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The FMA is an independent, autonomous and integrated supervisory authority for the Austrian financial market, established as an institution under public law. It is responsible for supervising credit institutions, payment institutions, insurance undertakings, *Pensionskassen* (pension companies), corporate provision funds, investment funds, licensed investment service providers, credit rating agencies and stock exchanges, as well as for prospectus supervision. The FMA is also responsible for monitoring trading in listed securities to ensure that this is carried out properly and for monitoring issuers' compliance with information and organisation obligations. Further tasks include combating the unauthorised provision of financial services and taking preventive action against money laundering and terrorist financing. The FMA is an integral part of the European System of Financial Supervisors (ESFS) and represents Austria in the relevant European institutions, closely cooperating with the network of supervisors and actively contributing to its work.

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.

In order to achieve these aims:

- the FMA monitors and takes any measures necessary to ensure compliance with provisions of law;
- the FMA defines minimum standards and publishes regulations putting legal provisions into concrete terms;
- in dialogue with market participants the FMA works out proposals for ensuring that the Austrian financial market permanently adheres to high standards;
- the FMA represents Austria's interests in the EU and other international bodies and supports cooperation with other supervisory authorities;
- the FMA utilises and further develops modern analysis systems;
- the FMA places great emphasis on employing highly qualified and motivated staff as well as deploying the most modern technology; and
- its staff works as a team towards solving problems in a holistic manner so as to accomplish its integrated supervisory tasks efficiently and effectively.

We as staff members of the FMA identify with these aims and base our actions on the values of independence and objectivity. We fulfil our commission with confidence and in the knowledge of the significance of our efforts for the Austrian financial market.



PREFACE BY THE FEDERAL MINISTER OF FINANCE

A stable economy needs a stable financial market. This is where our colleagues at the FMA come in. Thanks to their flexibility, dedication and professionalism, numerous steps were taken in 2013 towards stabilising the financial market with targeted action. Their contribution was key in achieving a safe and stable financial market, and in ensuring that we have an efficient supervisory system providing investors with the best possible protection.

As far as financial market supervision is concerned, the past year was an eventful one in every respect. Alongside internal personnel and organisational changes at the FMA itself in 2013, the year was dominated by numerous changes at national and European level.

Some projects that have been the subject of drawn-out negotiations, such as Basel III – which is vital to financial market stability in my view – finally entered into force in Austria in summer 2013 after protracted negotiations at European level. This ensured that the new rules would take effect from 1 January 2014.

The aim behind Basel III is to make the financial markets more stable and to raise the loss-bearing capacity of financial institutions, whilst ensuring that Austrian businesses and individuals can access credit. It brings advantages in terms of the strengthening and harmonisation of banking, securities, insurance and financial conglomerates supervision. Corporate governance in the banking sector is also improved, through such measures as limits on bonuses and stricter criteria for members of the supervisory board.

Meanwhile, the introduction in Austria of the Banking Intervention and Restructuring Act (BIRG) further improves the ability of the Austrian financial market to withstand crisis whilst also ensuring that situations are largely avoided in which taxpayers and the economy at large find themselves picking up the bill when banks collapse.

The BIRG obliges banks to prepare recovery and resolution plans for submission to the FMA. This gives the

FMA the opportunity, should a trigger event occur, to take measures at an early stage to avert a crisis situation at a credit institution.

The early intervention measures are designed to avoid crises and to ensure that timely intervention is possible in serious cases. The aim of recovery plans is to enable institutions to use their own means to return to economic health, while resolution plans guarantee a properly structured resolution process with clearly identifiable economic consequences.

With our package of banking measures we also adopted what was the correct approach at the time; economically healthy banks, and with them the entire Austrian economy, were able to withstand the crisis much better than others as a result. In 2013, Erste Group Bank redeemed participation capital of €1.76 billion, of which around €1.2 billion constituted participation capital subscribed by the state. This was subject to the successful implementation of a share capital increase and approval by the FMA. For its part, Raiffeisen announced that it would be following suit. The requisite share capital increase has already taken place.

There have also been personnel changes at the FMA over the past year. Back in February 2013, Klaus Kumpfmüller joined Helmut Ettl as a new Executive Director of the FMA. I am delighted that this responsible position is held by such an expert in his field.

During 2013 both the Banking Supervision Department and the Securities Supervision Department were restructured in anticipation of the new supervisory standards, the significant fall in the number of investment firms and investment service providers to be supervised, and the assumption of responsibility for operational banking supervision by the ECB with effect from November 2014. This preparatory work means that the changing requirements can also be fulfilled with the same level of professionalism and efficiency in the future.

Once again in 2014, we will face challenges on the financial and capital markets that will require a com-

mon approach. Alongside ongoing efforts to consolidate the progress made last year, new tasks also lie ahead.

As part of the preparations for the European Single Supervisory Mechanism (SSM), a comprehensive review will be carried out in 2014 of the 128 systemically important banks that will be subject to direct supervision by the ECB during the initial phase. This affects six banking groups in Austria. The relevant preparations began in the final months of 2013, and the final results are expected to be available by October 2014. At the same time, the implementation

of Basel II and of the Accounting Control Act means that further tasks lie ahead in the interests of financial market stability.

In order to guarantee this stability, we need skilled and conscientious employees who will ensure that the statutory requirements are implemented. With their help, Austrian banks will remain a stable and reliable partner to our economy and the people of our country.



MICHAEL SPINDELEGGER



PREFACE BY THE EXECUTIVE BOARD

Major changes for the future were mapped out in 2013. At least as far as the euro area states were concerned, the European Union finally agreed on a Europe-wide system of banking supervision. As of 4 November 2014, the European Central Bank will assume responsibility for supervising all major banks, albeit working in practice alongside the national supervisors on the basis of a specifically designed system. A new capital regime for banks has also entered into force, in the form of Basel III, which has brought tangible improvements to the quantity and quality of banks' own funds. Plans are also in place for a similar regime for insurance undertakings, in the form of Solvency II. Meanwhile, the introduction of statutory provisions on alternative investment fund managers (AIFM) marks the closing of a serious supervisory loophole with regard to shadow banking. Additionally, the European Market Infrastructure Regulation (EMIR) is now providing effective governance in the world of derivatives. And these are just a few examples of new developments in 2013.

The establishment of an enforcement panel responsible for accounting, guaranteeing the uniform and correct implementation of the International Financial Reporting Standards (IFRS) for listed companies, is also important for Austria's financial market, ensuring that its financial data represent valid and comparable indicators. This plays a key role in bolstering confidence in the Austrian financial market. Also particularly worthy of mention are the developments in the direction of a European recovery and resolution regime for banks, including the prior setting-up of a resolution fund and the establishment of resolution institutions.

Six years on from the major tremors that shook the global financial markets, the main lessons learnt from the crisis are being put into practice. We are rapidly approaching the target postulated by the G20 heads of government and state at their summit in Pittsburgh as the leaders of the world's major industrialised

nations considered how to avoid another such crisis in the future: "No financial market, no financial product, no financial market player should escape supervision any further."

None of these reforms are being introduced for the sake of it. It is not simply a case of improving the regulatory framework and optimising the way supervision is organised, making it more stable, more secure and more transparent. Rather, the aim is to drive through specific improvements on the financial markets. And this is an area in which we, the Austrian financial market supervisor, have enjoyed particular success over recent years. We have achieved a noticeable strengthening in the capital base of the companies that we supervise, in both quantitative and qualitative terms. We have also worked on a sustained basis to push forward with improvements to the compliance and governance of the supervised entities. Damaging incentive systems, regardless of whether they relate to managers' bonuses or sales commissions, have been consistently opposed. We have made a major contribution to the improvement of investment and financial advice and to better information for consumers. We are consistently working to counter the provision of financial services in cases where the statutory requirements are not being met. We have established a very strict and restrictive short selling regime, addressing the problems triggered by high frequency trading at an early stage. And for years now we have been consistently stemming the particular and cumulative risks associated with foreign currency finance.

For us, in our capacity as regulator and supervisor, this means, first and foremost, additional tasks, even greater responsibility and even more work. These are challenges that we, the FMA, are well placed to tackle. After all, our model of integrated supervision, covering all areas of the financial market, proved its worth at the very height of the crisis. Having information about every market under a single roof and being able to take action on all markets at the same time not

only cuts the costs of supervision but also makes optimum use of the synergies that are created. Interactions between the globally linked industries, financial markets and capital markets can be considered from the outset and are incorporated into all decision-making. Moreover, integrated supervision is an important instrument against supervisory arbitrage and evading regulation, while guaranteeing a level playing field across all sectors, industries and market frontiers.

