



Financial Markets Anti-Money Laundering Act

(*FM-GwG – Finanzmarkt-Geldwäschegesetz*)

Full Title: Federal Act on the Prevention of Money Laundering and Terrorist Financing in Financial Markets (*FM-GwG – Finanzmarkt-Geldwäschegesetz*)

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Table of contents

Section 1

Scope and Definition of Terms

- Article 1. Scope
Article 2. Definition of Terms

Section 2

Risk assessment

- Article 3. National risk assessment
Article 4. Risk assessment at company level

Section 3

Customer due diligence

- Article 5. Application of due diligence obligations
Article 6. Scope of due diligence obligations
Article 7. Point of time of application of due diligence obligations
Article 8. Simplified due diligence
Article 9. Enhanced due diligence
Article 10. Correspondent relationships
Article 11. Transactions and business relationships with politically exposed persons (PEPs)
Article 12. Inadmissible business relationships and measures for non-cooperative countries and territories

Section 4

Performance by third parties

- Article 13. Admissibility of performance by third parties
Article 14. Performance by third parties in the case of groups
Article 15. Outsourcing and agency relationships

Section 5

Reporting obligations

- Article 16. Reports to the Financial Intelligence Unit (Geldwäschemeldestelle)
Article 17. Non-execution of transactions
Article 18. Notifications from the competent authorities to the Financial Intelligence Unit (Geldwäschemeldestelle)
Article 19. Exclusion from claims for damages and protection against threats
Article 20. Prohibition of disclosure

Section 6

Retention of records, data protection, statistical information and requirements for their internal organisation

- Article 21. Requirements for retention of records and data protection
Article 22. Information exchange with the Financial Intelligence Unit (Geldwäschemeldestelle) and the FMA
Article 23. Requirements for internal organisation and trainings



Article 24. Strategies and procedures for groups

Section 7 Supervision

Article 25. Aims and principles of supervision
 Article 26. Authorisation to process data
 Article 27. Cooperation of Bundesrechnungszentrum GmbH
 Article 28. Supervision costs
 Article 29. Information and disclosure obligations
 Article 30. On-site inspections
 Article 31. Supervisory measures of the FMA
 Article 32. Supervision in the Context of the Freedom of Establishment and the Freedom to Provide Services
 Article 33. *Repealed*

Section 8 Penal provisions and disclosures

Article 34. Breaches of obligations
 Article 35. Penal liability of legal persons
 Article 36. Extension of the limitation period
 Article 37. Disclosure
 Article 38. Effective punishment of breaches of obligations
 Article 39. Usage of received fines
 Article 40. Protection of whistleblowers
 Article 41. Notifications to the European Supervisory Authorities

Section 9 Transitional and final provisions

Article 42. Entry into force
 Article 43. Entry into force of amendments
 Article 44. References
 Article 45. Gender-neutral use of language
 Article 46. Transitional provisions
 Article 47. Enforcement Clause

Annexes

Annex I
 Annex II
 Annex III

Section 1

Scope and Definition of Terms

Scope

Article 1. This federal act shall be applied to credit institutions and financial institutions (obliged entities). Excluded from this group are branches or branch establishments located in other Member States of credit institutions and financial institutions incorporated in Austria.

Definition of Terms

Article 2. For the purposes of this federal act, the following definitions shall apply:



1. credit institution: a credit institution pursuant to Article 1 para. 1 BWG and a CRR-credit institution pursuant to Article 9 BWG which provides activities in Austria through a branch.
2. financial institution:
 - a) financial institution pursuant to Article 1 para. 2 nos. 1 to 6 BWG;
 - b) an insurance undertaking pursuant to Article 1 para. 1 no. 1 VAG 2016 and a small insurance undertaking pursuant to Article 1 para. 1 no. 2 VAG 2016 respectively within the scope of their life assurance operations (classes 19 to 22 pursuant to Annex A to VAG 2016);
 - c) an investment firm pursuant to Article 3 para. 1 WAG 2018 and an investment services provider pursuant to Article 4 para. 1 WAG 2018;
 - d) an AIFM pursuant to Article 4 para. 1 AIFMG and a non-EU AIFM pursuant to Article 39 para. 3 AIFMG;
 - e) an e-money institution pursuant to Article 3 para. 2 of the E-Geldgesetz 2010;
 - f) a payment institution pursuant to Article 7 ZaDiG;
 - g) the Austrian Post with regard to its money transfer services;
 - h) Financial institutions pursuant to points a) to d) of Article 3 (2) of Directive (EU) 2015/849 with their place of incorporation in another Member State with business operations conducted through branches or branch establishments located in Austria as well as branches or branch establishments of such financial institutions that are authorised in third countries.
3. beneficial owner: a beneficial owner pursuant to Article 2 WiEReG. Article 2 no. 1 WiEReG shall not apply to exchange-listed companies, whose securities are admitted to listing on a regulated market in one or more Member States, or exchange-listed companies from third countries which are subject to disclosure obligations pursuant to a Regulation to be issued by the FMA on the basis of Article 85 para. 10 BörseG and such disclosure obligations are equivalent or comparable to those set forth in Union law.
4. trust or company service provider: any person providing one of the following services for third parties on a commercial basis:
 - a) the formation of companies or other legal persons;



- b) acting as, or arranging for another person to act as, a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;
 - c) providing a registered office, business address, correspondence or administrative address and other related services for a company, a partnership or any other legal person or arrangement;
 - d) acting as, or arranging for another person to act as, a trustee of an express trust or a similar legal arrangement;
 - e) acting as, or arranging for another person to act as, a nominee shareholder for another person other than a company listed on a regulated market that is subject to disclosure requirements in accordance with Union law or subject to equivalent international standards.
5. Correspondent relationship:
- a) the provision of banking services by one credit institution as the correspondent to another credit institution as the respondent, including providing a current or other liability account and related services, such as cash management, international funds transfers, cheque clearing, payable-through accounts and foreign exchange services;
 - b) the relationships between and among credit institutions and financial institutions including where similar services are provided by a correspondent institution to a respondent institution, and including relationships established for securities transactions or funds transfers.
6. politically exposed person: a natural person who is or who has been entrusted with prominent public functions including the following:
- a) heads of state, heads of government, ministers and deputy or assistant ministers; in Austria this particularly applies to the Federal President, the Federal Chancellor and the members of the Federal Government and the provincial governments;
 - b) Members of parliament or members of similar legislative bodies; in Austria this particularly applies to the members of the National Council (*Nationalrat*) and the Federal Council (*Bundesrat*);
 - c) Members of the governing bodies of political parties; in Austria this particularly applies to members of the governing bodies of political parties in the National Council;



- d) members of supreme courts, of constitutional courts or of other high-level judicial bodies, the decisions of which are not subject to further appeal, except in exceptional circumstances; in Austria this particularly applies to judges in the Supreme Court of Justice (*Oberster Gerichtshof*), the Constitutional Court (*Verfassungsgerichtshof*) and the Supreme Administrative Court (*Verwaltungsgerichtshof*);
- e) Members of courts of audit or the management bodies of central banks; in Austria this particularly applies to the President of the Austrian Court of Audit (*Bundesrechnungshof*) as well as the Directors of the Courts of Audit of the individual provinces (*Landesrechnungshof*) and the Members of the Governing Board of the Oesterreichische Nationalbank;
- f) Ambassadors, chargés d'affaires and high-ranking officers of the armed forces; in Austria this particularly applies to high-ranking officers in the armed forces in particular members of the military with a rank of Lieutenant General (*Generalleutnant*) or higher;
- g) Members of the administrative, management or supervisory bodies of state-owned enterprises; in Austria this particularly applies to enterprises in which the Federal Government holds at least 50% of the nominal capital, share capital or equity capital or which the Federal Government solely operates or which the Federal Government actually controls by financial means or other economic or organisational measures; in the case of enterprises in which a province holds at least 50% of the nominal capital, share capital or equity capital, or which a province solely operates or which the province actually controls by financial means or other economic or organisational measures - provided the total annual turnover of such an enterprise exceeds EUR 1 000 000 - the management board or the managing director. The total annual turnover shall be determined on the basis of the annual turnover stated in the most recent adopted annual financial statement;
- h) Directors, deputy directors and members of the board or an equivalent function of an international organisation.

No public function referred to in points a) to h) shall be understood as covering middle-ranking or more junior officials;

7. Family members: in particular

- a) the spouse of a politically exposed person, a person considered to be equivalent to a spouse of a politically exposed person or the life partner as defined in Article 72 para. 2 StGB,



- b) the children (including adopted and foster children) of a politically exposed person and their respective spouses, or a person considered to be equivalent to a spouse or life partner as defined in Article 72 para. 2 StGB,
 - c) the parents of a politically exposed person.
- 8. persons known to be close associates:
 - a) natural persons who are known to have joint beneficial ownership of legal entities or legal arrangements, or any other close business relations, with a politically exposed person;
 - b) natural persons who have sole beneficial ownership of a legal entity or legal arrangement which is known to have been set up for the de facto benefit of a politically exposed person.
- 9. senior management: officers or employees of the obliged entity with sufficient knowledge of the institution's money laundering and terrorist financing risk exposure and sufficient seniority to take decisions affecting its risk exposure, and need not, in all cases, be a member of the board of directors.
- 10. business relationship: any business, professional or commercial relationship which is connected with the commercial activities of an obliged entity and which is expected, at the time when the contact is established, to have an element of duration.
- 11. group: a group of undertakings which consists of a parent undertaking, its subsidiaries, and the entities in which the parent undertaking or its subsidiaries hold a participation, as well as undertakings linked to each other by a relationship within the meaning of Article 22 of Directive 2013/34/EU;
- 12. electronic money: electronic money pursuant to Article 1 para. 1 E-Geldgesetz 2010.
- 13. shell bank: a credit institution or financial institution, or an institution that carries out activities equivalent to those carried out by credit institutions and financial institutions, incorporated in a jurisdiction in which it has no physical presence, involving meaningful mind and management, and which is unaffiliated with a regulated financial group.
- 14. Financial Intelligence Unit (Geldwäschemeldestelle): the Financial Intelligence Unit (Geldwäschemeldestelle) pursuant to Article 4 para. 2 no. 1 of the Criminal Intelligence Service Act (BKA-G, Bundeskriminalamt-Gesetz).
- 15. customer: any person who has established a business relationship with the obliged entity, or wishes to establish one, as well as any person for whom the obliged entity conducts



a transaction or intends to conduct one, that does not fall within the scope of a business relationship (occasional transaction).

16. high-risk third countries: third countries, which have strategic deficiencies in their national anti-money laundering and counter financing of terrorism regime, that pose significant threats to the financial system of the European Union and which have been determined by the European Commission by means of a Delegated Regulation pursuant to Article 9 of Directive (EU) 2015/849.
17. Member State: a Member State of the European Union or another State that is a signatory country to the Agreement on the European Economic Area, published in Federal Law Gazette no. 909/1993 in the version of the protocol adjustment in Federal Law Gazette no. 910/1993 (EEA).
18. third country: any country that is not a Member State pursuant to no. 17.
19. life assurance contracts: life assurance contracts (classes 19 to 22 pursuant to Annex A to VAG 2016) and life assurance contracts and other insurance contracts with an investment purpose, provided that they are sold in Austria under the freedom of establishment.
20. European Supervisory Authorities; the European Banking Authority (EBA) pursuant to Regulation (EU) no 1093/2010, the European Insurance and Occupational Pensions Authority (EIOPA) pursuant to Regulation (EU) no 1094/2010 and the European Securities and Markets Authority (ESMA) pursuant to Regulation (EU) no 1095/2010.

Section 2

Risk assessment

National risk assessment

Article 3. (1) A coordinating committee shall be established at the Federal Ministry of Finance to develop measures and strategies for the prevention of money laundering and terrorist financing, to identify assess, understand and mitigate the risks prevailing in Austria with regard to money laundering and terrorist financing as well as all data protection issues. The Federal Ministries for Justice, for the Interior, for Science, Research and Economy, for Europe, Integration and Foreign Affairs, as well as the Financial Market Authority (FMA) and the Oesterreichische Nationalbank shall nominate at least one member and a deputy member. The chairperson and their deputy shall be nominated by the Federal Minister of Finance. The chairperson shall convene the coordination committee at least twice per calendar year. The



members of the coordination committee may also request it to be convened in the event of material reasons prevailing.

