

FMA internal (unofficial) translation of the Report by the Federal Minister of Finance, Hartwig Löger, to the Council of Ministers (Ministerrat) at its meeting on 21.11.2018 on Austrian Financial Market Supervision Reform

Austria as a financial centre depends strongly on high quality standards in terms of regulation and the system of financial market supervision. The Global Financial Crisis and subsequent follow-up from the crisis have led in both Europe and Austria to gaps in supervisory law being closed and that the regulatory framework has been extended and expanded into an ever more dense and comprehensive system for monitoring the financial sector. In addition to improving financial market stability and improving the resilience of the financial sector against crises, consequently a complex and in some areas bureaucratic apparatus was created among the institutions responsible for supervision, which contains inefficiencies, promotes slow and complex decision-making processes while also demonstrating a lack of legal clarity for supervised entities. The aim of the reform is therefore to organise the overall system of financial market supervision more efficiently (by eliminating duplications in the system, speeding up of decision-making processes, and creating clear points of contact and decision-making paths), while also strengthening the service focus (legal information, practical relevance, an approach of guidance rather than punishment). For the purpose of achieving this goal, a competence centre for financial market strategy and development will be established in the OeNB. The OeNB will retain its competence for macroprudential supervision and analysis. Competence for the conducting of on-site and off-site supervision will be bundled within the FMA and support provided for innovations in relation to financial market products and processes.

The programme of the government prescribes the combining of the agendas with regard to banking supervision in a single institution (One Stop Shop), thereby eliminating the redundancies that exist in this area between the FMA and the OeNB. In this regard a structural reform will take place during the first half of 2019 in and with the competent institutions, namely the Austrian Financial Market Authority (FMA; Finanzmarktaufsichtsbehörde), the Oesterreichische Nationalbank (OeNB) and the Federal Ministry of Finance (BMF; Bundesministerium für Finanzen). A Memorandum of Understanding (MoU) will be concluded between the BMF and the OeNB by the end of 2019 on the coordination of all financial market agenda, thereby ensuring the direct flow of information. This MoU will be published.

In the future the entire institutional oversight over the financial market will be bundled in the FMA. The tasks currently conducted in relation to the on- and off-site supervision in relation to banking supervision will be transferred from the OeNB to the FMA. In so doing the principle of proportionality will also be taken into account in the government's programme. The OeNB shall retain its competence for the monitoring of financial market stability (macroprudential analysis). The OeNB may, in order to ensure that it is able to fulfil its competence in the area of financial market stability as well as in crisis situations, may on the basis of a resolution passed by its

Governing Board (Direktorium) issue inspection orders to the FMA. A competence centre for financial market strategy and financial market development will be built up in the OeNB. The OeNB will house a pool of experts for quality assurance purposes in relation to the inspections conducted by the supervisor, which will support the BMF in its oversight of the FMA, and by retaining know-how in the OeNB in relation to crisis management. The staff members that form the pool of experts will be directly involved in inspection activities of the FMA on the basis of a rotation principle. The FMA will conclude an MoU with the OeNB, which will be published and which will clearly define their cooperation, the flow of information, as well as the resources to be made available for fulfilling their respective competences. Competences regarding statistics, supervisory reporting and supervision of payments shall continue to be performed by the OeNB. In order to reduce interfaces as well as to optimise information flow, the OeNB and the FMA will exchange reporting data, statistical information as well as all other data and information necessary for ongoing supervision in a suitable and efficient manner.

In addition to the Executive Director of the FMA being a voting member in the Supervisory Board of the ECB Banking Supervision (SSM) the competent Director for Supervisory Affairs in the OeNB shall also continue to be represented in this committee as a member without voting rights.

Supervision should concentrate on its core tasks - regulation and supervision are to be more clearly separated from one another. In this regard, regulatory issues will be more strongly concentrated in the BMF. As has been mentioned in the programme of the government, the FMA will be subjected to a comprehensive reform process, with the objective of a leaner, more cost-effective structure as well as an increased service focus (an approach of guidance rather than punishment). The FMA as an autonomous executive body that is not subject to external instructions shall perform microprudential supervision and oversight, shall be responsible for enforcement and procedural activities as well as the technical implementation of regulation. In order to support innovation in the financial sector, the FMA will establish a parallel licensing procedure which shall provide FinTechs and innovative business models of established financial institutions with a quick and secure process for authorisation and licensing (Regulatory Sandbox). The authorisation of an entity to participate in this innovation process shall be conducted by the FMA on the basis of an advisory board for the regulatory sandbox, in which the OeNB and the BMF will also be represented.