Supervision in Austria is optimally positioned. As we prepare for the many new tasks ahead of us, we have optimised our operational and organisational structure in our capacity as a modern authority, improved efficiency and established exemplary governance structures. Additionally, cooperation with our partners functions perfectly. The Federal Finance Ministry optimises the basic legal parameters during the legislative process, with Oesterreichische Nationalbank focusing on macrosupervision in its capacity as a competent and reliable partner for analysis, auditing and the preparation of decision-making in relation to banking supervision. As the sole supervisory authority, the FMA is responsible for integrated and consistent law enforcement.

In this regard it is particularly important to us that we thank our partners in the supervisory system for our effective and efficient working relationship. Without

these partners' unreserved support, provided in an atmosphere of trust, the supervisory system would not enjoy its excellent, hard-earned reputation that it has built up over the years.

Our particular thanks also go to our staff, without whose in-depth expertise and tireless commitment we would have struggled to overcome the major challenges that we have faced since the global financial crisis in particular. It is not least thanks to them that the right lessons have been learnt from the crisis, enabling a new foundation for regulation and supervision to be established in international cooperation efforts.

The optimisation of tried-and-tested rules and supervisory tools, the closing of regulatory loopholes, efforts to step up cross-border cooperation and the creation of a European system of supervision will strengthen the stability of the financial markets and boost confidence in their ability to function. In our capacity as Austria's supervisory authority, we will in any event do everything within our power to ensure that Austria remains a stable and secure base for business and finance that offers protection to its consumers, investors and savers.



HELMUT Ettl



KLAUS KUMPFMÜLLER

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DEVELOPMENTS ON THE FINANCIAL MARKETS

THE ECONOMIC ENVIRONMENT

Whilst the main factor impeding global economic growth in 2012 was political uncertainty in the industrialised nations (intensification of the euro crisis and budgetary crisis in the USA), it was doubts regarding the growth potential and financial market stability of some (major) developing countries and emerging markets that gradually bubbled to the surface in 2013. According to the International Monetary Fund, the price-adjusted figure for global economic growth in 2013 was +3.0% (2012: +3.1%).

While the group of developing countries and emerging markets once again made the biggest contribution to world growth, with a rate of +4.7% in 2013 (2012: +4.9%), countries such as Russia, with a growth rate of +1.5% (2012: +3.4%), South Africa (2013: +1.8%; 2012: +2.5%) and the group of Latin American and Caribbean countries (2013: +2.6%; 2012: +3.0%) were well down on the previous year's level in some cases. Meanwhile, the economies of Central and Eastern Europe, which are important to

the Austrian economy, recorded growth of 2.5% (2012: +1.4%, see Chart 1).

As far as the euro area is concerned, the worst is thought to be over. After a decline of 0.7% in 2012 and 0.4% in 2013, the IMF is forecasting real growth in 2014 and 2015 of 1.0% and 1.4% respectively. In terms of the EU-28, Eurostat calculations put real economic growth at 0.1%, with predicted real economic growth in the EU-28 of 1.4%.

Following 0.9% real economic growth in 2012, Austria's growth rate was still moderate in 2013, at 0.3%, just slightly higher than the level recorded by the EU-28.

In Japan, there are still no signs of any lasting economic upturn as the economic and financial policy measures in place, referred to as "Abenomics", have to deal with the negative overall economic impact of a prolonged period of deflation since the bursting of the home-made property and stock market bubble of the 1990s. The Japanese economy grew by 1.7% in 2013 (2012: +1.4%), but the IMF is expecting to see this growth rate fall again in 2015, slipping back to 1.0%.

On the consumption side of real GDP growth in Austria, the following breakdown emerged for 2013: private consumption waned by 0.2% (2012: +0.4%), with public consumption rising by 0.1% (2012: -0.2%). Gross fixed capital formation was down by 0.8% in 2013. After collapsing markedly during the period of crisis in 2009, exports grew for the fourth year in succession, expanding by 2.3% (see Chart 2 on page 15).

Following a considerable increase in the previous year (+2.6%), the harmonised consumer price index in Austria rose by 2.1% in 2013, considerably more than the 1.5% increase recorded in the EU-27/EU-28 (2012 [EU-27]: +2.6%). According to Statistics Austria, the main drivers of inflation in Austria in the reporting year, were the product groups "housing, water and energy", "food and non-alcoholic beverages" and

Chart 1: REAL GDP GROWTH RATES, ANNUALISED CHANGE COMPARED WITH PREVIOUS QUARTER, 2007–2013 (in %; source: IMF World Economic Outlook Update, January 2014)

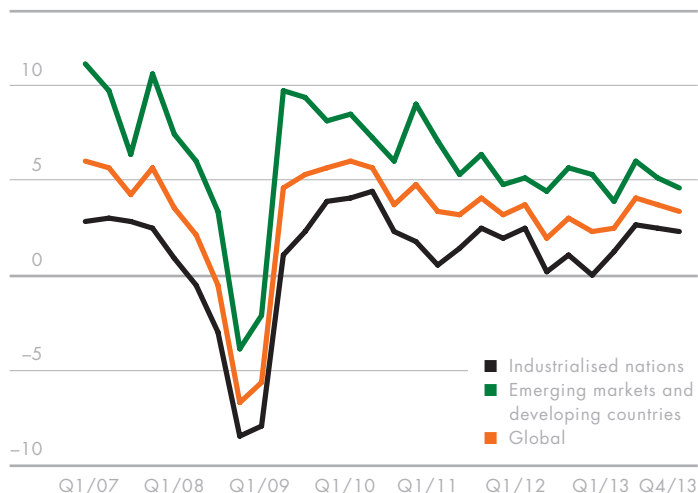


Table 1: ECONOMIC FIGURES AUSTRIA, 2009–2013

(Sources: OECD, Eurostat, European Commission, ECB, OeNB, Austrian Institute of Economic Research, Kreditschutzverband von 1870)

THE ECONOMIC ENVIRONMENT IN AUSTRIA	2009	2010	2011	2012	2013 (prel.)
SUPPLY AND DEMAND (real change in %)					
Gross domestic product	-3.8	2.1	2.7	0.9	0.4
Consumption	0.9	1.3	0.5	0.3	-0.1
Private consumption	1.1	1.7	0.7	0.4	-0.2
Public consumption	0.6	0.2	0.1	-0.2	0.1
Gross investment	-11.2	3.8	9.6	-0.7	-4.1
Gross fixed capital formation	-7.8	0.8	7.3	1.2	-0.8
Exports	-15.6	8.7	7.2	2.0	2.3
Imports	-13.3	8.8	7.2	0.8	0.4
LABOUR MARKET					
Dependently employed (changes in %)	-1.5	0.6	1.8	1.3	0.5
Unemployment rate (in %)					
Registered	7.2	6.9	6.7	7.0	7.6
Harmonised	4.8	4.4	4.2	4.3	4.8
PRICES AND INCOME (changes in %)					
GDP deflator	1.4	1.8	2.1	1.8	1.9
Consumer price index (HICP)	0.4	1.7	3.6	2.6	2.1
Unit labour cost (overall economy)	4.5	-0.1	1.2	3.6	2.4
Real disposable income	0.2	-0.7	-0.8	1.1	0.7
Savings ratio of households	11.2	9.1	7.4	7.4	8.2
INSOLVENCIES (changes in %)					
Corporate insolvencies	9.3	-7.6	-8.0	2.9	-9.6
Private bankruptcies	6.2	0.2	6.3	-0.8	-5.3
GENERAL GOVERNMENT FINANCES (as % of GDP)					
Public revenue (incl. property income)	48.5	48.1	48.0	49.2	...
Public spending (incl. property expenses)	52.6	52.6	50.5	51.7	...
Public balance (Maastricht definition)	-4.1	-4.5	-2.5	-3.1	-2.3
Government debt (Maastricht definition)	69.2	72.0	72.4	74.5	74.6
BALANCE OF PAYMENTS (as % of GDP)					
Trade balance (imports/exports of goods)	-1.4	-1.5	-2.9	-2.7	-1.5
Current account balance	4.8	2.7	3.5	1.8	2.5
INTEREST AND CREDIT					
Domestic credit to non-banks (changes in %)	-1.2	3.2	2.7	0.0	-1.9
Credit to non-financial enterprises	-2.5	2.4	2.7	0.8	-0.5
Credit to households	-0.1	5.9	2.6	0.7	0.2
3-month interbank rate (EURIBOR, average)	1.2	0.8	1.4	0.6	0.2
10-year reference government bond (average)	3.9	3.2	3.3	2.4	2.0
EXCHANGE RATES					
Nominal effective exchange rate (period average)	119.7	111.4	112.1	107.1	112.1
Real effective exchange rate (period average)	106.8	98.1	97.6	92.9	96.2

Table 2: ECONOMIC FIGURES INTERNATIONAL, 2009–2013

(Sources: OECD, Eurostat, European Commission, ECB, OeNB, Austrian Institute of Economic Research, Kreditschutzverband von 1870)

