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P R E F A C E B Y T H E E X E C U T I V E B O A R D



Financial markets are among the most creative and innovative areas of any market economy. They symbolise the process of “creative destruction”, as defined by Joseph Schumpeter: Even good is not good enough, as better comes along to oust it from the market – the driving force of the market economy and engine of economic growth. The financial markets incessantly revolutionise the economic structure from within, incessantly destroying the old structures, products and strategies, and incessantly creating new ones. And this destruction is necessary – rather than a fault of the system – for innovation to take place, new things to develop and be created.

This process of “creative destruction” also includes constantly exploring the limits of legislation, pushing the envelope around the grey areas of regulation and exploiting loopholes. Accordingly, keeping pace with market participants’ dynamism, creativity and capacity to innovate represents one of the greatest challenges for regulators and supervisors. They must provide market forces with an appropriate framework to strengthen stability of the financial markets, build trust in their function and treat all market participants as fairly as possible.

The permanent refinement of the regulatory framework is therefore simply the other side of the same creative destruction coin.

As regulators and supervisors we have set ourselves the objective, enshrined in the Mission Statement of the FMA, “to put forth preventive efforts with respect to compliance with supervisory standards while consistently punishing any violations of these standards.” Consequently, we acknowledge the need to engage proactively in dialogue with the stakeholders, supervised companies and all other participants in the financial market to create understanding of the objectives, purpose and methods of regulation and reach mutual comprehension of the supervisory demands and expectations.

One instrument we can use to do this is our “Facts and figures, trends and strategies” publication series, developed in 2015, in which we provide an annual review of the latest regulatory developments and describe, explain and discuss the most important in detail. We believe that this 2016 edition will give you a good, well-founded overview of the current developments in financial market legislation and of how regulation and supervision are responding to the lessons of the financial crisis. With this publication we aim to make a valuable contribution to building mutual understanding of the supervisory system.

We hope that you find it an interesting and useful read.

HELMUT E TTL, KLAUS KUMPFMÜLLER

The successful model of integrated supervision

By international standards, Austria is a small economy, with its domestic market accounting for a mere 2.3%¹ of the European Union's economic output. Yet the Austrian economy is an open economy, with particularly strong links to the countries of the euro area and to the markets of Central, Eastern and South-Eastern Europe. Moreover, compared with the real economic domestic market, the Austrian financial market is disproportionately dominant and even more international in character. The International Monetary Fund (IMF) ranks Austria as part of the "systemic core of the global financial system"² and as one of the 30 most systemically important financial centres in the world.

A SMALL OPEN ECONOMY, A GLOBALLY SIGNIFICANT FINANCIAL CENTRE

The following facts illustrate the significance of the Austrian financial industry and the manner in which it is interlinked:

- The aggregate total assets of all Austrian banks (including foreign subsidiaries) account for 313%¹ of Austria's gross domestic product.
- Austrian banks have 60 fully consolidated subsidiaries in the CESEE countries alone with aggregate total assets of € 265.7 billion.
- Austrian insurance undertakings operate in 26 countries with a total of 108 subsidiaries and holdings.
- Austria is a member of the European Union with a market comprising 508¹ million consumers and investors, and annual economic output of € 14.6 trillion¹. Austria is also an integral part of Europe's economic and monetary union with its common currency, the euro.

At the same time, the Austrian financial market features a high level of interweaving among the different participants:

- Three financial conglomerates together account for a market share of just under 20% of the Austrian banking sector and approximately 30% of the insurance sector (measured in terms of total assets in each case).
- Investment funds hold € 5.3 billion in securities issued by Austrian credit institutions and € 0.3 billion in securities from Austrian insurance undertakings.

¹ Source: Eurostat, OeNB.

² See <http://www.imf.org/external/np/pp/eng/2013/111513.pdf>.

- Austrian credit institutions or insurance undertakings hold a stake of more than 25% in 18 out of 24 investment fund management companies; all 5 real estate investment fund management companies have a credit institution or investment fund management company as their majority shareholder.
- Austrian insurance undertakings hold an interest of more than 25% in 6 out of 14 *Pensionskassen* and, conversely, one *Pensionskasse* holds a majority share in an insurance undertaking.
- Austrian credit institutions, insurance undertakings or *Pensionskassen* hold a stake of more than 25% in 7 out of 9 corporate provision funds.
- 27 of the 72 members of the Vienna Stock Exchange are Austrian credit institutions.
- The exposure of Austrian insurance undertakings to Austrian credit institutions accounts for approximately 13% of all assets, corresponding to € 13.8 billion; additionally, some insurance undertakings use banks as their sales partners.

Due to Austria's integration into Europe, the particular economic significance of its financial market and the interweaving of its market participants within Austria itself and on a cross-border basis, the Austrian National Council completely overhauled the way in which the Austrian financial market is supervised in 2001/2002. Based on an international best practice study, the FMA was set up as an integrated supervisory body, bringing together supervision of practically every aspect of the financial market under one roof.

THE INTEGRATED APPROACH TO SUPERVISION

The integrated model of financial supervision, as implemented in Austria, fully exploits the synergies created at all three levels of integration:

- integration across all sectors of the financial market;
- integration of prudential supervision and conduct supervision;
- integration of both micro-supervision and macro-supervision.

The key advantages of integrating supervision can be summed up as follows:

- The Austrian financial market, with its strongly interwoven character, is provided with an integrated supervisor that responds to risks and misconduct with appropriate measures, while also taking into account any interactions and dependencies.
- Micro-supervision and macro-supervision across all sectors provide the basis for a consistent risk analysis of the financial market, followed by effective measures.
- The integrated approach to supervision means that the FMA can help shape supervisory law at European and international level efficiently and effectively, on the basis of an agreed approach.
- Bringing conduct supervision and prudential supervision under one roof is the cornerstone of effective supervision, taking account of all causal links.

The companies operating on the financial market have, in the form of the authority, a contact point familiar with the market as a whole, while investors and consumers benefit from a central point of contact for any enquiries and a central complaints body.

This integrated supervisory model has proven the ideal model for the specific characteristics of the Austrian financial market from the outset. It is a cost-efficient approach for a small, open economy and, at the same time, creates synergy benefits in terms of expertise in what is a closely interwoven international financial centre. This approach is also in line with current trends in European supervision, which is becoming increasingly centralised. The creation of fair and equal competition conditions, a level playing field, requires a high level of harmonisation between still heterogeneous national supervisory practices and greater development of cross-sectoral rules.

In 2007 Austria's integrated supervisory model, as planned five years earlier when it was set up, was evaluated on the basis of the experiences gained over the initial period. It was also strengthened in light of the findings of the parliamentary enquiry committee, eliminating redundancies and interface problems in relation to the Oesterreichische Nationalbank in the area of banking supervision.

The legislator's commitment to an integrated supervisory approach in Austria is clearly demonstrated by the additional tasks for which the FMA has been made responsible since its establishment, namely supervision of corporate provision funds, prospectus supervision, measures to combat unauthorised business operations, prevention of money laundering and terrorist financing, compliance supervision, supervision of credit rating agencies, supervision of alternative investment funds, financial reporting enforcement, role of the national resolution authority for banks and investment firms, as well as other tasks. Within the European System of Financial Supervision, the FMA was assigned the function as sole responsible national supervisory authority, as well as being appointed the national competent authority within the Single Supervisory Mechanism (SSM) for banks, the decentralised system of banking supervision for the euro countries headed by the European Central Bank (ECB), and within the Single Resolution Mechanism (SRM) in Europe. This means that the FMA is also an integral component of Europe's supervisory architecture for the financial markets.

Through its integrated approach to supervision, the FMA is able to fulfil the supervisory aims as defined by the Austrian legislator efficiently and effectively, also ensuring that national and international challenges will be tackled optimally in future too.

The FMA has summarised its statutory remit and its supervisory aims in its Mission Statement as follows:

"The FMA is an independent, autonomous and integrated supervisory authority for the Austrian financial market...

The aims of the FMA are:

- *to contribute towards the stability of Austria as a financial market;*
- *to reinforce confidence in the ability of the Austrian financial market to function;*
- *to protect in accordance with provisions of law investors, creditors and consumers; and*
- *to put forth preventive efforts with respect to compliance with supervisory standards while consistently punishing any violations of these standards."*

The manner in which these aims are efficiently and effectively met through the integrated supervision model is depicted below using selected examples from supervisory practice.

AIM 1 "TO CONTRIBUTE TOWARDS THE STABILITY OF AUSTRIA AS A FINANCIAL MARKET"

CROSS-SECTORAL SUPERVISION

The strong interweaving between the financial sectors, particularly through ownership structures, sales cooperation agreements, financial transactions and assumption of guarantees, requires an integrated and cross-sectoral approach to supervision in order to be able to record and evaluate economic processes and risk-bearing capacity between the individual companies. In particular, it is a matter of countering the major danger of a risk transfer from one sector to another in a way that cannot be monitored, as well as countering any attempts to evade regulation or supervision.

An integrated approach to supervision enables:

- a harmonised and rapid form of supervision;
- uniform standards across all sectors;
- consistent interpretation of the law across all of its areas;
- uniform administrative practice;
- minimisation of regulatory arbitrage; and
- avoids potential evasive reactions from the supervised entities through the relocation of business activities or shifting of risks to other sectors.

INTEGRATION OF PRUDENTIAL SUPERVISION AND CONDUCT SUPERVISION

The aim of prudential supervision is to ensure that the supervised companies are solvent at all times and able to fulfil their contractual obligations. The aim of conduct supervision is to ensure equal, fair and transparent

conditions for all market participants. It is only by bringing both of these activities under one roof that it is possible to ensure a full exchange of information for the purposes of obtaining a full picture of a supervised company. In turn this means that supervisory laws can be agreed to fulfil all of the statutory obligations, to record risks effectively and to solve problems in a holistic manner.

What this means in supervisory practice is shown here in brief using a specific example: A supervised company is placing an equity-related issue, such as participation certificates, with interested retail investors. This type of financial transaction needs to be assessed and monitored from several entirely differently supervisory aspects.

- The planned issue needs to be valued in line with the equity rules (prudential supervision).
- The capital market prospectus must be reviewed for completeness, coherence and comprehensibility, and be approved (prospectus supervision).
- The disclosure obligations regarding the simultaneous provision of information to all investors must be monitored (ad hoc disclosure).
- Sales need to be supervised from the perspective of fair advisory and proper selling (supervision of rules of conduct).

Prospectus approvals as well as reviewing compliance with the conduct and compliance rules are covered by conduct supervision. It is only integrated supervision of equity-related issues that enables quick and effective prudential measures to be taken in the event of capital rules being breached, if information on the company's financial situation is inaccurate or not provided on time, or in the event of the need for a supplement and other risks. However, equity capital issuers tend to advertise and sell their own financial instruments as if the level of security was on a par with a simple savings account. Yet participation capital presents the risk of a total loss and, in the event of a liquidation, may only be repaid after the claims of all other creditors have been satisfied or secured. It goes without saying that the customer must be fully and specifically informed about this risk. Any failure to provide such information represents a breach of the type of conduct required by law.

Only an integrated supervisory body will be aware, even at the planning stage for the issuing of participation certificates, that such a product is intended for sale to customers in future. Consequently, an integrated supervisory body can input from an early stage its findings acquired through conduct supervision, namely the danger of a lack of information on the risk associated with financial instruments, and ensure that equity instruments in particular are the subject of appropriate prospectuses. It can also monitor whether such products are sold in accordance with the rules of conduct, with the required information on risk being provided.

It is therefore only by integrating prudential supervision and conduct supervision that the following is made possible:

- comprehensive exchange of information;
- overall knowledge of a supervised company;
- preventive action;
- agreed competent measures;
- consistent and holistic approach to problem-solving.

CROSS-SECTORAL MANAGEMENT OF MACRO AND MICROPRUDENTIAL RISKS

The aim of macroprudential supervision is to secure the stability of the financial system in its entirety and to counter any adverse developments, such as credit bubbles. Macroprudential risks can only be handled at the same time as and in close collaboration with microprudential supervision, as financial market stability depends on the overall stability of the individual market participants. Results from microsupervision must be linked on a cross-sectoral basis with findings from analysis of the financial system as a whole. In this way, systemic risks can be detected and appropriate measures introduced for the market and its participants.

What this means in supervisory practice is shown here using two specific examples:

Example – systemic risk buffer in the banking sector: In order to cover any risks that could arise, banks must have sufficient equity capital. Each bank's capital requirement is calculated on an individual basis using its risk profile. Banks may also be required to have an additional capital buffer to cushion the blow of any systemic macroeconomic risks. This type of systemic risk buffer is defined by macroprudential supervision, in Austria's case the Financial Market Stability Board (FMSB), in which the FMA is involved. It is particularly important here that risks that have been included in the equity calculation at a micro level (i. e. for the individual institution) are not then included for a second time at a macro level. In other words, capital should not be set aside twice to cover one and the same risk. Any such double counting must be avoided, which requires regular exchange between supervisors working at micro and macro level.

Decision-making in macroprudential supervision (nationally via the FMSB, at European level with the involvement of the European Systemic Risk Board (ESRB), the Single Supervisory Mechanism (SSM) and the European Commission where applicable) is markedly increased by the presence of an integrated supervisory authority.

Example – low interest rate environment: Persistently low interest rates present major challenges for everyone participating in the financial markets. With this in mind, the FMA carried out a comprehensive market analysis to study the impact on both the insurance and the banking sector. Based on the findings, targeted rules were adopted (increase in additional interest provision and reduction of maximum interest rate for insurance undertakings; risk-minimising measures for building societies) and further company-specific measures introduced.

Results from micro-supervision must be linked on a cross-sectoral basis with findings from analysis of the financial system as a whole. In this way, systemic risks can be detected and appropriate measures introduced for the market and its participants.

AIM 2 “TO REINFORCE CONFIDENCE IN THE ABILITY OF THE AUSTRIAN FINANCIAL MARKET TO FUNCTION”

One of the most important lessons learned from the global financial crisis is that regulating and supervising the financial market as a whole are critically important if the markets are to function properly. In its capacity as an integrated supervisory authority, the FMA deals with Austria's complex and highly interwoven financial market. This involves specific and comprehensive areas of responsibility and remits, and uniform administrative practice and interpretation of the law across all sectors.

One of the FMA's key tasks as it works to bolster confidence in the Austrian financial market is to ensure that only authorised providers offer financial services that require a licence on the Austrian financial market. With regard to these authorised providers it must then monitor whether they are complying with all of the statutory regulations.

COMBATING UNAUTHORISED BUSINESS

Unauthorised business is the offering of any financial service without holding the requisite approval/licence. When monitoring the market for unauthorised business operations, the supervisor will however also encounter situations that raise the suspicion of other legal standards being breached, such as the obligation to publish a prospectus, capital market law, the Stock Corporation Act (AktG; *Aktiengesetz*), criminal law, the ban on pyramid selling, the Telecommunications Act (TKG; *Telekommunikationsgesetz*) and its ban on cold calling, i. e. unsolicited phone calls, to name just a few examples. In such cases, where the FMA has justified suspicions that a law has been broken, it must report the situation to the responsible authority.

Where it suspects that unauthorised business is being carried out, the FMA, as the responsible authority, must carry out investigations taking account of all legal points of reference, as it will generally not be clear from the outset if a statutory rule has been or is being breached and if so which one. This means that the investigation cannot initially be limited to a particular financial service that requires a licence, to a particular sector or to a particular aspect of the law.

Example – public participation models: Generally, public participation models involve three legal aspects/sets of circumstances. Does the model represent a banking transaction governed by the Austrian Banking Act (BWG; *Bankwesengesetz*), is the offer subject to the obligation to publish a prospectus pursuant to the Capital Market Act (KMG, *Kapitalmarktgesetz*) or is it an alternative investment subject to the Alternative Investment Fund Managers Act (AIFMG; *Alternatives Investmentfonds Manager-Gesetz*)? By having one single authority tackle all of these questions, and with all of the supervisory areas being closely linked, complex legal issues can often be resolved by one entity in the simplest way, thereby quickly and effectively combating any unauthorised business.

UNIFORM DEVELOPMENT OF LEGISLATION, LEGAL INTERPRETATION AND ENFORCEMENT

The boundaries between different products, industries and sectors on the financial markets are becoming ever more blurred. Increasingly, this requires an integrated, and therefore uniform, approach with regard to the development of legislation, interpreting the law and enforcement. This is the only way in which to create a level playing field for all. An integrated approach is a reliable method of avoiding any distortion of competition.

Example – use of credit ratings: The EU Regulation on credit rating agencies and various sector guidelines stipulate that supervised companies in the financial sector, rather than automatically applying credit ratings, should carry out credit risk assessments of their own. For the Austrian financial market in particular, with its large number of small financial service providers across all sectors, uniform criteria must be defined for all supervised entities in all sectors so that any dependence on external credit rating agencies and the threat to stability posed by automatic application of credit ratings can be kept to a minimum.

Example – information requirements relating to financial products and services: If consumers are to make independent and well-informed decisions on which products and services from the financial and capital market to use, they must be able to understand and compare the information made available to them.

To achieve a level playing field, the information provided must be comprehensible and consistent in terms of level of detail. In order to enshrine these principles in law, cross-sectoral legal provisions have been developed in the form of MiFID II, PRIIPs at European level, and through the inclusion of information requirements in Austrian laws, namely the BWG, Payment Services Act (ZaDiG; *Zahlungsdienstegesetz*), 2016 Insurance Supervision Act (VAG 2016; *Versicherungsaufsichtsgesetz*) and Stock Exchange Act (BörseG; *Börsegesetz*). Only by having uniform information requirements with consistent, integrated implementation can there be fair competition, based on a genuine comparison of the different products. At the same time, the provision of fair and honest information generates consumer confidence, which is a vital component of financial market stability.

Supervisory convergence begins with the drawing up of national and international rules. Working to shape transparent, harmonised rules across all sectors at national and international level is therefore a key way in which an integrated supervisory authority can help strengthen confidence in the financial market.

Similarly, the adoption by an integrated supervisor of further-reaching legal frameworks in the form of regulations, minimum standards and circulars also guarantees legal security. For its part, the FMA has established a uniform supervisory position regarding the issuing of credit by AIFs and adopted an owner control regulation applicable to all sectors of the financial market as well as a regulation on combating money laundering and terrorist financing.

EFFECTIVE AND EFFICIENT SUPERVISORY ORGANISATION

Fast decision-making: The FMA's key strengths are its flat hierarchies and resulting efficient processes for operational supervision, the management of procedures and the development of legislation. The efficient transfer

of information within an integrated supervisory authority favours unbureaucratic consultation processes and quick decision-making with the involvement of all relevant parties.

Cost efficiency: Having one single supervisory body under one roof rather than a range of different institutions means that resources can be shared and overheads kept to a minimum, particularly with regard to human resource management, finance and controlling, IT and facility management. By pooling all of the supervisory activities within one organisation, the required administrative apparatus can also be kept to a minimum. The supervised entities, meanwhile, benefit directly in the form of lower contributions and, in addition, can make use of the same reporting channels (e.g. Incoming Platform) to comply with various reporting obligations.

Pooling knowledge: Within the integrated supervisory authority, the employees responsible for supervising a particular company or group engage in a regular direct exchange of their experience and findings from their supervisory work. Huge advantages are in evidence in the following areas in particular:

- supervision of financial conglomerates;
- supervision of insurance products with external guarantors (e.g. banks);
- combating unauthorised business and ensuring that licensing conditions are interpreted uniformly;
- insider dealing investigations involving function holders in supervised companies.

The structured exchange of information and efficient knowledge transfer take place both vertically and horizontally (subject-related) and are facilitated by the following:

- various forums and committees (e.g. Board meetings, the “International” round table, Consumer Protection Circle, regular bridgehead meetings);
- comprehensive training and CPD options (e.g. basic training covering all sectors for all FMA employees, university course in financial market supervision, legal forum);
- electronic systems (e.g. Fabasoft ELAK, SharePoint, reporting data pursuant to Article 9 EMIR, fund database, index of legal acts).

Centres of excellence within the FMA itself help to utilise synergies and pool the FMA’s expert knowledge:

- Financial market analysis
- Financial reporting and IFRS enforcement
- Managing procedures
- Consumer information
- Rules of conduct and compliance
- Combating money laundering and terrorist financing
- Combating unauthorised business

AIM 3 “TO PROTECT INVESTORS, CREDITORS AND CONSUMERS”

CONSUMER PROTECTION

Collective consumer protection as provided by the FMA involves enforcing prudential rules and, to an equal extent, enforcing rules of conduct and compliance requirements. By enforcing supervisory standards in practice, the integrated authority directly contributes to the protection of consumers as a whole as, ultimately, a well-functioning financial market is in the interests of the economy as a whole and thus in the interests of consumers. Additionally, standards that relate primarily to consumer protection are increasingly being incorporated into supervisory legislation.

Providing the public with a clear point of contact for consumer protection issues and information in relation to supervisory law, regardless of the company or financial product concerned, offers clear benefits:

- one universal contact point;
- uniform processing of enquiries (queries, complaints, etc.);
- overview of the handling of consumer issuers;

- insight into cross-sectoral consumer issues;
- setting of cross-sectoral priorities in supervisory activities.

COMPLIANCE, ORGANISATIONAL RULES AND RULES OF CONDUCT

Rules of conduct governing how companies interact with their customers, which have been written into law in ever more detail over recent years, are one of the best confidence-building measures. Supervision of compliance with organisational rules and rules of conduct is carried out by a centre of excellence within the FMA. Experts input their knowledge from across all of the sectors, drawing on the resulting synergies and engaging in convergent supervision in the interests of investor protection. From the perspective of the investor, it is ultimately unimportant which company is offering a product or service, as long as that company behaves appropriately.

AIM 4 “TO PUT FORTH PREVENTIVE EFFORTS ... WHILE CONSISTENTLY PUNISHING ANY VIOLATIONS OF STANDARDS”

A key preventive measure with regard to avoiding any misconduct on the part of supervised entities is the provision of clear statements on the supervisory authority’s specific expectations. The FMA makes use of a range of tools in this regard, including recommendations, circulars and minimum standards relating to the supervisory laws. Dialogue with market participants is another essential aspect as a means of achieving a cultural change among the supervised entities and of improving market discipline across all sectors. Breaches of the advertising rules in particular, as well as infringements of information and reporting requirements, have all fallen significantly due to integrated supervision efforts being stepped up.

Uniform interpretation of the law and management of procedures are prerequisites in this regard. With an integrated supervisory system, differences in the way in which legal rules are interpreted across different sectors can be avoided. The same interpretation can be applied uniformly regardless of the sector, with harmonised use of discretionary powers. In this way, integrated supervision guarantees optimum legal security. This is particularly clear in the area of administrative penal proceedings and with regard to proceedings before the Federal Administrative Court (BVwG).

Further supervisory procedures that also require harmonisation across the different sectors include for example:

- uniform monitoring of compliance with information requirements;
- uniform owner control procedures;
- uniform fit and proper requirements and tests for management and supervisory board members and other key functions;
- monitoring of accounting rules beyond sector limits;
- procedures in relation to the prevention of money laundering and terrorist financing for all companies;
- efficient gathering of relevant information during a prospectus approval procedure from all areas of supervision to verify comprehensibility, completeness and coherence.

SUMMARY

Having an integrated financial market supervisor covering all dimensions provides Austria, as a small, open economy with a strongly interwoven financial market classed as one of the world’s systemically important markets, with the optimum supervisory impact. Indeed, this is clearly confirmed by supervisory experience and practice since the FMA was first established.