(2) The coordinating committee shall draw up and maintain a national risk assessment on an ongoing basis. The basis of the national risk assessment shall consist of the contributions of the members listed in para. 1, who shall draw up such contributions in relation to their respective competences. In drawing up the national risk assessment, the findings of the report of the European Commission on the risks of money laundering and terrorist financing affecting the internal market pursuant to Article 6 (1) of Directive (EU) 2015/849 shall be taken into account. The chairperson of the coordination committee shall be responsible for coordinating the drawing up of the national risk assessment.

(3) The national risk assessment shall serve the following purposes:

1. the improvement of the regime for combatting of money laundering and terrorist financing, in particular by identifying any areas where the obliged entities shall be required to apply enhanced measures and recommending the measures to be taken;
2. the identification of sectors or areas of lower or greater risk of money laundering and terrorist financing;
3. the identification of money laundering and terrorist financing risks in relation to the development of new products and business practices including new delivery channels and the use of new or developing technologies both for new as well as for existing products;
4. the allocation and prioritisation of resources to combat money laundering and terrorist financing;
5. to ensure that appropriate rules are drawn up for each sector or area, in accordance with the risks of money laundering and terrorist financing, and
6. making appropriate information available promptly to obliged entities to facilitate them in carrying out their own money laundering and terrorist financing risk assessments.

The Federal Ministries of Finance, for Justice, for the Interior, for Science, Research and Economy, for Europe, Integration and Foreign Affairs, as well as the Financial Market Authority (FMA) and the Oesterreichische Nationalbank shall take necessary steps within the scope of their respective competences to realise these purposes.

(4) The Oesterreichische Nationalbank and the FMA upon request and within the scope of their competence, shall submit all data, information, analyses and assessments relating to the



financial market that are necessary for drawing up the national risk assessment to the Federal Minister of Finance without delay. The Oesterreichische Nationalbank shall submit the data that it has investigated and processed pursuant to Article 8 para. 2 of the Sanctions Act (SanktG - Sanktionsgesetz), to the FMA, provided that this data is required for the performance of duties by the FMA in accordance with this federal act.

(5) The Federal Minister of Finance shall submit the findings of the national risk assessment to the European Commission and shall publish it on the Federal Ministry of Finance's website.

(6) In addition, the coordination committee shall also develop strategies and measures for combatting of money laundering and terrorist financing on a national level, shall regularly review whether they are up-to-date, and shall issue recommendations for their implementation.

Risk assessment at company level

Article 4. (1) The obliged entities shall identify and assess the potential risks of money laundering and terrorist financing, to which they are exposed, on the basis of data and information taking into account all risk factors, in particular those that relate to customers, countries or geographical areas, products, services, transactions and delivery channels as well as other new or developing technologies, both for new and already existing products. In so doing, they shall take into account findings of the national risk assessment (Article 3) and of the report of the European Commission on the risks of money laundering and terrorist financing affecting the internal market (Article 6 (1) of Directive (EU) 2015/849). The investigation and assessment in relation to new products, practices and technologies shall in any case take place prior to their roll-out. The steps involved in the investigations and assessment shall be proportionate to the nature and size of the obliged entities.

(2) The obliged entities shall keep records for the investigation and assessment steps conducted pursuant to para. 1 and their outcome in an understandable way, and shall keep records up-to-date and shall make them available to the FMA upon request in a generally available electronic format. The FMA may determine by means of a Regulation that the records of a risk assessment may not be necessary for specific types of obliged entities within a sector, if the specific risks existing within the sector are clearly recognisable and are understood by the obliged entities within this sector.

Section 3

Customer due diligence

Application of due diligence obligations

Article 5. The obliged entities shall apply customer due diligence pursuant to Article 6 in the following cases:

1. when establishing a business relationship;

savings deposit transactions in accordance with Article 31 para. 1 BWG and transactions pursuant to Article 12 of the Securities Deposit Act (DepotG; Depotgesetz) shall always be considered as business relationships;

2. when executing any transactions which are not conducted within the scope of a business relationship (occasional transactions),
 - a) which involve an amount of at least EUR 15 000 or a euro equivalent value, regardless of whether the transaction is carried out in a single operation or in multiple operations between which there is an obvious connection; or
 - b) which involves a transfer of funds as defined in Article 3 (9) of Regulation (EU) 2015/847 exceeding EUR 1 000;

if the amount in the cases listed in letter a) is not known prior to the start of the transaction, then the due diligence obligations shall be applied as soon as the amount involved is known and it has been determined that the amount is at least EUR 15 000 in value or euro equivalent value;

3. for each deposit into savings deposits, and for each withdrawal of savings deposits if the amount deposited or withdrawn is at least EUR 15 000 or a euro equivalent value;
4. if the institution suspects or has reasonable grounds to suspect that the customer belongs to a terrorist organisation (Article 278b StGB) or the customer objectively participates in transactions which serve the purpose of money laundering (Article 165 StGB – including asset components which stem directly from a criminal act on the part of the perpetrator) or terrorist financing (Article 278d StGB);
5. when there are doubts as to the veracity or adequacy of previously obtained customer identification data.

Scope of due diligence obligations

Article 6. (1) Customer due diligence shall comprise:

All English translation of the authentic German text is unofficial and serves merely information purposes. The official wording in German can be found in the Austrian Federal Law Gazette (Bundesgesetzblatt; BGBl.). All translations have been prepared with great care, but linguistic compromises had to be made. The reader should also bear in mind that some provisions of these laws will remain unclear without certain background knowledge of the Austrian legal and political system. Please note that these laws may be amended in the future and check occasionally for updates.



1. identifying the customer and verifying the customer's identity on the basis of documents, data or information obtained from a reliable and independent source;
2. identifying the beneficial owner and taking reasonable measures to verify that person's identity so that the obliged entity is satisfied that it knows who the beneficial owner is, including, as regards legal persons, trusts, companies, foundations and similar legal arrangements, taking reasonable measures to understand the ownership and control structure of the customer;
3. assessing and obtaining information on the purpose and intended nature of the business relationship;
4. obtaining and checking of information about the source of the funds used; such information may include details about professional or business activities, income or operating result or the general financial situation of the customer and their beneficial owners;
5. identification and verification of the trustor and the trustee pursuant to para. 3;
6. conducting ongoing monitoring of the business relationship including scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the obliged entity's knowledge of the customer, the business and risk profile, including where necessary the source of funds.
7. regular checking of the availability of all required information, data and documents that are required under the federal act, and updating of such information data and documents.

The identity of those persons claiming to be wanting to act on behalf of the customer (natural persons authorised to represent the customer) shall be determined and verified pursuant to no. 1. The power of representation shall be verified in a suitable way and manner. The customer shall report any changes relating to the power of representation during an ongoing business relationship without delay at their own initiative.

(2) The verification of identity pursuant to para. 1 no. 1 shall in the case of

1. a natural person be by means of showing an official photo identification document in person. For the purposes of this provision, documents which are issued by a government authority and which bear a non-replaceable, recognisable photograph of the face of the person in question and include the name, date of birth and signature of the person as well as the authority which issued the document are considered to be official photo identification documents; in the case of foreign passports, the passport need not contain the person's signature and complete date of birth if this corresponds



to the law of the country issuing the passport. Individual criteria with regard to the official photo identification may be waived where technical advances, such as biometric data, give rise to other criteria which are at least equivalent to the waived criteria in terms of their identification effects. However, the criterion stipulating that the identification must be issued by a government authority must always be fulfilled;

2. a legal person, on the basis of meaningful supporting documentation available under the usual legal standards of the country in which the legal person is incorporated. In any case the effective existence, name, legal form, power of representation and place of incorporation of the legal person shall be checked.

(3) The obliged entities shall request customers to indicate the following:

1. Whether the customer intends to conduct the business relationship (Article 5 para. 1 no. 1) or the occasional transaction (Article 5 para. 1 no. 2) on one's own account or for the account of others or on behalf of a third party, and
2. the identity of its beneficial owner(s).

The customer shall comply with this request and shall report any changes relating to this request during an ongoing business relationship without delay at their own initiative. If the customer indicates that they intent to conduct the business relationship for the account of others or on behalf of a third party (no. 1), then they shall also be required to prove the identity of the trustor to the obliged entity, and the obliged entity shall determine and verify the identity of the trustor. The trustee shall be identified pursuant to para. 2 no. 1, and only in the physical presence of the trustee. The identification of the trustee by third parties shall be excluded. In the case of natural persons, the identity of the trustor shall be ascertained and verified by presentation of the original or a copy of the trustor's official photo identification document (para. 2 no. 1); in the case of legal persons, by means of meaningful supporting documents (para. 2 no. 2). The trustee must also submit a written declaration to the obliged entity stating that the trustee has ascertained the identity of the trustor personally or through reliable sources. In this context, reliable sources refer to courts and other government authorities, notaries, attorneys at law and third parties as specified in Article 13.

(4) The personal presentation of the official photo identification document as defined in para. 2 may be replaced by safeguards for business relationships or transactions without face-to-face contacts. The obliged entity must in any case know the name, date of birth and address of the customer, or in the case of legal persons the company name and place of incorporation. The following security measures shall be permissible:



1. the presentation in a video-based electronic procedure of the official photo identification document (online identification),
2. a statutorily prescribed procedure, which ensures that the same information would be made available as would be if an official photo identification document were presented (electronic ID card),
3. the submission of a legally binding declaration by the customer in the form of a qualified electronic signature in accordance with point 12 of Article 3 of Regulation (EU) No 910/2014 or the delivery of a legally binding declaration by the obliged entity via registered mail to the customer address given as the place of residence or place of incorporation, if in addition
 - a) in the case of legal persons the place of incorporation is also the place of the central administration, which shall be confirmed by the customer by means of a written declaration;
 - b) a copy of the official photo identification document of the customer or the customer's legal representative, or in the case of legal persons of the body authorised to represent it has been supplied prior to the conclusion of the contract, provided that the legal transaction has not been concluded electronically using a qualified electronic signature, and
 - c) for customers with a place of incorporation or place of residence in a third country, a written declaration by another credit institution with which the customer has a permanent business relationship is provided, stipulating that the identity of the customer has been determined and verified in accordance with this federal act, and that the permanent business relationship is still maintained. If the credit institution providing the confirmation has its place of incorporation in a third country, then this third country must fulfil the requirements pursuant to Article 13 para. 4. In lieu of identification and confirmation by a credit institution, identification and written confirmation by the Austrian representation in the third country in question or by a recognised certification authority is also permissible;

or

4. the first payment during transactions is settled through an account opened in the customer's name with a credit institution as specified in Article 13 and copies of customer documents are available, on the basis of which the information provided by the customer or the natural person authorised to represent the customer may be



verified in a credible manner. In lieu of such copies, a written declaration from the credit institution through which the first payment is intended to be made shall be sufficient for determining and verifying the identity of the customer as defined in this federal act or Directive (EU) 2015/849.

The FMA shall determine by means of a Regulation with the consent of the Federal Minister of Finance, which measures shall be necessary for online identification to mitigate the increased risk, and in so doing shall in particular define the requirements in relation to security of data, security against forgeries as well as for those persons that will conduct the online identification process.

(5) The obliged entities may determine the extent of the due diligence obligations listed in paras. 1 to 3 on a risk-sensitive basis. When assessing the risks of money laundering and terrorist financing at least the variables set out in Annex I shall be taken into account. As a result of this assessment, every customer shall be assigned to a risk class. The obliged entities shall have to be able to demonstrate to the FMA, that the measures they have taken are appropriate in view of the risks of money laundering and terrorist financing that have been identified.

Point of time of application of due diligence obligations

Article 7. (1) The determination and verification of the identity of the customer, the beneficial owner and the trustor and trustee (Article 6 para. 1 nos. 1, 2 and 5) and about the obtaining of information on the purpose and intended nature of the business relationship and the origin of the funds used (Article 6 para. 1 nos. 3 and 4) must occur prior to the establishment of a business relationship or the carrying or conducting of an occasional transaction. The determination and verification of the identity of a natural person authorised to represent the customer (Article 6 para. 1 closing part) must occur, when the authorised representative invokes their power of representation.