THE INTERNATIONAL ECONOMIC ENVIRONMENT	2009	2010	2011	2012	2013 (prel.)
EU-27					
Real GDP growth (in %)	-4.3	2.1	1.5	-0.3	0.1
Consumer prices (changes in %)	1.0	2.1	3.1	2.6	1.5
Budget deficit (as % of GDP)	-6.9	-6.5	-4.4	-3.8	-3.5
Debt position (as % of GDP)	74.6	80.0	82.5	86.6	89.8
Current account balance (as % of GDP)	-0.9	-0.1	-0.1	0.9	1.6
USA					
Real GDP growth (in %)	-3.1	2.4	1.8	2.8	1.9
Consumer prices (changes in %)	-0.4	1.6	3.2	2.1	1.5
Budget deficit (as % of GDP)	-11.6	-10.6	-10.0	-9.1	-6.4
Debt position (as % of GDP)	85.0	94.2	97.6	109.8	104.1
Current account balance (as % of GDP)	-4.8	-3.6	-3.3	-2.6	-2.6
3-month interest rates (average)	0.7	0.3	0.3	0.4	0.3
10-year interest rates (average)	3.2	3.2	2.8	1.8	2.3
EUR/USD (average)	1.39	1.33	1.39	1.29	1.33
JAPAN					
Real GDP growth (in %)	-5.5	4.7	-0.6	1.4	1.6
Consumer prices (changes in %)	-1.4	-0.7	-0.3	0.0	0.4
Budget deficit (as % of GDP)	-8.7	-6.8	-7.2	-9.1	-10.0
Debt position (as % of GDP)	194.1	200.0	211.7	214.3	227.2
Current account balance (as % of GDP)	3.3	2.9	3.7	1.0	1.2
3-month interest rates (average)	0.5	0.2	0.2	0.2	0.2
10-year interest rates (average)	1.3	1.2	1.1	0.8	0.7
EUR/JPY (average)	130.3	116.4	111.0	102.6	129.6
SWITZERLAND					
Real GDP growth (in %)	-1.9	3.0	1.9	1.0	2.0
Consumer prices (changes in %)	-0.7	0.6	0.1	-0.7	0.1
Budget deficit (as % of GDP)	1.0	0.6	0.8	0.4	0.1
Debt position (as % of GDP)	42.5	41.7	41.0	39.5	42.3
Current account balance (as % of GDP)	2.5	11.4	15.1	10.5	11.1
3-month interest rates (average)	0.4	0.2	0.1	0.1	0.0
10-year interest rates (average)	2.1	1.6	1.4	0.6	0.8
EUR/CHF (average)	1.51	1.38	1.23	1.21	1.23

“restaurants and hotels”. In the USA, the harmonised consumer price index rose by 1.5% in 2013, compared with a figure of +2.1% in 2012 (see Chart 3). In contrast to earlier years, inflationary pressure caused by imports of raw materials eased in Europe in 2013. The commodity price index published by the Hamburg Institute of International Economics (HWWI), which measures the changes in the prices contained in the industrialised nations’ commodity import account and 80% of which comprises energy commodities, amounted to -2.7% (2012: -2.8%) on a dollar basis on average over 2013, which equates to a fall on a euro basis of 2.0% (2012: +5.3%). After a certain degree of movement, the price for a barrel of Brent crude oil (159 litres) ended 2013 at USD 111.57, which was around the same level as at the 2012 year-end (USD 110.12) and thus well above the price of USD 34 recorded in the midst of the crisis (see Chart 4).

INTERNATIONAL FINANCIAL MARKETS

Whilst developments on the international financial markets were primarily dominated by the uncertainty in the euro area, up until the President of the European Central Bank (ECB), Mario Draghi, publicly announced that he would do “whatever it takes [within the mandate of the ECB] to preserve the euro”¹, it was the monetary policy measures introduced by the US Federal Reserve and the Bank of Japan that became the main focus of market participants’ attention in 2013.

Consequently, the announcement by the Chairman of the Federal Reserve, Ben Bernanke, before the Joint Economic Committee of the US Congress in May 2013², that the Fed’s monthly cash injections of USD 85 billion would be successively tapered as the US economy continued to develop positively, led to a significant capital outflow from the emerging markets as interest rate levels in the USA were expected to rise. In contrast, the Bank of Japan announced in April 2013 that it intended doubling its money supply within the next two years³.

¹ <http://www.ecb.int/press/key/date/2012/html/sp120726.en.html>

² <http://www.federalreserve.gov/newsevents/testimony/bernanke/20130522a.htm>

³ <https://www.boj.or.jp/en/mopo/outline/qqe.htm/>

Chart 2: GDP GROWTH RATES, REAL, 2009–2013 (real, in %; source: Eurostat)

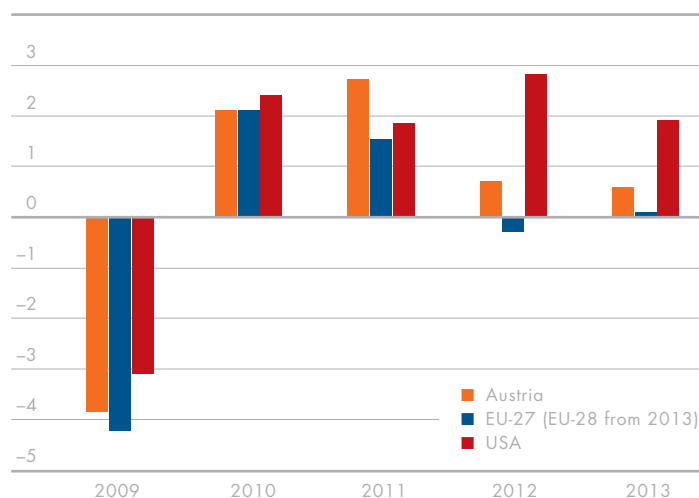


Chart 3: PERFORMANCE OF CONSUMER PRICES, 2009–2013 (change in %; source: Eurostat)

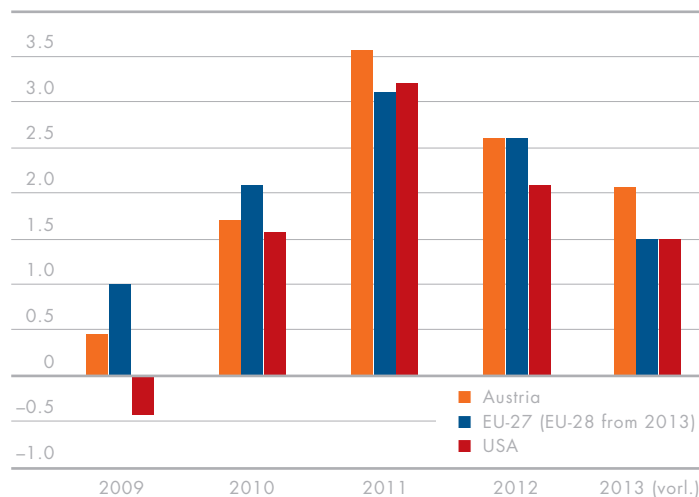


Chart 4: CHANGE IN THE PRICE OF BRENT CRUDE OIL, 2009–2013 (per barrel, cash market; source: Datastream)

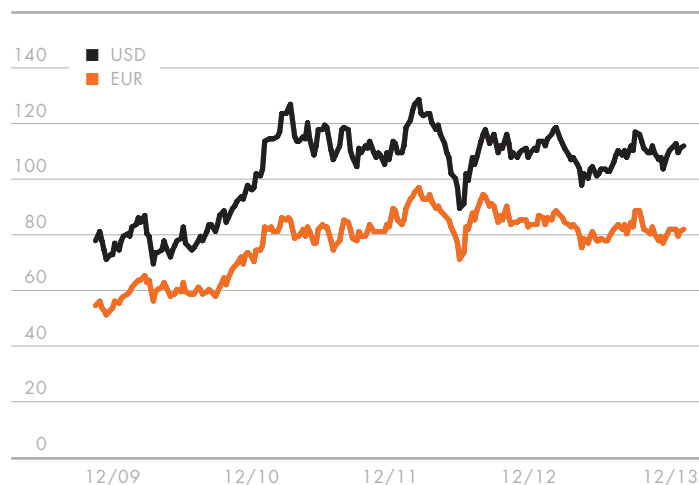


Chart 5: PERFORMANCE OF SELECTED SHARE INDICES, 2009–2013
(in %, 31/12/2011 = 100%; source: Datastream)