Efficiency and effectiveness in the design of legal provisions at national, European and international level are crucial. Further factors that contribute to success, such as cost efficiency, the pooling of knowledge, uniform

management of procedures and supervisory practice and efficient decision-making channels are in evidence both in the supervision of individual companies and in structured dialogue with the market as a whole.

In order to achieve the supervisory aims set by the legislator, many different tasks need to be completed, from practice-oriented participation in the development of European legislation through to the shaping of national supervisory law, from supervision of individual institutions through to the risk-oriented, macroeconomic observation of the market, from uniform interpretation of the law and management of procedures across all sectors to the economically effective implementation of supervisory activities.

Having an integrated supervisor that brings every aspect under one roof creates a supervisory authority for a strongly interwoven financial market that offers effectiveness, efficiency and quality.

Legal developments

Major changes in national and international financial market legislation

Financial market legislation is one of the most dynamic fields of law worldwide. Regulators and supervisors must keep pace with the developments on the markets, while coping with constantly changing requirements and new challenges. What is more, the global financial crisis called into question the efficiency and effectiveness of the existing types of regulation in many areas, demanding new legislative responses at both national and international level to the lessons learned from the crisis. In addition, consumer and investor protection standards are just as much subject to the dynamic development of society as are the standards applying to transparency and the provision of information. The following section provides a summary of the major changes in legislation falling within the scope of enforcement by the Financial Market Authority (FMA).

NATIONAL LEGISLATION

CHANGES TO EXISTING LAWS

FEDERAL ACT ON THE DETERMINATION OF THE CIRCULATION WEIGHTED AVERAGE YIELDS OF GOVERNMENT BONDS (UDRBG; *BUNDESGESETZ BETREFFEND DIE ERMITTLUNG DER UMLAUFGEWICHTETEN DURCHSCHNITTS-RENDITE FÜR BUNDESANLEIHEN*) AND OTHERS, Federal Law Gazette II No. 4/2015

The UDRBG gives the Oesterreichische Nationalbank (OeNB) the legal mandate to determine and publish the circulation weighted average yields of government bonds. In the context of federal acts, regulations and private agreements, this indicator replaces the previous one, the secondary market yields for government bonds.

2014 ACCOUNTING AMENDMENT ACT (RÄG 2014; *RECHNUNGSLEGUNGS-ÄNDERUNGSGESETZ*), Federal Law Gazette I No. 22/2015

This Act transposed Directive 2013/34/EU (on balance sheet requirements) into national law. One of its core elements is to legally specify fully harmonised information to be provided by small enterprises. The occasion of implementing the Directive was also used as an opportunity to bring up to date all regulations applying to balance sheets, for example by eliminating items and accounting methods that are not common in international practice. In addition, another step was taken towards achieving a “uniform balance sheet”.

2016 INSURANCE SUPERVISION ACT (VAG 2016; *VERSICHERUNGSAUFSICHTSGESETZ*), AMENDMENT TO THE AUSTRIAN BANKING ACT (BWG; *BANKWESENGESETZ*) AND OTHERS, Federal Law Gazette I No. 34/2015

The VAG 2016 implements Directive 2009/38/EC (Solvency II), which provides for the introduction of a risk-oriented supervision regime for insurance undertakings and reinsurance undertakings. A governance system aligned with progress at international level is to be established, involving a risk management function that includes assessment of risk and solvency by the company, an actuarial function, an internal audit function and a compliance function. Insurance and reinsurance undertakings are obliged to meet a solvency capital requirement (SCR) and a minimum capital requirement (MCR). The FMA can specify capital add-ons where the SCR does not adequately reflect the individual risk profile or where the governance system displays serious shortcomings. A standardised supervisory review process has also been specified.

CENTRAL SECURITIES DEPOSITORIES IMPLEMENTATION ACT (ZVVG; *ZENTRALVERWAHRER-VOLLZUGSGESETZ*), AMENDMENT TO THE AUSTRIAN BANKING ACT (BWG; *BANKWESENGESETZ*) AND OTHERS, Federal Law Gazette I No. 69/2015

The ZvVG serves to implement Regulation (EU) No 909/2014 (Central Securities Depositories Regulation). The CSDR introduces rules that on the one hand apply to the licensing and ongoing supervision of central CSDs, including recovery and resolution planning, and that are also aimed at improving securities settlement discipline.

AMENDMENT TO THE STOCK EXCHANGE ACT (BörseG; *BÖRSEGESETZ*) AND OTHERS, Federal Law Gazette I No. 98/2015

This legislation is basically designed to transpose Directive 2013/50/EU (amendment of the Transparency Directive) into national law. The general requirement to provide quarterly reports has been eliminated from the BörseG. Half-yearly financial statements are now required to be published within no more than three (instead of two) months of the period they cover. Expanded and increased powers to impose sanctions on legal persons have also been defined. Additions have been made to the catalogue of financial instruments triggering the obligation to disclose major holdings. And an exception from the prospectus obligation for open-ended alternative investment funds (AIFs) has been specified.

ALTERNATIVE DISPUTE RESOLUTION ACT (AStG; *ALTERNATIVES STREITBEILEGUNGSGESETZ*), Federal Law Gazette I No. 105/2015

The AStG transposes Directive 2013/11/EU (on alternative dispute resolution for consumer disputes) into Austrian law. The core aim of the AStG is to establish a nationwide system of centres for (out-of-court) alternative dispute resolution, to ensure every consumer has access to an efficient and cost-effective means of resolving disputes over obligations arising from contracts entered into when purchasing goods and services.

RULING BY THE CONSTITUTIONAL COURT LIFTING THE FEDERAL ACT ON RESTRUCTURING MEASURES FOR HYPO ALPE ADRIA BANK INTERNATIONAL AG (HaaSanG; *BUNDESGESETZ ÜBER SANIERUNGSMASSNAHMEN FÜR DIE HYPO*), Federal Law Gazette I No. 108/2015

The Constitutional Court handed down a ruling on 3 July 2015 lifting the HaaSanG, as published in Federal Law Gazette I No. 51/2014, on grounds of unconstitutionality and declaring the act no longer applicable.

2015 ACT AMENDING CRIMINAL LAW (*STRAFRECHTSÄNDERUNGSGESETZ*), Federal Law Gazette I No. 112/2015
Falsification of accounts has been defined as a criminal act based on uniform criteria. In addition, savings banks and large associations now also fall under this provision. Article 163b has been added to the Criminal Code (StGB; *Strafgesetzbuch*), which defines a separate offence of this kind in the case of statutory auditors. Now punishable are persons who to a material extent falsely or incompletely represent the assets, financial or earnings situation of an association or an affiliated company or who in the face of imminent danger to the association's liquidity fail to present a special report as required by law.

ALTERNATIVE FINANCING ACT (AltFG; *ALTERNATIVFINANZIERUNGSGESETZ*) AND OTHERS, Federal Law Gazette I No. 114/2015

The AltFG provides the option for small and medium-sized enterprises (SMEs) to issue shares and bonds valued at as much as € 250 000 or up to € 1.5 million in other alternative financial instruments without having to publish a prospectus. Issues between € 100 000 and € 1.5 million are subject to an information obligation towards investors. If the issuer accrues more than € 5 million in alternative financing over seven years, the issue falls under the prospectus obligation as specified in the Capital Market Act (KMG; *Kapitalmarktgesetz*) and a complete prospectus must be published. The maximum amount allowed to be invested by any one investor is € 5 000 per year. Special rules apply to parties operating web platforms, who under certain conditions are entitled to act as brokers of alternative financial instruments between issuers and investors. A simplified prospectus is now required where alternative financial instruments amounting to less than € 5 million are issued, beginning at € 250 000 for bonds and shares, and from € 1.5 million upwards for other alternative financial instruments. A capital market prospectus in accordance with the KMG is required for issues of € 5 million or more.

AMENDMENT TO THE 2011 INVESTMENT FUND ACT (InvFG 2011; *INVESTMENTFONDSGESETZ*) AND THE REAL ESTATE INVESTMENT FUND ACT (ImmInvFG; *IMMOBILIEN-INVESTMENTFONDSGESETZ*), IMPLEMENTING UCITS V, Federal Law Gazette I No. 115/2015

For the purpose of implementing Directive 2014/91/EU, it was more clearly specified that only one depositary is allowed to be appointed for a UCITS fund. The conditions under which depositaries are permitted to delegate custody tasks to third parties were additionally modified to align them with the Alternative Investment Fund Managers Directive (AIFMD). Another change was to specify certain due diligence obligations regarding the selection and appointment of sub-custodians and the monitoring of their activities. A stringent liability standard was also introduced. Depositaries are specifically bound to reimburse losses regardless of whether any misconduct or negligence was involved.

AMENDMENT TO THE AUSTRIAN BANKING ACT (BWG; *BANKWESENGESETZ*), Federal Law Gazette I No. 116/2015

The amendment to the BWG provides for broader access, particularly on the part of federal fiscal authorities, to information protected under banking secrecy.

ACT ON DEPOSIT GUARANTEE SCHEMES AND INVESTOR COMPENSATION (ESAEG; *EINLAGENSICHERUNGS- UND ANLEGERENTSCHÄDIGUNGSGESETZ*), IMPLEMENTING THE DGSD, Federal Law Gazette I No. 117/2015

The ESAEG transposes Directive 2014/49/EU (Deposit Guarantee Schemes Directive) into Austrian law. In lieu of five different deposit guarantee institutions, one uniform deposit guarantee scheme will generally exist in future (as of 1 January 2019). It will also be possible to recognise institutional protection schemes (IPs) under certain conditions. In future, contributions will be paid into the deposit guarantee scheme in advance and managed in a fund. Every protection scheme is required to accrue a deposit guarantee fund amounting to at least 0.8% of the covered deposits by 2024. Where required, the protection scheme must subsequently collect special contributions. Basically, a maximum of € 100 000 per customer and bank is covered.

AMENDMENT TO THE BANK RECOVERY AND RESOLUTION ACT (BaSAG; *BANKENSANIERUNGS- UND ABWICKLUNGSGESETZ*), FINANCIAL MARKET STABILITY ACT (FinStaG; *FINANZMARKTSTABILITÄTSGESETZ*) AND THE FEDERAL ACT INCORPORATING A FEDERAL DIVESTMENT (PUBLIC LIMITED) COMPANY (*ABBAG-GESETZ; BUNDESGESETZ ÜBER DIE EINRICHTUNG EINER ABBAUBETEILIGUNGSAKTIENGESSELLSCHAFT DES BUNDES*), Federal Law Gazette I No. 127/2015

The Federal Minister of Finance is empowered under certain conditions to take stabilising measures to protect public interests. The FinStaG was amended to provide for the general claims settlement between the Republic of Austria and the Free State of Bavaria. The legal form of the federal divestment company was changed from a public limited company to a limited liability company (GmbH).

MORTGAGE AND REAL ESTATE CREDIT ACT (HIKrG; *HYPOTHEKAR- UND IMMOBILIENKREDITGESETZ*) AND AMENDMENT TO THE CONSUMER CREDIT ACT (VKrG; *VERBRAUCHERKREDITGESETZ*), Federal Law Gazette I No. 135/2015

This Act implements those provisions of Directive 2014/17/EU on credit agreements for consumers relating to residential immovable property that fall under national civil law. Such items include pre-contractual information as well as the requirements to provide general information on credit agreements and on interest rate changes. Consumers are assured a period of reflection as well as the right to withdraw from the agreement to avoid any pressure. The option of early repayment is also extended. Additional rules of conduct applying to credit intermediaries and creditors are also defined.

AMENDMENT TO THE 1989 STOCK EXCHANGE ACT (BörseG; *BÖRSEGESETZ*), Federal Law Gazette I No. 150/2015
The primary subject of the amendment is to restructure the penal provisions associated with the transparency regulations on the basis of the minimum requirements of the Transparency Directive.

AMENDMENT TO THE BANK RECOVERY AND RESOLUTION ACT (BaSAG; *BANKENSANIERUNGS- UND ABWICKLUNGSGESETZ*) AND OTHERS, Federal Law Gazette I No. 159/2015

The amendment is mainly aimed at defining accompanying measures and clarifying details in relation to cooperation within the framework of the Single Resolution Mechanism (SRM) as set forth in Regulation (EU) No 806/2014 (SRM Regulation). This specifically concerns, firstly, regulations relating to organisation that are based on currently applicable measures to accompany the Single Supervisory Mechanism (SSM) as well as, secondly, accompanying measures aimed at progressively building up a Single Resolution Fund (SRF) for the purpose of financing resolution activities. To achieve this, national resolution authorities are charged with collecting contributions from the banking sector, which are subsequently to be transferred to the SRF.

FMA REGULATIONS

AMENDMENT TO THE MONEY MARKET FUNDS REGULATION (GMF-V; *GELDMARKTFONDSVERORDNUNG*), Federal Law Gazette II No. 7/2015

The legislation adapts the GMF-V to align it with the opinion published by the European Securities and Markets Authority (ESMA) on the review of the CESR Guidelines on a Common Definition of European Money Market Funds (ESMA/2014/1103).

AMENDMENT TO THE SECURITIES LENDING AND REPURCHASE AGREEMENTS REGULATION (WPV; *WERTPAPIERLEIH- UND PENSIONSGESCHÄFTEVERORDNUNG*), Federal Law Gazette II No. 8/2015

Adjustments were made to accommodate the ESMA guidelines, specifically with regard to diversifying the collateral portfolio and the details required to be given in the prospectus, investor information and in reports on activities.

BANK RECOVERY PLAN REGULATION (BaSaPV; *BANKENSANIERUNGSPLANVERORDNUNG*), Federal Law Gazette II No. 25/2015

This Regulation specifies the content and the degree of detail to be included in the recovery plans that are required to be prepared in accordance with the BaSAG.

AMENDMENTS TO THE FMA COST REGULATION (FMA-KVO; *FMA-KOSTENVERORDNUNG*), Federal Law Gazette II Nos. 55/2015 and 265/2015; 2016 FMA COST REGULATION, Federal Law Gazette II No. 419/2015

These Regulations are intended to accommodate other legislation, including the BaSAG, the adjustment of the minimum fee specified in Article 117 para. 3 VAG and the ESAEG.

AMENDMENTS TO THE FMA FEE REGULATION (FMA-GebV; *FMA-GEBÜHRENVERORDNUNG*), Federal Law Gazette II Nos. 56/2015, 219/2015 and 238/2015

The amendments are mainly intended to align the FMA-GebV with the VAG 2016 and the ZvVG.

SAVINGS ASSOCIATION REGULATION (SpVV; *SPARVEREINSVERORDNUNG*), Federal Law Gazette II No. 62/2015

This Regulation allows an official of a savings association to establish the identity of the members under the conditions specified in the BWG.

REGULATION ON THE REPORTING OF OWN FUNDS BY SPECIAL-PURPOSE CREDIT INSTITUTIONS (SK-EMV; *SONDERKREDITINSTITUTE-EIGENMITTELMELDEVERORDNUNG*), Federal Law Gazette II No. 79/2015

This Regulation provides for the reporting of data relating to own funds in the case of special-purpose credit institutions pursuant to the InvFG, ImmoInvFG and the Company Employee and Self-Employment Provisions Act (BMSVG; *Betriebliches Mitarbeiter- und Selbständigenvorsorgegesetz*).

OWN FUNDS REQUIREMENTS REGULATION FOR SMALL MUTUAL ASSOCIATIONS (kV-EEV; *KLEINE VERSICHERUNGSVEREINE EIGENMITTELERFORDERNISVERORDNUNG*), Federal Law Gazette II No. 94/2015

The kV-EEV specifies detailed provisions for determining own funds requirements in the case of small mutual associations.

SMALL INSURANCE UNDERTAKINGS INVESTMENT REGULATION (kVU-KAV; *KLEINE VERSICHERUNGSUNTERNEHMEN KAPITALANLAGEVERORDNUNG*), Federal Law Gazette II No. 97/2015, and SMALL MUTUAL ASSOCIATIONS INVESTMENT REGULATION (kV-KAV; *KLEINE VERSICHERUNGSVEREINE KAPITALANLAGEVERORDNUNG*), Federal Law Gazette II No. 98/2015

The kVU-KAV and kV-KAV define detailed rules for investments by small insurance undertakings and small mutual associations (not falling under Solvency II), based on the principles of risk diversification and on the best interests of association members or policyholders. Particular items specified include the location of assets as well as upper limits for categories and for individual types of assets.

AMENDMENT TO THE REGULATION ON MONEY LAUNDERING AND TERRORIST FINANCING RISK (GTV; *GELDWÄSCHEREI- UND TERRORISMUSFINANZIERUNGSRIKOV-VERORDNUNG*), Federal Law Gazette II Nos. 107/2015, 371/2015 and 422/2015

This Regulation designates countries referred to as high-risk (as at the end of 2015: Iran, North Korea, Myanmar, Pakistan, Somalia, Syria and Yemen); an elevated risk of money laundering or terrorist financing must be assumed in business relationships with such countries.

AMENDMENT TO THE RISK MANAGEMENT REGULATION FOR *PENSIONSKASSEN* (PK-RIMAV; *PENSIONSKASSEN-RISIKOMANAGEMENTVERORDNUNG*), Federal Law Gazette II No. 145/2015

The amendment includes provisions for measures to prevent dependency from external credit ratings and to avoid having to act automatically as a result of them, as well as additional documentation requirements regarding the admissibility of using derivatives.

INFORMATION REQUIREMENTS REGULATION FOR OCCUPATIONAL GROUP INSURANCE (BKV-InfoV; *BETRIEBLICHE KOLLEKTIVVERSICHERUNG INFORMATIONSPFLICHTENVERORDNUNG*), Federal Law Gazette II No. 149/2015

The Regulation defines the minimum content and the structure of the information that occupational group insurance undertakings are required to provide to all beneficiaries annually and to beneficiaries (recipients) upon the first pension payment.

SMALL MUTUAL ASSOCIATIONS ACCOUNTING REGULATION (kV-RLV; *KLEINE VERSICHERUNGSVEREINE RECHNUNGSLEGUNGSVERORDNUNG*), Federal Law Gazette II No. 168/2015

In this Regulation the FMA has laid down accounting principles for small mutual associations, designed to take into consideration the special features of such associations.

2016 FUNERAL COST REGULATION (*BEERDIGUNGSKOSTENVERORDNUNG*), Federal Law Gazette II No. 172/2015
The maximum amount for customary funeral costs has been increased from € 8 000 to € 10 000.

INSURANCE UNDERTAKINGS REPORTING REGULATION (VU-MV; *VERSICHERUNGSUNTERNEHMEN MELDE-VERORDNUNG*), Federal Law Gazette II No. 217/2015

Practically identical in content with the preceding MVVU regulation, the VU-MV replaces it by aligning it with the VAG 2016.

INSURANCE UNDERTAKINGS LIST REGULATION (VU-VerzV; *VERSICHERUNGSUNTERNEHMEN VERZEICHNIS-VERORDNUNG*), Federal Law Gazette II No. 218/2015

The Regulation specifies the content of the lists of assets required to be kept, under trustee supervision, by an insurance undertaking.

AMENDMENT TO THE FMA REGULATION ON THE INCOMING PLATFORM (FMA-IPV; *FMA-INCOMING-PLATTFORM-VERORDNUNG*), Federal Law Gazette II No. 238/2015

The amendment supplements the provisions governing electronic communications via the FMA's Incoming Platform between supervised entities and the supervisory authority to accommodate enforcement of the BaSAG and the VAG 2016.

ALTERNATIVE INVESTMENT FUND MANAGERS REPORTING REGULATION (AIFM-MV; *ALTERNATIVE INVESTMENT-FONDS MANAGER-MELDEVERORDNUNG*), Federal Law Gazette II No. 266/2015

This Regulation defines in systematic form detailed criteria applying to the regular reporting requirements for AIFMs, based on the European legal framework.

LIFE INSURANCE PACKAGE: LIFE INSURANCE PROFIT SHARING REGULATION (LV-GBV; *LEBENSVERSICHERUNG-GEWINNBETEILIGUNGSVERORDNUNG*), Federal Law Gazette II No. 292/2015; LIFE INSURANCE INFORMATION REQUIREMENTS REGULATION (LV-InfoV; *LEBENSVERSICHERUNG INFORMATIONSPFLICHTENVERORDNUNG*), Federal Law Gazette II No. 294/2015; LIFE INSURANCE PROFIT PLAN REGULATION (LV-GPV; *LEBENSVERSICHERUNG GEWINNPLANVERORDNUNG*), Federal Law Gazette II No. 295/2015; LIFE INSURANCE ACTUARIAL BASES REGULATION (LV-VMGV; *LEBENSVERSICHERUNG VERSICHERUNGSMATHEMATISCHE GRUNDLAGEN-VERORDNUNG*), Federal Law Gazette II No. 296/2015; ADDITIONAL PROVISIONS REGULATION FOR STATE-SPONSORED RETIREMENT PROVISION (PZV-ZRV; *PRÄMIENBEGÜNSTIGTE ZUKUNFTSVORSORGE-ZUSATZRÜCKSTELLUNGS-VERORDNUNG*), Federal Law Gazette II No. 297/2015; ACTUARY'S REPORT REGULATION FOR INSURANCE UNDERTAKINGS (VU-AktBV; *VERSICHERUNGSUNTERNEHMEN-AKTUARSBERICHTSVERORDNUNG*), Federal Law Gazette II No. 300/2015; MAXIMUM INTEREST RATE REGULATION FOR INSURANCE UNDERTAKINGS (VU-HZV; *VERSICHERUNGSUNTERNEHMEN-HÖCHSTZINSSATZVERORDNUNG*), Federal Law Gazette II No. 299/2015

This regulation package, aimed at sustainably securing private life insurance within an environment of consistently low interest rates, provides for the following measures:

- Minimum level of appropriate profit sharing for policyholders.
- Specification of the content, structure and manner of providing information on the actuarial bases, including profit plans and reports on fulfilment of duties by the responsible actuary during the preceding financial year.
- Lowering of the maximum interest rate for calculating technical provisions in the sectors of life insurance

and state-sponsored retirement provision, from 1.5% to 1%, due to the continued period of low interest. Related to this economically was a larger allocation to the additional interest provision, which was already introduced for the 2015 financial year.

- Definition of the conditions for establishing additional provisions for investment risks in state-sponsored retirement provisions, as well as the minimum levels of such provisions. The discount factor used to calculate the additional provisions was reduced in the face of the continued period of low interest, from 2.75% to 1.75%.

Detailed specification of the statutory information requirements applying to life insurance undertakings. The main items on which information is required to be provided prior to closing a contract include the features of the product category in the specific case as well as the extent of any guarantee and information concerning the guarantor and that party's liability in the event of default.

AMENDMENT TO THE REGULATION ON FINANCIAL STATEMENTS AND CONSOLIDATED FINANCIAL STATEMENTS (JKAB-V; JAHRES- UND KONZERNABSCHLUSS-VERORDNUNG), Federal Law Gazette II No. 302/2015

The amendment was to streamline reporting content in line with Regulation (EU) 2015/534 of the European Central Bank, which is directly applicable.

HEALTH INSURANCE PROFIT SHARING REGULATION (KV-GBV; KRANKENVERSICHERUNG-GEWINNBETEILIGUNGS-VERORDNUNG), Federal Law Gazette II No. 309/2015

Policyholders receive at least 85% of the minimum assessment basis in bonuses, while considering the risk carried by insurance undertakings through their own funds. Any additional allocation is compensated by taking it into account in the following years.