(2) By way of derogation from para. 1, the obliged entities may allow verification of the identity of the customer, the beneficial owner and the trustor to be completed during the establishment of a business relationship, if this is necessary to not interrupt the normal conduct of business, and where there is little risk of money laundering or terrorist financing. In such situations, those procedures shall be completed as soon as practicable after initial contact.

(3) By way of derogation from para. 1, the opening of a bank account, including accounts that permit transactions in transferable securities, shall be permissible at an obliged entity, provided that there are adequate safeguards in place to ensure that transactions are not carried out by



the customer or on its behalf until full compliance with the customer due diligence requirements pursuant to Article 6 para. 1 nos. 1 to 5 has been obtained.

(4) In the case of life assurance contracts, insurance undertakings shall also be required to comply, in addition to the customer due diligence obligations towards customers and beneficial owners, with the following due diligence obligations towards the beneficiaries of life assurance contracts:

1. in the case of beneficiaries that are identified as specifically named persons or as legal arrangements, the insurance undertaking shall hold the names of the respective persons;
2. in the case of beneficiaries that are designated by characteristics, class or by other means, insurance undertakings shall obtain sufficient information concerning those beneficiaries to ensure that they will be able to establish the identity of the beneficiary at the time of the payout.

The insurance undertakings shall, in the instances named in nos. 1 and 2, verify the identity of the beneficiaries prior to payout. In the case that the life assurance contract is either fully or partially taken over by a third party, or the claim from this contract is assigned fully or partially to a third party, then the insurance undertakings that are aware of this takeover or assignment shall determine and verify the identity of the new customer or the beneficial owner at the time at which the claims from the contract were assigned to or taken over by the natural or legal person or legal arrangement.

(5) Where the beneficiaries of trusts or of similar legal arrangements are designated by means of particular characteristics or by class, the obliged entities shall be required to obtain sufficient information concerning the beneficiaries to be satisfied that they will be able to establish the identity of the beneficiary at the time of the payout or at the time that the beneficiary exercises its vested rights. The identity of the beneficiaries must in any case be verified prior to payout.

(6) The obliged entities shall apply customer due diligence obligations not only to all new customers, but also to existing customers on a risk-sensitive basis at the appropriate time. This shall in particular be the case when the relevant circumstances of a customer change.

(7) If, with the exception of Article 6 para. 1 nos. 6 and 7, the obliged entities either do not comply or are not able to comply with the customer due diligence obligations, then they shall not be allowed to carry out a transaction through a bank account, to establish a business relationship or to carry out transactions. Furthermore, they shall have to terminate an existing business relationship. Insurance undertakings shall not be allowed in the case of life assurance



contracts to establish a business relationship and to carry out a transaction, if they do not or are unable to fulfil their due diligence obligations towards a customer or a beneficiary. Occupational severance and retirement funds shall not be allowed to conduct transactions, if they do not or are unable to fulfil their due diligence obligations towards a customer. In cases as per Article 6 para. 1 no. 6 a transaction may be delayed until the necessary checking steps have been concluded. In all cases the obliged entities shall consider making a suspicious transaction report in relation to the customer in accordance with Article § 16 to the Financial Intelligence Unit (Geldwäschemeldestelle).

(8) The acceptance and acquisition of securities for

1. securities accounts (Article 11 DepotG) and
2. business relationships pursuant to Article 12 DepotG,

which were initiated or entered into before 1 August 1996, shall only be permissible, when the customer due diligence obligations had previously been applied pursuant to Article 6. The sale of securities and the withdrawal of balances and income from securities accounts (Article 11 DepotG) and from business relationships pursuant to Article 12 DepotG may only be carried out provided that the customer due diligence obligations pursuant Article 6 have previously been applied.

(9) In the case of existing savings accounts pursuant to Article 31 BWG, where customer due diligence obligations pursuant to Article 6 have not yet been applied, deposits may neither be made or received, and amounts from credit transfers may not be credited to such savings accounts.

(10) Savings accounts, for which customer due diligence obligations pursuant to Article 6 have not yet been applied, shall be operated as specially marked accounts. Deposits into and withdrawals from such accounts may only be made, and funds transfers only credited to those accounts, if the customer due diligence obligations pursuant to Article 6 have been applied.

Simplified due diligence

Article 8. (1) Where an obliged entity identifies on the basis of its risk assessment (Article 4) that areas exist of a lower risk of money laundering or terrorist financing, then it may apply simplified customer due diligence. In this case, the risks of money laundering and terrorist financing relating to types of customers, geographic areas, and particular products, services, transactions or delivery channels shall be assessed and at least the factors of potentially lower risk situations set out in Annex II taken into account.



(2) Before applying simplified customer due diligence for a customer, obliged entities shall ascertain that the business relationship or the transaction presents a lower degree of risk. In particular they shall not assume a low risk of money laundering or terrorist financing if there is information available to suggest that the risk of money laundering or terrorist financing might not in fact be low.

(3) Also in those areas, in which the obliged entities apply simplified due diligence, they shall ensure that the transactions and business relationships shall be adequately monitored to enable the detection of unusual or suspicious transactions.

(4) The obliged entities shall be required to retain sufficient information in order to be able to demonstrate compliance with the requirements for the application of simplified due diligence.

(5) The FMA may determine, with the consent of the Federal Minister of Finance, by means of a Regulation in which areas a low risk of money laundering or terrorist financing exists, if this has been determined in the national risk assessment (Article 3) or the FMA itself has identified that a low risk exists taking into account para. 1 second sentence. The FMA shall determine, as necessary the precise scope of simplified due diligence towards customers in a Regulation pursuant to this paragraph.

(6) Regulation (EU) 2015/847 shall not apply to domestic transfers of funds to a payee account permitting payments for the provision of goods or services if:

1. the payment service provider of the payee is subject to the obligations set forth in Directive (EU) 2015/849;
2. the payment service provider of the payee is able by means of a reference number relating to the customer to trace back, through the payee, the transfer of funds to the natural or legal person who has made an agreement with the payee for the provision of goods and services, and
3. the amount being transferred is EUR 1 000 or less.

Enhanced due diligence

Article 9. (1) In the cases referred to in Articles 10 to 12, in the case of natural or legal persons domiciled in high-risk third countries, and if an obliged entity determines, either on the basis of its risk assessment (Article 4) or in another manner, that a higher risk of money laundering or terrorist financing exists, then the obliged entity shall apply enhanced customer due diligence to manage and mitigate those risks appropriately. In this case, the risks of money laundering and terrorist financing relating to types of customers, geographic areas, and particular



products, services, transactions or delivery channels shall be assessed and at least the factors of potentially higher risk situations set out in Annex III taken into account.

(2) Where obliged entities have branches or branch establishments or subsidiaries incorporated in high-risk third countries, they shall not have to automatically invoke enhanced customer due diligence needed for them, where those branches or branch establishments or subsidiaries fully comply with the group-wide strategies and procedures (Article 24). In this instance the obliged entities shall assess on a risk-sensitive basis whether it shall be necessary to apply enhanced due diligence obligations.

(3) The obliged entities shall examine, as far as reasonably possible, the background and purpose of all complex and unusually large transactions, and all unusual patterns of transactions, which have no apparent economic or lawful purpose. In particular, obliged entities shall increase the degree and nature of monitoring of the business relationship, in order to determine whether those transactions or activities appear suspicious.

(4) The FMA may determine, with the consent of the Federal Minister of Finance, by means of a Regulation in which areas, in addition to those listed in this federal act, a high risk of money laundering or terrorist financing exists, if this has been determined in the national risk assessment (Article 3) or the FMA itself has identified that a high risk exists taking into account para. 1 second sentence. The FMA shall determine, as necessary the precise scope of enhanced due diligence towards customers in a Regulation pursuant to this paragraph.

Correspondent relationships

Article 10. In the case of cross-border correspondent relationships with respondent institutions incorporated in third countries, obliged entities shall, in addition to the customer due diligence obligations set out in Article 6:

1. gather sufficient information about a respondent institution to understand fully the nature of its business and be able to ascertain the reputation of the institution and the quality of supervision on the basis of publicly available information;
2. satisfy themselves of the adequacy of the respondent institution's controls for combatting money laundering and terrorist financing;
3. obtain approval from senior management before establishing new correspondent relationships;
4. document the respective responsibilities of each institution, and



5. with respect to payable-through accounts, be satisfied that the respondent institution has verified the identity of and performed ongoing due diligence on the customers having direct access to accounts of the respondent institution, and that the respondent institution is able to provide relevant customer due diligence data to the obliged entity upon the latter's request;

Transactions and business relationships with politically exposed persons (PEPs)

Article 11. (1) In addition to the customer due diligence obligations set out in Article 6, the obliged entities shall

1. have in place appropriate risk management systems, including risk-based procedures, to be able to determine whether the customer, the beneficial owner of the customer, or the trustor of the customer is a politically exposed person and to apply these procedures prior to establishing the business relationship as well as to apply them at regular intervals during the ongoing business relationship.
2. in the case of business relationships with politically exposed persons:
 - a) obtain the approval of their senior management, before establishing or continuing business relationships with such persons;
 - b) take adequate measures to establish the source of wealth and source of funds that are involved in business relationships or transactions with such persons; and
 - c) subject the business relationship to enhanced ongoing monitoring.

If the beneficial owner of the customer pursuant to Article 2 no. 1 point b sub-point cc WiEReG has been identified, then no. 2 shall not apply in the case of Austrian politically exposed persons, where no risk factors exist that indicated an increased level of risk.

(2) Insurance undertakings shall take reasonable measures to determine whether the beneficiaries of a life insurance contract and/or, where necessary, the beneficial owner of the beneficiary is a politically exposed person. Those measures shall be taken no later than at the time of the payout or at the time of the assignment, in whole or in part, of the life assurance contract. Where increased risks have been identified, in addition to applying the customer due diligence laid down in Article 6, obliged entities shall also be required to:

1. inform its senior management prior to payout, and
2. conduct enhanced scrutiny of the entire business relationship with the insurance policyholder.



(3) Where a politically exposed person is no longer entrusted with a prominent public function by a Member State or a third country, or with a prominent public function by an international organisation, obliged entities shall, for at least twelve months, be required to take into account the continuing risk posed by that person and to apply appropriate and risk-sensitive measures until such time as that person is deemed to pose no further risk specific to politically exposed persons.

(4) The measures referred to in this Article shall also apply to family members or persons known to be close associates of politically exposed persons.

Inadmissible business relationships and measures for non-cooperative countries and territories

Article 12. (1) The obliged entities shall not enter into or continue a correspondent relationship with a shell bank, and shall take appropriate measures to ensure that they do not engage in or continue correspondent relationships with a credit institution or financial institution, which is known to permit its accounts to be used by a shell bank.

(2) In any case, the obliged entities shall be prohibited from servicing anonymous accounts and from accepting anonymous savings deposits; Article 7 paras. 8 to 10 shall be applicable.

(3) In cooperation with the Main Committee of the National Council, the federal government shall issue a regulation designating as non-cooperative countries and territories those countries which do not take the measures against money laundering necessary according to international standards in their territories or jurisdictions. In particular, a violation of international standards is to be assumed in cases where the Council of the European Union or the Financial Action Task Force on Money Laundering have adopted resolutions to this effect.

(4) In connection with non-cooperative countries and territories, the following provisions apply:

1. unless proven otherwise, persons with their place of incorporation or residence in a non-cooperative country or territory shall be considered in any case not to meet the requirements for the sound and prudent management of an obliged entity.
2. a licence shall not be granted to an obliged entity, where one or more persons who hold a qualifying holding in the undertaking submitting the application have their place of incorporation or residence in a non-cooperative country or territory, unless the applicant submitting the application is able to prove that the obliged entity shall not conduct activities for the purpose of money laundering and will not conduct any transactions in violation of United Nations decisions which are binding under public international law.