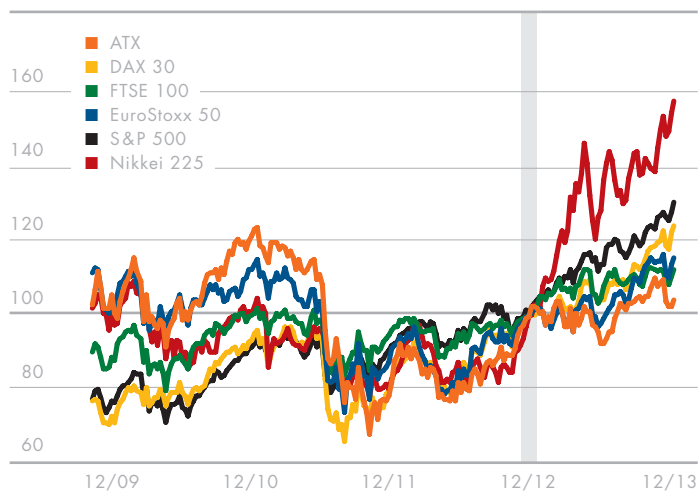
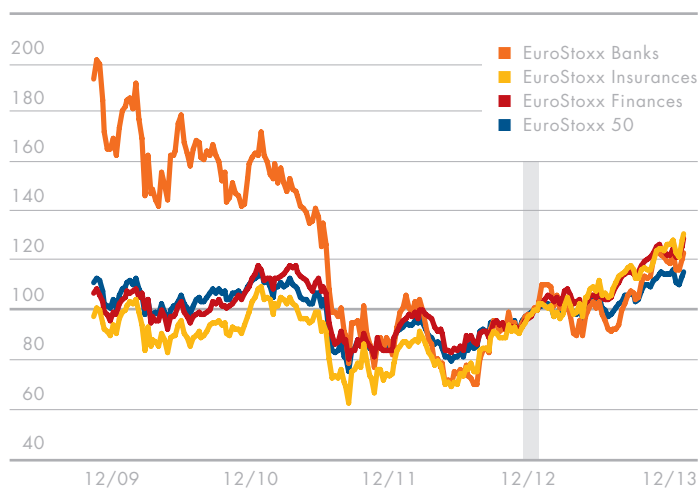


Chart 6: IMPLICIT VOLATILITY OF SELECTED SHARE INDICES, 2009–2013
(in %; source: Datastream)



Chart 7: PERFORMANCE OF EUROPEAN SECTOR INDICES, 2009–2013
(in %, 31/12/2012 = 100%; source: Bloomberg)



As shown in Chart 5, investor confidence in the survival of the euro area, which had obviously been strengthened over the long term, the moderately positive growth prospects in the EU and the USA, and the economic measures adopted by the Japanese government and central bank bolstered the key indices, helping them to develop positively. The S&P 500 in the USA and the German DAX 30 recorded year-on-year growth of 29.89% and 23.94% respectively, with the FTSE 100 in London increasing by a solid 12.43% and the Japanese Nikkei 225 – boosted by the cash injections from the Bank of Japan – by a considerable 56.68%. The EURO STOXX 50, which comprises euro area blue-chip shares, grew by 15.52%. The ATX, up by just 4.66%, was the only index lagging behind the international trend.

Falling levels of uncertainty among participants in the financial markets in relation to future price fluctuations are demonstrated by the volatilities priced in to the options that are being traded. The volatility index for both the S&P 500 and the EURO STOXX 50 fell significantly on a year-on-year basis (see Chart 6): the volatility index of the S&P 500 ended 2013 on 12.33 points (2012: 19.47 points), with the equivalent index of the EURO STOXX 50 on 15.81 points (2012: 18.23 points).

Chart 7 compares the change in the EURO STOXX bank and insurance indices and the development of the index for other financial service providers with the average performance on the market as a whole. The moderately positive development is also reflected here. The best result in the financial sector was recorded by European insurance stocks, which put on 30.66% compared with the previous year. Whilst the European banking sector grew by 15.52%, other financial services were up by 29.37%. It is interesting to note that the stocks in all three indices for the various sectors of the financial industry considerably outperformed the EURO STOXX 50.

The trend towards normalisation on the financial markets in the industrialised nations is also evident from the performance of ten-year government bonds, with the exception of Japan. Following the Federal Reserve's announcement in May 2013, as referred to above, and in anticipation of higher interest rates in the USA, the prices of US government bonds in

Table 3a: FINANCIAL MARKET FIGURES, 2009–2013
(Sources: OeNB, OeKB, Wiener Börse AG)

AUSTRIA'S FINANCIAL MARKET	2009	2010	2011	2012	2013 (prel.)
BANKING SECTOR					
Regulatory capital ¹					
Core capital (in € billions)	60.6	67.2	68.8	69.8	70.5
Tier 2 capital (in € billions)	23.4	22.8	22.2	21.5	21.1
Equity ratio (as % of assessment base)	12.8	13.2	13.6	14.2	15.4
Asset composition and quality ²					
Total assets (in € billions)	1,029.0	978.6	1,014.3	982.1	929.2
Sectoral distribution of assets (as % of total)					
Domestic banks	27.1	24.6	25.2	23.5	22.3
Foreign banks	15.9	14.0	14.0	13.7	13.5
Non-bank financial intermediaries	3.4	3.3	3.0	3.0	2.8
Non-financial enterprises	17.8	19.2	18.9	19.9	20.6
Households	16.6	18.5	18.2	19.1	19.9
Private non-profit organisations	0.4	0.4	0.4	0.4	0.4
Government	3.6	3.9	4.1	4.2	4.0
Foreign non-banks	15.3	16.0	16.2	16.2	16.5
Deposits (excluding interbank) to loans (in %)	78.1	77.0	78.1	80.3	83.7
Share of foreign currency loans granted to households (in %)	29.5	30.1	28.3	23.9	20.6
Sectoral distribution of liabilities (as % of total) ²					
Domestic interbank liabilities	20.7	18.2	19.0	17.8	16.5
Foreign interbank liabilities	9.2	8.9	8.9	8.2	7.4
Deposits domestic non-banks	27.1	28.8	28.6	30.2	32.6
Deposits foreign non-banks	4.9	5.2	5.8	5.9	6.4
Own domestic issues	15.7	16.2	15.1	14.5	14.8
Earnings and profitability (in %) ³					
ROA	0.00	0.41	0.12	0.32	0.07
ROE	0.06	5.74	1.64	4.21	0.91
Operating expenses to operating income	62.1	58.6	60.9	63.8	67.7
Personnel expenses to non-interest expenses	51.4	50.2	51.2	51.2	50.7
Balance from allocations to/release of value adjustments for credit risks (in € billions)	4.4	2.8	2.4	1.5	3.3
Sectoral distribution of income (as % of total)					
Net interest income	49.1	46.3	50.0	46.1	46.5
Income from securities and investments	18.6	20.4	19.0	19.2	15.9
Balance of business on commission basis	20.2	20.0	19.9	20.1	21.5
Balance of financial business	2.7	3.4	1.7	3.3	2.6
Liquidity (in %)					
Cover ratio of liquid resources of the first degree	680.9	830.8	920.5	2,368.8	2,049.8
Cover ratio of liquid resources of the second degree	236.2	226.9	218.2	223.0	212.6

¹ OeNB, secondary research: merging of reporting data of banking groups and unconsolidated data reported by individual institutions.

² OeNB, including branches from EEA countries in Austria (Article 9 BWG), credit guarantee banks and corporate provision funds.

³ OeNB, based on quarterly reports; income data of individual institutions active in Austria are presented on an unconsolidated basis.

Table 3b: FINANCIAL MARKET FIGURES, 2009–2013
 (Sources: OeNB, OeKB, Wiener Börse AG)