Prudential supervision will be conducted by the FMA as an integrated supervisory authority of the financial market. The FMA's competences shall cover:

- Prudential supervision of banks, insurance companies, pension funds (*Pensionskassen*), corporate provision funds, asset managers and other licensed and regulated financial intermediaries and providers of financial products
- Conduct supervision of the capital market, intermediaries and issuers
- Collective consumer protection of depositors, savers, investors and insured persons

- As the authority for the enforcement of macroprudential supervision issues (implementing the macroprudential analysis performed by the OeNB)
- The role as the national resolution authority (NRA) for bank resolution
- Representing Austria in European and international institutions in the area of financial supervision as the National Competent Authority (NCA)

The FMA shall cede its competence for accounting enforcement to the Audit Oversight Body of Austria (APAB; Abschlussprüferaufsichtsbehörde).

An additional organisational unit (group) will be established in the BMF within the existing Directorate General III (Economic Policy, Financial Markets and Customs Duties) to expand its competences in the areas of financial market law and regulation falling within the joint scope of the Minister of Finance (Finanzminister) and the Secretary of State (Staatssekretär). Three new divisions will be established (Supervisory Authorities, Capital Market Law, Securities Law). The additional necessary resources will be covered as far as possible by the reform itself.

The personnel required for on-site and off-site supervision in the OeNB will be integrated into the FMA. The goal is to exploit synergies in expertise by amalgamating resources and to strengthen the competences of the FMA. OeNB staff members working in banking supervision will as far as possible be directly transferred to the FMA or be seconded for a medium-term transitional period and shall be subject to instructions by the FMA. Functions in the FMA will be performed by most suitable staff members for the job - regardless of whether they were FMA staff members or formerly OeNB staff members. Resources in the OeNB that existed due to the hitherto existing redundancies, are to be reduced. The FMA will make all necessary information available to the Governor of the OeNB for discussion and taking of decisions for all topics of relevance relating to supervision in Meetings of the ECB's Governing Council. Parallel structures for the preparation and debriefing of such Governing Council meetings are to be avoided to as great an extent as possible and instead existing know-how in the supervisory authority made available.

The democratic oversight of the FMA by the Austrian parliament will be strengthened. For this purpose it is intended that reporting and information obligations to the National Council (Nationalrat) are to be extended. The Supervisory Board of the FMA is to be reinforced. To achieve this objective independent experts (not affiliated to supervised entities) are to become members with voting rights, and the competence of the Supervisory Board extended in terms of expertise to cover the priorities for supervision, strategic planning across several years and the budget, and the coordination of financial market-related issues. The OeNB will be represented by one member. The Chairperson and their Deputy are to be directly informed about all material issues relating to the authority with the relevant procedure in this regard to be determined in the Rules of Procedure of the Supervisory Board. The Supervisory Board will commission and oversee a cost-effectiveness project in the FMA. A similar cost-effectiveness project will also be

commissioned and overseen by the General Council (Generalrat) in the OeNB. The FMA shall convene one or more advisory councils (Fachbeiräte), which shall be composed of experts drawn from ministries, industry and academia, who shall draw up proposals for the appropriate enforcement of regulation, for the purpose of further developing supervisory principles and to advise the FMA on the basis of their practical experience.

The direct costs of supervision that hitherto arose from the tasks conferred by the FMA to the OeNB, and which were borne by the Federal Government as the sole shareholder of the OeNB, shall in the future be refunded from the Federal Government to the FMA directly, thereby ensuring that the restructuring will not result in any increased cost burden for the supervised entities.

I hereby propose that the Federal Government should approve the aforementioned points on the reform for financial market supervision and should confer upon the Federal Ministry of Finance the order to present the necessary draft legislation. The Legal Act regarding the Reform is intended to be implemented in two stages: (1) The principles and competences are to be legally fixed by mid-2019 and transposed in detail in the material legal acts in relation to supervisory law; (2) Entry into force and implementation of organisation changes in the FMA, OeNB and BMF by the end of 2019. The FMA and the OeNB are instructed to support the BMF in the legal implementation of the reform, as well as to prepare and implement the operative aspects of the reform by the end of 2019.

20 November 2018

(Hartwig) Löger
Finance Minister