3. The FMA shall prohibit the acquisition of a qualifying holding in an obliged entity by persons whose place of incorporation or residence is in a non-cooperative country or territory.
4. The identity of a customer, whose place of incorporation or residence is in a non-cooperative country or territory, may be ascertained only by the customer appearing in person at the obliged entity confirming their identity using an original official photo identification document; for transactions carried out on behalf of others, these requirements apply to both the trustee and the trustor; the obliged entities shall make copies of the official photo identification documents and shall be required to retain them pursuant to Article 21.
5. All transactions,
 - a) in which the originator or beneficiary is a person whose place of incorporation or residence is in a non-cooperative country or territory, or
 - b) which are executed into or from an account held at a foreign credit institution or financial institution incorporated in a non-cooperative country or territory,

shall be reported to the Financial Intelligence Unit (Geldwäschemeldestelle) by credit and financial institutions without delay, if the amount exceeds EUR 100 000 or a euro equivalent value; Article 16 shall apply. This reporting obligation applies regardless of whether the transaction is carried out in a single operation or in multiple operations between which there is an obvious connection; in cases where the amount is unknown at the beginning of a transaction, the report must be submitted as soon as the amount is known and it is established that it will come to at least EUR 100 000 or an equivalent value.

Section 4

Performance by third parties

Admissibility of performance by third parties

Article 13. (1) The obliged entities may rely on third parties for the fulfilment of the customer due diligence obligations set out in Article 6 para. 1 nos. 1 to 5 and 7, provided that no indications exist to suggest that the listed obligations will not be fulfilled to a comparable standard. However, the ultimate responsibility for meeting those obligations shall remain with the obliged entity which relies on the third party.

(2) The obliged entities shall ensure that they obtain the necessary information without delay with regard to the customer due diligence obligations set out in Article 6 para. 1 nos. 1 to 5



and 7 from the third parties upon whom they are reliant. Furthermore, they shall be required to take appropriate steps to ensure that the third party is able to forward them upon request copies of the documentation used to satisfy these due diligence obligations as well as other relevant documentation on the identity of the customer or the beneficial owner(s).

(3) Credit institutions and financial institutions incorporated in Austria shall be considered as third parties, for the purpose of this Article, provided that they do not only hold an authorisation for conducting exchange bureau business (Article 1 para. 1 no. 22 BWG), as well as the persons listed in items a and b of Article 2 (1) 3) of Directive (EU) 2015/849 and insurance intermediaries pursuant to Article 365m para. 3 no. 4 of the Commercial Code (GewO 1994 - Gewerbeordnung) incorporated in Austria.

(4) Credit institutions and financial institutions pursuant to points 1 and 2 of Article 3 of Directive (EU) 2015/849 shall be considered as third parties for the purposes of this Article, provided that they do not only hold an authorisation for conducting exchange bureau business, as well as the persons listed in items a) and b) of Article 2 (1) 3) of Directive (EU) 2015/849 incorporated in another Member State and corresponding obliged entities incorporated in a third country

1. whose customer due diligence requirements and record-keeping requirements are consistent with those laid down in Directive (EU) 2015/849; and
2. that are subject to supervision in relation to compliance with these requirements, consistent with Section 2 of Chapter VI of the Directive (EU) 2015/849.

Obliged entities shall be prohibited from relying on third parties established in high-risk third countries. This shall not apply for branches or branch establishments of third parties incorporated in Austria or in another Member State and their subsidiaries, where those branches or branch establishments or subsidiaries fully comply with the group-wide policies and procedures.

Performance by third parties in the case of groups

Article 14. The requirements pursuant to Article 13 may be fulfilled by the implementation of a group programme (policies and procedures to be applied on a group-wide basis pursuant to Article 24), in which all of the following requirements are fulfilled:

1. the obliged entity relies on information provided by a third party that is part of the same group;



2. the group applies customer due diligence, rules on record-keeping and programmes against money laundering and terrorist financing in accordance with this federal act or Directive (EU) 2015/849, or equivalent rules;
3. the effective implementation of the requirements referred to in no. 2 is supervised at group level by a competent authority of the home Member State or of the third country.

Outsourcing and agency relationships

Article 15. This Section shall not apply to outsourcing or agency relationships where, on the basis of a contractual arrangement, the outsourcing service provider or agent is to be regarded as part of the obliged entity.

Section 5

Reporting obligations

Reports to the Financial Intelligence Unit (Geldwäschemeldestelle)

Article 16. (1) The obliged entities shall inform the Financial Intelligence Unit (Geldwäschemeldestelle) without delay upon their own initiative by means of a suspicious activity report, if they know, suspect or have reasonable grounds to suspect, that

1. an attempted, upcoming, ongoing or previously conducted transaction is related to asset components originating from one of the criminal activities listed in Article 165 StGB (including asset components which stem directly from a criminal act on the part of the perpetrator);
2. an asset component originates from one of the criminal activities listed in Article 165 StGB (including asset components which stem directly from a criminal act on the part of the perpetrator) or
3. a customer has violated the obligation to disclose trust relationships pursuant to Article 6 para. 3; or
4. the attempted, upcoming, ongoing or previously conducted transaction or the assets are connected to a criminal organisation pursuant to Article 278a StGB, a terrorist organisation pursuant to Article 278b StGB, a terrorist crime pursuant to Article 278c StGB or terrorist financing pursuant to Article 278d StGB.

The suspicious activity report shall be submitted in a commonly used electronic format, via the secure communications channels determined by the Financial Intelligence Unit (Geldwäschemeldestelle).



(2) The obliged entities, and their employees as applicable, shall cooperate fully with the Financial Intelligence Unit (Geldwäschemeldestelle), by providing the Financial Intelligence Unit (Geldwäschemeldestelle) irrespective of a suspicious activity report pursuant to para. 1, directly or indirectly upon request all information it deems necessary for preventing or pursuing money laundering or terrorist financing.

(3) Credit institutions shall inform the Financial Intelligence Unit (Geldwäschemeldestelle) without delay about all requests to withdraw savings deposits, if

1. the customer's identity has not yet been determined pursuant to Article 6 para. 1 for the savings deposit, and
2. the payout is intended to be made from a savings deposit with a credit balance of at least EUR 15 000 or euro equivalent value.

Payouts from such savings deposits shall only be made upon expiry of a period of seven calendar days following the request for the payout, unless the Financial Intelligence Unit (Geldwäschemeldestelle) orders a longer period pursuant to Article 17 para. 4.

(4) The Financial Intelligence Unit (Geldwäschemeldestelle) shall provide obliged entities with access to up-to-date information on the ways of money laundering and terrorist financing, and provide indications that allow suspicious transactions to be recognised. Likewise, the authority shall ensure that timely feedback is provided about the effectiveness of and follow-up to reports of suspected money laundering or terrorist financing.

(5) The Financial Intelligence Unit (Geldwäschemeldestelle) shall also be authorised to examine required information from natural and legal persons and other facilities with a legal personality for the prevention of and pursuit of money laundering and terrorist financing and to process this information in an information application together with data that it has processed or is allowed to process in the enforcement of national or regional laws, provided that this information corresponds to the groups of affected parties and data types set out in standard application SA037 in Annex 1 of the Regulation on Standards and Templates (StMV - Standard- und Muster-Verordnung 2004), published in Federal Law Gazette II no. 312/2004. The data shall be deleted as soon as it is no longer required for the fulfilment of duties, at latest after a period of five years. Submissions shall be permissible within the meaning of Article 4 para. 2 nos. 1 and 2 of the Criminal Intelligence Service Act (BKA-G, Bundeskriminalamt-Gesetz).



Non-execution of transactions

Article 17. (1) The obliged entities shall cease to conduct any further execution of related transactions following submission of a suspicious activity report (Article 16 para. 1) and shall fulfil any additional specific instructions received from the Financial Intelligence Unit (Geldwäschemeldestelle). The Financial Intelligence Unit shall take into account whether the risk exists by delaying or ceasing the transactions could hinder or impede the investigation of the case or the pursuit of the beneficiary of a suspicious transaction.

(2) In the event that it is not possible to cease the execution of the transactions listed in para. 1, or any stoppage or delay could impede the pursuit of the beneficiary of a suspicious transaction, the obliged entities concerned shall submit the suspicious activity report (Article 16 para. 1) to the Financial Intelligence Unit (Geldwäschemeldestelle) immediately thereafter. In cases of doubt, orders involving incoming funds may be executed, while orders involving outgoing funds are not to be executed.

(3) The obliged entities shall be entitled to request that the Financial Intelligence Unit (Geldwäschemeldestelle) should decide whether concerns exist about the immediate execution of a transaction; if the Financial Intelligence Unit (Geldwäschemeldestelle) fails to respond by the end of the following banking day, the transaction may be executed immediately.

(4) The Financial Intelligence Unit (Geldwäschemeldestelle) shall be authorised to instruct that an ongoing or upcoming transaction, for which a report pursuant to Article 16 para. 1 is to be submitted, shall be omitted or temporarily delayed, and that instructions given by the customer relating to the disbursement of funds shall only be allowed to be conducted with the consent of the Financial Intelligence Unit (Geldwäschemeldestelle). The Financial Intelligence Unit (Geldwäschemeldestelle) must inform the Public Prosecutor's office of this instruction without unnecessary delay. The customer shall also be informed, although informing the customer may be put off for up to a maximum of five banking days, if doing so could otherwise impede the pursuit of the beneficiary of a suspicious transaction. The obliged entities shall be informed about the delay in informing the customer. The notification to the customer must include an indication that the customer or another affected party may be entitled to lodge a complaint with the competent administrative court regarding violations of their rights.

(5) The Financial Intelligence Unit (Geldwäschemeldestelle) shall repeal the instruction in accordance with para. 4 as soon as the conditions for its having been issued no longer prevail, or the public prosecutor declares that the conditions for confiscation pursuant to Article 109 no. 2 and Article 115 para. 1 no. 3 of the Code on Criminal Procedure (StPO - Strafprozessordnung) do not exist. Otherwise, the instruction shall be abrogated:



1. once six months have elapsed since it was issued, or
2. as soon as the court has issued a legally effective decision on a request for confiscation pursuant to Article 109 no. 2 and Article 115 para. 1 no. 3 StPO.

**Notifications from the competent authorities to the Financial Intelligence Unit
(Geldwäschemeldestelle)**

Article 18. In the event that the FMA or the Oesterreichische Nationalbank, in performing their supervision duties, find reason to suspect that a transaction serves the purpose of money laundering or terrorist financing, they shall report this to the Financial Intelligence Unit (Geldwäschemeldestelle) without delay. This shall also apply accordingly for the government tax authorities in the performance of their duties.

Exclusion from claims for damages and protection against threats

Article 19. (1) Claims for damages may not be asserted due to the fact that an obliged entity or employees of the obliged entity have delayed or omitted the execution of a transaction in negligent ignorance of the fact that the suspicion of money laundering or terrorist financing or of violations pursuant to Article 6 para. 3 was incorrect.

(2) The obliged entities shall ensure that individuals, including employees and representatives of the obliged entity, who report suspicions of money laundering or terrorist financing internally or to the Financial Intelligence Unit (Geldwäschemeldestelle), are protected from being exposed to threats or hostile action, and in particular from adverse or discriminatory employment actions.

Prohibition of disclosure

Article 20. (1) Obligated entities shall be obliged to ensure confidentiality towards customers and third parties of all procedures in relation to Articles 16 and 17. Furthermore, the obliged entities shall, if they become aware or have a suspicion of or have reasonable grounds to assume, that a circumstance that requires to be reported pursuant to Article 16 para. 1 exists and they could reasonably assume that the application of customer due diligence obligations could impede the pursuing of the beneficiary of a suspicious transaction, they shall waive the application of customer due diligence obligations and shall instead inform the Financial Intelligence Unit (Geldwäschemeldestelle) immediately by means of a suspicious activity report.

(2) As soon as the customer has been informed by the Financial Intelligence Unit (Geldwäschemeldestelle) about the order pursuant to Article 17 para. 4 having been issued,



the obliged entities shall be empowered to refer the customer - although only at the customer's request - to the Financial Intelligence Unit (Geldwäschemeldestelle); furthermore, the obliged entities shall with the consent of the Financial Intelligence Unit (Geldwäschemeldestelle) also be empowered to inform the customer of the order.