2016 VOLATILITY RESERVE REGULATION (VU-SWRV; SCHWANKUNGSRÜCKSTELLUNGS-VERORDNUNG), Federal Law Gazette II No. 315/2015

This Regulation was issued to provide rules for establishing a volatility reserve to balance fluctuations in annual retained claims expenditure for the insurance classes of non-life and accident insurance.

ACCOUNTING REGULATION FOR INSURANCE AND REINSURANCE UNDERTAKINGS (VU-RLV; VERORDNUNG ÜBER DIE RECHNUNGSLEGUNG VON VERSICHERUNGS- UND RÜCKVERSICHERUNGSUNTERNEHMEN), Federal Law Gazette II No. 316/2015

This Regulation specifies rules covering the determination and calculation of the technical provisions, single items of the financial statements, details in the annex and management report, and the fulfilment of presentation obligations.

CONTRIBUTION PARAMETER REGULATION (BeiPaV; BEITRAGSPARAMETERVERORDNUNG), Federal Law Gazette II No. 341/2015

This Regulation specifies the parameters to be considered within the framework of the criteria listed in Article 126 para. 5 BaSAG when determining the amounts to be contributed to the resolution fund in 2015.

AMENDMENT TO THE REGULATION ON MASTER DATA REPORTING (STDM-V; STAMMDATENMELDUNGS-VERORDNUNG), Federal Law Gazette II No. 342/2015

The amendment is mostly for the purpose of adapting the FMA regulation to Regulation (EU) No 575/2013 (Capital Requirements Regulation).

REGULATION ON THE ANNEX TO THE AUDIT REPORT FOR PROTECTION SCHEMES (SiEi-APV; SICHERUNGS-EINRICHTUNGEN-APV), Federal Law Gazette II No. 344/2015

The Regulation specifies rules applying to the form and structure of the annex to the audit report in the case of

protection schemes. The annex must state the results of the audit of the financing requirements having to be met by the scheme.

HEALTH INSURANCE INFORMATION REQUIREMENTS REGULATION (KV-InfoV; *KRANKENVERSICHERUNG INFORMATIONSPFLICHTENVERORDNUNG*), Federal Law Gazette II No. 374/2015

This Regulation details the information requirements for health and accident insurance similar to life insurance as referred to in Article 255 paras. 1 and 2 VAG 2016 that apply prior to concluding a contract and throughout its term.

PROTECTION SCHEMES REPORTING REGULATION (SiEi-MV; *SICHERUNGSEINRICHTUNGEN-MELDEVERORDNUNG*), Federal Law Gazette II No. 391/2015

This Regulation specifies the scope and form as well as the contents and structure of the reports that are submitted by protection schemes to the FMA and the OeNB in compliance with the ESAEG, taking into consideration the guidelines of the European Banking Authority (EBA guidelines).

FIRST AMENDMENT OF THE REGULATION ACCOMPANYING THE CRR (1. *CRR-BV-NOVELLE; NOVELLE DER CRR-BEGLEITVERORDNUNG*), Federal Law Gazette II No. 415/2015

The authorisation for the repayment of own funds instruments as required in the CRR is specified in this amendment as pre-approval for the repayment of credit balances for called-in shares in credit cooperatives, in order to mitigate the burden of administration on credit institutions and supervisors.

INSURANCE UNDERTAKINGS INVESTMENT REGULATION (kVU-KAV; *VERSICHERUNGSUNTERNEHMEN KAPITALANLAGEVERORDNUNG*), Federal Law Gazette II No. 423/2015

In this Regulation, qualitative specifications relating to the prudent person principle are defined in detail for investments by insurance and reinsurance undertakings. The specific details reflect EU requirements, EU interpretations of the prudent person principle, risk diversification as well as the interests of policyholders and beneficiaries (entitled).

2016 REGULATION ON OWNER CONTROL (EKV 2016; *EIGENTÜMERKONTROLLVERORDNUNG*), Federal Law Gazette II No. 425/2015

This Regulation defines the type and contents of information that is to be submitted to the FMA using the appropriate reporting forms and relating specifically to the acquisition, increase, relinquishing or reduction of qualifying holdings in the listed companies.

CAPITAL BUFFER REGULATION (KP-V; *KAPITALPUFFER-VERORDNUNG*), Federal Law Gazette II No. 435/2015

This Regulation pertaining to the BWG implements the recommendations of the Financial Market Stability Board concerning the use of the countercyclical capital buffer and the systemic risk buffer, while defining the finer detail of the basis for calculating the countercyclical capital buffer, as well as the restrictions on distributions in the event of falling below the combined buffer requirement.

INTERNATIONAL LEGISLATION

REGULATIONS AND DIRECTIVES ADOPTED IN 2015

REGULATION (EU) 2015/534 ON REPORTING OF SUPERVISORY FINANCIAL INFORMATION (ECB/2015/13)

Credit institutions are subject to regular reporting requirements as set out in Regulation (EU) No 575/2013. The information reported is collected by the ECB under Decision ECB/2014/29. This Regulation complements that Decision by further specifying the requirements concerning the reporting of supervisory financial infor-

mation. The requirements laid down in the Regulation concerning significant and less significant supervised entities are aimed at ensuring that these supervised entities report a common minimum set of information to the competent authorities. Format and frequency of reporting as well as reference dates, data quality and IT language are defined in particular. Effective entry into force: 1 April 2015.

REGULATION (EU) 2015/751 ON INTERCHANGE FEES FOR CARD-BASED PAYMENT TRANSACTIONS

Every time a customer makes a purchase using a payment card, the cardholder's bank charges the merchant an interchange fee. This Regulation is intended to reduce the fees for both merchants and consumers as a way of helping to establish an EU-wide payment market. It provides for maximum interchange fees (0.2% of the transaction value for debit card transactions by consumers and 0.3% for consumer credit card transactions). The Regulation forms part of a package that also includes the revised Payment Services Directive. The package is aimed at promoting the single digital market through more secure and less costly payment transactions, while paving the way for innovative payment technologies. Effective entry into force: 8 June 2015.

REGULATION (EU) 2015/760 ON EUROPEAN LONG-TERM INVESTMENT FUNDS

This Regulation lays down harmonised provisions regarding the authorisation and investment policy of European long-term investment funds (ELTIFs) and defines the conditions under which ELTIFs operate. ELTIFs target certain kinds of alternative investments, including unlisted companies, debt instruments for which there is no readily identifiable buyer, real assets requiring significant initial investments, and small and medium-sized enterprises (SMEs) with a maximum market capitalisation of € 500 million that are admitted to trading on a regulated market. Only an AIFM authorised under Directive 2011/61/EU may apply for authorisation to manage an ELTIF. The European Securities and Markets Authority (ESMA) keeps a central public register identifying each authorised ELTIF, the manager of the ELTIF and the competent authority. The manager of the ELTIF is responsible for ensuring compliance with this Regulation and is also liable for any infringements. The Regulation additionally specifies provisions aimed at strengthening investor protection. Effective entry into force: 9 December 2015.

REGULATION (EU) 2015/847 ON INFORMATION ACCOMPANYING TRANSFERS OF FUNDS

This Regulation, which replaces Regulation (EU) No 1781/2006, is intended to ensure the full traceability of transfers of funds as a means of facilitating the prevention, detection and investigation of money laundering and terrorist financing. The Regulation thus implements recommendations made by the Financial Action Task Force (FATF). It applies to transfers of funds in any currency to or from payment service providers or intermediary payment service providers established in the EU. The payment service provider of the payer is obliged to accompany the payment with certain items of information concerning the payer and the payee and to verify the accuracy of this information. The parties involved are required to implement effective risk-based procedures for the case that information is lacking or incomplete. The EU Member States are obliged to impose effective, appropriate and dissuasive sanctions in response to breaches of the Regulation. Alongside the Fourth Anti-Money Laundering Directive (AMLD), the Regulation belongs to a package of legislative measures aimed at preventing money laundering and terrorist financing. Effective entry into force: 26 June 2017.

REGULATION (EU) 2015/2365 ON TRANSPARENCY OF SECURITIES FINANCING TRANSACTIONS AND OF REUSE

This Regulation was issued in response to the need to render the markets for securities financing transactions (SFTs) and thus the financial system more transparent. It creates a Union framework under which details of SFTs can be efficiently reported to trade repositories and information on SFTs and total return swaps is disclosed to investors in collective investment undertakings. The new rules governing the transparency of SFTs as well as certain over-the-counter (OTC) derivatives, and in particular total return swaps, are closely related to the provisions of Regulation (EU) No 648/2012 (European Market Infrastructure Regulation – EMIR), since OTC derivatives fall within the scope of EMIR reporting requirements. Effective entry into force: 12 January 2016.

DIRECTIVE (EU) 2015/849 ON THE PREVENTION OF THE USE OF THE FINANCIAL SYSTEM
FOR THE PURPOSE OF MONEY LAUNDERING AND TERRORIST FINANCING

The now Fourth Anti-Money Laundering Directive (AMLD) broadens the scope of the risk-based approach with regard to the prevention of money laundering and terrorist financing. Under the Directive, obliged entities are now required to examine each separate business relationship and transaction to determine any money laundering risk in the individual case. Risks are to be classified as potentially lower or higher only after an overall assessment of all risk factors. In addition, enhanced due diligence requirements apply to politically exposed persons from that particular country, to correspondent relationships and to customers established in high-risk third countries. Member States must ensure that they hold information on the beneficial owner of companies in a central register in each Member State or a public register. Companies are required to consistently keep current information on company ownership and to report this information to the register. Implementation deadline: 26 July 2017.

DIRECTIVE (EU) 2015/2366 ON PAYMENT SERVICES IN THE INTERNAL MARKET (PSD2)

This Directive repeals Directive 2007/64/EC, referred to as the Payment Services Directive (PSD). The Directive broadens the scope of the PSD, lays down rules for merchants when surcharging their customers for the use of a given means of payment, revises the previous rules on refunds in cases of direct debits and on liability in cases of unauthorised transactions, and introduces more stringent security requirements for payment service providers. It also specifies licensing and registration requirements, own funds requirements and transparency rules (such as for fee conditions) for payment service providers. Implementation deadline: 13 January 2018.

EUROPEAN LEGISLATIVE PROJECTS

The following legislative projects of special relevance to the FMA's activities were discussed at European level in 2015 but have not yet been concluded or published.

DIRECTIVE ON INSURANCE MEDIATION (IDD) – Commission proposal COM(2012) 360

This proposal aims to amend Directive 2002/92/EC (Insurance Mediation Directive – IMD1) in order to ensure a level playing field between all participants involved in the selling of insurance products and to strengthen policyholder protection. In the course of discussions, the title was changed from "IMD2" to "Insurance Distribution Directive" (IDD). The proposal should achieve the following improvements: expand the scope of application of IMD1 to all distribution channels (e.g. direct writers, car rentals, etc.); identify, manage and mitigate conflicts of interest; raise the level of harmonisation of administrative sanctions and measures for breaches of key provisions of the current Directive; enhance the suitability and objectiveness of advice; ensure sellers' professional qualifications match the complexity of products sold; simplify and approximate the procedure for cross-border entry to insurance markets across the EU.

REGULATION ON MONEY MARKET FUNDS – Commission proposal COM(2013) 615

The proposal introduces common standards to increase the liquidity of money market funds (MMFs) as well as to ensure the stability of their structure. Uniform rules will be introduced to ensure a minimum level of daily and weekly liquid assets. A standardised policy will be established to permit fund managers to gain a better understanding of their investor base. Common rules are also introduced to guarantee that MMFs invest in high quality and well diversified assets of good credit quality. In this way it will be ensured that the liquidity of the fund is adequate to meet investors' redemption requests. The stability of MMFs will be ensured through the creation of clear and harmonised valuation rules for the assets in which the funds invest. These valuation rules will restore the evident truth that MMFs are normal mutual funds whose investment assets are subject to price fluctuations.

REGULATION ON STRUCTURAL MEASURES IMPROVING THE RESILIENCE OF EU CREDIT INSTITUTIONS – Commission proposal COM(2014) 43

With this proposal the European Commission intends to prohibit large Union credit institutions and banking groups with a particularly complex structure from carrying out high-risk proprietary trading. In addition, the competent authorities are to be granted the power to require the separation of potentially high-risk trading activities from deposit-taking if these activities threaten financial stability. Furthermore, in order to avoid activities being driven towards less strictly regulated “shadow banking”, transparency of certain transactions outside the regulated banking sector is to be increased.

DIRECTIVE ON THE ACTIVITIES AND SUPERVISION OF INSTITUTIONS FOR OCCUPATIONAL RETIREMENT PROVISION (IORP II DIRECTIVE) – Commission proposal COM(2014) 167

The European Commission is working on proposals to strengthen the internal market for occupational retirement provision. It plans to facilitate cross-border activities of institutions for occupational retirement provision (IORPs), to ensure effective supervision of IORPs and to strengthen governance. Moreover, the proposals extend the requirements relating to the disclosure of information to members and beneficiaries and adapt the rules on investment.

REGULATION LAYING DOWN COMMON RULES ON SECURITISATION AND CREATING A EUROPEAN FRAMEWORK FOR SIMPLE, TRANSPARENT AND STANDARDISED SECURITISATION – Commission proposal COM(2015) 472

This proposal contains rules for simple, transparent and standardised (STS) securitisations. Two types of STS requirements are defined, one for long-term securitisations and one for short-term securitisations. While the requirements are intended to apply to all financial sectors, only “true sale” securitisations will be allowed to be designated as STS. Originators, sponsors and securitisation special purpose entities (SSPEs) are in future to be responsible for ensuring compliance with STS requirements and for reporting to ESMA. Special due diligence requirements have been laid down for institutional investors.

REGULATION ON THE PROSPECTUS TO BE PUBLISHED WHEN SECURITIES ARE OFFERED TO THE PUBLIC OR ADMITTED TO TRADING – Commission proposal COM(2015) 583

This proposal is intended as a revision of Directive 2003/71/EC (Prospectus Directive). In future, an exception from the prospectus obligation is to be made for raising small amounts of capital, while the minimum thresholds requiring a company to issue a prospectus are to be increased. Specifically, no EU prospectus will be required where less than € 500 000 in capital is to be raised (currently € 100 000), while Member States will be able to set higher thresholds for their domestic markets; the corresponding maximum will be increased from € 5 million to € 10 million. Other proposals include a simplified prospectus for small companies (with a market capitalisation of up to € 200 million), briefer prospectuses and improved investor information, less stringent requirements for secondary issuances by listed companies, and accelerated and simplified procedures for active issuers.

REGULATION IN ORDER TO ESTABLISH A EUROPEAN DEPOSIT INSURANCE SCHEME (EDIS) – Commission proposal COM(2015) 586

The proposal contains the following provisions concerning the planned European Deposit Insurance Scheme (EDIS):

- EDIS is to be built upon the existing system composed of national deposit guarantee schemes (DGSs); each investor will continue to enjoy the same level of protection (€ 100 000);
- EDIS is to be cost-neutral for the banking sector, as the contributions paid by the banks to EDIS may be compensated at the level of the national DGSs;
- EDIS is to be risk-weighted: banks facing higher risks will be required to contribute more than banks with lower risks, and this principle will be applied more vigorously as EDIS is gradually implemented, while such risk-weighting will apply from the outset;

- Membership in EDIS will be mandatory for euro area countries whose banks are currently under the Single Supervisory Mechanism but also open to other EU Member States wishing to join the banking union. EDIS is to be introduced in three stages by 2024, and a European Deposit Insurance Fund to be created.

REGULATION ON INDICES USED AS BENCHMARKS IN FINANCIAL INSTRUMENTS AND FINANCIAL CONTRACTS (BMR)

– Commission proposal COM(2013) 641

A benchmark is an index or indicator that is used as a reference price for a financial instrument or contract or to measure the performance of investment funds. This Benchmarks Regulation is intended to improve governance of those benchmarks that are used in the EU for financial instruments such as bonds, shares, options and futures, and swaps. An example of governance as used here is how conflicts of interest are resolved. The new rules have direct relevance to consumers, considering that benchmarks determine the amount of mortgage payments made by millions of households in the EU. The new Regulation is also intended to minimise the risk of manipulation by requiring authorisation and supervision of benchmark administrators in the EU.

Deposit guarantee schemes (recast)

After many years of at times difficult negotiations, the Directive 2014/49/EU (Deposit Guarantee Schemes Directive – DGSD) was adopted by the European Parliament and the European Council on 16 April 2014 and published in the Official Journal of the European Union on 12 June 2014. The Member States were given until 3 July 2015 to transpose the Directive into national law.

The declared goal of the new DGSD is to provide depositors with rapid and comprehensive compensation in the case of a credit institution becoming insolvent. The related harmonisation of the legal and administrative rules in the Member States should be viewed as a contribution to improving confidence in the banking industry’s ability to function properly. Deposits of “classic” savers, part of the group being targeted, are protected in Europe, regardless of the European state in which the deposits have been made and the currency in which they are denominated, up to a certain upper limit per depositor, generally set at € 100 000.

The DGSD includes new provisions in relation to the financing of the protection scheme (based on the principle of ex-ante financing) and supervision. The deposit guarantee fund will be financed in future from annual contributions paid by all credit institutions¹ on the basis of their covered assets and risk profile. This will continue until the target level of 0.8% of the covered assets of all credit institutions is achieved, which is scheduled for 3 July 2024. With the implementation of the Directive, deposit guarantee schemes (DGSs) will be subject to supervision by a supervisory authority. The supervisor’s main task will be to review compliance with the corresponding standards. In the event of any infringements by the schemes or on the part of credit institutions, the competent supervisory authority may impose sanctions in order to protect depositors. In Austria, this role falls to the FMA in the capacity of integrated supervisory authority.

THIRD PILLAR OF THE BANKING UNION

The new Directive, by establishing the third pillar (European deposit guarantee scheme), represents a further step towards the completion of the banking union. The process of implementing the Single Supervisory Mechanism (SSM), which is the first pillar of the banking union, and the introduction of the Single Resolution Mechanism (SRM), the second pillar, have largely been completed over the past few years.

¹ The credit institutions being referred to here are CRR credit institutions/institutions that accept deposits from the public in the widest sense and engage in classic credit business (see Article 7 para. 1 no. 9 ESAEG in this regard).

OUTLOOK – A EUROPEAN DEPOSIT GUARANTEE SCHEME

On 24 November 2015 the European Commission published a Proposal for a Regulation in order to establish a European Deposit Insurance Scheme (EDIS).

The proposed system, which still offers protection for individual depositors of € 100 000, is based on the national deposit guarantee schemes. All directly and indirectly supervised banks in the eurozone that take deposits are intended to form part of EDIS in future, regardless of which DGS they currently belong to. The plan is for EDIS to be managed in the context of executive and plenary sessions of the Single Resolution and Deposit Insurance Board.

The introduction of a European Deposit Insurance Scheme is scheduled to take place over three successive stages.

- **Phase 1 – Reinsurance of national deposit guarantee schemes 2017–2020:** EDIS should provide additional funding once the national system has been exhausted, subject, however, to an upper limit. The calculation of the liquidity requirement in any payout case should be based on the funding at the disposal of the national DGSs and on the amount that can be made available through extraordinary ex-post contributions within three days of the case arising.

The difference is the “liquidity bottleneck”, to be covered by financial resources from EDIS. During the first phase, however, only 20% of the liquidity requirement will be made available. This is the “liquidity assistance”. The remaining 80% must be raised through other funding sources on the part of the respective national DGSs.

In addition to the “liquidity assistance”, plans are also in place to cover excess losses, taking account of any return flows from the insolvency proceedings and the available funding that would have to be in place, as well as the extraordinary ex-post contributions that could be raised within one year. Here too, a limit of 20% of these excess losses would apply.

- **Phase 2 – Co-insurance 2020–2024:** During this phase, the plan is for the EDIS contribution to be successively increased. The calculation of the liquidity assistance and partial absorption of losses are carried out as in the first phase. EDIS is now to assume an ever higher portion of the shortfall and bear any loss (following a payout to depositors). Initially, EDIS is to assume 20% of the funding and loss (in the first year this still corresponds to the first phase). This proportion is to be gradually increased (20%, 40%, 60%, 80%).

- **Phase 3 – Full insurance from 2024 onwards:** From this point onwards, the share of risk assumed by EDIS will be 100%. This means that, as of 2024, the available funds will be organised entirely on an EU-wide basis.

In 2024, following the planned development phase, the national deposit guarantee schemes would remain in existence in order to administer any disbursements and to act as a point of contact for depositors and banks. In addition, the national DGSs could raise contributions over and above the target of 0.8% of the amount of covered assets. These would then remain within the respective national scheme.

Whether and in what form EDIS will actually be implemented in practice is not yet clear, with future developments yet to be firmly established.

IMPLEMENTATION IN AUSTRIA

In Austria, the European rules aimed at harmonising deposit guarantee schemes have been transposed into national law in the form of the Deposit Guarantee Schemes and Investor Compensation Act (ESAEG; *Einlagensicherungs- und Anlegerentschädigungsgesetz*). The ESAEG was published in Federal Law Gazette

No. 117/2015 on 14 August 2015, transferring the corresponding supervisory powers to the FMA in its capacity as integrated supervisory authority.

The new rules on deposit guarantee schemes include provisions on the organisational design of protection schemes, the way in which the schemes are funded and investment of the contributions raised, resolution and/or compensation for depositors in a payout event, information obligations on the part of the protection schemes and on the part of the banking industry with regard to depositors, and supervision of the protection schemes.

The provisions implemented at national level are supplemented by the European Banking Authority (EBA) guidelines, to be applied by the FMA, such as the “Guidelines on methods for calculating contributions to deposit guarantee schemes” (EBA/GL/2015/10).

BASIC ORGANISATIONAL PARAMETERS

Every credit institution that accepts deposits pursuant to Article 7 para. 1 no. 3 ESAEG must belong to a protection scheme. During the transitional period until 31 December 2018, each association² must have its own protection scheme, of which the respective credit institution must be a member. As of 1 January 2019, this arrangement is to be replaced by a single national deposit guarantee scheme.

Alongside this single deposit guarantee scheme, there is also the option of having an institution-specific guarantee system, known as an institutional protection scheme (IPS), officially recognised. The earliest date from which such schemes may be recognised is 1 January 2019.

Consequently, there will be five protection schemes during the transitional period until the end of 2018, namely Einlagensicherung der Banken und Bankiers Gesellschaft m.b.H., Volksbank Einlagensicherung eG, Sparkassen-Haftungs AG, Österreichische Raiffeisen Einlagensicherung eGen and Hypo-Haftungs-Gesellschaft m.b.H.

Each of these protection schemes must fulfil all of the requirements stipulated in the ESAEG until such time as the single scheme is established. The ESAEG defines, for example, the organisational requirements for protection schemes, which are monitored by the FMA (Article 2 ESAEG).

ORGANISATIONAL STRUCTURE OF A PROTECTION SCHEME

The protection schemes must have two directors, who must be fit and proper to manage the scheme’s operations. A supervisory body is also required, in the form of a supervisory board or advisory board, which must be monitored by the directors. Each scheme must have a suitable risk management system in place for the purposes of identifying, managing, monitoring and limiting risks, as well as engaging in an expedient exchange of information with other protection schemes as an early warning tool.

STRESS TESTS

A sufficient data base should be in place to ensure that any negative developments at credit institutions can be recognised at an early stage, enabling appropriate measures to be introduced. Stress tests are to be conducted regularly and at least every three years in order to guarantee that the procedures, systems and processes used are resistant to stress. This type of testing should ensure that resolution can proceed smoothly in the interests of depositors should an institution fail.