AUSTRIA'S FINANCIAL MARKET	2009	2010	2011	2012	2013 (prel.)
INSURANCE SECTOR					
Earned premiums (in € millions)	18,057	18,797	19,019	18,686	...
Life assurance (increase in %)	0.5	1.1	-7.3	-6.9	...
Non-life/accident insurance (increase in %)	-1.0	5.2	7.2	0.8	...
Health insurance (increase in %)	3.7	2.8	3.6	3.4	...
Technical account balance (in € millions)	132	380	257	457	...
Financial result (in € millions)	2,730	3,04	2,889	3,406	...
Result from ordinary activities (in € millions)	744	1,100	1,162	1,394	...
Combined ratio (non-life/accident insurance, in %)	100.6	92.8	91.9	93.4	...
PENSIONS KASSEN					
Assets managed (in € millions, year-end)	13,342	14,912	14,764	16,278	17,384
Performance (in %)	9.0	6.5	-3.0	8.4	5.2
Beneficiaries (entitled) (in 1,000s, year-end)	680	696	721	744	755
Beneficiaries (recipients) (in 1,000s, year-end)	62	66	71	76	81
CORPORATE PROVISION FUNDS					
Assets managed (in € millions)	2,830	3,573	4,284	5,275	6,015
Performance (in %)	3.7	2.6	0.2	4.3	2.8
INVESTMENT FUNDS					
Assets managed (in € millions, year-end)	136,660	145,176	134,590	144,411	145,293
Net inflow of funds (in € millions)	-41	2,034	-4,695	-391	-843
Number of domestic investment funds (year-end)	2,238	2,158	2,232	2,230	2,153
CAPITAL MARKET					
ATX at year-end	2,496	2,904	1,892	2,401	2,547
ATX performance (in %)	42.5	16.4	-34.9	26.9	6.1
Market capitalisation (in € millions, year-end)	76,951	91,038	63,679	78,124	82,990
Market capitalisation/GDP (in %)	28.0	31.8	21.1	25.2	26.5
Sales in share segment (in € millions, double counting)	72,594	73,530	60,54	36,089	38,722
Number of issuers (share segment, year-end)	94	86	81	79	75
Secondary market returns (in %, year-end)	3.15	2.56	2.15	0.97	1.24
Spreads of ten-year govt bonds compared w. German Bunds (in basis points)	29	49	111	43	34
CDS spreads (5 years, in basis points)	84	100	184	45	37
Sales in bond segment (in € millions)	1,947	2,140	1,309	216	222

particular began to fall, ending the year down 9.7 percentage points. The price pressure emanating from US markets also impacted on the government bonds of other western industrialised nations. The prices of Austrian government bonds, for example, fell by 3.0 percentage points year-on-year, with German Bunds down 3.4 percentage points. With the Japanese central bank buying up massive quantities of government bonds, the prices of these bonds increased by 1.3 percentage points in contrast (see Chart 8).

The exceptionally expansionist fiscal policy pursued by the Bank of Japan, as expected, had a significant impact on the yen. While the external value of the US dollar, sterling and the Swiss franc remained more or less unchanged against the euro, the yen actually lost 26.18% (see Chart 9).

FINANCIAL MARKET CRISIS

While the economic recovery in the euro area and the USA gave some observers reason to hope that the worst of the negative fallout from the financial market crisis on the real economy was over, at least across large swathes of the industrialised world, new risks began to emerge over the course of the year, including risks that had barely been given a second thought until then. Certainly, both Ireland (December 2013) and Spain (January 2014) were able to successfully conclude their positive economic development and structural reforms under the troika's support programme. However, Chart 11 (as seen on page 22) clearly shows that their debt burden is continuing to rise. It is therefore too early for optimism. At the same time, a growing number of experts – among them Christine Lagarde, Head of the International Monetary Fund (IMF) – began to warn increasingly loudly of the threat of deflation in the euro area.

Continued disinflation, or even deflation, in the euro area could be enough to trigger the European triangle of crises again (sovereign debt, banking and structural crises). Alongside the classic negative effects of deflation due to rising real interest rates, falling investment levels and a reduced debt repayment capacity with an unchanged nominal debt burden, the European Central Bank's conventional scope for monetary policy measures, with a main refinanc-

Chart 8: CHANGE IN PRICE OF 10-YEAR REFERENCE BONDS, 2009–2013
(in %, 31/12/2012 = 100%; source: Datastream)

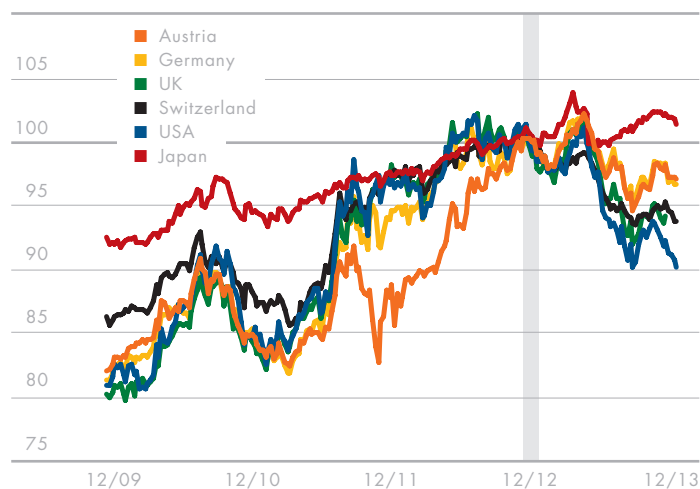
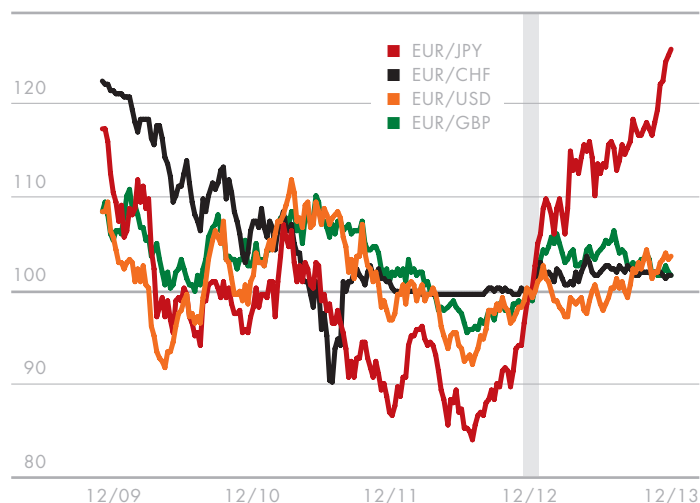


Chart 9: PERFORMANCE OF SELECTED FOREX RATES, 2009–2013
(in %, 31/12/2012 = 100%; source: Datastream)



ing interest rate of 0.25%, is practically exhausted. Given the ECB's lack of room for manoeuvre compared with other central banks, any extraordinary measures on its part, specifically the buying up of government bonds, would not be without controversy. Against the background of high government borrowing by some Member States and the ECB's limited room for manoeuvre, any ongoing period of deflation would present the euro area with particular challenges. Additionally, the comprehensive assessment announced by the ECB for the first half of 2014, consisting of a rigorous audit of the balance sheets of the banks that will be directly supervised by the ECB

in future and a related stress test, could spark off renewed distortions.

Regardless of this, events during the reporting year showed that the financial market crisis, triggered by the Federal Reserve's tapering of its extraordinary monetary policy measures, has now entered its sixth phase, a phase of re-internationalisation. While the emerging markets recorded significant capital inflows from investors looking to maximise their returns as the Federal Reserve kept interest rates low, these investors began returning their capital to the USA from the middle of the year onwards, in anticipation of higher risk-adjusted interest there. Whilst the main countries hit by these outflows were the group referred to as the Fragile Five by Morgan Stanley (Brazil, Indonesia, India, Turkey and South Africa), over the past year it has been financial stability risks in China that have also started to dominate the agenda (shadow banks, property bubble).

HISTORY OF THE CRISIS

The financial market crisis can be roughly broken down into six different phases:

1. Crisis caused by subprime exposure, affecting US mortgage providers and investors in securitisation products.
2. Banking and financial market crisis caused by rising loan defaults and falling real estate prices; as these new factors are priced in, and as a result of efforts to reduce risk and of an increased requirement for liquidity, the prices of shares and corporate bonds fall.
3. Real economic crisis: stifled demand, which is tackled through fiscal policy and economic stimulus programmes, significant rise in public borrowing.
4. Crisis of states: Sprawling budget deficits in the midst of a recession jeopardise long-term ability to finance government debt.
5. Fragmentation of financial markets within Europe: The lack of convincing solutions to the European triangle of crises (sovereign debt, banking and structural crises) is adding to the uncertainty surrounding the long-term future of the euro area in its current form and is causing nervous investors to

shift significant amounts of capital out of the peripheral countries into states regarded as being more stable, both within and outside the European Union.

6. Re-internationalisation: Gradual move back by the Federal Reserve from the extraordinary monetary policy measures introduced, resulting in major capital outflows from the emerging markets, particularly the Fragile Five, and triggering stability risks in these countries.

The subprime crisis, which emanated from the USA, was created on the basis of extremely low interest rates resulting from the expansionist monetary policy of the US Federal Reserve and the belief that real estate prices would continue to rise.

This combination of factors allowed unsupervised mortgage brokers to arrange loans for customers with a poor credit rating. Tempting offers such as lower interest rates or no interest at all during the early years ("teaser rates") of these mortgages, which were generally flexible-rate products, were used to ensure a keen level of demand. A further factor was the prospect of problem-free redemption, where necessary through the sale of the property serving as collateral at a price that was generally expected to rise in the future and be higher than when the mortgage was provided. The high loan-to-value ratios and the ease with which borrowers could terminate their contracts also helped to inflate the bubble. At the same time, a steady decrease in the quality of loan documentation was observed. For example, borrowers' stated asset and income levels were verified only superficially. A major factor in the growth of the mortgage loan market, and with hindsight in the obvious breakdown in quality assurance on loans, was the "originate and distribute" strategy, according to which loans only remained on the books of the originating bank for a short period before very quickly being passed on to the capital market in securitised form. The securitisation of the loans also meant that regulatory loopholes were deliberately exploited to ensure that less capital backing was required for the same level of exposure to credit risk. From the state's point of view, the promotion of home ownership also helped to distort the market.

