conducted until 31 December 2013, remain legally effective. Irrespective of the legal effectiveness of the appointment, credit institutions shall in such cases, however, inform the FMA in writing about the names and the evidence of the consent of the appointed agents by 31 March 2014.

Article 26e. The Federal Minister of Finance shall evaluate Article 23 with regard to any need to amend its content by 31 December 2019 at the latest. For this purpose, the FMA shall make the following data for the period between 3 January 2018 and 31 March 2019 to the Federal Minister of Finance by 31 April 2019:

1. The number of applications for the issuing of an administrative decision in response to a request for information each year;
2. The number of administrative decisions in response to a request for information issued each year;
3. Information about the type of thematic areas in supervisory law, for which requests for information to issue administrative decisions in response to a request for information have been made, including the respective allocations of requests for information to these thematic areas;
4. the FMA's annual costs for the processing of requests for information pursuant to Article 23, both in total and broken down by accounting group;
5. the FMA's annual receipts arising from the collection of contributions towards administrative costs pursuant to Article 23 para. 8, both in total and broken down by accounting group.



References

Article 27. Where references to other federal acts are made in this Federal Act, those acts shall be applicable as most recently amended unless specified otherwise.

Entry into Force and Enforcement

Article 28. (1) The provisions of Article 2, Article 12, § 13, § 15 para. 1 no 1 and paras. 2 to 9, Article 18, Article 19, Article 20, Article 21, Article 22 and Article 23 of this federal act including headings shall enter into effect on 1 April 2002.

(Note.: para. 2 found to no longer be applicable by Article 2 para. 2 no. 78, of Federal Law Gazette I No. 2/2008.)

(3) The omission of Article 3, Article 5 para. 3 and Article 16 in the version of the federal act in Federal Law Gazette I No. 45/2002 shall enter into force on 1 April 2002.

(4) Article 2 para. 1 in the version of Federal Law Gazette I No. 45/2002 shall enter into force on 2 April 2002.

(5) Article 2 para. 1 in the version of Federal Law Gazette I No. 100/2002 shall enter into force on 1 July 2002.

(6) Article 2 para. 1 in the version of Federal Law Gazette I No. 80/2003 shall enter into force on 1 September 2003.

(7) Article 2 in the version of Federal Law Gazette I No. 70/2004 shall enter into force on 1 January 2005 and shall apply to financial years beginning after 31 December 2004.

(8) Article 2 para. 1 in the version of Federal Law Gazette I No. 32/2005 shall enter into force on 1 June 2005.

(9) Article 3 including its heading in the version of the federal act in Federal Law Gazette I No. 33/2005 shall enter into force on 1 July 2005.

(10) Article 2 para. 3 in the version of Federal Law Gazette I No. 78/2005 shall enter into force on 10 August 2005.

(11) Article 22a in the version of Federal Law Gazette I No. 56/2007 shall enter into force on 1 August 2007.

(12) Article 2 no 3, Article 19 paras. 4 and 10, Article 22a, Article 22b para. 1, Article 22c and Article 22d para. 1 in the version as amended by Federal Law Gazette I No. 60/2007 shall enter into force on 1 November 2007.

(14) Article 2 para. 1, Article 5 para. 2, Article 18 para. 1, Article 19 paras. 1, 5 and 5a and Article 26b as amended by Federal Law Gazette I No. 108/2007 shall enter into force on 1 January 2008.

(15) Article 21 para. 2 in the version of Federal Law Gazette I No. 22/2009 shall enter into force on 1 April 2009.

(16) Article 2 no 1, Article 19 paras. 5 and 5a, Article 22b para. 1, Article 22c and Article 22d para. 1 in the version as amended by Federal Law Gazette I No. 66/2009 shall enter into force on 1 November 2009.

(17) The heading before Article 22b, Article 22b and Article 22c in the version as amended by Federal Law Gazette I No. 37/2010 shall enter into force on 1 July 2010.

(18) Article 2 paras. 1 and 2, Article 22b para. 1, Article 22c and Article 22d para. 1 in the version as amended by Federal Law Gazette I No. 107/2010 shall enter into force on 30 April 2011.

(19) Article 18 para. 1 and Article 19 paras. 1, 4 and 5 in the version of Federal Law Gazette I No. 50/2011 shall enter into force on 1 August 2011. Article 19 para. 5a in the version of Federal Law Gazette I No. 50/2011 shall enter into force on 1 January 2012.

(20) Article 2 para. 1, Article 21a, 21b and Article 22 para. 1 in the version of the federal act in Federal Law Gazette I No. 77/2011 shall enter into force on the day after publication.

(21) Article 2 para. 3 and Article 22c in the version of Federal Law Gazette I No. 21/2013 shall enter into force on 1 July 2013.