The FMA is required to stipulate the rules for these stress tests by means of a regulation based on the EBA Guidelines, which are currently being drafted. The high number of basic organisational measures serves to guarantee an optimum level of security for depositors.

² Fachverband der Banken und Bankiers, Fachverband der Landes-Hypothekenbanken, Fachverband der Raiffeisenbanken, Fachverband der Sparkassen, Fachverband der Volksbanken.

CREATION OF THE DEPOSIT GUARANTEE FUND – EX-ANTE FINANCING

The deposit guarantee fund in the minimum amount of 0.8% of the covered deposits is to be created by 3 July 2024. This means that the deposit guarantee schemes are required to collect risk-based contributions from their members every year (up until this date). The first contribution was already collected in 2015, amounting to half the annual contribution. Between now and 2024, approximately € 1.62 billion of ex-ante funding is to be collected assuming an unchanged level of deposits. A total of € 86 million was raised for the short financial year of 2015.

The contributions are calculated using a risk-based method, in the form of a contribution model, by the deposit guarantee schemes. The contribution due from each member institution should also be defined using a risk-based approach. The calculation is based on the amount of covered deposits (basic component) and the nature of the risks to which the respective member institution is exposed (risk components).

The EBA Guidelines on methods for calculating contributions to deposit guarantee schemes (EBA/GL/2015/10) set out five categories of risk indicators, with tips on how to weight these. These risk categories are: capital, liquidity, asset quality, business model and management, and potential outflows from the deposit guarantee fund. The deposit guarantee scheme must ensure that its method guarantees an evenly paced creation of the fund, with due account being taken of any potential procyclical effects on contributions as a result of general economic developments.

The method used to calculate contributions and extraordinary contributions must be approved by the FMA. Approval will be given subject to the basic components being derived from a member institution's share of covered deposits expressed as a proportion of the covered deposits of all member institutions. The FMA must be of the opinion that the risk categories, risk indicators and any further necessary components (e.g. certain default probabilities with a high or low level of risk) incorporated into the method are accurately reflecting the nature of the risk. In December 2015 the risk-based methods being used by the five protection schemes to calculate contributions were approved by the FMA.

When the target level of 0.8% of the total covered assets is reached, i.e. with effect from 3 July 2024, no further contributions shall generally be required. This will not apply if financing has been needed for the disbursement of covered deposits. In such a case, the target must be reached again.

PAYMENT COMMITMENTS

Payment commitments are promises made by the member institutions to the deposit guarantee scheme to pay a certain portion of the ex-ante contributions (only) where necessary. The eligibility of payment commitments is being introduced on a staggered basis as of 2016 and amounts to a maximum, as of 2019, of 30% of the ex-ante contribution.

EXTRAORDINARY CONTRIBUTIONS – EX-POST FINANCING

If it becomes clear that the financing available on an ex-ante basis will not be sufficient to compensate investors in a payout event, extraordinary contributions, referred to as ex-post contributions, are to be collected, generally amounting to up to 0.5% of the total covered deposits. As things stand, this is approximately € 1.02 billion.

Generally, a deposit guarantee scheme may also raise this type of contribution several times during a calendar year. The amount due from each individual member institution is calculated on the basis of the most recent annual contribution due from the institution expressed as a proportion of the total annual contributions paid by all of the member institutions in a DGS. The contribution may, based on risk discounts or premiums, also amount to more or less than 0.5% for an institution. This is in line with the EBA Guidelines (EBA/GL/2015/10), according to which the ex-post contributions are calculated on the same basis as ex-ante payments.

Where the extraordinary contributions at a level of 0.5% of covered deposits are not sufficient to compensate

depositors in a payout event, or where higher contributions are required for the repayment of a loan, the FMA may also approve higher extraordinary contributions.

Upon application by a member institution, the FMA may suspend this type of extraordinary contribution, provided that payment of the extraordinary contribution would jeopardise the solvency or liquidity of the institution concerned. As soon as the institution is sufficiently solvent or liquid again, the contributions must be paid in arrears subject to a corresponding level of interest.

OVERFLOW SYSTEM

If the ex-ante and ex-post contributions raised within the (first-affected) protection scheme are not sufficient, an “overflow” system is used. This means that the other (second-affected) protection schemes must contribute to coverage of the depositors’ claims.

The overflow system kicks in as soon as all of the financing from the first-affected protection scheme has been used up. In such an instance, the other protection schemes must be informed of the situation without delay. The second-affected schemes are then obliged to cover the shortfall by making the required funding available. The proportion of their commitment is based on the total covered deposits of the members of the second-affected scheme concerned as a proportion of the total deposits of all second-affected schemes.

The payment obligation of all second-affected schemes is limited to the amount of their deposit guarantee fund and, at most, the extraordinary contributions to be charged. The specific terms governing the provision of financing are to be agreed contractually on an ex-ante basis between the protection schemes concerned.

BORROWING TRANSACTIONS

The deposit guarantee schemes must take out loans if the compensation claims in the event of an institution failing cannot be fulfilled even after the overflow system has been applied. If the lenders take the form of other DGSs, certain conditions must be met, including the condition that loans may only be taken out for up to 0.5% of the covered deposits. In addition, the repayment period must be no longer than five years.

If a loan is taken out with other market participants, all of the DGSs are required to contribute to repayment. The proportion of contributions is based on the total covered assets of the scheme’s own members as a proportion of the total covered assets of members of all schemes. The specific terms governing the implementation of lending and borrowing are to be agreed contractually on an ex-ante basis between the DGSs concerned.

The provision in the ESAEG according to which the Federal Minister of Finance may assume liability for borrowed funds has a declaratory effect. If necessary, a special law has to be enacted. Similarly, any dimension relating to aid aspects must be resolved on an individual basis with the European Commission.

INVESTMENTS MADE BY THE DEPOSIT GUARANTEE FUND

The protection scheme is responsible for investing in the interests of the depositors. As a general rule, the investments must be low risk, and efforts must be made to ensure that sufficient liquid assets would be available in a payout event. Furthermore, the investment strategy must be appropriately diversified. To avoid any concentration and contagion risks, any investment in the scheme’s own sector must be limited to 10%.

PAYOUT EVENTS

Funds from deposit guarantee schemes may be paid out in three different cases. Firstly, funds will be paid out if the FMA has determined that it will not be possible for a member institution to repay deposits that have fallen due and if it has no current prospect of being able to do so in the future either. A second case in which the funds are used is in the event of an officially instructed suspension of payments with regard to a member

institution's covered deposits. Finally, the third case would be the start of bankruptcy proceedings with regard to a member institution and/or if a court orders that a member institution be subject to receivership.

ELIGIBLE DEPOSITS

Basically, deposits made by depositors are deemed to be eligible deposits. Excluded, however, are deposits made by credit institutions with other credit institutions. With regard to trust accounts, the underlying deposits are generally eligible for repayment.

The following are not deemed to be eligible deposits: deposits by public authorities (states, local governments, central governments), deposits by unknown holders (if the holder has never been identified), deposits arising out of transactions in connection with which there has been a criminal conviction for money laundering, and deposits by pension and retirement funds.

COVERAGE LEVEL

Generally, eligible deposits are covered up to an amount of € 100 000. If a deposit is held in a foreign currency, the conversion to the euro is carried out on the basis of the middle rate on the day on which the payout event occurred. The repayment itself is made in euros.

In some exceptional cases, a higher coverage level of up to € 500 000 may apply. This higher level applies if the deposit results from a private real estate transaction or if the deposit serves social purposes and is linked to particular life events of a depositor (e.g. marriage, divorce, retirement, dismissal, redundancy, invalidity or death). A higher level of coverage is also possible with regard to payment of certain insurance benefits or compensation for criminal injuries.

In the above cases, the higher level of coverage is always applicable for a limited period of time. The payout event must occur within twelve months of the corresponding amount being credited.

REPAYMENT

As of January 2024, the repayable amount must be available within seven working days of the payout event having occurred. In Austria, the currently applicable repayment period is 20 working days. Member States will have to reduce their payment periods gradually between now and 2024: down to 20 working days by the end of 2018, 15 working days by the end of 2020, and 10 working days by the end of 2023.

Eligible deposits must be clearly identified as such so that the institution can determine their amount at any time. As a general rule, the deposit guarantee scheme must repay the eligible assets upon the occurrence of a payout event without the need for the depositor to make a request. However, this is only possible if the DGS has been advised in advance of the manner in which repayment is to be made. Otherwise, the DGS must in any event ensure that the amount due is available to the depositor on time.

Repayment without the need for a request does not apply in the case of deposits subject to a higher coverage level for a limited time, as such deposits are not recognisable as such for the member institution. Consequently, the depositor must submit a request, taking instruction from the DGS in this regard. The burden of proof as to whether the higher coverage level for the deposit is justified on account of the corresponding circumstances lies in this instance with the depositor.

COOPERATION AND REPAYMENT WITH REGARD TO BRANCHES

Where an Austrian credit institution operates through a branch in another Member State, the deposits taken by that branch will be protected by the DGS to which the Austrian institution belongs. Any payout shall be made by the DGS in the Member State in which the branch is based. However, this will be carried out on

behalf of and in accordance with the instructions of the Austrian DGS, which must provide the necessary funding prior to payout and compensate the DGS of the host Member State for the costs incurred.

Where a credit institution based in a Member State operates a branch in Austria, the deposits taken by that branch are duly protected by the DGS in the respective Member State. In this case, payment is made by the DGS in Austria, with the costs being borne by the scheme of the respective Member State in which the credit institution is based.

To ensure that this “cooperative” system between the Member States can function smoothly, cooperation agreements are to be concluded between the deposit guarantee schemes in the respective Member States.

DEPOSITOR INFORMATION

The deposit guarantee scheme must publish the relevant information for “its” depositors on its website. Above all, information must be provided on the procedure for having deposits repaid and, generally, on the terms and conditions governing deposit protection.

The member institutions must inform the public and/or depositors of their membership of a DGS by means of a notice displayed in their main hall and on their website. Information must also be provided on the protection of the deposits pursuant to the ESAEG. Where deposits are taken via a branch in a Member State, this information must also be provided in the official language of that Member State.

In terms of advertising, reference may only be made to the DGS guaranteeing the product to which the advertisement refers. Such information may extend to the factual description of the functioning of the DGS but shall not contain a reference to unlimited coverage of deposits.

SUPERVISION OF DEPOSIT GUARANTEE SCHEMES

The supervisory system is basically modelled on the system of banking supervision as defined in the Austrian Banking Act (BWG; *Bankwesengesetz*). Above all, the FMA has a right to inspect and request information from DGSs. It may arrange for on-site inspections to be carried out and may order the restoration of legal compliance. In the event of a continued or repeated infringement, the FMA may prohibit the directors from managing the business.

SUPERVISION OF MEMBER INSTITUTIONS

The deposit guarantee scheme must inform the FMA in the event that a member institution does not comply with its obligations. After a hearing with the DGS, the FMA may order the institution to restore legal compliance and, subject to certain conditions, ban the managing directors from managing the business.

Should the member institution still fail to comply with its obligations, the DGS may, with the FMA’s consent, exclude the institution concerned subject to the renewed setting of a notice period of at least one month.

If the institution is excluded from the DGS, it will automatically lose its licence to take deposits. The member institution must immediately inform depositors of its exclusion and of the resulting legal consequences. Deposits that are held at the time of the institution being excluded will continue to be protected by the DGS.

CONCLUSION

The new rules will improve the performance of the deposit guarantee schemes, simplifying and speeding up depositors’ access in the event of a claim under the scheme.

The transition from a purely ex-post system to a system in which ex-ante funding from the banks is to be built up gradually, quicker payments in the event of a claim, and the newly organised supervision of DGSs are key elements that will boost financial market stability and depositor confidence.

The FMA package of measures to safeguard life insurance in the long term

In Austria, life insurance is a highly popular financial product used especially for old-age provision, for survivors' pensions or as provision in the event of occupational disability. Such contracts are long-term as a general rule, running for periods of well over 20 years. Yet, the long term of these contracts poses special challenges for both insurance undertakings and policyholders. Insurance undertakings have to enter into obligations and assure benefits, even though forecasts of economic, legal and political developments entail great uncertainties over such long periods of time. Prior to the global financial crisis, hardly any insurance manager could have imagined such a sustained low-interest environment, characterised in part by negative interest on investments. It has very serious impact on life insurance, however. For policyholders too, an individual's personal economic circumstances can change just as drastically over the long policy term as that individual's needs. Hence, it has become unavoidable for insurance undertakings to supplement their products with options that allow policyholders to later modify the insurance coverage to better accommodate the current situation. Accordingly, options and guarantees play a major part in life insurance today.

In many countries, and especially in English-speaking countries including the United States, life insurance policies structured as "variable annuities"¹ have become common. In Austria, meanwhile, classic life insurance² continues to maintain a lead in terms of premium revenues and invested assets.

Many life insurance products are endowment policies, meaning capital is saved up and invested during the term of the policy and later paid out with interest on a stipulated date. This explains why endowment life insurance and any evaluation of such schemes are highly dependent on the investment income. The impact studies done prior to the introduction of the new Solvency II supervisory regime also clearly revealed the dominant role that market risk plays for life insurance undertakings, specifically representing 70% to 80% of total risk (attributable in part to the current low-interest environment).

In 2015 the FMA issued a package of measures aimed at safeguarding life insurance in the long term, to ensure the continued capacity of insurance undertakings to honour the obligations entered into and the guarantees given in the past, even in an environment of consistently low interest rates. The main objective of the measures package is to secure in the long run the role of private life insurance as an important component of

¹ Special unit-linked life insurance contracts including additional options and guarantees.

² For our purposes here, the term "classic life insurance" comprises those life insurance contracts which are not included under the *Deckungsstock* of unit-linked and index-linked life insurance.

old-age provision, also with a view to the coming transition to the new, risk-oriented Solvency II supervisory regime as well as to the challenges of structuring products within an environment that is volatile for both companies and customers alike.

REDUCTION OF THE MAXIMUM INTEREST RATE

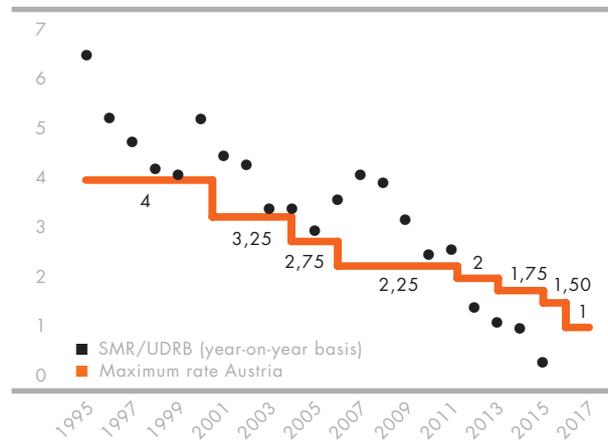
In classic life insurance, provisions are created for future assured benefits, to the extent that such benefits are not covered by future premiums. In calculating the amount of such provisions, it is assumed that a particular interest rate will be earned (see Chart 1). This assumed interest rate also defines the annual guaranteed increase of the capital accumulated to date. It should be noted that in the context of life insurance such a guaranteed yield equalling the assumed interest rate applies exclusively to the savings premium. The savings premium is the portion of the total premium remaining after insurance tax, costs and the risk premium have been deducted. The holder of a classic with-profits endowment policy upon maturity thus receives at least the savings premium along with interest calculated according to the assumed interest rate, while taking into account the probability of survival.

Chart 1 shows the changes in the maximum permissible interest rate (guaranteed rate) in comparison with the secondary market yield, which in May 2015 was replaced as an indicator by the "circulation weighted average yields of government bonds" (UDRB). Table 1 below shows the changes in the maximum assumed interest rate permitted (guaranteed rate).

In response to the environment of consistently low interest rates, the FMA decreased the maximum interest rate for calculating technical provisions in the sectors of life insurance and state-sponsored retirement provision, from the current 1.5% to 1% as of 1 January 2016.

The reduction is designed to ensure that the bene-

Chart 1: Changes in the maximum permissible assumed interest rate 1995-2015



SMR: secondary market yields for government bonds
UDRB: circulation weighted average yields of government bonds

Table 1: Maximum permissible assumed interest rate in with-profits life insurance

CONTRACTS CONCLUDED AFTER	31 Dec. 1994	30 Jun. 2000	31 Dec. 2003	31 Dec. 2005	31 Mar. 2011	20 Dec. 2012	31 Dec. 2014	31 Dec. 2015
Maximum permissible assumed interest rate	4%	3.25%	2.75%	2.25%	2%	1.75%	1.50%	1%

fits guaranteed by newly concluded insurance contracts can be provided in the long term. As has been additionally detailed in the Maximum Interest Rate Regulation (*Höchstzinssatzverordnung*), the actual level of assumed interest must not be simply aligned with the maximum interest rate permitted but has to be determined considering the individual circumstances in each case as well as the principle of prudence. The FMA accordingly defines several criteria to be taken into account here, such as guarantees and options, the term of the obligation and any resulting reinvestment risk, and the capital market situation.

INCREASE OF THE ADDITIONAL INTEREST PROVISION AND SHORTENED PERIOD FOR BUILDING UP ASSETS

Prior to 2000, the maximum permissible assumed interest rate in with-profits life insurance was (a guaranteed rate of) 4%. The rate was then successively decreased to 1% as of 1 January 2016 (see Chart 1). Formerly, the

risk of being incapable of honouring these guarantees was, in view of the yields expected at the time, considered negligible, and customers were not usually called on overtly to bear the costs of this risk.

As a result of the low-interest period, the risk insurers face of not earning enough to pay out the guarantees has mounted considerably. This guarantee risk or interest risk can be minimised by creating larger provisions already now, for instance by assuming a lower rate of future yield than the assumed interest rate.

To ensure that insurers are capable of paying out the guaranteed sum, the FMA prescribed in the Maximum Interest Rate Regulation back in 2013 the establishment of an additional interest provision. This provision is intended to safeguard the interest obligations (i.e. guarantees) that insurers have towards their policyholders. Nonetheless, the Maximum Interest Rate Regulation lays down only a minimum requirement for establishing the additional interest provision. Reserves to cover increased interest obligations may be needed in individual cases. In view of the continuing downward trend in capital market interest rates, the FMA increased the minimum requirement for the additional interest provision in 2015, while at the same time moving up the deadline for fully accumulating the provision. An additional interest provision of twice the original amount is now required to be established through linear accumulation by 31 December 2021. What is more, a higher allocation has been specified for 2015 to ensure that reserves are built up quickly and as smoothly as possible.

The insurance business is based on the principle of collective risk-sharing. It is in the collective interest of policyholders to ensure that adequate funds to cover guaranteed benefits are also available in the longer term. In the FMA's view it is therefore justified to require insurers, beginning in 2016, to set aside a certain portion of the bonus as an allocation to the additional interest provision, until it is certain that all guaranteed benefits can be provided in the long term. This allocation should continue to be drawn largely from insurance undertakings' own funds. To ensure that a sufficient volume is established, a limited amount can be deducted when determining the assessment basis for the bonus. If in one year the revenues are not sufficient to fund the guaranteed benefits, a commensurate amount of the additional interest provision can be released to close the gap. If the prescribed volume of the additional interest provision falls below the actual amount in the reserve, for instance due to a rise in the UDRB or a drop in the average assumed interest rate, all funds financed by revenues (from both policyholders and shareholders) will again go directly towards the bonus. Only once all of these funds have been repaid can the funds financed solely by shareholders be released.

ENHANCED TRANSPARENCY AND CLARITY FOR CUSTOMERS

The focus of policyholders' interest is traditionally the insurance cover assured them (i.e. the guarantee), which includes payment of the assured sum upon occurrence of the event covered by the insurance. Provisions of supervisory law require insurers, for the protection of their customers, to prudently select the actuarial bases and mortality probabilities used to calculate life insurance schemes. In the case of with-profit policies, policyholders are not usually guaranteed in advance over the term of the contract any specific amount of the surpluses that result from the calculations, whereas such surpluses are indeed appropriately apportioned to each individual contract later at periodic intervals (bonus).

The complexity of life insurance products has grown in recent years. Faced with this complexity, consumers seeking insurance find it increasingly difficult to understand these products, especially with regard to the risks and guarantees they entail. In view of the environment of low interest rates, the rising life expectancy and insurers' increased capital requirements under Solvency II, more and more life insurance products with reduced or no guarantees are on offer.

The FMA is keenly intent on ensuring that, prior to signing a life insurance policy, interested parties receive comprehensive, understandable information on the main components of the product. The FMA has therefore issued a regulation covering the information requirements in life insurance (LV-InfoV), which is based on the Authority's supervisory experience in practice. The aim is to allow every party interested in a life insurance policy to read, in easily understandable terms and prior to signing the contract, information concerning the benefits to be provided by the insurer and the premiums required to be paid.

A critical aspect here is the distinction between guaranteed insurance benefits and those merely based on forecasts, and to clearly point out the risks accepted by the policyholder and those borne by the insurer. Thus, the scope of the guarantee or guaranteed benefits as well as the identity of the guarantor and of the party assuming liability for any default on the guarantor's part have to be stated unequivocally prior to entering into the agreement.

To enhance transparency and facilitate comparisons of different insurance products, uniform features are required for the specimen calculations, insurance benefits and premium payments by policyholders. In addition, the consequences of premature termination and of exemption from premiums have to be presented to the prospective policyholder in clear terms.

Another focus is cost transparency. With low income from investments, the cost burden has a greater impact on the benefits paid out in the event of survival. Simple specimen calculations demonstrate this: where high income from investments is assumed up to maturity, the effect of compound interest accounts for a predominant share of the sum paid out by the insurance, while the cost burden is a rather secondary factor. Yet this relation changes dramatically when only moderate or even poor investment income can be achieved during the term of the policy, so that the costs eat up the compound interest effect.

The customer ought to be able to identify the share of the premium contributed that will actually be available for investment. The requirement to use a uniform table allowing the comparison of various insurance products is also in the interests of cost transparency. As of 2016 insurance undertakings are also obliged to disclose the effective total interest and the effective guaranteed interest rate.

The value information provided annually to policyholders must in future allow them to recognise any deviations from the originally forecast values. It will give policyholders the option of taking appropriate action in the event that the value of the contract develops differently from the original prognosis. This will also apply to insurance policies signed before 1 January 2016.

By enshrining the information requirements in a regulation, the FMA supports legal certainty in this area while enabling the Authority to consistently enforce entitlements.

MORE DETAILED FRAMEWORK CONDITIONS FOR PRODUCT DESIGN

The new supervisory rules entering into force as of 1 January 2016 (Solvency II) will also accommodate new products adapted to reflect the current low-interest environment.

Especially during periods of low interest and in the face of volatile capital markets, insurance undertakings will be enabled to offer insurance products equipped with more effective mechanisms to compensate varying levels of investment income without comprising policyholders' entitlement to an appropriate level of profit-sharing. The new regulation on profit-sharing will include requirements applying to the portion of terminal bonus included in the provision for participation in profits.

In order to ensure sufficient ongoing allocations of profits to cover new products as well, the percentage of terminal bonus in relation to total participation in profits will be limited.

The new, risk-oriented supervisory regime for insurance undertakings, i. e. Solvency II, along with the FMA's comprehensive package of measures aimed at safeguarding life insurance, provide the flexible framework needed to ensure that this financial product will in future continue to play an important role in old-age provision, survivors' pensions and provision against the many risks of daily living.