However, the long-term trend of rising property prices

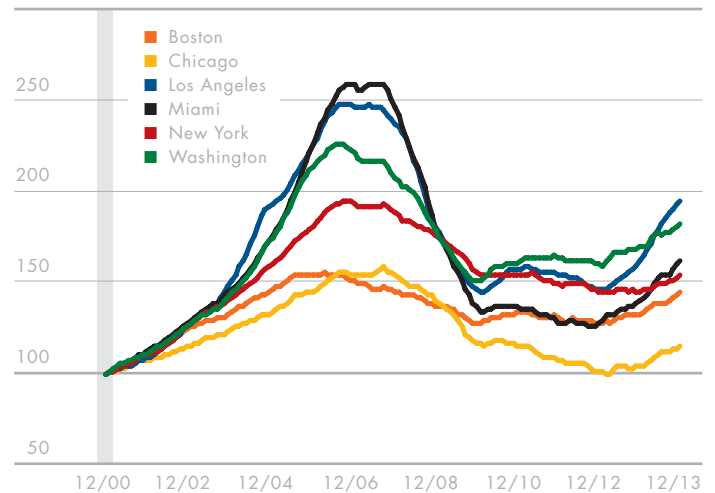
in the USA came to an end in 2006 and 2007, with the counter-trend hitting those regions the hardest where prices once had risen the most strongly. The nationwide S&P/Case-Shiller index, which reflects house price changes in 20 American metropolitan regions, fell by 32.6% between the third quarter of 2006 and the second quarter of 2009. Over the subsequent 18 months, during which period the market was twice propped up by tax relief measures, an overall minimal rise was observed. However, no recovery on the scale seen in some cases on the financial markets was recorded (see Chart 10)

Even before real estate prices had peaked in many major towns and cities, the rise in interest rates was forcing a rapid increase in households' financial commitments. Interest rates started to rise in summer 2004 but it took until the teaser rates began to expire in 2006 for the full impact to be felt. Combined with a traditionally low savings ratio, mortgage default rates rose significantly among borrowers with low credit ratings. As shown in Figure 10, the extraordinary measures adopted by the Federal Reserve, particularly its monthly buying up of mortgage backed securities (MBS) worth USD 40 billion, created a gradual recovery in real estate prices.

Ailing loans and a rising number of defaults represent a particular problem for US mortgage banks as the real estate serving as collateral can no longer be realised at the prices on which the original loan calculation was based. However, it is not just in direct lending business that write-downs are being required to take account of claims that cannot be recovered. The trend of securitising credit risks and thus selling structured loan pools to other, primarily European, banks or other investors inevitably means that the problem has spread beyond the US mortgage banks into other financial sectors. When assessing the underlying risks and the design of the products, investors obviously relied too heavily on the assessments of credit rating agencies, which, themselves, had insufficient data to model the risks of such products, particularly with regard to historical performance.

The rising default rates have caused the prices for structured loan products such as asset backed securities (ABS) and collateralised debt obligations (CDOs) to collapse. The reason for this could also be traced

Chart 10: REAL ESTATE PRICES IN SELECTED MAJOR US CITIES
(in %, 12/00 = 100%; source: S&P Case-Shiller)



back to the fact that trading in these products had practically ground to a halt. With extremely low liquidity available, sales could only be made with very large discounts. Given the need for write-downs in order to report these assets at their market values in balance sheets, credit institutions faced an increasingly tough profit situation, particularly those institutions that held ABS and CDOs based on US mortgage risks.

As early as 2007 some banks, in Germany and the UK for example, were already finding their existence under threat from the financial crisis. In the late summer of 2008, the crisis took on a new dimension that put the entire financial system at risk. The collapse of US investment bank Lehman Brothers and the problems experienced around the same time with the two US mortgage lenders Fannie Mae and Freddie Mac, the American International Group insurance corporation and the investment bank Merrill Lynch marked the worst point in the crisis to date. Alongside these institutions, which were at the centre of public attention, numerous smaller US banks also slipped into difficulties. From 2007 to the end of 2012, 477 institutions closed.

Nearly all of the industrialised nations reacted with effect from 2008, not just by introducing comprehensive emergency measures to stabilise the banking sector (generally by injecting equity capital or assuming guarantees) but also by launching economic rescue

Chart 11: GOVERNMENT DEBT OF SELECTED STATES IN RELATION TO GDP, 2011–2013 (source: OeNB)

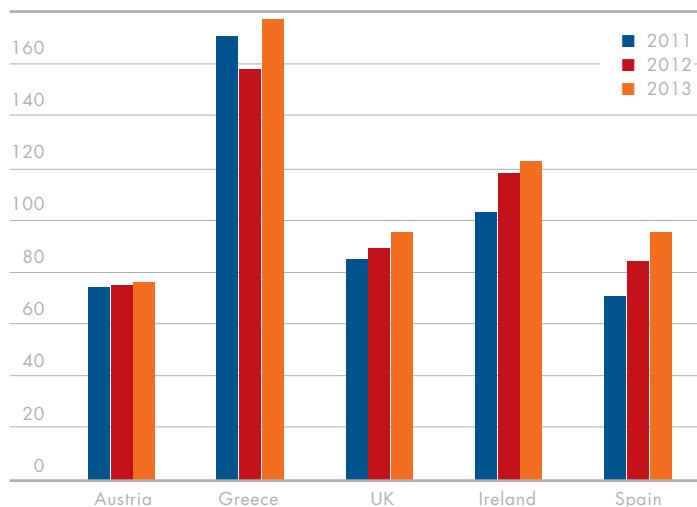
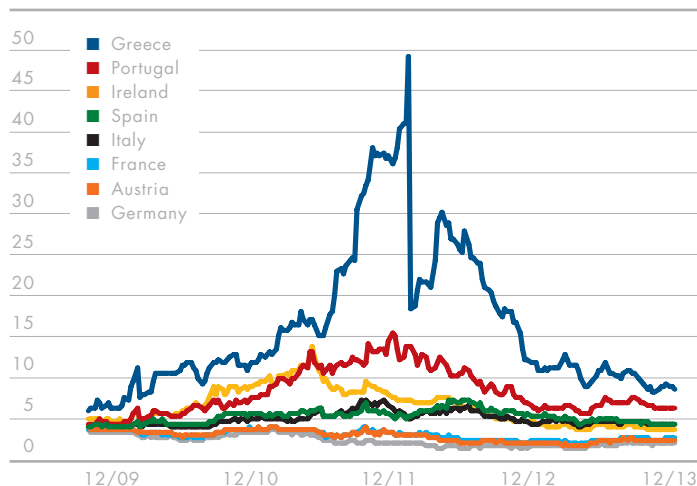


Chart 12: INDEX OF CDS SPREADS FROM THE EUROZONE AND DENMARK, SWEDEN, THE UK, NORWAY (SovX Western Europe); INDEX OF CDS SPREADS OF SELECTED EUROPEAN COMPANIES IN THE FINANCIAL SECTOR (iTraxx Europe Financials) (source: Bloomberg)



Chart 13: YIELDS ON 10-YEAR GOVERNMENT BONDS OF SELECTED EUROZONE COUNTRIES (source: Datastream)



packages. These expansive fiscal policy measures at a time when tax revenues were falling resulted in massive increases in public borrowing.

Chart 12 shows the risk premiums payable by euro area countries and those paid by selected European companies in the financial sector: these premiums have been increasing synchronously, particularly from the middle of 2011. As the positive correlation between the CDS spreads of European governments and those of banks shown in Chart 12 clearly indicates, the European banking sector has also not remained immune to the negative effects of the sovereign debt crisis from 2011 onwards. It was only after ECB President, Mario Draghi, famously announced in May 2012 that he would do “whatever it takes [within the mandate of the ECB] to preserve the euro” that the iTraxx Europe Financials and SovX Western Europe spreads began to fall.

While the public purse was still able to support the foundering banks during the second phase of the crisis, these governments, as ‘payers of last resort’, are themselves now highly indebted in some cases and their resources are naturally no longer available. This is further intensifying the pressure on the European banking sector, and in the peripheral countries in particular.

States’ high levels of borrowing had a negative impact on their credit ratings and thus pushed down the value of the government bonds held by the banks. Given that government bonds are a widely used form of investment in the European banking sector, not least for regulatory reasons, this also affects banks’ credit standing, which in turn increases the probability of new government aid being needed and reduces the credit rating of the states concerned.