(3) The prohibition pursuant to this Article:

1. does not affect the disclosure of information to the FMA, the Oesterreichische Nationalbank, or the disclosure of information for law enforcement purposes;
2. does not affect the disclosure of information between credit institutions and financial institutions and their branches or branch establishments and their subsidiaries in third countries, provided that such entities fully comply with the applicable group-wide policies and procedures (Article 24) and the group-wide policies and procedures comply with the requirements of this federal act.
3. does not prevent the disclosure of information between the relevant obliged entities in cases that refer to the same customer and the same transaction involving two or more obliged entities; this shall also apply to credit institutions and financial institutions pursuant to Article 1 nos. 1 and 2 of Directive (EU) 2015/849 incorporated in another Member State, provided that they do not only hold an authorisation for conducting exchange bureau business, as well as obliged entities incorporated in a third country, in which comparable requirements apply to those set out in Directive (EU) 2015/849 and that are subject to comparable obligations in terms of both professional secrecy and personal data protection. The information exchanged is to be used exclusively for the purposes of the prevention of money laundering and terrorist financing.

Section 6

Retention of records, data protection, statistical information and requirements for their internal organisation

Requirements for retention of records and data protection

Article 21. (1) The obliged entities shall be required to retain:

1. copies of the documents and information which are necessary to comply with the customer due diligence requirements, for a period of five years after the end of the business relationship with their customer or after the date of an occasional transaction;



2. receipts and records of transactions required to investigate transactions, for a period of five years after the end of the business relationship with their customer or after the date of an occasional transaction.

(2) The obliged entities shall be required to delete all personal data, which they have processed solely for the purposes of this federal act upon expiry of the retention periods in accordance with para. 1, unless the regulations set out in other federal acts require or allow a longer retention period. No data shall be allowed to be deleted until any pending investigative, main or appeal proceedings in relation to Articles 165, 278a, 278b, 278c, 278d or 278e StGB have been ended in a legally binding manner, if the obliged entity has demonstrably become aware of the proceedings.

(3) The FMA may instruct by means of a Regulation that longer retention periods shall apply following a detailed review of their necessity and proportionality, if this is necessary to prevent, uncover or investigate money laundering or terrorist financing, or if this is necessary for specific types of obliged entities on the basis of particular circumstances. The retention periods shall not be allowed to exceed ten years.

(4) Personal data that is processed by obliged entities on the basis of this federal act solely for the purposes of the prevention of money laundering and terrorist financing, shall not be allowed to be processed further in such a way that is incompatible with those purposes. This personal data shall not be allowed to be processed for other purposes, for example for commercial purposes.

(5) Obligated entities shall provide new customers with the information required in accordance with Article 24 paras. 1 and 2 of the Data Protection Act 2000 (DSG 2000 - Datenschutzgesetz 2000) before establishing a business relationship or carrying out an occasional transaction. That information shall, in particular, include a general notice concerning the legal obligations of obliged entities under this federal act with regard to the processing of personal data for the purposes of the prevention of money laundering and terrorist financing.

(6) An overriding public interest pursuant to Article 26 para. 2 DSG 2000 may exist, if the refusal of information (Article 20 para. 1) is necessary to ensure the confidentiality of procedures, which serve for the performance of Articles 16 and 17, in order to

1. enable the obliged entity or the FMA to fulfil its/their tasks properly for the purposes of this federal act, or



2. avoid obstructing official or legal inquiries, analyses, investigations or procedures for the purposes of this federal act and to ensure that the prevention, investigation and detection of money laundering and terrorist financing is not jeopardised.

Information exchange with the Financial Intelligence Unit (Geldwäschemeldestelle) and the FMA

Article 22. The obliged entities shall have systems in place that enable them to respond fully and speedily through secure channels to enquiries from the Financial Intelligence Unit (Geldwäschemeldestelle) or the FMA, in a manner that ensures full confidentiality of the enquiries, that appear necessary to the aforementioned bodies for the purposes of the prevention of or pursuing of money laundering or terrorist financing, as to whether they are maintaining or have maintained, during a five-year period prior to that enquiry a business relationship with specified persons, and on the nature of that relationship.

Requirements for internal organisation and trainings

Article 23. (1) The obliged entities shall establish policies, controls and procedures for the effective mitigation and management of risks of money laundering and terrorist financing identified on European Union, national and company-wide levels, which shall be commensurate to the type and size of the obliged entity. In so doing, they shall take into account the report of the European Commission pursuant to Article 6 (1) of Directive (EU) 2015/849, the national risk assessment (Article 3) and the risk assessment at company level (Article 4) into account. The policies, controls and procedures shall in particular include the following:

1. risk classification at customer level (Article 6 para. 5),
2. risk management systems (Article 11 para. 1 no. 1),
3. customer due diligence measures; this shall also include measures relating to new products, practices and technologies for addressing the risks associated with them,
4. suspicious activity reports,
5. retention of documentation, and
6. provisions for compliance with para. 6

(2) The policies, controls and procedures (para. 1) shall be determined in written form and approved by the management board; they shall be applied on an ongoing basis, and adapted accordingly as necessary. The ongoing compliance with the internal regulations, which form



part of the policies, controls and procedures, of the employees who are subject to these regulations, shall be monitored by the special officer (para. 3). In particular, he/she shall also be responsible for the compliance with group-wide policies and procedures pursuant to Article 24. Furthermore, a risk-based independent review of the policies, procedures and controls as well as their ongoing application, shall be conducted by Internal Audit. Where obliged entities are not required to have an internal auditing body, and where an independent inspection is necessary due to the type and scope of the business activities conducted, the inspection shall be conducted by an independent body.

(3) The obliged entities shall appoint a special officer to ensure compliance with the provisions of this federal act. The position of the special officer shall be set up in such a way that such officer shall be responsible only to the management board and shall report to the management board directly, without any intermediate levels. Moreover, the officer shall be granted free access to all information, data, records and systems that may in any possible way be connected to money laundering and terrorist financing, as well as sufficient powers for the enforcement of compliance with the provisions contained in this federal act. Obligated entities shall guarantee by means of appropriate organisational measures that all the special officer's duties may be fulfilled at all times on site. The obliged entities shall ensure that the special officer shall at all times possess adequate professional qualifications, knowledge and experience (expert qualification) and is reliable and of integrity (personal reputation).

(4) The obliged entities shall designate a member of the management board, who shall be competent for ensuring that the provisions intended to prevent or combat money laundering or terrorist financing are complied with.

(5) The obliged entities shall ensure by means of measures that are commensurate to the risks to which they are exposed, as well as their type and size, that their employees are aware of the provisions for the prevention or combatting of money laundering or terrorist financing to an extent that is necessary for the fulfilment of their duties. Those measures shall include participation of the competent employees in special ongoing training programmes, in which they learn how to recognise operations which may be related to money laundering or terrorist financing and to instruct them as to how to proceed in such cases.

(6) Furthermore, the obliged entities shall also consider, when selecting staff members, their propriety with regard to their attachment to legal values; attention shall also be paid, prior to the appointment of supervisory board members, to their attachment to legal values.

(7) Electronic money issuers as defined in point 3 of Article 2 of Directive 2009/110/EC and payment service providers as defined in point 11 of Article 4 of Directive (EU) 2015/2366, are



incorporated in another Member State and which are established in Austria in another form than a branch, shall name a central point of contact in Austria, if they satisfy the criteria set out in the delegated act pursuant to Article 45 (10) of Directive (EU) 2015/849, which are responsible, on behalf of the appointing institution, for guaranteeing compliance with the rules for the combatting of money laundering and terrorist financing and to facilitate supervision by the FMA, by among other ways making documents and information available to the FMA upon request.

Policies and procedures for groups

Article 24. (1) Obligated entities that are part of a group shall implement group-wide policies and procedures for the purpose of combatting money laundering and terrorist financing, including data protection policies as well as policies and procedures for sharing information within the group, to be defined in written form, and to be applied on an ongoing basis. Those policies and procedures shall be implemented effectively at the level of branches or branch establishments and subsidiaries in Member States and third countries.

(2) Obligated entities shall ensure that their branches or branch establishments in other Member States observe the national legislation passed transposing Directive (EU) 2015/849 in the Member State in question.

(3) Obligated entities shall ensure that their branches or branch establishments and their subsidiaries located in third countries, where the minimum requirements for the prevention of money laundering and terrorist financing are less strict than those set out in this federal act, shall apply the requirements of this federal act, to the extent that the third country's law so allows.

(4) The obliged entities shall inform the FMA in cases in which the implementation of the policies and procedures to be applied on a group-wide basis pursuant to para. 1 is not permissible in accordance with the law of a third country. Furthermore the obliged entities shall ensure that their branches or branch establishments and their subsidiaries in this third country apply additional measures to effectively mitigate the risk of money laundering or terrorist financing. If the additional measures are not sufficient, then the FMA shall exercise additional supervisory actions. The FMA may among other things prescribe that the group shall not be allowed to establish or that it terminates business relationships, and shall not be allowed to undertake transactions in the third country or where necessary request the group to close down its operations in the third country.



(5) The FMA shall notify the European Supervisory Authorities of instances in which a third country's law does not permit the implementation of the policies and procedures required under para. 1. In such cases, coordinated action may be taken to pursue a solution.

(6) The exchange of information, including customer information, within the group for the purposes of combatting money laundering and terrorist financing shall be permitted; in particular the documents and information, which are required for satisfying due diligence obligations towards customers and the information submitted together with a suspicious activity report may be passed on within the group, in order to fulfil the group-wide policies and procedures pursuant to para. 1. It shall not be permitted to pass such information on if the Financial Intelligence Unit (Geldwäschemeldestelle) or the Financial Intelligence Unit of another Member State or a third country instructs otherwise.

Section 7

Supervision

Aims and principles of supervision

Article 25. (1) The FMA shall supervise the compliance of the rules of this federal act and of Regulation (EU) 2015/847 by

1. credit institutions pursuant to Article 2 no. 1;
2. financial institutions pursuant to Article 2 no. 2 point a), that belong to a group of credit institutions pursuant to Article 30 BWG or a group supervised by the FMA pursuant to Article 197 para. 1 VAG 2016; and
3. financial institutions pursuant to Article 2 no. 2 points b) to h)

with the aim of the prevention of the abuse of the financial system for the purpose of money laundering and terrorist financing. In so doing, it shall take into account the national economic interest in maintaining a functioning financial system. By way of derogation from Article 1 for the purposes of this section only those entities listed in nos. 1 to 3 shall be considered as obliged entities.

(2) The FMA shall, when performing its duties and exercising its supervisory powers pursuant to this federal act, proceed on the basis of a risk-based approach. It shall

1. analyse and assess the risks of money laundering and terrorist financing existing in the financial system in Austria,
2. base the frequency and intensity of on-site and off-site supervision on the risk profile of obliged entities, and on the risks of money laundering and terrorist financing in Austria,



3. review the assessment of the money laundering and terrorist financing risk profile of obliged entities, including the risks of non-compliance, both periodically and when there are major events or developments affecting the obliged entities' management and operations.
4. take into account, as appropriate, the degree of discretion allowed to the obliged entities as well as the risk assessments that underlie this discretion, as well as the adequacy and implementation of the internal policies, controls and procedures of the obliged entities.

(3) The FMA shall, in the enforcement of the provisions of this federal act, including the issuing of Regulations on the basis of this federal act and their enforcement, as well as on the basis of Regulation (EU) 2015/847 take into account European convergence in respect of supervisory tools and supervisory procedures. To this end, the FMA shall participate in the activities of the European Supervisory Authorities, and shall apply Guidelines, Recommendations and other measures decided upon by the European Supervisory Authorities. The FMA may deviate from the guidelines and recommendations of the European Supervisory Authorities when justified grounds exist to do so, in particular in the event of a conflict with provisions set out under national law.

(4) The FMA shall cooperate within the meaning of Regulations (EU) no 1093/2010, (EU) no 1094/2010 and (EU) no 1095/2010 with the European Supervisory Authorities and with the other participants of the European System of Financial Supervision (ESFS) pursuant to Article 1 (3) of Regulation (EU) no 1092/2010, and shall make all information available to them without delay necessary for the performance of their duties in accordance with the aforementioned Regulations that they require on the basis of Directive (EU) 2015/849.