The new transparency regime for listed companies

The new European transparency regime for issuers whose securities have been admitted to trading on a regulated market entered into force in Austria at the end of last year. This regime is based on the revised Transparency Directive, the amendments to which are based on the findings from an in-depth evaluation of practical experience with the transparency requirements previously in place. Many fundamental changes have been made as a result. In particular, stock market listings have been made more attractive for small and medium-sized enterprises (SMEs), transparency gaps have been remedied, investors have been given easier access to information, and the sanctions to be applied in the event of any violation have been tightened up.

THINNING OUT THE INFORMATION OBLIGATIONS

In order to make listing on a regulated market more attractive for small and medium-sized enterprises, the new transparency regime markedly reduces the amount of administrative effort involved in a listing. Previously, the periodic disclosure requirements included the provision of annual reports, half-yearly reports and interim reporting by the management. The need to provide such a huge amount of information often discouraged SMEs in particular from thinking about a stock market listing. Now, however, the obligation to publish interim and quarterly reports has been abolished. As a general rule, listed companies are now only required to publish yearly and half-yearly financial reports.

The European lawmakers also felt that the obligation to present more frequent financial reports during the course of the year could be a negative factor, encouraging issuers to focus on optimising their results in the short term to the detriment of long-term investment. This would encourage a short-termist approach to investment strategies and increase capital market pressure on issuers. Consequently, by doing away with the need for interim statements, the lawmakers are looking to boost sustainable value creation, a long-term investment strategy and a reduction in the administrative burden for SMEs. Furthermore, the lawmakers believe that this measure does not impact on investor protection.

The national lawmaker may impose further periodic reporting duties on issuers only in exceptional cases, such as limited to financial institutions. In addition, the home Member State may oblige issuers to publish additional financial reports provided that this does not create an unreasonable financial burden for small and

THE LEGISLATIVE PROCESS

At the end of November 2013 the European Parliament and Council, following an in-depth evaluation of practical experience of Directive 2004/109/EC (Transparency Directive) and Directive 2003/71/EC (Prospectus Directive), adopted Directive 2013/50/EU amending the previous Transparency Directive (revised Transparency Directive), granting the Member States an appropriate period of time in which to transpose the new provisions into national law. The Austrian lawmaker implemented the revised Transparency Directive in Austrian law with effect from 26 November 2015 by amending the Austrian Stock Exchange Act (BörseG; *Börsegesetz*) and Capital Market Act (KMG, *Kapitalmarktgesetz*), Federal Law Gazette I No. 98/2015.

medium-sized issuers, and provided that the content of the requested additional information is proportionate given the factors contributing to investors' decision-making in the Member State concerned. The Austrian lawmaker made use of this statutory power as defined in Article 87 para. 6 BörseG by enabling the operator of a regulated market to require that issuers in the market segment with the highest requirements publish interim reports. In line with this obligation, the Vienna Stock Exchange requires companies that list on its prime market to continue to publish quarterly reports.

Annual financial reports must also be published no later than four months after the end of the financial year in future. However, the rules on the reporting deadline for half-yearly financial reports have been eased. These documents must now be published within three months of the reporting date, compared with a previous deadline of two months after the period end. The issuer must also guarantee that its annual and half-yearly financial reports are publicly available for a period of at least ten years, compared with the previously required period of just five years. As of 1 January 2020, plans are also in place for a uniform and harmonised electronic reporting format that will be obligatory for the preparation of annual financial reports. These plans depend on the relevant cost-benefit analysis still to be concluded by the European Securities and Markets Authority (ESMA) yielding a positive finding.

With a view to reducing unnecessary administrative work for listed companies, the obligation to disclose bond issues has also been abolished, as this has generated many implementation difficulties in practice and was also viewed as too complex. Similarly, issuers are no longer required to inform the responsible authority of any changes to their founding act or articles of association. This change is due to the fact that this requirement also overlapped with similar obligations emanating from other European directives and resulted in confusion over the role of the competent authorities.

REMEDYING TRANSPARENCY GAPS

The new regime also closes various gaps in the existing transparency rules, regarding such areas as reports on company holdings, for example. Transparency regarding holdings means that the balance of power within a listed company is visible. Any efforts to amass voting rights and any related takeover plans can therefore be detected from an early stage. Statutory reporting obligations for shareholders now arise upon the following shareholding thresholds being reached, exceeded or not met: 4%, 5%, 10%, 15%, 20%, 25%, 30%, 35%, 40%, 45%, 50%, 75% and 90%.

The impetus for the reform at European level of reporting obligations in relation to major holdings stemmed from cases in which investors acquired financial holdings in companies through new types of financial instrument that were not covered by the existing disclosure requirements. Being able to build up a significant voting rights position without having to report the changes enables investors to "creep up" on a company, ensuring

that they have a favourable starting point should they decide to launch a takeover (examples in this regard include the Schaeffler/Continental case in Germany and the involvement in Telekom Austria of Ronny Pecik).

One of the core aims of the revised Transparency Directive is, therefore, to have innovative financial products recorded more effectively and on a uniform basis across the EU. The notification requirements will apply to financial instruments that a) give the holder the unconditional right to acquire shares, or b) give the holder the discretion as to his right to acquire shares, or c) have a comparable economic effect to a) and b), and involve physical settlement or cash settlement. Prior to the Directive being amended, financial instruments that only involved cash settlement (cash settled derivatives) were not covered by the reporting obligations. In short, the financial instruments concerned are all contracts that confer a right to buy shares with voting rights attached. As a guide to those financial instruments subject to notification requirements, ESMA is now maintaining a non-exhaustive list, which is regularly updated.

If the financial instrument provides exclusively for a cash settlement, the number of voting rights must now be calculated on a delta-adjusted basis. This is done by multiplying the notional amount of underlying shares by the delta of the instrument. The delta indicates how much a financial instrument's theoretical value would change in the event of the price of the underlying instrument fluctuating and provides an accurate picture of the exposure of the holder to the underlying instrument. This approach is taken in order to ensure that the information about the total voting rights accessible by the investor is as accurate as possible.

The requirement to disclose major holdings is triggered in three cases: where a threshold is reached in relation to voting rights from shares, in the event of voting rights from financial instruments and all other instruments, and in the event of voting rights from these two cases combined. To date, European legislation has not stipulated that the voting rights from shares and financial instruments should be aggregated when calculating whether thresholds had been reached or not.

With a view to remedying transparency gaps, however, it is not just the required disclosures on major holdings that have been revised. Changes have also been made to make the relevant definitions more specific. Now, for example, the concept of "issuer" covers natural persons as well as legal entities. Similarly, the definition of "home Member State" has been made more precise to remedy any gaps in supervision. Certain issuers must provide notification of their choice of home Member State within three months of their securities being admitted to trading on a regulated market for the first time. Once this deadline has expired, the Member State in whose territory the issuer's securities have been admitted to trading on a regulated market will be recorded as the home Member State. If the securities are admitted to trading on a regulated market in more than just one Member State, all those Member States will be considered to be home Member States until such time as the issuer chooses just one and notifies the competent authority accordingly.

The final major change implemented to remedy any transparency gaps relates to a newly introduced obligation for issuers whose securities have been admitted to trading on a regulated market and that are active in the extractive or logging of primary forest industries. In future, such issuers shall be required to prepare a separate report on payments made to governments in the countries in which they operate to the extent that the payments made over a financial year reach or exceed the threshold of € 100 000. This report must be published within six months of the financial year-end. The aim of this provision is to create transparency for the public on how natural resources are being used and exploited by disclosing revenues from particularly resource-rich countries.

FACILITATING ACCESS TO REGULATED INFORMATION FOR INVESTORS

In order to provide access to financial information on all listed companies at a pan-European level, a single European access point is being set up. This will be operated by ESMA and will be up and running by 1 January 2018 at the latest. As of this date, the Member States must ensure that their central storage systems can be accessed via the single web portal so that all of the existing systems are linked to one another.

EXPANSION OF SANCTIONING POWERS

Finally, the European Commission's evaluation also revealed that, due to major differences in national sanctioning regimes in the financial services sector, a fundamental reform and minimum level of harmonisation were required. This encompassed both the sanctioning rules themselves and their enforcement. EU-wide minimum standards have now been introduced while also leaving scope for the Member States to stipulate stricter sanctions.

Breaches of transparency rules may relate to either natural persons or legal entities. In the case of legal entities, members of the administrative, management or supervisory body are held responsible. Under the revised rules, fines of up to € 10 million or up to 5% of the total annual turnover may be imposed in the event of breaches committed by legal entities. With regard to natural persons, the financial sanctions may amount to up to € 2 million. In addition, in the case of both legal entities and natural persons, a fine amounting to twice the profits or losses made as a result of the breach may be imposed if such a fine is higher than the amount stipulated in the threat of punishment itself.

Material circumstances determining the type and amount of the administrative sanction include, for example, the gravity and the duration of the breach, the financial strength of the person responsible, the level of co-operation, and previous breaches, as well as other similar factors.

It should also be noted in this regard that these sanctions are not court sanctions but purely administrative sanctions. In accordance with the principle of naming and shaming, which is in keeping with the particular information and transparency requirements of all market participants and, in particular, has a strong disciplinary effect on the financial market, any sanctions and measures that are imposed on issuers must now be publicly announced without delay. This announcement is not made on the basis of an arbitrary decision. Rather, it is a general requirement and must be carried out regardless of any ongoing appeal process. However, specific circumstances have been defined under which the content of the announcement may be restricted (anonymised) or the announcement postponed. Any appeal lodged to protect the public profile of the party concerned must also be included in the announcement.

MiFID II and MiFIR

The new supervisory regime for securities trading

The application of the Markets in Financial Instruments Directive (MiFID II) and the related Regulation on Markets in Financial Instruments (MiFIR), which both entered into force on 3 July 2014, will result in a complete overhaul of the supervisory regime in many areas. Since preparations have been highly challenging, the European Commission proposed extending the application date to 3 January 2018. In any event, the original date of 3 January 2017 is no longer achievable. In view of the huge challenges involved with MiFID II and MiFIR, and the required lead time for the requisite practical implementing measures, regulators, supervisors and industry must continue to give their all to the preparations.

The new supervisory regime for trading in securities is based on two major developments. Firstly, the decision reached by the heads of government and state at the G20 summit in Pittsburgh in September 2009 in response to the financial crisis to divert OTC trading activities as far as possible to regulated multilateral trading platforms. Secondly, the previous MiFID regime has been subjected to an in-depth evaluation, reflected in the reports by the European Commission on trade transparency and handling of commodity derivatives and through a public consultation phase conducted by the European Commission (MiFID review), which questioned nearly all of the regulated areas.

Many a lesson has consequently been learned for the new supervisory regime. By way of example:

- the scope of application will be expanded;
- the market infrastructures will be supplemented by new organised trading facilities and new data reporting services providers;
- trade transparency will be expanded to cover both equity and non-equity markets and intensified for systematic internalisers, and reporting towards supervisory authorities will also be expanded;
- investor protection will be enhanced, and strengthened by new tools such as product governance and product intervention; and
- the general regulatory trend towards harmonisation of administrative penalties has been addressed, enabling Austria to increase its range of penalties considerably.

EXTENDED APPLICATION

MiFID II extends the scope of application for regulating securities trading.

Regulatory arbitrage across sectors is to be avoided. Credit institutions that sell structured deposits or provide advice on such should therefore be regulated as if they were providing investment services regarding financial instruments. A structured deposit must be fully repaid at maturity like any other deposit. However, its interest or premium risk is dependent on an underlying value such as a derivative. A similar regulatory arbitrage in the insurance sector concerning insurance-based investment products has been countered by the adoption of Directive (EU) 2016/97, the new Insurance Distribution Directive.

The risks for the market arising from speculative behaviour should be reduced by the use of information technology and also with regard to commodity prices. Where computer programs are used to set the parameters for the execution of orders as part of so-called algorithmic trading techniques, these must be reported to the supervisor, and security requirements must be met during their use. High frequency trading (HFT) where computers are closely linked to trading venues and which execute high volume, automated trading strategies are to provide sufficient liquidity through market making. Regulators should set position limits to counter the threat of speculative trading in commodities, which in turn limit the amount of admissible net positions within the individual types of commodity derivatives, not counting hedging transactions. In addition, market operators should manage positions in a way that provides them with an overview of all positions received, requiring traders, if necessary, to either reduce positions or provide liquidity where they dominate the market.

In contrast to the extensions of the scope of application, exemptions for the real economy are to be further curbed. Where a company, when viewed overall, offers investment services on an ancillary basis as part of its main business outside the capital market, the exemption will in future only apply to clients and suppliers of the main business. This enables such companies to continue providing hedging transactions over the whole value-added chain without turning them into competitors of licensed legal entities. In exchange, the market participants in the real economy will be required in future to report transactions to the regulator. Where energy utilities do not bundle their activities in joint venture companies, they will need to obtain a licence at least as an investment service provider in future.

NEW MARKET INFRASTRUCTURES

ORGANISED TRADING FACILITIES

MiFID II also introduces a new trading venue, that of the organised trading facility (OTF). The OTF is a new addition to the existing categories of trading venues and is one that is better suited to meeting the needs of trading in bonds, derivatives, structured finance products and emission allowances. The aim is to move OTC trading in these financial instruments from broker systems to regulated multilateral systems, provided that the financial instruments are standardised and their markets sufficiently liquid. The organisational expansion will result in more transparency and efficiency, particularly because derivative trading will be moved to organised systems. Operation of an OTF requires authorisation pursuant to MiFID II, meaning that companies need to obtain the requisite licence before being allowed to operate an OTF.

Apart from regulated markets and multilateral trading facilities (MTFs), the OTF constitutes the third category of a multilateral system, in which multiple third-parties buying and selling interests in financial instruments are able to interact in a way that results in a contract. For regulatory reasons, OTFs – in contrast to other multilateral systems – are, however, only open to bonds, structured finance products, emission allowances and derivatives. This is to avoid regulatory arbitrage and any move to the more tightly regulated multilateral systems used for shares and instruments similar to shares.

The main difference between a regulated market or an MTF on the one hand and an OTF on the other is the way in which orders are executed. While non-discretionary rules apply to regulated markets and MTFs with regard to the execution of orders, operators of an OTF exercise a certain degree of discretion, specifically when deciding to place or retract an order and when deciding not to match certain orders. For transactions

THE LEGISLATIVE PROCESS

The legal framework of the new supervisory regime for securities trading is set by Directive 2014/65/EU of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (Markets in Financial Instruments Directive – MiFID II) and the related Regulation (EU) No 600/2014 of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (Markets in Financial Instruments Regulation – MiFIR). In this respect, it is similar to the framework of banking supervision, which is based on the Capital Requirements Directive (CRD IV) and the related Capital Requirements Regulation (CRR).

From a regulatory perspective, the new framework stipulates further steps for both European and Austrian legislation before the new supervisory regime can actually be applied in practice. At European level, a Delegated Regulation and a Delegated Directive, as well as further regulations on technical standards are yet to be adopted, all of which to be prepared by the European Securities and Markets Authority (ESMA) assisted by the FMA. In Austria, the Directives must be transposed by way of amendments to the Securities Supervision Act (WAG; *Wertpapieraufsichtsgesetz*) and the Stock Exchange Act (*BörseG; Börsegesetz*), and various FMA regulations need be issued.

At the time of this report being prepared the actual application date was not yet known.

carried out via an OTF, the same MiFID II rules of conduct and rules on best execution apply, limiting the scope of discretion. In this context, the pre-trade and post-trade transparency requirements as referred to in MiFIR must also be taken into account.

Another difference between the two are the waivers of the prohibition, applying to all MTF operators, to execute client orders against proprietary capital (either their own or that of their group) when matching orders, thereby interposing itself, even if only commercially, between the counterparties to a transaction and exposing itself to own risk. Dealing on own account other than matched principal trading is permitted with regard to sovereign debt instruments for which there is no liquid market. Engaging in matched principal trading in bonds, structured finance products, emission allowances and those classes of derivatives that are subject to the clearing obligation in accordance with the European Market Infrastructure Regulation (EMIR) is permitted where the client has consented to the process.

Despite these exceptions, the differentiation between multilateral and bilateral trading should be kept as distinct as possible. Any operator of an OTF is therefore prohibited from operating a systematic internaliser from within the same legal entity.

DATA REPORTING SERVICES PROVIDER

MiFID II introduces the collective term of “data reporting services provider”, which covers the new authorisations for approved publication arrangements (APA), consolidated tape providers (CTP) and approved reporting mechanisms (ARM).

Investment firms are now required to publish a certain set of data on shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments, bonds, structured finance products, emission allowances and derivatives traded on a trading venue via such an APA.

The data published in this way is supplemented with data to be published by trading venues, consolidated by a CTP into a continuous electronic data stream and made available to the public. This should provide the investing public as well as all market participants with a much more comprehensive overview of all trading activities in the capital market than before.

The third data reporting services provider, the so-called ARM, is intended to regulate more strongly that services sector to which investment firms outsource the reporting of securities transactions. While the existing MiFID allows investment firms to outsource the reporting of their transactions to any third party, this will in future only be possible where that provider is first authorised as an ARM.

Basically, every company may apply to its national supervisory authority for authorisation as a data reporting services provider, with this activity already being included in the authorisation of investment firms and market operators operating a trading venue, provided certain organisational requirements are met.

ESMA is currently setting up an overview on its website of all data reporting services providers authorised within the European Union.

EXPANSION OF TRANSPARENCY IN THE MARKET AND FOR REGULATORS

TRADE TRANSPARENCY FOR INSTRUMENTS OTHER THAN SHARES

The pre-trade and post-trade transparency requirements, which so far, according to MiFID, have only applied to regulated markets and MTFs and only with respect to shares, now form part of the directly applicable rules contained in MiFIR. The transparency requirements applicable under this Regulation to equities and equity-like financial instruments now also concern depositary receipts, exchange-traded funds, certificates and other similar financial instruments in addition to shares. The requirements are being expanded to include all trading venues, i.e. apart from the regulated markets and MTFs they now also cover OTFs.

The waivers from pre-trade transparency are broader, i.e. the possible exceptions from publishing pre-trade transparency data (current bid and offer prices and the depth of trading interests at those prices). In order to ensure that certain kinds of those waivers do not unduly harm price formation, a double volume cap mechanism is being introduced to restrict trading under those waivers. The percentage of trading in a financial instrument carried out under those waivers shall be limited to 4% (on one trading venue) and 8% (overall Union trading) of the total volume of trading in that financial instrument at all trading venues across the European Union over the previous twelve months. For the purposes of this double volume cap mechanism, ESMA will publish the total volume of Union trading per financial instrument, as well as the percentage of trading under those waivers over the previous twelve months. When the 4% and 8% limits are exceeded, the national authority will suspend use of the previously authorised waivers in that financial instrument for a period of six months.

Details on pre-trade transparency requirements, on waivers from them including the double volume cap mechanism, and on post-trade transparency requirements including the provisions on deferrals (manner of the approved deferred publication) can be found in the technical standards which ESMA has submitted for adoption to the European Commission.

What is completely new is the introduction of equivalent pre-trade and post-trade transparency requirements for non-equity instruments. This covers the bonds, structured finance products, emission allowances and derivatives previously mentioned in relation to the newly organised trading systems. Apart from similar waivers from pre-trade transparency as apply to equity instruments, the national supervisory authority may waive the obligation to publish pre-trade information where there is no liquid market for a class of non-equity instruments, i.e. where the liquidity of that instrument falls below a specified threshold. ESMA has been mandated to develop draft regulatory technical standards to specify the parameters and methods for calculating this liquidity threshold. Since there are no reliable transparency data on non-equity instruments available under the previous MiFID, the parameters, methods and thresholds developed by ESMA have yielded test results that are rather controversial. It therefore remains to be seen how this RTS, which also contains specifications for post-trade transparency, will ultimately be received by the European Commission.

TRANSPARENCY FOR SYSTEMATIC INTERNALISERS

The obligation for systematic internalisers to make public firm quotes in respect of those financial instruments traded on a trading venue for which they are systematic internalisers and for which there is a liquid market (with markets that are not liquid, quotes must be disclosed upon request) is being widened, so that, in addition to shares, it now also includes equity-like instruments, as already mentioned in respect of the extended trading transparency rules. As before, the obligation only applies to transactions up to standard market size. The standard market size for each class of equity and equity-like instruments is a size representative of the arithmetic average value of the orders for the respective class of instruments. Post-trade transparency requirements are extended accordingly.

Moreover, systematic internalisers are now also obliged to make public firm quotes in respect of those non-equity instruments, as already mentioned in connection with the extended transparency regime, for which there is a liquid market. Such an obligation does not apply to non-equity instruments falling under the above liquidity threshold or to transactions that exceed the size specific to the financial instrument.

Systematic internalisers, like all other investment firms, must publish transactions in equity and non-equity instruments that they have carried out on own account or on behalf of clients (volume, price and time), with a deferral being possible for non-equity instruments.

NEW REPORTING SYSTEM

One project which has already proven to be very extensive during the preparations for MiFID II will be the new reporting system for securities transactions. Preparatory work has begun both for market participants and supervisory authorities in 2015, in order to be ready in time when the new reporting obligations enter into force.

The existing systems must be extended regarding three major points: the definition of the term “financial instrument” will be widened; the category of trading venues whose financial instruments are subject to the reporting obligation will be extended from just regulated markets to include MTFs and OTFs; and lastly the information to be reported to the supervisory authorities will be much more detailed in future.

Enshrining the new reporting system in a directly applicable European regulation additionally means that the national reporting system used so far must be adapted to the new reporting logic, harmonised at European level. This has also been done under CRD IV, and proven highly ambitious for all involved.

During preparation of the related regulatory technical standards ESMA made use, as far as possible, of existing definitions for natural or legal persons and of synergies achieved in the context of the mandatory reporting of derivative contracts under the European Market Infrastructure Regulation (EMIR). However, since the aims of these two supervisory regimes are rather divergent, this has been only partly successful.

ENHANCED INVESTOR PROTECTION

PRODUCT GOVERNANCE

The product governance requirements under MiFID II demonstrate the tendency to create product-related rules in addition to the rules of conduct governing selling. MiFID II specifies that credit institutions and investment firms that issue or manufacture (product manufacturers) financial instruments (including structured deposits) must set up a product approval process. Each and every financial instrument must be subjected to this product approval process before it is marketed or distributed. Significant adjustments of financial instruments already in the market must also undergo the product approval process.

One important component of this product approval process is the specification of an identified target market for each newly developed financial instrument. This is intended to determine in advance – taking product

characteristics and particularly product risk into account – whether, for example, the product in question has been devised for a broad group of investors or tailored to a specific group. Accordingly, the distribution strategy should be consistent with the needs of the identified target market.

Product manufacturers are obliged to take reasonable steps to ensure that the product is subsequently distributed to the identified target market. In this context they must make available to any distributor all appropriate information on the product approval process, and particularly any information on the definition of the target market. Distributors, in turn, are obliged to make adequate arrangements to obtain such product information. The information will enable distributors to understand the characteristics of the products they offer and to assess, taking the identified target market into account, whether these products are consistent with the needs of their clients.

The product governance requirements under MiFID II also include the obligation to periodically review the products that are already in the market, thereby considering any subsequent event that could have affected the original risk assessment or whether the financial instrument remains consistent with the needs of the identified target market.