(22) Article 22 paras. 2 and 2a in the version of Federal Law Gazette I No. 70/2013 shall enter into force on 1 January 2014. Article 23 including its heading shall expire at the end of 31 December 2013.



(23) Article 2 para. 1 in the version of Federal Law Gazette I No. 160/2013 shall enter into force on 1 January 2014.

(24) Article 26c in the version of Federal Law Gazette I No. 135/2013 shall enter into force on 22 July 2013. Article 22b para. 1, Article 22c and Article 22d para. 1 in the version of the federal act in Federal Law Gazette I No. 135/2013 shall enter into force on the day after publication. Article 2 paras. 1 and 3 and Article 19 paras. 4 and 10 shall enter into effect on 1 January 2014 and shall be applicable to FMA financial years beginning after 31 December 2013. The text in article 2 para 1 shall be deleted at the end of 31 December 2013.

(25) Articles 13 to 13b including headings, Article 14 para. 4, Article 16 para. 2a, Article 18 paras. 1 and 2, Article 22 para. 5, Article 22b para. 1, Article 22c para. 1, Article 22d para. 1 and Article 26d in the version of the Federal Act published in Federal Law Gazette I No. 184/2013 shall enter into force on 1 January 2014.

(26) Article 2 para. 1 in the version of Federal Law Gazette I No. 51/2014 shall enter into force on the following day after publication.

(27) Article 2 para. 1, Article 18 para. 1, Article 19 paras. 1, 5 and 5c in the version as amended by Federal Law Gazette I No. 98/2014 shall enter into force on 1 January 2015.

(28) Article 2 para. 2, Article 18 para. 1, Article 19 paras. 1, 4, 5 and 5b, Article 22a no. 1 points g to i, no. 2 points d and e, the deletion of Article 22a no. 2 point f, Article 22a no. 3, Article 22b para. 1, Article 22c para. 1, Article 22d para. 1 und Article 26 para. 3 no. 2 in the version of Federal Law Gazette I No. 34/2015 enter into force on 1 January 2016

(29) Article 18 para. 1 and Article 19 paras. 1, 4 and 5 in the version of Federal Law Gazette I No. 117/2015 shall enter into force on 1 January 2016 and shall be applicable to FMA financial years beginning after 31 December 2015.

(30) Article 19 paras. 1, 4 and 5 in the version of Federal Law Gazette I No. 159/2015 shall enter into force on 1 January 2016 and shall be applicable to FMA financial years beginning after 31 December 2015.

(31) Article 2 para. 1 no.17 in the version of the Federal Act published in Federal Law Gazette I No. 73/2016 enters into force on 18 September 2016.

(32) Article 2 para. 1 nos. 1 to 16 and 18 and paras. 2 to 4, Article 18 para. 1 and Article 19 para. 5c in the version in the federal act in Federal Law Gazette I No. 73/2016 enter into force on the following day after publication.

(33) Article 2 paras. 1 to 3, Article 22 para. 1, Article 22b para. 1 and Article 22c para. 1 in the version as amended by Federal Law Gazette I No. 118/2016 shall enter into force on 1 January 2017.

(34) Article 2 para. 3 no. 15 in the version of the Federal Act published in Federal Law Gazette I No. 93/2017 shall enter into force on the following day after publication, Article 22b para. 1 and Article 22d para. 1 in the version of the Federal Act published in Federal Law Gazette I No. 93/2017 shall enter into force on 1 January 2018.

(35) Article 2 para. 3 nos. 1 and 2, Article 19 paras. 4 and 10, Article 21 para. 2, Article 22 paras. 1, 5a, and 6 to 11, Article 22a no. 1 lits. b and c, Article 22a no. 2 lit. b, Article 22b para. 1, Article 22c para. 1 and Article 22d para. 1 in the version of the Federal Act amended by Federal Law Gazette I No. 107/2017 shall enter into force on 3 January 2018. Article 26a shall expire at the end of 2 January 2018.

(36) Article 2 para. 6, Article 8 para. 1, Article 14 paras. 1a and 1b, Article 16a including heading, Article 18 para. 1, Articles 19 paras. 1 and 5 to 5d, Article 22 paras. 2b, 2c, 3a and 12, Article 3 including heading as well as Article 26e in the version of the Federal Act amended in Federal Law Gazette I No. 149/2017 shall enter into force on 3 January 2018.

(37) Article 2 para. 1 no. 10, Article 22b para. 1, Article 22c para. 1 and Article 22d para. 1 in the version as amended by Federal Act in Federal Law Gazette I No. 17/2018 shall enter into force on 1 June 2018.

Article 29. The following shall be in charge of enforcement:

1. with regard to Article 5 para. 2 the Federal Government,
2. with regard to all other provisions of this federal act, the Federal Minister of Finance.