(5) The FMA may cooperate mutually with authorities in Member States and third countries that perform the duties that correspond to the FMA's duties, and shall share all information, where the sharing of the information serves the purposes of supervision of financial markets. Such information shall also include information about shareholders, members of the management board, the supervisory board, the administrative board, and the executive directors of the obliged entities as well as information relating to the customers of the obliged entities. The FMA may also exercise its powers under federal law exclusively for the purposes of cooperation or exchange of information in accordance with this paragraph, even if the conduct that is subject of the investigation does not constitute a breach of a regulation applicable in Austria.



(6) The submission of information to authorities in third countries pursuant to para. 5 shall only be permissible, if they are subject to or have agreed to an equivalent level of professional secrecy that corresponds to the professional secrecy pursuant to the respective European legal acts that govern the activities of obliged entities. Where information that the FMA receives from the competent authority of another Member State is affected, such information may only be allowed to be disclosed with the explicit consent of that supervisory authority and only for the purposes, for which that authority has given its consent. Furthermore such a submission shall only be permissible on the basis of a reciprocal agreement or actual reciprocity.

Authorisation to process data

Article 26. The FMA shall be authorised to collect and process data as defined in the Data Protection Act 2000 (DSG 2000 - Datenschutzgesetz 2000) provided that this lies within its scope of responsibilities pursuant to this federal act.

Cooperation of Bundesrechnungszentrum GmbH

Article 27. The Bundesrechnungszentrum GmbH shall cooperate in the conduct of business operations, that the FMA is subject to in accordance with this federal act and Regulation (EU) 2015/847, provided that such a cooperation is in the interest of simplicity, expedience or cost-effectiveness.

Supervision costs

Article 28. (1) The costs of the FMA for the supervision of obliged entities in accordance with this federal act shall constitute costs of the accounting groups for banking supervision, insurance supervision and securities supervision pursuant to Article 19 para. 1 nos. 1 to 3 FMABG and shall be refunded to the accounting groups in accordance with the assignment set out in paras. 2 to 5, or where accounting subgroups shall be established within the accounting group pursuant under the federal act to the accounting subgroups.

(2) The costs for the supervision of credit institutions pursuant to Article 1 para. 1 BWG, with the exception of credit institutions pursuant to Article 1 para. 1 nos. 13, 13a and 21 BWG, the costs of supervision of CRR-credit institutions pursuant to Article 9 BWG, which conduct activities in Austria through a branch, for financial institutions pursuant to Article 1 para. 2 nos. 1 to 6 BWG that are part of a group of credit institutions pursuant to Article 30 BWG, for CRR-financial institutions pursuant to Article 11 and Article 13 BWG, which conduct activities in Austria through a branch, for electronic money institutions pursuant to Article 3 para. 2 E-Geldgesetz 2010, for branches pursuant to Article 9 E-Geldgesetz 2010, payment institutions pursuant to Article 7 ZaDiG and branches pursuant to Article 12 ZaDiG, shall be assigned to



the sub-accounting group to be established pursuant to Article 69a para. 1 BWG within the accounting group Banking Supervision pursuant to Article 19 para. 1 no. 1 FMABG.

(3) The costs for the supervision of insurance undertakings pursuant to Article 5 no. 1 VAG 2016, small insurance undertakings pursuant to Article 5 no. 3 VAG 2016, the branches of EEA insurance undertakings pursuant to Article 5 no. 7 VAG 2016, the branches of third-country insurance undertakings pursuant to Article 5 no. 5 VAG 2016 and of financial institutions pursuant to Article 1 para. 2 nos. 1 to 6 BWG, which form part of a group to be supervised by the FMA pursuant to Article 197 VAG 2016, shall be assigned to the accounting group Insurance Supervision pursuant to Article 19 para. 1 no. 2 FMABG.

(4) The costs for the supervision of investment firms pursuant to Article 3 para. 1 WAG 2018, of investment services providers pursuant to Article 4 para. 1 WAG 2018 and investment firms pursuant to point 1) of Article 4 (1) of Directive 2014/65/EU, which are authorised in another Member State, and which conduct activities in Austria pursuant to Article 17 WAG 2018 through a branch, shall be assigned to the accounting subgroup to be established pursuant to Article 89 para. 1 WAG 2018 for providers of investment services within the accounting group for Securities Supervision pursuant to Article 19 para. 1 no. 3 FMABG

(5) The costs for the supervision of AIFMs pursuant to Article 4 para. 1 AIFMG, of branches established pursuant to Article 33 AIFMG, of non-EU AIFMs pursuant to Article 39 para. 3 AIFMG, of management companies pursuant to Article 5 para. 1 InvFG 2011, of branches established pursuant to Article 36 para. 2 InvFG 2011, of real estate investment fund management companies pursuant to Article 2 para. 1 ImmoInvFG and corporate provision funds pursuant to Article 18 para. 1 BMSVG shall be assigned to the account subgroup to be established pursuant to Article 45a para. 1 BMSVG, Article 56 para. 5 AIFMG, Article 2 para. 12 ImmoInvFG and Article 144 para. 1 InvFG 2011 within the accounting group Securities Supervision pursuant to Article 19 para. 1 no. 3 FMABG.

Information and disclosure obligations

Article 29. (1) The FMA may request information from obliged entities at any time on all issues that are addressed in this federal act and in Regulation (EU) 2015/847 and may request necessary documents to be disclosed and may determine the way and manner in which the documents shall be disclosed.

(2) The FMA may, in order to ensure the legality of insurance business, also request information from insurance intermediaries pursuant to Article 365m para. 3 no. 4 of the Commercial Code (GewO 1994 - Gewerbeordnung 1994) at any time and request the



submission of documents, in particular about contracts held by insurance intermediaries or contracts with third parties, and may inspect them on-site; Article 30 paras. 1 to 3 shall apply accordingly.

(3) The FMA, in relation to the supervisory obligations conferred upon it in accordance with this federal act, may request information from anyone about issues covered by this federal act. Any other existing obligation of secrecy existing in accordance with other legal provisions shall not be affected by this. The auditor of the obliged entity may not however invoke his secrecy obligation.

(4) The obligation to disclose information implies a commitment to submit certificates and other written documentation, or to permit them to be inspected.

On-site inspections

Article 30. (1) The competent bodies within the FMA may conduct on-site inspections at the obliged entities at any time to verify compliance with the provisions of this federal act.

(2) The FMA may, with the consent of the host country's competent authority, conduct inspections of branches or branch establishments and subsidiaries in Member States and third countries of obliged entities incorporated in Austria to check the effective implementation of the policies and procedures pursuant to Article 24. Paras. 3 to 8 of this Article shall be applied accordingly. The FMA may request the host country's competent authority to perform the inspection, if doing so simplifies or speeds up the procedure or if doing so is in the interests of expedience, simplicity, rapidity or cost-effectiveness.

(3) Where necessary, the FMA may appoint inspection bodies that do not belong to the FMA. They shall be remunerated by the FMA with a fee that is commensurate to the work involved in the inspection and the expenses incurred for this purpose.

(4) The inspection shall be announced at least one week prior to commencement, provided that doing so shall not thwart the purpose of the inspection. The inspectors are to be provided with a written inspection engagement and must voluntarily present proof of their identity as well as the inspection engagement before beginning the inspection. The inspection mandate shall describe the subject matter of the inspection.

(5) Obligated entities shall make the documents required for the inspection available to the inspection bodies, and allow them to inspect the bookkeeping records, receipts and documents, and to provide information as requested. Furthermore, the obliged entities shall grant the inspectors access to the business premises at any time during usual business and working times.



(6) The inspection bodies may request the information and documentation required for the inspection directly from any person employed by the obliged entities within the scope of that person's activities.

(7) The inspection bodies shall be provided with suitable premises and tools for the purpose of conducting the inspection. Where data is entered or stored using data media, the obliged entity shall be obliged at its own expense to provide the tools necessary to render the documents readable within a reasonable period of time and, where necessary, provide the required number of permanent copies which can be read without auxiliary tools.

(8) The findings made during the course of the inspection shall be recorded in writing. The affected obliged entity shall be given an opportunity to submit its opinion.

(9) Paras. 1 to 8 shall be applied accordingly for service providers, to whom the functions or business activities have been outsourced by the obliged entities, and regardless of whether such a transfer requires authorisation. If the service provider is incorporated in another Member State or a third country, then the FMA shall be required to gain the consent of the competent authority in the host state before an on-site inspection is conducted. In the case of an entity that is not subject to supervision, the competent authority in the host country, in which the service provider is incorporated, shall be the competent authority. The FMA may delegate an on-site inspection to the competent authority in the host country, in which the service provider is incorporated.

(10) A service provider incorporated in Austria, to whom functions or business operations have been outsourced by a credit and financial institution pursuant to items a to d of Article 3 nos. 1 to 2 of Directive (EU) 2015/849 incorporated in another Member State, or by comparable entities in a third country, may, with the consent of the FMA, be inspected on-site by the competent authority of the relevant Member State or third country or by persons appointed by them. The FMA itself or inspection bodies appointed by the FMA pursuant to para. 3 may participate in this inspection. Paras. 4 to 8 shall be applied accordingly. The FMA may perform the inspection at the request of the host country's competent authority, if doing so simplifies or speeds up the procedure or if doing so is in the interests of expedience, simplicity, rapidity or cost-effectiveness.

(11) Austrian branches or branch establishments and subsidiaries of credit institutions and financial institutions pursuant to points a) to d) of Article 3 (1) and (2) of Directive (EU) 2015/849 incorporated in another Member State or comparable third country entities may, with the consent of the FMA, be inspected by the competent authorities of their home state or persons appointed by those authorities with regard to the effective implementation of policies



and procedures as defined in Article 45 (1) of Directive (EU) 2015/849. The FMA itself or inspection bodies appointed by the FMA pursuant to para. 3 may participate in such an inspection. Paras. 4 to 8 shall be applied accordingly. The FMA may perform the inspection at the request of the host country's competent authority, if doing so simplifies or speeds up the procedure or if doing so is in the interests of expedience, simplicity, rapidity or cost-effectiveness.

Supervisory measures of the FMA

Article 31. (1) The FMA shall issue all instructions that are necessary and suitable to ensure that the business operations of obliged entities are conducted in accordance with this federal act and with Regulation (EU) 2015/847.

(2) In addition to instructions addressed to the obliged entities themselves, if the purpose of the instructions require, such instructions in accordance with para. 1 may also be issued to:

1. the members of the management body of the obliged entity, as well as the persons who control the obliged entity; or
2. service providers, to whom the functions or business activities have been outsourced, and regardless of whether outsourcing requires authorisation.

(3) In cases of breaches of obligations pursuant to Article 34 paras. 2 and 3, the FMA may:

1. temporarily prohibit by means of an instruction any person held responsible for the breach of the provisions, regardless of whether that person has already performed these managerial functions, from exercising managerial functions in obliged entities, and
2. revoke the licence granted by the FMA pursuant to the procedures set out in Article 9 para. 1 no. 4 AIFMG, Article 6 para. 2 no. 3 in conjunction with Article 70 para. 4 BWG, Article 26 para. 7 E-GeldG, Article 148 para. 5 InvFG 2011, Article 285 VAG 2016, Article 90 para. 3 no. 5 in conjunction with Article 92 para. 8 WAG 2018 or Article 64 para. 7 ZaDiG.

Supervision in the context of the Freedom of Establishment and the Freedom to Provide Services

Article 32. (1) If a credit institution or financial institution pursuant to Article 1 (1) and (2) of Directive (EU) 2015/849 incorporated in another country, which performs business operations in Austria, breaches the provisions of this federal act or of Regulation (EU) 2015/847, then the FMA shall request this entity to remedy such shortcomings. This request shall not be issued in



the form of an administrative decision. At the same time, the FMA shall communicate its findings to the competent authority of the home Member State.

(2) In the event that the credit institution or financial institution pursuant to Article 1 (1) and (2) of Directive (EU) 2015/849 incorporated in another Member State does not comply with the instruction pursuant to para. 1, then the FMA shall communicate this to the competent authority in the home Member State, and shall request that the supervisory authority in the entity's home Member State takes the appropriate measures for remedying the shortcomings.