In a bid to halt this negative spiral of events, European policymakers agreed on the creation, for a limited period, of the European Financial Stability Facility (EFSF), which was subsequently followed by the establishment of a permanent European Stability Mechanism (ESM). Its purpose is to support states that are facing payment difficulties, thereby averting the threat of another systemic crisis. Based in Luxembourg and with €500 billion of aid at its disposal, the ESM finally became operational on 27 September 2012.

In addition, the ECB, through its long-term refinancing

operations (LTROs), provided the European banking system with credit for the unusually long term of three years at the end of 2011/beginning of 2012. During the two auctions for unlimited funds, European banks availed themselves of more than a trillion euros in total. In order to stop the prices of ailing states' government bonds plunging any further, the ECB, through its Securities Markets Programme (SMP), has bought up government bonds on the secondary market with an outstanding value as at 7 March 2014 of approximately € 176 billion.

Yet neither the extraordinary measures adopted by the ECB nor the implementation of the ESM was initially enough to allay investors' fears that the euro area was about to start falling apart. Investors withdrew their capital from the peripheral countries, and from Greece in particular, moving their money into countries inside and outside the EU that they believed to be a safer choice. The further rise in the interest rate differential within the euro area triggered by this capital flight caused the European financial market to grow ever more fragmented. Thus the financial crisis entered a crucial phase.

Chart 13 shows how the yields on ten-year Greek government bonds began to soar again after some of the country's debts were written off in February 2012. Any renewed rise in the yields on Greek government bonds on the scale observed prior to the debt relief measures would have further compromised Greece's ability to sustain its debts and severely hampered the country's reform efforts due to prohibitive debt servicing costs. The potential departure of Greece from the euro area would have further intensified the pressure on other peripheral countries and thus also led to even higher interest rates. As shown in Chart 13, the situation only eased in response to the reassurance given by ECB President Mario Draghi, referred to above, and the launch of the ECB's Outright Monetary Transactions programme in the middle of the year. The yields on Greek government bonds continued to develop positively in 2013, not least due to an upturn in the tourism sector and the

reduced debt burden thanks to the restructuring programme⁴. However, it should be noted that the falling value of the Turkish lira due to major capital outflows (tapering, increasing political risk) will mean tougher price competition for the Greek tourist industry, a sector that is so important to the country's economy.

AUSTRIAN FINANCIAL MARKET

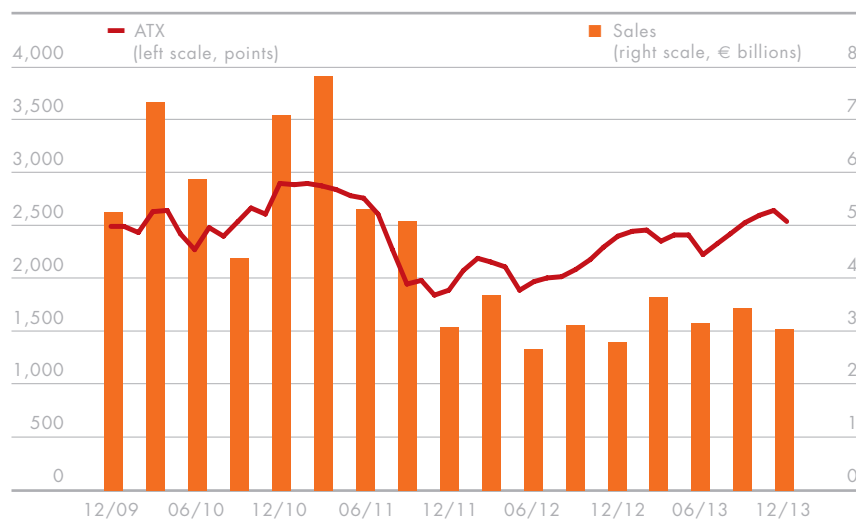
The performance of the Austrian Traded Index (ATX) was generally unaffected in 2013 by the positive performance recorded by the international benchmark indices listed above (see Chart 14). Certainly, the ATX put on 6.05% in 2013, ending the year at around the 2,546 points mark, but this increase was substantially lower than that recorded by the Frankfurt Stock Exchange (2013: +29.89%), for example.

The top performer, growing by 93.81%, was Warimpex Finanz- und Beteiligungs AG. Century Casinos Inc. was in second place, with annual growth of 90.70%, followed by Palfinger AG, which ended the year 75.49% up on 2012. The highest losses were registered by Lenzing (-38.97%), Wolford (-27.16%) and RBI (-18.55%).

The market capitalisation of the Vienna Stock Exchange follows the trend set by share prices. The equity-market.at segment reported capitalisation of nearly

⁴ See for example: http://ec.europa.eu/economy_finance/eu/forecasts/2013_spring/el_en.pdf

Chart 14: DEVELOPMENT OF THE EQUITYMARKET.AT SEGMENT OF THE VIENNA STOCK EXCHANGE, 2009–2013 (final quarterly results; source: Wiener Börse AG)



€83 billion at the end of 2013, some 6.23% up on the previous year-end. Transactions also increased, up by 6.20%. Using the standard double counting method, the total amount traded was €38.33 billion – significantly lower, even, than 2007 when a figure of €188.0 billion was achieved.

There was one new listing in 2013 (Valneva SE), one removal (Intercell AG) and one instance of a company changing market segment (BWT AG, switch from prime market to standard market continuous).

THE EUROPEAN BANKING UNION AND SINGLE SUPERVISORY MECHANISM

In summer 2013 the European heads of state and of government from the euro area reached agreement on the restructuring of banking supervision in the context of the new European Banking Union. As well as encompassing the Single Supervisory Mechanism (SSM) based at the European Central Bank (ECB), this is also set to encompass the Single Resolution Mechanism (SRM) and a European deposit guarantee system.

Regulation (EU) No 1024/2014 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (SSM Regulation) entered into force on 3 November 2013. Under the terms of this Regulation, the ECB is to assume responsibility for supervising all banks in the euro area (currently numbering 18 EU Member States) with effect from 4 November 2014. Banks with significant cross-border operations are to be placed under the direct supervision of the ECB, with all other banks continuing to be supervised at national level and only being monitored indirectly by the ECB. Generally, banking supervision in the euro area will be carried out in future via a decentralised system headed by the ECB, and under its responsibility, and involving close cooperation with the national supervisory authorities. This will ensure that banks in the euro area are supervised on the basis of uniform criteria and methods in accordance with the principle of proportionality and optimisation of knowledge and synergies.

“SIGNIFICANT” VERSUS “LESS SIGNIFICANT”

For the purposes of allocating responsibility for supervision to the ECB or the national competent authorities within the framework of the SSM, banks will be classed on a Europe-wide basis as “significant” or “less significant”. The highest level of consolidation will be used to determine which category applies. Currently, around 130 banking groups are to be

classed as significant credit institutions. With regard to these credit institutions, the ECB will take all binding regulatory decisions at both group and individual level, with the national authorities supporting the ECB in the exercise of all matters and with regard to day-to-day supervision.

This “significance” will be assessed on the basis of the following criteria:

- The total value of its assets exceeds €30 billion; or
- the ratio of its total assets to national gross domestic product exceeds 20% and the total assets exceed €5 billion; or
- a notification is made by the national competent authority stating that it considers the credit institution to be of significant relevance to the national economy, with this significance having been confirmed by the ECB.
- A credit institution may also be classed as significant by the ECB based on its significant cross-border activity.
- The provision of direct financial support from the European System of Financial Supervision (ESFS) or the European Stability Mechanism (ESM) will also result in classification as a significant credit institution.

At least the three largest banks in each Member State will also always be classed as significant.

TASKS CONFERRED ON THE ECB AS THE DIRECTLY RESPONSIBLE SUPERVISORY AUTHORITY

Article 4 of the SSM Regulation makes the ECB responsible for all microprudential tasks relating to the supervision of the credit institutions for which it has been given responsibility. This means that, in future, the ECA will be responsible for all of the supervision-related tasks previously carried out by the national competent authorities, including:

- authorising credit institutions and withdrawing authorisations (in stipulated joint procedures with the national authorities);
- ensuring compliance by the credit institutions with regulatory provisions, reporting rules and disclosure requirements;
- assessing the acquisition and disposal of qualifying holdings (in stipulated joint procedures with the national authorities);
- guaranteeing compliance with due diligence obligations and the requirements applicable to the directors of credit institutions;
- remuneration policy; and
- carrying out supervision on a consolidated basis (involvement in and organisation of supervisory colleges).

Pursuant to Article 5 of the SSM Regulation, macroprudential tasks will generally remain the responsibility of national authorities. Included in their remit are applying requirements for capital buffers to be held by credit institutions over and above their own funds requirements, as well as other measures to address systemic or macroprudential risks as defined in Regulation (EU) No 575/2013 and Directive 2013/36/EU (in application of Basel III in Europe) and applicable since 1 January 2014. Planned measures are to be reported to the ECB, which has a right of objection. The ECB may also apply stricter rules than those planned by the national competent authorities.