In the case of product governance rules not being complied with, MiFID II provides for a specific action that widens the powers of the FMA via MiFIR: where a company subject to MiFID II has no product approval process in place or is not applying the process, the supervisory authority will be entitled to suspend distribution of the financial instruments concerned.

PRODUCT INTERVENTION

MiFIR introduces new product intervention powers for competent authorities. Accordingly, a national supervisory authority, the FMA in Austria, may prohibit or restrict the marketing and distribution of financial instruments (including structured deposits) as well as certain financial activities or practices. Where a national supervisory authority has not taken action to address the issue or the actions that have been taken were ineffective, the prohibition may temporarily also be imposed by the European Securities and Markets Authority (ESMA) in the case of financial instruments, or the European Banking Authority (EBA) in the case of structured deposits.

Such prohibitions or restrictions are however subject to the following strict conditions: the product or financial activity addresses a significant investor protection concern or a threat to the orderly functioning and integrity of financial markets or commodity markets or to the stability of the financial system, or a derivative has a detrimental effect on the price formation mechanism in the underlying markets. Before authorities exercise their right to intervene they should examine whether the deficiencies could be resolved by applying less stringent European provisions. The action must also be proportionate, particularly in relation to investors who hold an affected financial instrument in a market that has previously been liquid. Aspects related to cross-border activities must also be kept in mind, particularly to ensure that the action is not discriminating against services or activities provided by companies from another Member State. Product intervention should, ultimately, only be effected for the general good.

INDEPENDENT INVESTMENT ADVICE

MiFID II also specifies significant changes with regard to investment advice. The new legal framework for “investment advice on an independent basis” determines the requirements to be fulfilled by investment advice for which the client pays a fee but no commission. In this connection MiFID II specifies that independent advice must include a range of products that is sufficiently diverse. The financial instruments offered to the client must not be limited to own products or products provided by entities having close links with the company.

The company is not allowed to accept and retain commissions in relation to the independent advice it offers. Any commissions received must be passed on to the client. Minor non-monetary benefits that are capable of

enhancing the quality of service provided to a client, such as for example written product information or information events, are exempted from this rule. In this sense, such minor non-monetary benefits must be of a scale and nature that they could not be judged to impair compliance with the company's duty to act in the best interest of its clients. The minor non-monetary benefits must be clearly disclosed to the client.

ENHANCED INFORMATION REQUIREMENTS FOR INVESTMENT ADVICE

To conform to MiFID II provisions, the information to be provided to clients in the context of investment advice must now also consider the conditions under which that advice is provided. Clients must be informed "in good time" before receiving advice whether or not the advice is provided on an independent basis or based on commissions. In addition, clients must be informed in detail about the range of advisory services provided. This information must include whether the advice is based on a broad or on a more restricted range of products (e.g. whether only own products are offered). The client must also be advised of the services offered in connection with the investment advice, particularly whether the company will provide the client with a continuous, periodic assessment of the suitability of the financial instruments acquired for the client's needs. Such continuous advice is now mandatory under MiFID II for portfolio management.

Another new requirement laid down in MiFID II in connection with investment advice is the requirement to specify the content and results of the suitability assessment in a written statement. This suitability report details how the advice given meets the preferences, needs and other characteristics of the retail client. The statement must be handed over to the client before any transactions are executed. If the client is not personally present, e.g. when advice is provided on the phone, the statement may by way of exception also be submitted after execution of transactions, with the client's consent.

Extended information requirements relating to product bundling have also been laid down in MiFID II. Where products or services are offered together with other products or services as part of a package (cross-selling), the client must be informed whether parts of the package can also be purchased separately. The costs and fees entailed with each part must be given separately. Moreover, in the case of such a bundle of services or products, the assessment of appropriateness and suitability must consider whether the overall bundled package is appropriate for the client.

SUMMARY

The new supervisory regime under MiFID II and MiFIR should make securities trading more transparent, extend its provisions and rules, without any loopholes, to all comparable market participants in need of regulation, and strengthen investor confidence in the financial market by offering an appropriate level of protection. It remains to be seen whether all lessons from the financial crisis in relation to securities trading have been learned.

The changing nature of prospectus law

Changes in light of the Capital Markets Union

With the aim of strengthening economic growth in Europe over the long term, the European Commission has launched an initiative to create a Capital Markets Union (CMU). The goal is to deepen the capital markets of the EU Member States and to create greater integration so that investors and savers in Europe are given the most efficient and direct opportunities to put their money to work to enhance investment and growth prospects. This should create fresh and additional capital for European businesses, particularly small and medium-sized enterprises and start-ups, while also unlocking financial resources for infrastructure projects. Moreover, the CMU should help cut the costs of finance and make the financial system less vulnerable to crises.

In publishing its “Green Paper Building a Capital Markets Union” in February 2015, the European Commission launched a consultation process on the measures needed to achieve these goals. One of the main starting points in the Green Paper is reform of the European regime for the public offering of securities and investments. The Commission has therefore carried out additional consultations in relation to the Prospectus Directive and on the subject of securitisations.

The aims of the consultation processes included:

- developing proposals on how to encourage high-quality securitisation and free up bank balance sheets to lend;
- reviewing the Prospectus Directive to make it easier for firms, particularly smaller ones, to raise funding and reach investors cross border;
- starting work on improving the availability of credit information on SMEs so that it is easier for investors to invest in them;
- working with the industry to put into place a pan-European private placement regime to encourage direct investment into smaller businesses; and
- supporting the take-up of new European long-term investment funds to channel investment in infrastructure and other long-term projects.

Contributions to the consultation process and the public debate revealed a broad consensus to the effect that a single market for capital would result in a greater level of risk sharing across borders, to deeper and more liquid markets and to a wider range of financing options in the economy as a whole. There was also far-reaching agreement, however, that this goal could be best achieved on a gradual basis, based on a clearly scheduled action plan.

AN ABC OF PROSPECTUS LAW

What is a prospectus and when must a prospectus be published?

- A prospectus is a legally binding document that describes an issuer and the securities being issued. It enables investors to make an informed investment decision on whether to invest in the company by forming an opinion on its assets and liabilities, financial position, profit and losses, and prospects of the issuer and of any guarantor, as well as on the basis of the rights, opportunities and risks associated with the securities in question. A compact summary, clearly defined by law, should help potential investors to understand the key content relevant to making an investment decision.
- A prospectus is composed of a registration document (describing the issuer), a securities note (describing the shares, bonds or options offered) and a summary. It is currently approved in Austria in the form of a single document. It is also possible, however, for the three different parts to be approved separately (tripartite prospectus).
- A prospectus must be prepared whenever securities are either offered to the public or are intended to be admitted to trading on a regulated market.
- Prospectuses may be prepared in the form of a one-off prospectus containing all of the key information on the securities being offered at the time of approval, or in the form of a base prospectus that does not yet contain any final information on the securities to be offered. In the second case, interested investors are provided with specific information on the product prior to the start of the offer in the form of “final terms”.
- Where Austria is the home Member State, the prospectus must be approved by the FMA. The FMA will grant its approval provided that the document is complete, coherent and comprehensible, and complies with any other requirements as defined in the KMG.

PRIORITISING REFORM OF THE PROSPECTUS REGIME

The “Action Plan on Building a Capital Markets Union”, published on 30 September 2015, prioritises the reduction of barriers to the capital markets. Consequently, the currently applicable prospectus regime based on Directive 2003/71/EC (Prospectus Directive), amended by Directive 2010/73/EU (2010 Amending Directive) and latterly by Directive 2014/51/EU (Omnibus II Directive), was subjected to a far-reaching analysis and review. As far as Austria is concerned, this European prospectus regime has been implemented through the Capital Market Act (KMG, *Kapitalmarktgesetz*).

Based on this review of the prospectus regime currently applicable in the EU, the European Commission kicked off a fundamental reform on 30 November 2015 with the publication of its “Proposal for a Regulation of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading” (legislative proposal). This is intended to replace Directive 2003/71/EC and Commission Regulation (EC) No 809/2004 based on the Directive, and will be directly applicable in all EU Member States following its entry into force.

The responsible EU Commissioner, Jonathan Hill, summed up the aims of the reform as follows during its presentation: “We need a prospectus regime that gives investors the information they need, but that does not pile up unnecessary costs and put companies off raising money on the public markets. Today’s proposal strikes a better balance. It will make the system simpler, cheaper and quicker. It will safeguard investors, while making it easier for small and medium-sized enterprises and other businesses to raise money.”

The key areas covered by the legislative proposal are therefore:

- removal of the administrative burdens that firms are forced to overcome;

- making access to the capital market more cost-effective and simpler for SMEs;
- enabling all issuers to make flexible (including from a time perspective) use of the capital market, with the focus on secondary issuances by companies whose securities are already admitted to trading on a regulated market of a stock exchange and on companies that make frequent use of the capital market for refinancing;
- simplifying the information contained in the prospectus, with a clear focus on the prospectus summary, which should be made clearer and easier to understand for retail investors.

WHAT ARE THE MAIN PLANNED CHANGES TO THE PROSPECTUS REGIME?

OBLIGATION TO PUBLISH A PROSPECTUS

Currently, issuers are required to draw up a capital market prospectus if their public offering of securities in the EU exceeds a total value of € 100 000. This threshold is to be raised to € 500 000 but will take into account all offers made within a twelve-month period.

In addition to the exceptions from the prospectus obligation as defined in Article 3(2) of the Prospectus Directive, the Member States should also be given the power to grant exemption if securities are only going to be offered for sale in that state, if there are no plans to have the securities admitted to trading on a regulated market of a stock exchange and if the total value of the offering is less than € 10 million. This upper limit is also calculated over a twelve-month period.

In addition, the Prospectus Regulation is not intended to apply to securities that are fungible with securities already admitted to trading on the same regulated market (provided that the volume, calculated over a twelve-month period, accounts for less than 20% of the number of securities already admitted to trading on the same regulated market). The current threshold of 10% is therefore to be doubled.

ALLEVIATED RULES FOR SMES

Barely any market participants have taken advantage of the relaxed rules introduced by the 2010 Amending Directive with regard to the prospectus regime applicable to small and medium-sized enterprises (SMEs). Consequently, plans are now in place to give SMEs the option of producing a lighter prospectus provided that the SME has not issued any securities that have been admitted to trading on a regulated market. This type of prospectus is intended to be thinner, less complex and cheaper to produce. It should even be possible to prepare prospectuses for equities and non-equity securities (that are not subordinated, convertible or exchangeable, that do not give a right to subscribe to or acquire other types of securities and that are not linked to a derivative instrument) in the form of a standardised questionnaire that can be completed by the issuer itself.

SECONDARY ISSUANCES

The relaxed conditions created by the 2010 Amending Directive for rights issues have also not been accepted by the market. In this regard the legislative proposal significantly expands the area of application for lighter prospectuses in relation to secondary issuances. Companies whose securities are already listed on a regulated market and that are looking to issue additional equities or debt instruments (corporate bonds) may publish a new, simplified type of prospectus. This is to apply in the following cases in future:

1. issuers whose securities have been admitted to trading on a regulated market or an SME growth market for at least 18 months and who issue more securities of the same class;
2. issuers whose equity securities have been admitted to trading on a regulated market or an SME growth market for at least 18 months and who issue non-equity securities;
3. offerors of a class of securities admitted to trading on a regulated market or an SME growth market for at least 18 months.

UNIVERSAL REGISTRATION DOCUMENT

With a view to removing administrative burdens, issuers that have their head office in a Member State and whose securities have been admitted to trading on a regulated market or via a multilateral trading system will have the option in future of drawing up a uniform registration document on an annual basis for submission to the relevant authority, regardless of whether that issuer is planning a public offering or to have securities admitted to a stock exchange. This document will be valid for the issue of both equity and non-equity securities and will include such information as details about the organisation, business activity, income and financial situation, the issuer's future prospects and shareholder structure.

An issuer which has filed and received approval from the national competent authority for a universal registration document for three consecutive years may subsequently file these universal registration documents with the competent authority without first seeking its approval. This process will result in the issuer being awarded frequent issuer status. Provided that the FMA has been informed in advance, this will enable the issuer to benefit from a faster approval process for a prospectus, with the decision-making period being cut from ten to five bank working days. Issuers will consequently be able to react more flexibly to the market environment. With regard to any public offering of securities, however, the universal registration document and the securities note, along with any summary, must be approved.

As a result of the benefits gained from a universal registration document for the issuer, a further planned change – namely the possibility of using tripartite prospectuses, also under the base prospectus regime – is to be driven forward.

BASE PROSPECTUS REGIME

With Regulation (EC) No 809/2004 due to be merged into the legislative proposal, the existing annexes defining the minimum information to be included in the prospectus are also likely to cease to apply. Instead, the European Commission intends adopting delegated acts regarding the format of the prospectus, the base prospectus and the final terms, and the schedules defining the specific information which must be included in a prospectus. It is currently not possible to forecast the resulting impact on the existing prospectus regime.

It is however likely that the summary of the prospectus will be redesigned. Aspects currently being discussed include reducing the length of the summary to six standard A4 pages, with the structure no longer being as fragmented as has been the case since the entry into force of the 2010 Amending Directive.

Instead, there are to be four sections:

1. an introduction containing warnings;
2. key information on the issuer, the offeror or the person asking for the admission to trading;
3. key information on the securities; and
4. key information on the offer itself and/or the admission to trading.

In those cases in which, pursuant to Regulation (EU) No 1286/2014, a key information document is to be prepared on packaged retail and insurance-based investment products (PRIIPs), the issuer may include this information in the prospectus in place of the security-specific summary. If the issuer opts for this approach, the maximum length may be extended from six A4 pages to nine pages.

If the final terms are not included in the base prospectus, the obligation to draw up a summary of the prospectus will no longer apply in future. In such a case, the issuer will only be required to produce an "issue-specific" summary and annex it to the final terms, when those are filed.

In the interests of comprehensibility, particularly for retail investors, the way in which risk factors are presented has been subject to critical review. It was found that many prospectuses list a number of generic risk factors in the form of a disclaimer. This makes it more difficult for investors to recognise which risk factors are actually relevant to the issuer and the securities. With regard to effective investor protection this is counterproductive, which is why only material issuer-specific and security-specific risks should be included and described in future.

The legislative proposal significantly widens the range of information that an issuer may incorporate by reference in a prospectus. Provided that it has been published prior to the prospectus being approved or at least simultaneously in electronic form, information that may be incorporated by reference in a prospectus can come from the following sources in future:

- prospectuses, supplements and final terms;
- documents prepared in the context of takeovers, mergers and divisions;
- regulated information which needs to be disclosed under the Transparency Directive and the Market Abuse Regulation;
- historical financial information;
- company agreements and articles of association.

Where an issuer decides to incorporate information by reference in a prospectus, such information must be available in the same language as the prospectus.

INVESTIGATORY, PROHIBITION AND SANCTIONING POWERS

According to the text of the legislative proposal, the FMA's powers in relation to the prospectus regime are extended considerably, with a clear increase in sanction levels. While there have only been certain powers to date in relation to the approval procedure, these are now to be extended to include cases outside the approval process. As well as these powers being extended in terms of time, the following key powers for the supervisory authorities have been included in the legislative proposal:

- to require the inclusion of supplementary information in the prospectus, where necessary for investor protection;
- to require the issuer to disclose all material information that may have an effect on the assessment of the securities admitted to trading on a regulated market of a stock exchange in order to ensure investor protection or the smooth operation of the market;
- to request information from the issuers, offerors – including those persons who control them or are controlled by them – or persons asking for admission to trading on a regulated market, as well as from their managers and auditors;
- to prohibit or suspend an offer to the public or admission to trading, or any advertisements in relation to a public offer, for a maximum of ten consecutive working days on any single occasion where there are reasonable grounds for suspecting that the provisions of the Prospectus Regulation have been infringed;
- to refuse approval of any prospectus for a maximum number of five years, where this issuer or offeror has repeatedly and severely infringed the provisions of the Prospectus Regulation;
- to make public the fact that an issuer, an offeror or a person asking for admission to trading has infringed the obligations defined in the Prospectus Regulation;
- in the event of product interventions pursuant to the regime governed by the Markets in Financial Instruments Directive (MiFID), to suspend approval of a prospectus or to prohibit the public offer;
- to carry out on-site inspections at any premises other than the private residences of natural persons where a reasonable suspicion exists that evidence can be found that may be relevant to prove an infringement of the Prospectus Regulation.

Based on the current text of the legislative proposal, the measures and sanctions adopted by the FMA pursuant to the provisions of the Prospectus Regulation will have to be published to a large extent. Publication may be delayed or not take place if it would be disproportionate or if it would pose a risk to financial market stability. The obligation to publish also does not apply to measures used to investigate the case (investigative powers such as the obtaining of information, on-site inspection), and publication may also take place on an anonymous basis under certain circumstances.

The legislative proposal also provides for the possibility of Member States retaining judicial criminal proceedings in place of the stipulated administrative sanctions. This is subject to the requirement that measures are in

place to ensure that any breaches of the listed standards can be properly pursued and punished, and that the judicial criminal offences have already been implemented twelve months after the Regulation enters into force. If, after the entry into force of the new Prospectus Regulation, there continue to be judicial criminal offences in Austria, the European Commission and the European Securities and Markets Authority (ESMA) must be informed in detail accordingly.

FURTHER STEPS TOWARDS A NEW EUROPEAN PROSPECTUS REGIME

The legislative proposal has been submitted to the European Parliament and the Council for debate and adoption.

Once it has been adopted, the European Commission will then adopt delegated acts on the following issues, judged by the FMA as being material:

- format and content of the prospectus, the base prospectus and the final terms, as well as on the schedules on the basis of which these documents are to be prepared;
- procedure for the scrutiny, approval, filing and review of the universal registration document, as well as determining in which cases these can simply be amended by the issuer (without being approved by the competent authority) and under which conditions the status of frequent issuer may be lost.

Subsequently and/or in parallel, ESMA will prepare statements on the following areas of the legislative proposal that are judged by the FMA to be important and that are still to be specified:

- specifying the rules with regard to the inclusion and presentation of risk factors in the prospectus;
- a guide on preparing the standardised questionnaire for small and medium-sized enterprises.

In the Council working groups, the Netherlands Presidency presented the plan to complete the general review by June 2016. A detailed schedule is not yet available.

Macroprudential supervision

Securing creditor protection and strengthening financial market stability

Macroprudential supervision – the FMA’s core task – involves securing creditor protection and strengthening financial market stability through ongoing supervision of individual financial institutions. Macroprudential supervision, in contrast, identifies and analyses risks on a forward-looking basis, in the interests of the overall stability of the financial system. As well as cyclical and structural issues, this also involves fundamental issues in conjunction with incentive problems in the financial system, the latter’s inherent procyclicality and the risks arising from direct and indirect links between institutions and other undertakings, and between different sectors. Macroprudential supervision is used to curb these risks.

THE MACROPRUDENTIAL SUPERVISION SYSTEM IN AUSTRIA

The system of macroprudential supervision in Austria is shown in Figure 1. The system pools the specific expertise found in the institutions relevant to financial market stability and thus meets the broad remit of a systemic approach to supervision without the need for inefficient and costly parallel structures.

FINANCIAL MARKET STABILITY BOARD

The Financial Market Stability Board (FMSB) assumes the central role within the macroprudential supervisory process. Its remit includes the authority to issue risk warnings and to make specific recommendations for action. The Board is composed of representatives from the Federal Ministry of Finance (BMF), the Fiscal Advisory Council, the Oesterreichische Nationalbank (OeNB) and the FMA. Its members meet to analyse issues of a macroprudential nature, and to discuss and recommend the measures needed.

THE FMA AS A MACROPRUDENTIAL AUTHORITY

The function of macroprudential authority as defined in the Capital Requirements Directive (CRD IV)/Capital Requirements Regulation (CRR) is performed by the FMA. This means that it is responsible for officially implementing the measures in Austria. If the FMSB, in the capacity of interinstitutional decision-making forum, issues risk warnings in relation to detrimental developments of relevance to the stability of the Austrian financial market and specific recommendations for action, the FMA, as the macroprudential authority, must respond and is subject to a comply-or-explain mechanism.

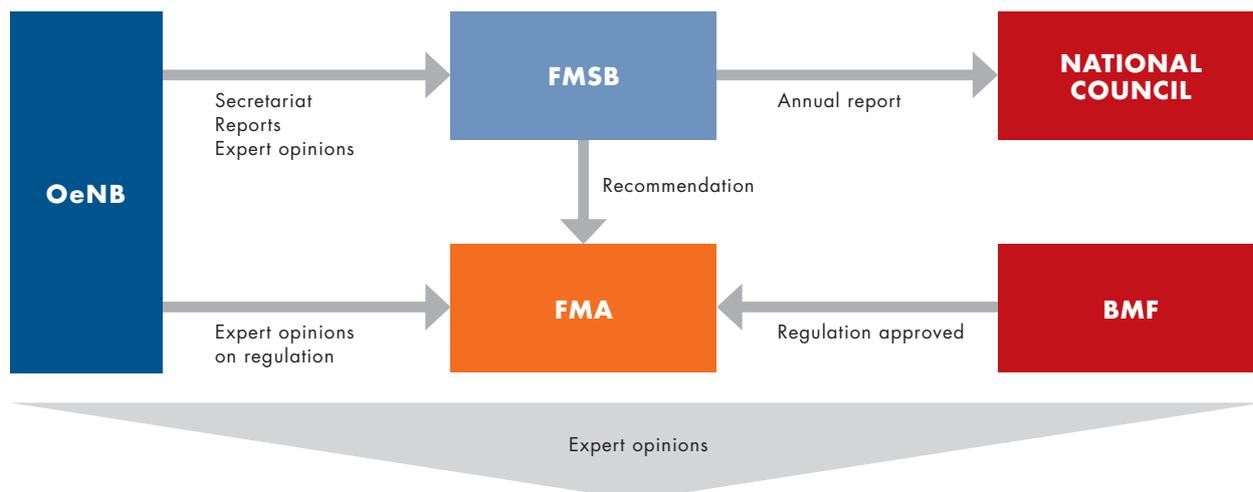


Figure 1: Institutional design of macroprudential supervision in Austria (source: OeNB)

Given its expertise in economics and finance with regard to financial market stability, the OeNB supports the FMA by providing analyses and expert opinions.

EUROPEAN SYSTEMIC RISK BOARD

The FMSB’s counterpart at European level is the European Systemic Risk Board (ESRB) based at the European Central Bank.

ESRB RECOMMENDATION

Macroprudential supervision must take a forward-looking approach, identifying those risks that could destabilise the financial system (systemic risk), analysing them and, if necessary, introducing timely countermeasures. To this end, and in accordance with the Recommendation of the ESRB on intermediate objectives and instruments of macroprudential policy (ESRB/2013/1), the macroprudential supervisory institutions are required to define specific intermediate objectives for the purposes of meeting their overriding aims and as a means of implementing their supervisory policy in everyday practice. These should at least address the following types of market failure:

- excessive credit growth and leverage;
- excessive maturity mismatch and market illiquidity;
- direct and indirect exposure concentrations;
- systemic impact of misaligned incentives with a view to reducing moral hazard;
- threat to the resilience of financial infrastructures.

The intermediate objectives set by the macroprudential authorities must be evaluated on an ongoing basis and, where necessary, adapted and extended in line with the specific features of the national financial system.

If macroprudential supervision identifies a systemic risk for the financial system, timely and effective action must be taken using the corresponding instruments. As a general rule, macroprudential supervision in Europe encompasses the entire financial market. To date, however, it has mainly had access to banking sector instruments for tackling systemic risks.