(3) If the competent authority of the home Member State does not take any measures, or if the measures taken appear to be inadequate or ineffective, then the FMA, in applying Article 31 shall issue the necessary and suitable instructions to the credit institution or financial institution pursuant to Article 1 (1) and (2) of Directive (EU) 2015/849 incorporated in another Member State. The competent authority of the home Member State shall be contacted prior to instructing a measure in accordance with this paragraph.

(4) In the event that a measure is urgently necessary for preventing the misuse of the financial system for the purposes of money laundering and terrorist financing, then the FMA shall issue the necessary and suitable instructions, without procedures pursuant to paras. 1 to 3 and applying Article 31, to the credit institution or financial institution pursuant to Article 1 (1) and (2) of Directive (EU) 2015/849 incorporated in another Member State. The competent authority of the home Member State shall be contacted once a measure in accordance with this paragraph has been ordered.

Article 33. *Repealed*

Section 8

Penal provisions and disclosures

Breaches of obligations

Article 34. (1) Any person who, as person responsible (Article 9 VStG) of an obliged entity, breaches the obligations pursuant to

1. Article 4 (conducting, documenting and updating the risk assessment),
2. Articles 5 to 12 (customer due diligence obligations) and the Regulations of the FMA issued on the basis of Article 6 para. 4, Article 8 para. 5 and Article 9 para. 4,
3. Articles 13 to 15 (execution by third parties),
4. (Repealed)



5. Article 19 para. 2 (protection against being exposed to threats or hostile actions in an employment relationship),
6. Article 20 (prohibition of disclosure)
7. Article 21 paras. 1 to 3 (retention obligations) and Regulations of the FMA issued on the basis of Article 21 para. 3,
8. Article 23 paras. 1 to 3 or 6 (internal organisation),
9. Article 23 paras. 4, 5 or 7 (trainings, responsibility of the management body and designation of the central point of contact), or
10. Article 24 (policies and procedures for groups)

commits an administrative offence and shall be punished by the FMA with a fine of up to EUR 150 000.

(2) In the case of breaches pursuant to para. 1 nos. 2, 4, 7, 9 and 10 that are severe, repeated or systematic breaches or a combination of such breaches, the fine shall be up to EUR 5 000 000 or up to double the amount of the gain arising from the breach of obligations, where this amount is able to be determined.

(3) Any person who, as person responsible (Article 9 VStG) for an obliged entity,

1. fails repeatedly or systematically to submit prescribed information about the originator or beneficiary in breach of Articles 4 to 6 of Regulation (EU) 2015/847,
2. does not ensure that records are retained pursuant to Article 16 of Regulation (EU) 2015/847, where this constitutes a repeated, systematic and severe failure,
3. fails to introduce effective risk-based procedures in breach of Article 8 or 12 of Regulation (EU) 2015/847, or
4. in the case that the obliged entity is an intermediary payment service provider pursuant to Article 3 no. 5, severely breaches Article 11 or 12 of Regulation (EU) 2015/847,

commits an administrative offence and shall be punished by the FMA with a fine of up to EUR 5 000 000 or up to double the amount of the gain arising from the breach, where this amount is able to be determined.

(4) The FMA may refrain from imposing a fine on a person responsible pursuant to Article 9 VStG, if the breach does not constitute a severe, repeated or systematic breach, or if an administrative penalty has already been imposed on the legal person for the same breach and no particular circumstances exist, which stand in the way of refraining from imposing a fine.



(5) Anyone acting as trustee, who does not fulfil their disclosure obligation pursuant to Article 6 para. 3, commits an administrative offence and shall be punished by the FMA with a fine of up to EUR 60 000.

Penal liability of legal persons

Article 35. (1) The FMA may impose fines against legal persons, if a breach of an obligation pursuant to Article 34 paras. 1 to 3 was committed to their benefit by a person, who acted individually or as part of an organ of the legal person, and who holds a leading position within the legal person based on any of the following powers:

1. the power to represent the legal person;
2. the power to take decisions on behalf of the legal person; or
3. the power to exercise control within the legal person.

(2) Legal persons may also be held responsible for breaches of the obligations pursuant to Article 34 paras. 1 to 3, if a lack of monitoring or control by a person listed in para. 1 enabled the committing of one of the breaches of the obligations listed in Article 34 paras. 1 to 3 by a person acting for the legal person to the benefit of the legal person.

(3) The fine pursuant to paras. 1 and 2 shall be up to EUR 150 000 for breaches of obligations pursuant to Article 34 para. 1 and up to EUR 5 000 000 or 10% of total annual turnover in the case of breaches of obligations pursuant to Article 34 paras. 2 and 3. The total annual turnover shall be determined on the basis of the annual turnover from the most recent adopted annual financial statement. If the obliged entity is a credit institution, an electronic money institution pursuant to Article 3 para. 2 and Article 9 para. 1 E-Geldgesetz 2010, which is a CRR-financial institution pursuant to point 26 of Article 4 (1) of Regulation (EU) No 575/2013, a payment institution pursuant to Article 3 no. 4 ZaDiG, which is a CRR-financial institution pursuant to point 26 of Article 4 (1) of Regulation (EU) No 575/2013, an AIFM pursuant to Article 2 para. 1 no. 2 AIFMG or an investment firm pursuant to Article 1 no. 1 WAG 2018, then the total annual turnover is the total of the income items listed in nos. 1 to 7 of Annex 2 to Article 43 BWG less the expenditures listed therein. If the obliged entity is an insurance undertaking pursuant to Article 5 no. 1 VAG 2016 or a small insurance undertaking pursuant to Article 5 no. 3 VAG 2016, then the total annual turnover shall be the total of the income items listed in Article 146 para. 4 nos. 1 to 8 and 10 to 11 VAG 2016 less the expenditures listed therein. If the obliged entity is a parent undertaking or a subsidiary of a parent undertaking, which is required to prepare consolidated financial statements in accordance with Article 22 of Directive 2013/34/EU, then the total annual turnover shall be determined on basis of the



proceeds of the annual revenues of the corresponding type of income in accordance with the relevant accounting Directives according to the last available consolidated accounts. Where the FMA is unable to determine or calculate the bases for the total revenues, then it shall estimate them. In so doing, all relevant circumstances shall be taken into account that are relevant for the estimate.

(4) *(Repealed)*

Extension of the limitation period

Article 36. In the case of administrative offences pursuant to this federal act, instead of the period of limitation for pursuing this matter pursuant to Article 31 para. 1 VStG a period of limitation of three years shall apply. The period of limitation for penal liability pursuant to Article 31 para. 2 VStG shall be five years in such cases.

Disclosure

Article 37. (1) The FMA may publish the name of the natural person or legal person on its website in the event of a breach of obligations pursuant to Article 34 nos. 2 and 3 and Article 35 in conjunction with Article 34 paras. 2 and 3 including details about the breach of obligations, provided that such disclosure does not seriously jeopardise the stability of the financial markets, or cause a disproportionately high level of damage to the party concerned.

(2) The FMA shall publish legally effective imposed fines for breaches of obligations pursuant to Article 34 paras. 2 and 3 and Article 35 in conjunction with Article 34 paras. 2 and 3 as well as legally binding supervisory measures imposed against breaches of the obligations listed in Article 34 paras. 2 and 3 on its website, including the identity of the natural or legal person upon whom the sanction has been imposed or the supervisory measures enacted and information about the type and character of the underlying breach of the obligation without delay, once the person in question has been informed about the fine or supervisory measures becoming legally effective.

(3) Where the FMA considers the publication of such data to be disproportionate following a case-by-case assessment of the proportionality of the publication of the identity of the person or personal data of the affected natural or legal person named in para. 2, or where the publication of this data would threaten the stability of the financial markets of one or several Member States, or the conducting of on-going investigations, then the FMA shall only publish the decision (para. 2):

1. once the reasons for not publishing it cease to exist;



2. anonymously, if such an anonymous publication ensures an effective protection of the relevant personal data; if it is decided to publish the information on an anonymous basis, then the FMA may postpone the publication of the relevant data for a reasonable period of time, if it is to be assumed that the reasons for an anonymised publication shall cease to exist within that period; or
3. choose not to publish the decision, if the options in accordance with nos. 1 and 2 are not sufficient to ensure
 - a) that the stability of the financial markets is not jeopardised, or
 - b) that with regard to measures deemed to be of a minor nature, that proportionality is preserved in publishing the decisions.

(4) The person affected by this publication may make an application to the FMA to review the lawfulness of the publication pursuant to paras. 1, 2 or 3 in a procedure resulting in an administrative decision. In this case, the FMA shall notify the public of the initiation of such a procedure in the same way as the original publication. If, in the course of this review, it is found that the publication was unlawful, the FMA shall correct the publication or in accordance with the request of the person subject to this publication, either revoke it or remove it from its website.

(5) In the event that the administrative decision underlying the publication pursuant to paras. 1 to 3 is appealed against, then this as well as the outcome of this procedure shall be published in the same manner as the original publication. In the event that suspensory effect is granted for such an appeal in a procedure in a court of law, then the FMA shall also make this known. If an appeal is granted against a decision that is the subject of the publication pursuant to paras. 1 to 3, the publication may be removed as the request of the affected party from the FMA's internet presence.

(6) If a publication is not to be revoked or removed from the internet on the basis of a decision pursuant to paras. 4 and 5, it shall remain published for a period of five years. Publication of the personal data shall however only be maintained for as long as none of the criteria for an anonymised publication are fulfilled.

Effective punishment of breaches of obligations

Article 38. When applying a supervisory measure pursuant to Article 31 para. 3 or imposing a fine pursuant to Article 34 or Article 35, the FMA shall take all relevant circumstances into account, including where applicable



1. the gravity and the duration of the breach of the obligation;
2. the degree of culpability of the natural or legal person held responsible;
3. the financial strength of the natural or legal person held responsible, as indicated for example by the total turnover of the legal person held responsible or the annual income of the natural person held responsible;
4. the benefit derived from the breach by the natural or legal person held responsible, provided that this can be determined;
5. the losses caused to third parties by the breach of obligations, provided that they can be determined;
6. the willing of the natural or legal person held responsible to cooperate with the competent authority; and
7. previous breaches of obligations by the natural or legal person held responsible.

The provisions of the VStG shall be unaffected by this paragraph.

Usage of received fines

Article 39. Fines imposed by the FMA pursuant to this federal act shall flow to the Federal Government.

Protection of whistleblowers

Article 40. (1) Obligated entities shall have appropriate procedures in place to enable their employees, whilst keeping their identity confidential, to report any internal breaches of the provisions contained in this federal act, in regulations or administrative decisions enacted on the basis of this federal act, or against the provisions of Regulation (EU) 2015/847, or any administrative decision issued on the basis of that Regulation to a suitable body. The procedures pursuant to this paragraph must comply with the requirements of para. 3 nos. 2 to 5.

(2) The FMA shall establish effective mechanisms to encourage the reporting of breaches or suspected breaches of the provisions of this federal act, of the regulations or administrative decisions issued on the basis of this federal act, of the provisions of Regulation (EU) 2015/847, or of an administrative decision issued on the basis of that Regulation.

(3) The mechanisms referred to in para. 2 shall include at least:

1. specific procedures for the receipt of reports on breaches and their follow-up;



2. appropriate protection for employees of obliged entities who report breaches committed within the obliged entity;
3. appropriate protection for the accused person;
4. protection of personal data concerning both the person who reports the breaches and the natural person who is allegedly responsible for a breach, in compliance with the principles laid down in the DSG 2000;
5. clear rules to guarantee that the identity of the person who reported the breach is not disclosed, unless such disclosure of identity is obligatory in relation to public prosecution, court or administrative proceedings.

Notifications to the European Supervisory Authorities

Article 41. The FMA shall report all fines imposed for breaches of obligations pursuant to Article 34 paras. 2 and 3 and Article 35 in conjunction with Article 34 paras. 2 and 3, as well as supervisory measures imposed pursuant to Article 31 para. 3 to the European Supervisory Authorities. If an appeals procedure is initiated, then both this fact and the outcome of the appeal shall also be reported to the European Supervisory Authorities.

Section 9

Final provisions

Entry into force

Article 42. (1) This federal act shall enter into force on 1 January 2017, with the exception of Article 8 para. 6 and Articles 34 to 38. Article 34 paras. 1, 2, 4 and 5 and Articles 35 to 38 in the version of the federal act published in Federal Legal Gazette I no 118/2016 shall enter into force upon expiry of the date of their publication in the Federal Law Gazette, at earliest however, on 1 January 2017. Article 8 para. 6 and Article 34 para. 3 shall enter into force on 26 June 2017.

(2) Article 46 including its heading shall expire at the end of 25 June 2017.

(3) The FMA may already issue Regulations on the basis of mandates conferred upon it in this federal act from the day following publication of the federal act. These Regulations shall enter into force at the earliest at the same time as the corresponding mandates become effective.

Entry into force of amendments

Article 43. (1) Article 46 including its heading in the version of the Federal Act amended in Federal Law Gazette I No. 107/2017 shall enter into force on 26 June 2017.



(2) Article 2 no. 2 point c, Article 28 para. 4, Article 31 para. 3 no. 2, Article 35 para. 3 and Article 44 para. 1 no. 16 in the version of the Federal Act amended in Federal Law Gazette I No. 107/2017 shall enter into force on 3 January 2018. Article 33 including its heading, Article 34 para. 4 and Article 35 para. 4 shall expire at the end of 2 January 2018.

(3) Article 2 para. 3 no. 6 point g, Article 11 para. 1 final part, Article 23 para. 3 and Article 44 para. 1 no. 22 in the version of the Federal Act amended in Federal Law Gazette I No. 136/2017 shall enter into force on the day following their publication.

References

Article 44. (1) Where references are made in this federal act to the following laws, they shall apply to their respective current versions unless specified otherwise:

1. Securities Deposit Act (DepotG - Depotgesetz) published in Federal Law Gazette no. 424/1969,
2. Criminal Code (StGB - Strafgesetzbuch) published in Federal Law Gazette no. 60/1974,
3. Code on Criminal Procedure 1975 (StPO - Strafprozeßordnung 1975), published in Federal Law Gazette no. 631/1975;
4. Administrative Enforcement Act 1991 (VVG -Verwaltungsvollstreckungsgesetz 1991), published in Federal Law Gazette no. 52/1991;
5. Administrative Enforcement Act 1991 (VVG -Verwaltungsvollstreckungsgesetz 1991), published in Federal Law Gazette no. 53/1991;
6. Banking Act (BWG - Bankwesengesetz), published in Federal Law Gazette no. 532/1993;
7. Private Foundation Act (PSG - Privatstiftungsgesetz), published in Federal Law Gazette no. 694/1993;
8. Commercial Code 1994 (GewO 1994 - Gewerbeordnung 1994), published in Federal Law Gazette no. 194/1994;
9. Cooperative Auditing Association Act 1997 (GenRevG 1997 - Genossenschaftsrevisionsgesetz 1997), published in Federal Law Gazette I no. 127/1997;
10. Data Protection Act 2000 (DSG 2000 - Datenschutzgesetz 2000), published in Federal Law Gazette I no. 165/1999;
11. Financial Market Authority Act (FMABG - Finanzmarktaufsichtsbehördengesetz), published in Federal Law Gazette I no. 97/2001;

All English translation of the authentic German text is unofficial and serves merely information purposes. The official wording in German can be found in the Austrian Federal Law Gazette (Bundesgesetzblatt; BGBl.). All translations have been prepared with great care, but linguistic compromises had to be made. The reader should also bear in mind that some provisions of these laws will remain unclear without certain background knowledge of the Austrian legal and political system. Please note that these laws may be amended in the future and check occasionally for updates.



12. Criminal Intelligence Service Act (BKA-G - Bundeskriminalamt-Gesetz), published in Federal Law Gazette I no. 22/2002;
13. Associations Act 2002 (VerG - Vereinsgesetz 2002), Federal Law Gazette I no. 66/2002;
14. 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;
15. Real Estate Investment Fund Act (ImmoInvFG - Immobilien-Investmentfondsgesetz), published in Federal Law Gazette I no. 80/2003,
16. Securities Supervision Act 2018 (WAG 2018 - Wertpapieraufsichtsgesetz 2018), published in Federal Law Gazette I no. 107/2017;
17. Payment Services Act (ZaDiG - Zahlungsdienstegesetz), published in Federal Law Gazette I no. 66/2009;
18. E-Money Act 2010 (E-Geldgesetz 2010 - E-Geldgesetz 2010), published in Federal Law Gazette I no. 107/2010;
19. Investment Funds Act 2011 (InvFG 2011 - Investmentfondsgesetz 2011), published in Federal Law Gazette I no. 77/2011;
20. Alternative Investment Funds Manager Act (AIFMG - Alternative Investmentfonds Manager-Gesetz), published in Federal Law Gazette I no. 135/2013,
21. Insurance Supervision Act 2016 (VAG 2016 - Versicherungsaufsichtsgesetz 2016), published in Federal Law Gazette I no. 34/2015;
22. Beneficial Owners Register Act (WiEReG - Wirtschaftliche Eigentümer Registergesetz), published in Federal Law Gazette I no. 136/2017.

(2) Where references are made in this federal act to EU Directives, unless instructed otherwise, the following listed versions thereof shall apply:

1. Directive 2007/64/EC on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC, OJ L 319, 05.12.2007, p. 1 most recently amended by Directive 2009/111/EC, OJ L 302, 17.11.2009, p. 97;
2. Directive 2009/110/EC on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC, OJ L 267, 10.10.2009, p. 7;



3. Directive 2013/34/EU on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC and repealing Directives 78/660/EEC and 83/349/EEC, OJ L 182, 29.06.2013, p. 86, most recently amended by Directive 2014/102/EU, OJ L 334 of 21.11.2014, p. 86;
4. Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC, OJ L 141 of 05.06.2015, p. 73; and
5. Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, OJ L 173, 12.06.2014, p. 349, last amended by Directive (EU) 2016/1034, OJ L 175, 23.06.2016, p. 8, as amended by the corrigendum, OJ L 64, 10.03.2017, p. 116.

(3) Where references are made in this federal act to EU Regulations, unless instructed otherwise, the following listed versions thereof shall apply:

1. Regulation (EC) No 1781/2006 on information on the payer accompanying transfers of funds, OJ L 345, 08.12.2006, p. 1.
2. Regulation (EU) No 1092/2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board, OJ L 331, 15.12.2010, p. 1.
3. Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Decision 2009/78/EC, OJ L 331, 15.12.2010, p. 12, most recently amended by Regulation (EU) No 806/2014, OJ L 225, 30.07.2015, p. 1;
4. Regulation (EU) No 1094/2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Decision 2009/78/EC, OJ L 331, 15.12.2010, p. 48, most recently amended by Directive 2014/51/EU, OJ L 153, 22.05.2014, p. 1;
5. Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Decision 2009/77/EC, OJ L 331, 15.12.2010, p. 84, most recently amended by Directive 2014/51/EU, OJ L 153, 22.05.2014, p. 1; and



6. Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, OJ L 176, 27.06.2013, p. 1, most recently amended by Delegated Regulation (EU) 2015/62, OJ L 11, 17.01.2015, p. 37;
7. Regulation (EU) No 2015/847 on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006, OJ L 141, 05.06.2015, p. 1.

Gender-neutral use of language

Article 45. Where expressions in this Federal Act relating to persons are given only in the masculine form, they shall refer equally to men and women. The respective gender-specific form shall be used when applied to specific persons.

Transitional provisions

Article 46. Until expiry of 25 June 2018 the application of due diligence obligations pursuant to Article 6 paras. 1, 2 and 3 in the instances listed in Article 5 nos. 1, 2 and 5 in relation to electronic money (electronic money as defined in Article 1 para. 1 E-Geldgesetz 2010) may be omitted, provided that:

1. in the case of a data medium that cannot be recharged, the amount stored does not exceed EUR 250, or in the case of payment transactions within Austria the amount does not exceed EUR 500;
2. in the case of a data medium that can be recharged, that the total amount of transactions made in a calendar year does not exceed EUR 2 500, except when an amount of EUR 1 000 or more is reimbursed in the same calendar year upon the electronic money holder's request pursuant to Articles 18 and 19 E-Geldgesetz 2010.

Enforcement clause

Article 47. Responsible for the execution of this federal act are:

1. the Federal Minister for Justice with regard to Article 19;
2. the Federal Minister for the Interior with regard to Article 16 paras. 4 and 5 and Article 17 paras. 4 and 5;
3. The Federal Minister of Finance in consultation with the Federal Minister of the Interior with regard to Article 16 paras. 1 and 2, Article 17 paras. 1 to 3 and Article 22; and
4. with regard to all other provisions, the Federal Minister of Finance.



Annexes

Annex I

to Article 6

The following is a non-exhaustive list of risk variables that obliged entities shall consider when determining to what extent to apply customer due diligence in accordance with Article 6 para. 5:

1. the purpose of an account or a business relationship;
2. the level of assets to be deposited by a customer or the size of transactions undertaken;
3. the regularity or duration of the business relationship.

Annex II

to Article 8

The following is a non-exhaustive list of factors and types of evidence of potentially low risk in accordance with Article 8 para. 1:

1. Risk factors relating to customers:
 - a) exchange-listed companies, whose securities are admitted to listing on a regulated market in one or more Member States, or exchange-listed companies from third countries which are subject to disclosure obligations equivalent or comparable to those set out under Union law, as determined by a regulation to be issued by the FMA on the basis of Article 85 para. 10 BörseG;
 - b) public administrations or enterprises;
 - c) customers that are resident in geographical areas of lower risk in accordance with no. 3.
2. Risk factors relating to products, services, transactions or delivery channels:
 - a) life assurance contracts with low premiums,
 - b) insurance policies for pension schemes, provided that the policies neither contain an early surrender option, nor may they be used as collateral for loans,
 - c) a pension, superannuation or similar scheme, such as those operated by corporate provision funds that receive severance contributions and pension contributions for the self-employed, which provide retirement benefits to employees, where



contributions are made by way of deduction from salaries, and where the rules of the system do not permit the beneficiary to transfer their rights to someone else,

- d) financial products or services that provide appropriately defined and limited services to certain types of customers with the aim of granting access to the financial system for the purposes of financial inclusion,
- e) products where the risks of money laundering and terrorist financing are managed by other factors such as restrictions in place on the electronic purse or transparency of ownership (e.g. certain types of electronic money).

3. Geographical risk factors:

- a) Member States,
- b) third countries having effective systems for the combatting of money laundering and terrorist financing,
- c) third countries identified by credible sources as having a low level of corruption or other criminal activity,
- d) third countries which, on the basis of credible sources (e.g. mutual evaluations, detailed assessment reports or published follow-up reports), have requirements to combat money laundering and terrorist financing consistent with the revised FATF Recommendations and effectively implement those requirements.

Annex III

to Article 9

The following is a non-exhaustive list of factors and types of evidence of potentially higher risk in accordance with Article 9 para. 1:

1. Risk factors relating to customers:
 - a) the business relationship is conducted in unusual circumstances,
 - b) customers that are resident in geographical areas with a high risk pursuant to no. 3,
 - c) legal persons or arrangements that operate as personal asset-holding vehicles,
 - d) companies that have nominee shareholders or shares issued in bearer form,
 - e) businesses that are cash-intensive;
 - f) the ownership structure of the company appears unusual or excessively complex given the nature of the company's business;
2. Risk factors relating to products, services, transactions or delivery channels:
 - a) private banking,
 - b) products or transactions that might favour anonymity,
 - c) non-face-to-face business relationships or transactions, without certain safeguards, such as electronic signatures,
 - d) payments received from unknown or unrelated third parties,
 - e) new products and new business practices, including new delivery mechanisms, and the use of new or developing technologies for both new and pre-existing products,
3. Geographical risk factors:
 - a) without prejudice to Article 2 no. 17, countries that are identified by credible sources (e.g. mutual evaluations, detailed assessment reports or published follow-up reports) as not having effective systems for combatting money laundering or terrorist financing,
 - b) third countries identified by credible sources as having a significantly high level of corruption or other criminal activity,
 - c) countries, against whom for example the European Union or the United Nations has/have imposed sanctions, embargos or similar measures,
 - d) countries that provide financial or other means of support for terrorist activities, or in which known terrorist organisations operate.