SPECIFIC MACROPRUDENTIAL INSTRUMENTS:

- Systemic risk buffer (SRB) to limit long-term, non-cyclical systemic risks (Article 23d of the Austrian Banking Act – BWG; *Bankwesengesetz* in conjunction with Article 133 CRD IV);

- Buffer for global and other systemically important institutions (G-SII, O-SII) to strengthen the risk-bearing capacity of individual institutions that are relevant to the global or national financial system (Articles 23b and 23c BWG in conjunction with Article 131 CRD IV) – from 2016 onwards;
- Countercyclical capital buffer (CCB) to strengthen the risk-bearing capacity of the banking sector in times of increasing cyclical systemic risks, particularly with regard to excessive credit growth (Article 23a BWG in conjunction with Article 130 CRD IV) – from 2016 onwards;
- National flexibility package to avoid systemic risks in the national financial system that cannot be cushioned using other instruments (Article 458 CRR).

Instruments at the interface between micro and macroprudential supervision:

- Stricter criteria to avoid risks relating to real estate security (Article 124/126 CRR);
- Pillar 2 measures to address systemic risks, particularly for groups of credit institutions with a similar risk profile (particularly Articles 39, 69 and 70 BWG in conjunction with Articles 97, 98 and 102 to 104 CRD IV).

ONGOING MACROPRUDENTIAL SUPERVISION

MACROPRUDENTIAL STRATEGY

In December 2015, the FMSB formulated and adopted the macroprudential policy strategy for Austria. Member states of the ESRB are recommended to publish this strategy as a means of communicating the cornerstones of macroprudential supervision to the general public and in order to comply with accountability obligations.

The strategy, which is available on the FMSB website¹, sets out the goals of macroprudential supervision, based on the overarching aim of securing financial market stability and put into practical effect by means of intermediate objectives (see above). It also sets out the operating framework, the organisational design of the strategy and the available instruments.

CAPITAL BUFFER

The FMA adopted a Capital Buffer Regulation (KP-V; *Kapitalpuffer-Verordnung*) in December 2015 designed to improve the capital bases of Austrian credit institutions and thus make them more resilient to systemic risks.

Table 2: **Overview of prescribed systemic risk buffers**

LEVEL OF SYSTEMIC RISK BUFFERS (as a % of risk-weighted assets)	1 Jan. 2016	1 Jan. 2017	1 Jan. 2018	1 Jan. 2019
BAWAG P.S.K. Bank für Arbeit und Wirtschaft und Österreichische Postsparkasse Aktiengesellschaft ²	0.25	0.50	1.00	1.00
Erste Group Bank AG	0.25	0.50	1.00	2.00
Hypo NÖ Gruppe Bank AG	1.00	1.00	1.00	1.00
Hypo Tirol Bank AG ³	1.00	1.00	1.00	1.00
Oberösterreichische Landesbank Aktiengesellschaft	1.00	1.00	1.00	1.00
Raiffeisen Bank International AG	0.25	0.50	1.00	2.00
Raiffeisen Zentralbank Österreich Aktiengesellschaft	0.25	0.50	1.00	2.00
Raiffeisenlandesbank Niederösterreich-Wien AG ⁴	0.25	0.50	1.00	1.00
Raiffeisenlandesbank Oberösterreich Aktiengesellschaft ⁵	0.25	0.50	1.00	1.00
Sberbank Europe AG	0.25	0.50	1.00	1.00
UniCredit Bank Austria AG	0.25	0.50	1.00	2.00
Vorarlberger Landes- und Hypothekbank Aktiengesellschaft ⁶	1.00	1.00	1.00	1.00

¹ See <https://www.fmsg.at/en/publications/strategy.html>.

² Based on the consolidated position of Promontoria Sacher Holding N.V.

³ Based on the consolidated position of Landes-Hypothekbank Tirol Anteilsverwaltung.

⁴ Based on the consolidated position of Raiffeisen-Holding Niederösterreich-Wien.

⁵ Based on the consolidated position of Raiffeisenbankengruppe OÖ Verbund eGen.

⁶ Based on the consolidated position of Vorarlberger Landesbank-Holding.

With effect from 1 January 2016, twelve credit institutions have had a systemic risk buffer imposed on them. By 2019 this must amount to up to 2% of risk-weighted assets over and above Common Equity Tier 1 capital (see Table 2).

By introducing this Regulation, the FMA has implemented a recommendation made by the FMSB in September 2015, addressing the relative undercapitalisation of Austrian banks compared with credit institutions elsewhere in Europe. The systemic risk buffer is designed to defend against long-term, non-cyclical systemic risks, particularly risks resulting from systemic vulnerability due to high levels of interdependence and risks from the systemic cluster risk emanating from similar risk positions.

As well as the systemic risk buffer, the KP-V also deals with the countercyclical capital buffer (CCB), which is designed to counter the creation of risky credit bubbles. However, given the current lack of any excessive credit growth in Austria, the CCB has initially been set at 0%. The FMSB will be evaluating this rate quarterly in future.

RISK DISCUSSIONS AT THE FMSB

FMSB meetings regularly discuss the current risks facing the Austrian financial system. Issues covered in 2015 included, in particular, risks in the real estate sector and the consequences of low interest rates for credit institutions' profit situation and risk-bearing capacity.

DEVELOPMENT OF REAL ESTATE PRICES

Real estate prices have risen markedly over recent years in Austria in general and in Vienna in particular. Internationally, there are numerous examples of situations where an overvalued property market, coupled with a sharp rise in mortgage lending, has triggered a systemic financial crisis. To limit the impact of such risks to financial market stability, many countries make use of ratios in the form of loan-to-value (LTV ratio), debt-to-income (DTI ratio) and debt service-to-income (DSTI ratio) as macroprudential tools. To date, the FMSB has not felt that rising real estate prices in Austria have triggered an excessive rise in mortgage loans. Looking to the medium and long term, however, the possibility of a continued property price boom contributing to macroprudential risks cannot be excluded. With this in mind, the FMSB has begun looking at ways of how the instruments typically used elsewhere could also be applied in Austria, despite the lack of any direct need for action at the current time.

LOW INTEREST RATES

An even more direct risk than that posed by property prices is the risk associated with the current environment of low interest rates. These have persisted over a long period and pose a major challenge for Austrian credit institutions. From a structural perspective, Austrian banks tend to be underfunded compared with their international counterparts and are exposed to specific risks including exposure to relatively high levels of foreign currency loans and business activities in emerging economies in Central and Eastern Europe. Over recent years the average interest margin at the level of individual institutions has consistently declined, partly due to the falling level of interest rates, which impacts on profitability and the ability to build up an institution's capital base. This falling interest margin has been particularly marked among smaller and medium-sized banks, which are highly dependent on financing via customer deposits. In this regard, the FMSB highlighted the risks associated with the search for more profitable forms of investment (search for yield). The FMSB also issued a reminder that rising interest rates create another risky scenario for banks and borrowers, particularly as a large proportion of the credit granted in Austria takes the form of variable-interest loans.

The Fourth Anti-Money Laundering Directive

Europe better armed to combat money laundering

After more than two years of negotiations, the new Directive (EU) 2015/849 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (Fourth Anti-Money Laundering Directive – AMLD) and the new Regulation (EU) 2015/847 on information accompanying transfers of funds (Funds Transfers Regulation) entered into force on 26 June 2015. This EU anti-money laundering package provides more effective weapons to combat money laundering and to prevent terrorist financing. The goal of the package is to halt misuse of the European Union’s financial system, thereby protecting the integrity and stability of the system.

The new anti-money laundering regime implements the 40 recommendations made by the Financial Action Task Force (FATF) and revised in 2012. An independent intergovernmental body under the Organisation for Economic Co-operation and Development, the FATF develops standards to protect the global financial system against money laundering, financing of terrorism and proliferation of weapons of mass destruction, while monitoring the implementation and proper application of these standards by the Member States through regular country evaluations.

The revision of the European anti-money laundering regime strengthens the risk-oriented approach to prevention, clarifies details and introduces simplified procedures for electronic money products in practice, requires the storage of beneficial ownership information in a register, and provides for much stronger sanctions in the case of any breach.

The package of measures enforces a minimum harmonisation of anti-money laundering rules within the European Economic Area (EEA). Aspects of specific areas will also be detailed and harmonised in the form of Regulatory Technical Standards (RTS) and guidelines to be prepared by the European Supervisory Authorities (European Banking Authority – EBA, European Insurance and Occupational Pensions Authority – EIOPA; European Securities and Markets Authority – ESMA).

EXPANSION OF THE RISK-BASED APPROACH

A central aspect of the Fourth Anti-Money Laundering Directive is that the risk-based approach has been expanded. This approach has been introduced more strongly at all levels of the prevention system. To this end the Directive specifies the preparation of corresponding national risk assessments by Member States as well as

providing for a supranational risk assessment at European level. Specifications also exist for the risk-based supervision of obliged companies and persons. Based on a clear assessment of the specific risks of money laundering and terrorist financing in that Member State, the national supervisory authority is to align its activities, and specifically the frequency and intensity of supervision, with the risk profile of obliged entities.

The risk-based approach has undergone a basic change with respect to the application of simplified or enhanced due diligence measures by obliged entities in the specific case. While the Third Anti-Money Laundering Directive standardised a number of predefined cases of application, the Fourth Anti-Money Laundering Directive is more flexible in this respect. The latter specifies that obliged entities are to subject business relationships and transactions to a prior risk assessment. Appropriate detailed measures are to be defined based on this risk assessment. In contrast to the Third Anti-Money Laundering Directive, cases are no longer expressly enumerated for which an application of simplified or enhanced due diligence would be required under law. Only certain risk factors are listed that are to be examined when assessing risk in future. For this purpose, the Annex to the Directive contains a comprehensive catalogue of risk factors indicating a potentially lower or higher risk. An exemption from this general principle has been made in the cases of correspondent relationships and of individuals referred to as “politically exposed persons” (PEPs), which the FATF Recommendations classify as high-risk situations and for which enhanced due diligence is still required to be applied.

The Fourth Anti-Money Laundering Directive provides the three European Supervisory Authorities (the ESAs, i. e. EBA, EIOPA and ESMA) with a mandate to detail corresponding guidelines for the risk-based approach while taking into consideration the risk factors listed in the Annex to the Directive. This will be the responsibility of the Joint Committee of the ESAs and in particular the Anti-Money Laundering Sub-Committee (AMLC), which has already prepared corresponding proposals to be published following a public consultation during 2016.

EXPANSION OF THE SCOPE OF APPLICATION

The Fourth Anti-Money Laundering Directive adds providers of gambling services to the list of obliged entities (previously only casinos were mentioned). With the exception of casinos, and following an appropriate risk assessment, Member States are however given the option to exempt, in full or in part, providers of certain gambling services from the scope of application.

In the case of persons trading in goods, the Directive requires the customer’s identity to be verified only when carrying out transactions amounting to € 10 000 or more (previously € 15 000).

REGISTER OF BENEFICIAL OWNERSHIP

Building on the principles of the G8 and G20, calling for more transparency of beneficial ownership, legal entities are required to obtain and hold adequate, accurate and current information on their beneficial ownership. This information is to be held in a central register in each Member State. Access to this central register is to be provided in all cases to competent authorities and Financial Intelligence Units (FIUs), obliged entities, within the framework of customer due diligence, and to any person or organisation that can demonstrate a legitimate interest. Yet, when complying with customer due diligence, obliged entities must not rely solely on the central register. Disclosure protection similar to that existing for the Austrian company register has not been defined.

POLITICALLY EXPOSED PERSONS

In accordance with the FATF Recommendations, the Fourth Anti-Money Laundering Directive specifies an expanded scope of application of enhanced due diligence to additionally cover politically exposed persons (PEPs). The definition of a PEP has also been supplemented to include members of the management of inter-

national organisations (as already specified by Austrian law) as well as members of legislative bodies in addition to the members of parliament that had already been included.

EXEMPTIONS FOR ELECTRONIC MONEY PRODUCTS

In the case of electronic money products, after carrying out an appropriate risk assessment, Member States can under specified risk-mitigating conditions exempt obliged entities from certain customer due diligence measures. The conditions for an exemption include cases where the stored amount does not exceed € 250 and the payment instrument is not reloadable.

THIRD-COUNTRY POLICY

An important new feature relates to third-country policy. Specifically, there is no more a “white list” of countries having an equivalent system for combating money laundering and terrorist financing. Instead, relevant assessments will in future have to be performed by obliged entities in the individual case, while in particular taking into consideration the evaluations by the FATF or other regional organisations (such as MONEYVAL). To identify high-risk third countries, in particular those classified as such by the FATF, the Commission will be empowered to adopt appropriate delegate acts. Previously the FATF list was adopted to varying extents within the EU through acts of national law. The new procedure is intended to ensure a harmonised policy towards third countries.

USE OF AGENTS

In future Member States can require electronic money and payment service providers that provide cross-border services in a host country through local agents to appoint a central contact point for the host country’s competent supervisory authority. Such a contact point will be responsible for ensuring compliance with anti-money laundering and countering the financing of terrorism (AML/CTF) rules in that particular host country and will be required to provide the competent authority will all documents and information on request. The Directive gives the ESAs the mandate to prepare relevant RTS specifying the conditions under which the appointment of a central contact point is appropriate as well as the concrete function to be fulfilled by such contact points.

GROUP-WIDE POLICIES AND PROCEDURES

Companies maintaining branches or subsidiaries in Member States or third countries are required to have group-wide policies and procedures, including data protection policies and policies and procedures for sharing information for AML/CFT purposes and to effectively implement those policies and procedures within the group.

In addition, where some or all of the obligations cannot be met in a third country, the company must take supplementary measures, while the home authority is also required to take additional supervisory measures. The ESAs are to prepare appropriate RTS specifying these additional measures.

ADDITIONS TO THE LIST OF PREDICATE OFFENCES

One notable new development is the additions to the list of predicate offences associated with money laundering. The newly adopted predicate offences include tax offences punishable by deprivation of liberty for more than one year or, where a Member State has a minimum threshold for offences, punishable by deprivation of liberty for more than six months.

HIGHER SANCTIONS

Considerably sharper sanctions have been defined to respond to breaches of provisions of the AML/CTF rules. The Directive now specifies a penalty of at least € 5 million or 10% of total annual turnover in the case of a legal person, i. e. credit and financial institutions. A maximum penalty of at least € 5 million is laid down for natural persons.

The natural or legal person concerned and the type of the breach will also be made public in future, provided that the decision cannot be appealed and certain exceptions stated in the Directive do not apply (e. g. publication would be disproportionate). The national supervisory authorities are now also obliged to report all administrative sanctions and measures to the ESAs. The ESAs, in turn, are obliged to provide links to the corresponding publication of information by the supervisory authorities on their websites.

The Fourth Anti-Money Laundering Directive must be transposed into national law by 26 June 2017.

NEW REGULATION ON THE TRANSFER OF FUNDS

The most important change introduced by the new Funds Transfers Regulation is the requirement for obliged payment service providers to now accompany transfers with information on the payee, in addition to information on the payer. In addition, intermediary payment service providers are required in future to have effective procedures in place in order to detect whether information on the payer and the payee is missing or incomplete. Payment service providers are only obliged to check the information of transactions exceeding € 1 000, unless the transfer appears to be linked to other transfers, the funds have been received or paid out in cash or in anonymous electronic money, or where there are reasonable grounds for suspecting money laundering or terrorist financing.

Exceptions are defined for certain kinds of transfers of funds, such as when made using payment cards, electronic money instruments, mobile phones or other digital or information technology devices with similar characteristics, where they are used exclusively for the purchase of goods or services and the number of the card, instrument or device accompanies all transfers.

The Funds Transfers Regulation must be applied by the Member States of the European Union from 26 June 2017 onwards.

FMA initiative “Information requirements”

In 2015 the FMA launched its “Information requirements” initiative. Supervised companies are legally required to provide customers and consumers with clear and comprehensible information on certain topics and financial products. The FMA has now stepped up its supervision of compliance with these information obligations across all fields of supervision. As well as focusing on the timely submission of information, and pre-contractual information in particular, the FMA is also concerned with the quality of the information being provided by supervised companies.

FMA CONSUMER INFORMATION

The FMA itself has been providing consumers, savers and investors with a central source of consumer information since 2006. They can ask questions about any aspect of supervision and also submit any complaints about supervised companies. Questions posed by members of the public are answered clearly and simply, and all complaints are followed up by means of a transparent complaints procedure published on the FMA’s website.

The aims of the FMA’s consumer information include, in particular:

- to inform consumers about the FMA’s statutory remit, and its rights, obligations and method of working;
- to contribute to a better understanding of how the financial markets work and of specific products offered on these markets;
- to provide information that is sound, objective and not sales-driven;
- to provide individually tailored information and legal explanations to consumers in need of advice.

The overall aim is to have well-informed consumers who can make sound investment decisions in line with their own particular requirements and personal circumstances.

The FMA, like the legislative authorities, takes as its premise the concept of the responsible consumer. This means that every consumer should be free to choose from the products offered in the financial markets the one that best matches their expectations, requirements and risk propensity. However, for this to be possible, the market for this product has to function efficiently and, at the same time, the product must be sufficiently transparent and the consumer sufficiently well informed to be able to make a rational and sound decision. Providing the necessary information is the task of the company concerned.

Yet, across all areas of supervision, the FMA receives numerous questions and complaints regarding the quality, and in particular the comprehensibility, of information provided by companies. Consequently, the FMA finds itself working on a daily basis to improve the quality of the statutory information published by supervised companies, the overall standard of which is lacking.

The questions that consumers ask the FMA cover a broad range of issues across the Authority's full supervisory remit, in other words basically covering the whole of Austria's financial market.

Key issues raised in relation to banking supervision, for example, include the new system for deposit guarantee schemes, dealing with foreign currency loans and bullet loans with repayment vehicles, the nature and redemption of Tier 2 capital bonds, the time taken for bank transfers, and other similar topics. However, it is in precisely these areas that the banks are required by law to provide their customers with full information. This clearly shows that there is major need for improvement with regard to the information provided by banks, in terms of both its quality and how easy it is to understand.

In relation to insurance supervision, questions mainly concern the capital guarantee, performance and maturity payments, as well as the surrender value of life insurance policies. Consumers' questions on non-life insurance primarily relate to the reliability of premium increases and the claim against the insurance undertaking for cover. Here too, the insurance undertakings themselves have a statutory obligation to provide information and explanations. The problem is that the information provided is at times highly complex and thus difficult for customers to understand. The FMA provides further assistance here by adding to this information, explaining causal relationships and background factors, and translating technical terminology into simpler language. This is an area in which the insurance industry must step up, providing information that is geared towards its customers and target groups, and service-oriented.

Questions regarding the conduct of supervised companies relate to the financial products on offer, their features and their design, as well as the related level of risk. In these areas too, there are numerous statutory information requirements in place, compliance with which should be improved.

TRANSPARENCY AND INFORMATION MEASURES IMPLEMENTED BY THE FMA

Ever since it was established, the FMA has aimed to achieve an optimum level of transparency on the financial markets. After all, it is only by having as much valid information as possible that the markets can function efficiently in the interests of consumers.

With this in mind, the FMA launched a transparency initiative back in 2004. With minimum standards on information requirements, the FMA has defined, with regard to certain financial products, the basic minimum of information that a provider must make available to consumers before concluding a contract, during the term of a contract and at the point of disbursement. In addition, the FMA also provides a uniform definition of certain key indicators so that, as far as possible, comparisons can also be made across different products and sectors. Clear rules on easily comprehensible specimen calculations supplement the information requirements. The FMA has also published easy-to-understand information folders and brochures on particularly relevant consumer issues, including for example information on the risks associated with foreign currency loans, a guide to life insurance, "Investment basics", "The 10 Commandments of Investing Money", information on public participation models and bitcoin information. In this way, consumers are informed of their rights in relation to financial products and financial services, and learn about the associated risks. When preparing its information material, the FMA focuses very carefully on using language that is clear and that will be readily understood by consumers.

As part of the FMA's transparency initiative, minimum information standards were drawn up for the following types of savings products and products designed to provide for the future: life insurance, *Pensionskassen* (pension companies), corporate provision funds, occupational group insurance and home savings contracts. Specifically, the minimum standards on information requirements in the life insurance sector define the information that must be provided for customers on any product offered by the insurance undertaking. It is not just

the insurance undertakings that must adhere to these standards. They must also be observed by any external brokers. Prior to any contract being concluded, this information encompasses the provision of advertising that is not misleading, clear product names, means of communication and the possibilities for terminating the contract. During the contract term, the focus lies on performance.

The FMA's minimum standards governing the annual information to be provided by *Pensionskassen* to beneficiaries stipulate the obligation of the *Pensionskassen* to ensure that it is possible to check that the actual payout matches the agreed disbursement and the obligation to describe the risk potential, investment focuses and costs in a transparent manner.

By means of its transparency efforts, the FMA is always working to ensure that consumers have access to all of the information that they need to select the optimum product to meet their long-term savings needs. This also highlights the FMA's strong commitment to the principle of collective consumer protection.

THE CONCEPT OF COLLECTIVE CONSUMER PROTECTION

Based on one of the lessons learned from the global financial crisis, the European Union has created a completely new supervisory architecture for the single market for financial services. At the heart of this new architecture are three European supervisory authorities in the form of the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Markets and Securities Authority (ESMA), along with the European Systemic Risk Board (ESRB), which is based at the European Central Bank (ECB). Together with the national competent authorities, these European supervisory authorities form a decentralised European system of supervision within which the national authorities form an integral part of the European institutions, with the latter being supported by the work performed at national level.

The European supervisory institutions have also been given a clear statutory remit to protect consumers. Consequently, as European regulators and rule-makers, they have given the national competent authorities an explicit remit to create a form of consumer protection within the European single market that is as harmonised as possible. The European supervisory authorities assume the function of coordinating bodies, whilst the specific task of designing and implementing consumer protection takes place at national level. In particular, the national authorities are explicitly responsible for regulating and monitoring transparency, simplicity and fairness on the financial products market.

INFORMATION REQUIREMENTS AT EUROPEAN LEVEL

The national competent authorities are subject to rules set at European level stipulating specific information obligations and obligations based on target groups. These rules are either directly applicable or must be transposed into national law. In any event, the FMA is responsible for supervising compliance with these rules. Particular examples of future rules include the Markets in Financial Instruments Directive (MiFID II), the Regulation on key information documents for packaged retail and insurance-based investment products (PRIIPs), the Insurance Distribution Directive (IDD) and the Payment Accounts Directive (implemented in Austria through the Consumer Payment Accounts Act – VZKG; *Verbraucherzahlungskontogesetz*).

MIFID II, the Markets in Financial Instruments Directive, is a Directive introduced by the European Union to harmonise financial markets throughout the European single market. The key obligations imposed by this Directive relate to improved rules of conduct in relation to investment advice and the creation of more efficient, robust and transparent financial markets in Europe. Also covered by the Directive is the provision of investment advice on structured products, products with a capital guarantee, derivatives, investment funds and structured deposits.

PRIIP refers to the Regulation on key information documents for packaged retail and insurance-based investment products. The Regulation requires the use of a key information document (KID) to provide investors with clear and simple key information on investment funds and other structured products sold by both banks and

insurance undertakings. The KID is a pre-contractual document containing basic information for retail investors in a uniform layout without any advertising statements. Its aim is to enable readers to understand and compare the basic features and risks of PRIIPs.

IDD, the Insurance Distribution Directive, defines fair, transparent and uniform selling rules for the European insurance market. These are applicable to all sales activities conducted by the insurance industry in Europe. At the heart of the IDD are improved advisory quality and new transparency rules for selling. For example, when selling an insurance policy, clear information must be provided on who is paying the remuneration and on the type of remuneration (fee, commission, broker's fee, etc.).

The VZKG, which transposes the Payment Accounts Directive into Austrian law, deals with the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features.

THE FMA'S NEW "INFORMATION REQUIREMENTS" INITIATIVE

Information rules applicable to supervised companies are introduced to protect consumers. This need for protection is based on the principle that, from a structural perspective, consumers are at a disadvantage compared with financial services companies, suffering from a lower level of specialist knowledge, information, resources and experience. Generally speaking, financial services companies have a strong edge over their customers in terms of information and knowledge.

The aim is to even out this asymmetry in the information available to each party, thereby compensating for the imbalance between consumers and a company. This means that consumers, be they investors, policyholders or bank customers, must be as well informed as possible before signing any contract so that they are not placed at a disadvantage. If a customer enters into a contract without being sufficiently aware of the economic advantages and disadvantages of the product and the associated rights and obligations, that customer may buy the wrong product and encounter considerable risks as a result.

The pressing need to provide customers with better information stems primarily from the increasingly complex nature of the markets, technological changes and the rising number of cross-border transactions. Yet it also stems from the increasingly diverse range of offers and products, which is also growing ever more complex. This is one of the main factors behind consumers' growing need for clear and comprehensive information that is easy to understand.

FAIRNESS AND TRANSPARENCY

The availability of high-quality, clear and comprehensible information for customers and consumers provides the foundation for a trusting relationship between a company and its customers. Without customer confidence in financial services companies, the financial system would lack stability, competition and integrity, and this confidence is also key to financial market stability. Supervision of fairness and transparency on the markets is therefore crucial, as is monitoring to ensure that minimum standards are upheld in relation to corporate governance and in relation to the way in which customers are advised and informed.

The responsibility to provide customers with full information and information that meets the statutory rules lies with the supervised companies, namely credit institutions, insurance undertakings, *Pensionskassen*, investment firms and also issuers.

In practice, however, the information that the supervised entities provide to their customers and consumers generally lags behind the statutory rules, meeting neither the legal requirement nor the FMA's expectations. It would appear that the supervised companies sometimes fail to live up to their requirement to actually inform their customers appropriately. Rather, they have been doing the bare minimum as a means of formally complying with the law. Often, consumers are faced with terms and conditions and information materials that are complex and difficult to understand, not to mention too small to read easily.

This failing is evidenced by the numerous complaints received by the FMA regarding the customer information

produced by supervised companies. These complaints relate to the absence of information that is required by law and also to the poor quality of information that has been provided. There are also numerous cases currently going through the Austrian courts that involve customers taking action against supervised companies due to information being insufficient or lacking.

It seems that companies often attempt to portray themselves as being highly expert and knowledgeable by using foreign words and long, unwieldy sentences consisting of several clauses. In such cases there is no evidence of a genuine desire to inform customers. The protection and information aims enshrined in the supervisory rules are not being fulfilled.

The FMA is taking action to counter this situation with its "Information requirements" initiative, as part of which checks are being made to determine whether information is available, whether that information has been given to the customer or consumer on the date required by law, and whether the content of the information complies with the statutory rules. The subject areas and products with regard to which information must be provided to customers cover all areas of the FMA's supervisory remit. Consequently, these are reviewed regularly and comprehensively on a cross-departmental basis.

Most of the rules relate to the timing of the provision of information, and whether periodic information is required. In addition, the rules also stipulate certain content and key data that must be included. Companies face the challenge of making sure that their external sales partners also comply with the information requirements and must ensure that their information is honest, comprehensible and fair, as these concepts have not been fleshed out in sufficient detail by the lawmaker.

PRODUCT-SPECIFIC RULES

In the area of banking supervision, where direct collective consumer protection has been least in evidence to date, banks now have to inform their customers about the new deposit guarantee schemes, for example. So that depositors are aware of their entitlement to compensation and know who to contact if necessary, deposit-taking credit institutions will be required to write to their customers in future, by using a template as stipulated in the statutory provisions, explaining their rights under the respective deposit guarantee scheme. They must do this when the account is first opened and also annually.

With regard to insurance supervision, insurance customers benefit from numerous information rights, particularly in relation to life insurance. As well as pre-contractual information obligations, insurance undertakings are also required to provide information during the policy term. Prior to any contract being concluded, basic information must be supplied on the insurance undertaking, applicable law, the means of communication to be used between the insurance undertaking and policyholder, the options for terminating the policy, and the competent supervisory authority and complaints body. Furthermore, product-specific information must also be provided, relating in particular to the sum insured and guaranteed rate of interest, profit participation and the total and effective interest rate. So that the policyholders can estimate how much they can expect to receive when their policy matures, they must be provided with a forecast in the form of a specimen calculation showing the potential performance of the policy. With regard to the insurance premium, information must be disclosed regarding payments by the policyholder, the premium amount, the total premiums paid, and the fees and additional costs of the insurance undertaking. A table listing the surrender values must also be provided in the event of the policy being terminated by the policyholder.

As well as information on the profit participation acquired to date, the annual statement must also include a breakdown of the current investments. Any changes to the agreed investment strategy must also be detailed.

With regard to securities supervision, and the provisions of the 2007 Securities Supervision Act (WAG 2007; *Wertpapieraufsichtsgesetz*), the FMA has introduced a regulation on how to handle conflicts of interest and information obligations. This applies to credit institutions, investment fund management companies, investment firms and insurance undertakings, and also extends to certain securities services offered under the freedom to provide services and freedom of establishment.

The lawmaker also provides clear rules on the fairness of information provided. All consumer information, including marketing communications, must be honest and clear, and must not be misleading. Risk information must also be accurate, honest and clearly expressed. Information must be comprehensible, important statements or warnings may not be concealed, expressed in a way that makes them sound less serious or that could be misleading.

The European Commission has defined key principles for certain investment funds and retail funds. These must be adhered to when compiling and providing key information for investors. A standardised key investor information document (KIID) must be used. It contains essential information about an investment fund in an easily comprehensible and standardised form (e.g. objectives, investment policy, risk and reward profile and annual ongoing charges). Investors and consumers must be provided with a KIID before making any investment decision.

In terms of its content, the information must be accurate and set out logically, written in language that is accessible to retail investors. The use of a uniform template should ensure that the information provided is comparable, as should the uniform structure and quality, and the type of language used in the KIID.

THE FMA'S SUPERVISORY FOCUS

Now more than ever the FMA is focusing its supervisory activity on compliance with the existing information requirements as there has been an increase over recent years in the information requirements being made of supervised companies, from both a quantitative and a qualitative perspective. At the same time, new consumer protection and information rules are consistently being adopted at European level, and these will also have to be implemented and observed by the supervised companies in future.

When reviewing compliance with information requirements, the FMA also pays attention to the quality of internal implementation guidelines. Pro forma guidelines that simply repeat the text of the respective legal standard are not what the FMA expects. Instead, internal guidelines should contain specific instructions for employees on implementation and procedures, and should be actively brought to their attention.

Complaints and enquiries about the information provided by supervised companies may be submitted to the FMA's consumer information team. The FMA looks into all information that it receives regarding infringements of the supervisory rules, and infringements of information requirements are no different. The aim is to ensure that any malpractice can be quickly remedied.

The FMA's „Information requirements“ initiative is a key tie-in measure, linking up with the various activities for financial education by other institutions, ensuring that “financially educated”, responsible consumers have the information that they need at their fingertips in future. The initiative is also a key component of the FMA's efforts to boost confidence in supervised companies and to strengthen financial market stability.

The new European resolution mechanism for banks and the FMA's role as national resolution authority

The euro crisis that followed the global financial crisis of 2009 provided dramatic evidence of the fateful interweaving of national banking sectors with state budgets. To cushion the impact on financial market stability and do as much as possible to avoid any contagion effects in the real economy, nearly all of the euro area countries were forced to shore up ailing banks with taxpayers' money. In some euro states – Ireland, Spain, Portugal, Cyprus and Greece in particular – the effect on government borrowing was such that the countries' credit ratings were massively downgraded. This in turn caused the cost of government borrowing to soar, resulting in even higher levels of public debt. The poorer credit ratings then exacerbated the banking crisis, with a knock-on effect on the real economy and, subsequently, on the government debt crisis. This vicious circle of events, which threatened to spiral out of control, was only halted by severe austerity measures, by the solidarity shown by the rest of the euro area countries and by massive intervention on the part of the European Central Bank (ECB).

In response to the crisis, European policymakers, and representatives of the eurozone in particular, developed the concept of a banking union, supplementing economic and monetary union. The banking union is based on three pillars:

- common banking supervision in the form of the Single Supervisory Mechanism (SSM) headed by the ECB;
- the Single Resolution Mechanism (SRM) for banks and investment firms; and
- a single deposit guarantee scheme.

The aim of the European banking union is to make Europe's financial system more resistant to crisis and to avoid the vicious circle of bank crises and government debt crises. The banking union is binding on all of the euro area countries but is also open to all Member States of the European Economic Area (EEA), which may participate on a voluntary basis. Moreover, the banking union should ensure that, in future, it is primarily a bank's owners and creditors who are called upon to fund any recovery or resolution, and not taxpayers. The Single Resolution Mechanism (SRM), enshrined in the Bank Recovery and Resolution Directive (BRRD) and in the SRM Regulation, should provide a key tool in this regard.

THE SINGLE RESOLUTION MECHANISM

The SRM consists of the Single Resolution Board (SRB) based in Brussels, the various national resolution author-

ities (NRAs) and the Single Resolution Fund (SRF). Its scope covers all banks that operate in the euro area and any banks from outside the euro area where the Member States have voluntarily joined the Single Supervisory Mechanism (SSM).

SINGLE RESOLUTION BOARD

The SRB is the resolution authority within the European banking union. It is responsible for banks that fall under the direct supervision of the European Central Bank (ECB), that operate on a cross-border basis, or that are required to avail themselves of funds from the SRF in the context of a resolution procedure.

Currently, just under 140 institutions come under the direct responsibility of the SRB with all of the others being the direct responsibility of their NRA. As far as Austria is concerned, the institutions subject to direct supervision by the ECB within the SSM are RZB, RLB NÖ/Wien, RLB OÖ, BAWAG, Erste Group, Volksbank Wien, VTB and Sberbank, as well as Bausparkasse Wüstenrot and Hypo Group Alpe-Adria due to their cross-border operations.

The core responsibilities of the SRB are:

- to draft resolution plans in the context of the SRM;
- to carry out an assessment and analysis of the resolvability of the institution concerned, to address any obstacles to resolution and to adapt the resolution plans accordingly;
- to set the minimum requirement for own funds and eligible liabilities (MREL) in the event of resolution;
- to prepare resolution measures and select the appropriate tools in the event of an actual resolution;
- to devise a resolution concept on the basis of the resolution plans. This concept stipulates the tools that are to be used and how the costs of resolution are to be met. The respective NRA is then given the task of implementing the resolution process in accordance with the devised concept and is also responsible for implementing the required measures. For its part, the SRB monitors the implementation process.

As far as the SRB was concerned, 2015 was dominated by the setting up of its structures and organisation, and by the review of recovery plans and preparation of resolution plans. The SRB has been fully operational, particularly with regard to early intervention and resolution measures for individual institutions, since 1 January 2016, as of which time it has also been managing the Single Resolution Fund.

Ultimately, the SRB will employ around 250 staff. From an operational perspective, the SRB is headed by its Board comprising a Chair (currently Elke König), Vice Chair and four full-time members.

All key decisions by the SRB are made during plenary sessions. Plenary sessions are attended by the Chair, the four full-time Board Members and a member appointed by each participating Member State to represent the country's national resolution authority. FMA Executive Director Klaus Kumpfmüller represents Austria on the Board. Among the Board's duties are to take decisions concerning the use of the Single Resolution Fund where funding for a specific resolution measure exceeds € 5 billion, and decisions involving organisational issues.

The Board's executive session is attended by the Chair and the four full-time Board Members. The executive representatives may take independent decisions on resolution measures where the amount of support to be provided by the Fund is less than € 5 billion. When the consultations and decisions concern a specific company, the member representing the Member State in which the company (or its subsidiaries) is established is invited to attend.

Any decision taken by the Board on the resolution of an institution requires a resolution concept, which must be submitted to the European Commission. The Commission and the Council may, within 24 hours, lodge objections to the resolution concept or request changes, which the Board has to consider.

The NRA responsible in the particular case then implements the Board's decisions.

NATIONAL RESOLUTION AUTHORITY

In Austria, the lawmakers have assigned the FMA the function of NRA. The FMA has been fulfilling this func-

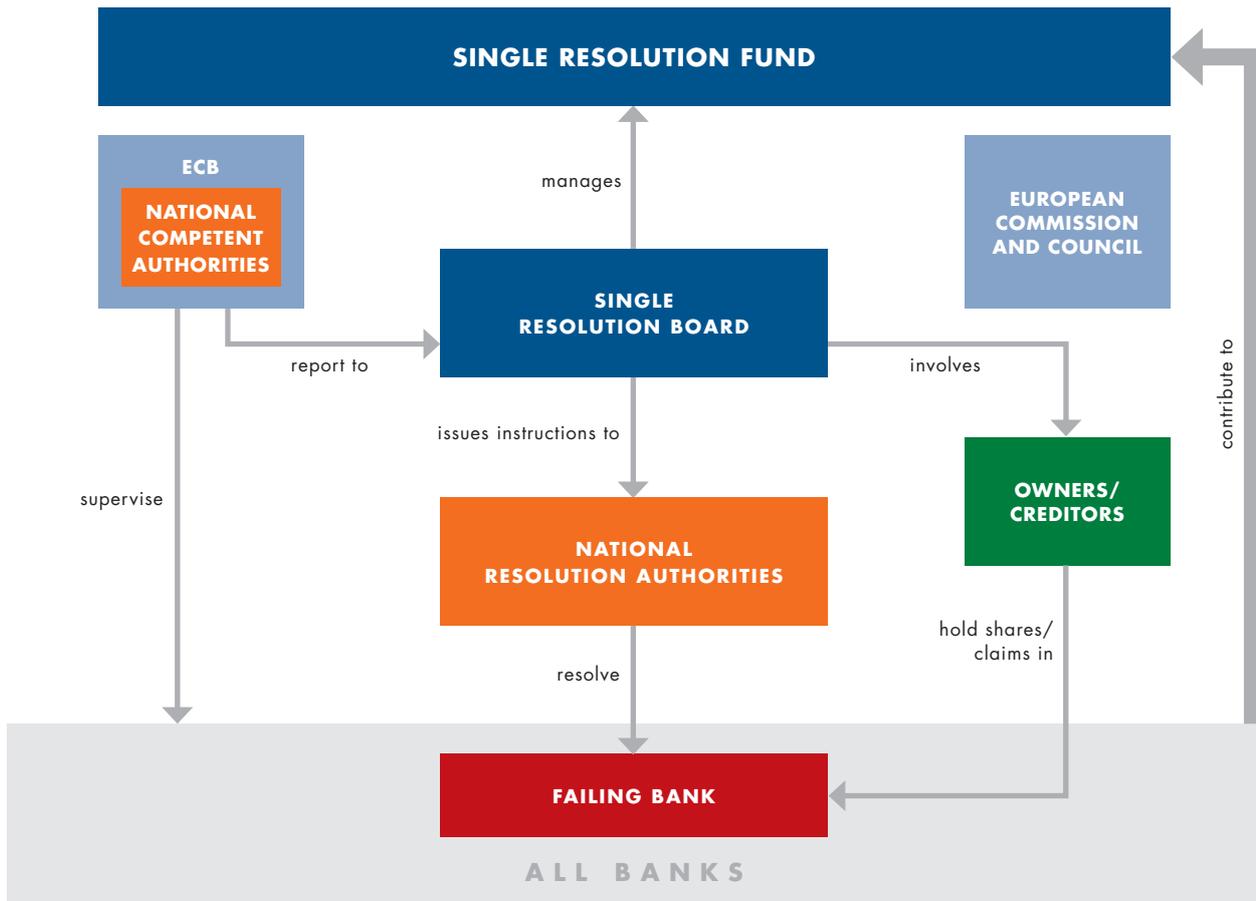


Figure 2: The Single Resolution Board

tion in full, in other words including early intervention and resolution measures applicable to individual institutions, since 1 January 2015. Consequently, the FMA placed Heta Asset Resolution AG into resolution pursuant to the Bank Recovery and Resolution Act (BaSAG; *Bankensanierungs- und Abwicklungsgesetz*) and BRRD with effect from 1 March 2015 and, since June 2015, has been accompanying the private (non-official) resolution of Immigon, the wind-down entity (pursuant to Article 162 BaSAG in conjunction with Article 84 BaSAG) of ÖVAG, formerly the central institution of the Volksbank cooperative sector.

The remit of a national resolution authority is very similar to that of the Single Resolution Board: resolution planning, stipulation of the MREL, removal of any obstacles to resolution and the resolution of banks that are failing or are likely to fail. The NRAs are also required to implement and enforce resolution measures on behalf of the SRB.

There are 605 licensed institutions subject to the SRM regime in Austria. Ten of these are the direct responsibility of the SRB, with the remainder being the responsibility of the FMA.

For those banks that are not the direct responsibility of the SRB, proportionality criteria (business activity, ownership structure, legal form, risk profile, size, amount of covered deposits, number of accounts, etc.) have been applied to identify around 50 banks (and banking groups) for which the FMA is required, in the capacity of NRA, to prepare a resolution plan due to the fact that resolution under the BaSAG regime cannot be excluded. With regard to all other banks, it is assumed that, in the event of a (probable) default, either a private-sector solution would be found or ordinary insolvency proceedings instigated. As the responsible NRA, it goes without saying, however, that the FMA is also involved in preparing the resolution plans for those institutions for which the SRB is directly responsible.

COOPERATION BETWEEN THE NRAS AND THE SRB

For the purposes of guaranteeing a good working relationship between the SRB and the NRAs, and to ensure that Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms (BRRD) is applied uniformly by the authorities, the following SRB committees with their own areas of specialisation have been set up:

- The “Committee on Cooperation between the SRB and the NRAs” is responsible for designing and defining the cooperation arrangements in place.
- The “Committee on Resolution Planning” was set up to provide practical support during resolution planning.
- The “Committee on Crisis Management” focuses on preparing a list of banks and a crisis management manual.
- The “Committee on Contributions” is responsible for preparing a data compilation template for the purposes of calculating SRF contributions. This process of collecting data is subject to regular consultation with the national resolution authorities.

The FMA is represented on all of the committees and also works on the policies being developed by the SRB through various sub-working groups.

INTERNAL RESOLUTION TEAMS

Internal Resolution Teams (IRTs) are resolution teams specific to an individual institution or group consisting of SRB staff and staff from the relevant NRA. They are led by the SRB. During the third quarter of 2015 the SRB launched an IRT pilot project, which is intended to take on responsibility for resolution planning for cross-border banks in future. As part of this pilot project, the cooperation processes in place between the SRB and the NRAs were tried and tested. The FMA was represented in the pilot IRTs in the capacity of both home and host authority.

In future, the IRTs are to be pooled on the basis of their geographic footprint, size, business model and ownership structure. The FMA will be involved in a total of five IRTs. As part of a first wave in early 2016, priority IRTs are being set up, some of which cover exactly the same remit as existing pilot IRTs. Overall, the SRB has defined 24 priority IRTs, of which two for Austrian banking groups. The remaining IRTs are also due to be launched in spring 2016.

EBA RESOLUTION COMMITTEE

The Bank Recovery and Resolution Directive (BRRD) specifies that provisions of the Directive are to be fleshed out by Commission legislation. In such cases, the BRRD delegates responsibility for drawing up draft regulatory or implementing technical standards to the European Banking Authority (EBA). Accompanying guidelines are also being prepared, which will similarly be subject to public consultation.

Additionally, the BRRD requires the EBA to create a permanent internal committee to serve as an EBA resolution committee, while the competent (supervisory) authorities and resolution authorities are required to cooperate with the EBA for the purposes of the BRRD. The EBA met this requirement with the establishment of the Standing Committee on Resolution (ResCo) as of 1 January 2015. ResCo is comprised of high-level representatives from the respective resolution authorities, which are assigned the tasks referred to above.

ResCo takes independent decisions in matters relating exclusively to resolution, for instance when deciding on proposals for standards and guidelines but also on breaches of contract. In such cases the EBA Board of Supervisors is entitled only to object but not to amend any decisions. ResCo decisions on matters concerning both resolution and supervision are referred to the Board of Supervisors for approval.

RESOLUTION COLLEGES

Effective resolution of institutions and groups active on a cross-border basis requires cooperation between the

European Union, the Member States and third-country resolution authorities. With this in mind, resolution colleges responsible for resolution are being set up in 2016, headed by the resolution authority of the parent institution. In the event of a banking group with cross-border operations failing, these resolution colleges should ensure the introduction of a coordinated and harmonised approach. The resolution colleges will also be responsible for preparing and adopting joint decisions such as (group) resolution plans, the minimum requirement for own funds and eligible liabilities (MREL) and specific resolution mechanisms during the process.

RESOLUTION FUND

During the financial crisis most CRR institutions were supported with public money. In many countries this created higher levels of government debt and meant that institutions that were actually not capable of surviving (or competing) were artificially kept afloat. Consequently, the BRRD included provisions that prohibit this type of public support and, at the same time, implement an inter-institutional fund managed by the resolution authority. This fund is designed to support the resolution of any CRR institutions that get into difficulties, enabling them to withdraw from the market smoothly (resolution) without any undesirable turbulence on the market. Additionally, the fund means that struggling CRR institutions can go through resolution without the need for government or public funding (tax money).

With the entry into force of BaSAG, the necessary framework was created for raising contributions to the national resolution fund from the CRR institutions liable to pay. This resolution financing mechanism, as defined in Article 123 BaSAG, is funded on an ex-ante basis with contributions from the CRR institutions and, if required, should only be used for the following purposes (cf. Article 124 BaSAG):

- securing of the assets or liabilities of the institution under resolution;
- granting of loans to the institution under resolution;
- acquisition of assets of the institution under resolution;
- provision of capital for a bridge institution;
- compensation payments (under certain conditions) to shareholders or creditors (in general deposit guarantee schemes).

In total, the FMA in the capacity of NRA raised an amount of around € 198 million for the SRF from Austrian institutions in 2015. Pursuant to the agreement with the SRB, this amount (minus negative interest) was transferred to the SRF on 28 January 2016.

With effect from 1 January 2016, the SRB assumed responsibility for the SRF and took over its management. However, responsibility for compiling data, calculating contributions, ordering payment and collecting payments remains with the NRAs – i. e. the FMA in Austria's case – in accordance with an intergovernmental agreement. The FMA then transfers the annual Austrian contribution (+/- interest) to the SRF.

The aim is to have a resolution fund of around € 55 billion across the euro area as a whole by 2024. Based on initial rough estimates, this means that Austrian institutions will have to contribute a total of around € 1.6 billion. A portion of the national contributions due annually will be allocated to a national compartment reserved for the resolution of banks in the Member State concerned. This proportion will be reduced from year to the next in favour of the pan-European pot. By 2024 there will only be one fund for all euro area banks.

This will mark the implementation of another important pillar of the banking union, and will further increase the financial stability of the eurozone. With the SRB now also assuming its full role with effect from 2016, cooperation will be greatly intensified.