Supervision-related issues such as the prevention of money laundering and terrorist financing, combating unauthorised banking activities, supervision of payment and electronic money institutions, as well as consumer protection issues, remain the exclusive responsibility of the national authorities.

COOPERATION BETWEEN NATIONAL AUTHORITIES AND THE ECB WITHIN A DECENTRALISED SUPERVISION SYSTEM

The finer details of the cooperation in relation to significant and less significant credit institutions within the decentralised supervision system are regulated by an ECB regulation, known as the Framework Regulation. The Framework Regulation proposal was presented to the European Parliament for consideration and public

consultation in early 2014. Adoption of the Framework Regulation by the ECB Governing Council is scheduled for May 2014 at the latest, paving the way for its scheduled entry into force in early summer 2014.

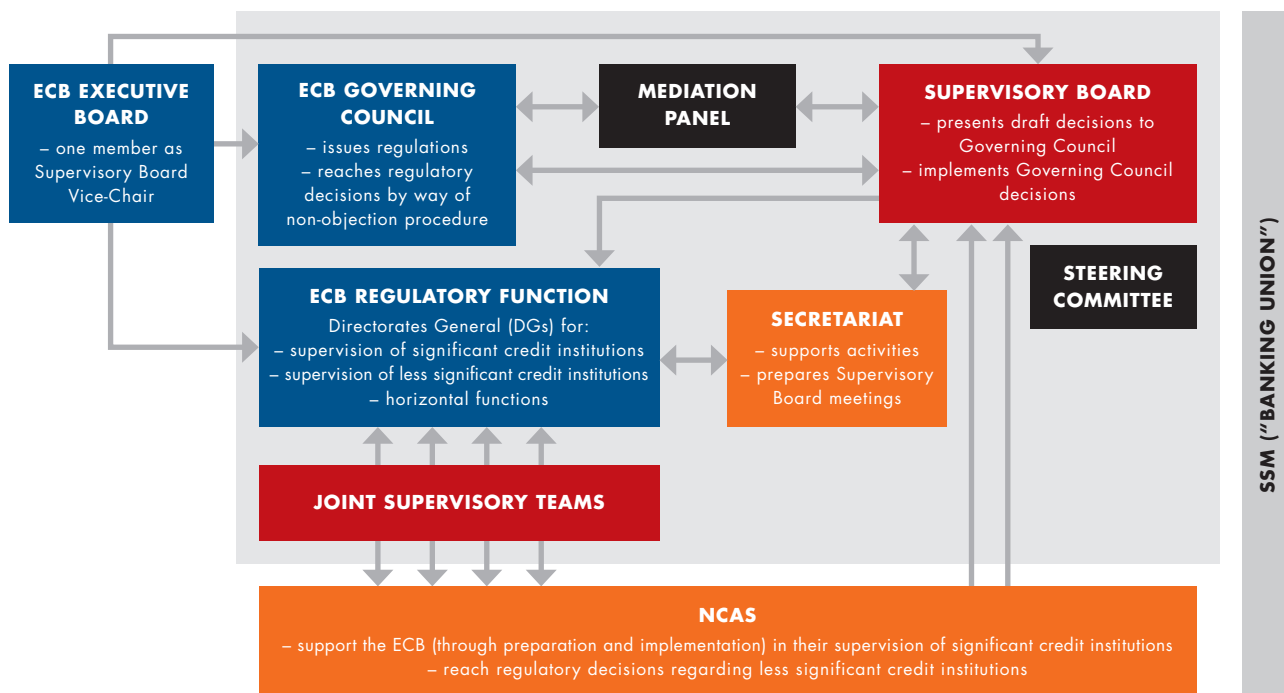
Generally, in the context of the SSM, the ECB may request that the national competent authorities and both significant and less significant credit institutions submit all information that it requires to carry out the tasks conferred on it. The ECB enjoys all the powers and is subject to all of the obligations applicable to the national authorities under the terms of EU law. This also encompasses the regular and standardised collection of information from all banks for supervisory and statistical purposes.

In terms of the supervision of significant credit institutions, the national competent authorities will be required to prepare comprehensive decision drafts for the ECB. In this regard the preparation of national legal foundations is of particular importance. In supervising significant Austrian banks, the ECB will apply Austrian law. Additionally, the national authorities will be required to liaise with the ECB contact partners at a technical level on an ongoing basis and continue to plan on-site inspections with the involvement of the ECB. This division of labour will be achieved through Joint Supervisory Teams (JST), composed of ECB and national supervisors and set up for each significant credit institution.

Even though less significant credit institutions will basically remain subject to banking supervision at a national level, such institutions will nevertheless still be required to comply with the comprehensive general information and reporting obligations vis-à-vis the ECB. Certain decisions made by the national competent authorities on less significant credit institutions that are classed as high priority must also be submitted to the ECB for its approval. The precise scope of this submission requirement is based on the ECB's risk assessment.

The ECB also has a right of direct access which enables it to take over responsibility for the supervision of individual or several less significant banks if there is a risk to the uniform supervision standards. The aim of this right is to give the ECB a means of contributing to a greater extent to a high, uniform level of supervision in the euro area across all spheres.

Figure 1: SSM ORGANISATION (expected)



ORGANISATIONAL SEPARATION OF BANKING SUPERVISION AND MONETARY POLICY IN THE ECB

With a view to avoiding any conflicts of interest within the ECB in terms of its monetary policy-related tasks and its new supervisory activity, provision has been made for a strict separation of these two functions.

The ECB is required to exercise the tasks conferred on it by the SSM Regulation independently of its tasks in relation to monetary policy and its other tasks. The tasks as defined in the SSM Regulation may not have a negative impact on the ECB's work in relation to monetary policy and may also not be determined by its monetary policy activities. Similarly, these ECB tasks may not have a detrimental effect on the tasks to be performed in conjunction with the European Systemic Risk Board (ESRB) and other tasks. The ECB must report on its compliance with this separation to the European Parliament and the Council. The staff responsible for carrying out the tasks defined in the SSM Regulation must be separated in the organisational structure from the staff responsible for performing other ECB tasks, with independent reporting. The ECB will also ensure that its Governing Council carries out its monetary policy and its supervisory

functions in a completely separate manner. This separation also extends to a strict separation of meetings and agendas.

With a view to observing this separation, the Supervisory Board, a body dedicated to banking supervision, has been established at the ECB composed of the heads of the national competent authorities. The Supervisory Board held its constituent meeting on 30 January 2014. The FMA is represented on this Board at the ECB through its Executive Director Helmut Ettl, in the capacity of a voting member. Oesterreichische Nationalbank (OeNB) is also represented, as a non-voting member.

Alongside the creation of the supervisory body, the establishment of a Mediation Panel is designed to guarantee the separation of monetary policy and supervisory tasks. This Mediation Panel will resolve any differences of opinion between national supervisory authorities with regard to objections of the ECB Governing Council to a proposed draft decision from the Supervisory Board. It will be composed in each case of one member per participating state, selected by each Member State from the ranks of the members of the ECB Governing Council and Supervisory Board. The Mediation Panel will make decisions on a simple majority basis, with every member having one vote.

As previously, the ECB Executive Board and Governing Council will remain the ECB's primary decision-making bodies. The Governing Council consists of the six members of the Executive Board and the governors of the national central banks of the euro area countries. The Executive Board is responsible for implementing monetary policy at the ECB, preparing meetings of the ECB's Governing Council and managing the ECB's day-to-day business. It consists of a President, Vice-President and four other members.

PREPARATION OF DECISIONS BY THE ECB'S NEW SUPERVISORY BOARD RESPONSIBLE FOR BANKING SUPERVISION

According to the system defined in the SSM Regulation, the Supervisory Board is the ECB body charged with handling all issues relating to banking supervision. It is responsible for submitting fully developed draft decisions to the Governing Council and for executing its decisions. The Supervisory Board is composed of a Chair, Vice-Chair and four ECB representatives along with representatives of the national competent authorities of each euro area country.

Fully developed draft decisions are to be prepared by the Supervisory Board before being submitted to the Governing Council of the ECB for a final decision. The latter may object to a decision, which will result in the proposal being returned to the Supervisory Board. A period of ten working days is granted to the ECB, which may, in sufficiently justified cases, request that this period be extended once by a further ten days. If the ECB's Governing Council issues no objection to the proposed decision, it will enter into force. A Steering Committee will be set up to support the Supervisory Board, composed of a limited number of Supervisory Board members. Additionally, a secretariat will be set up to support the activities of and prepare for Supervisory Board meetings.

LEGAL REMEDY AND PARLIAMENTARY CONTROL

The credit institutions concerned may appeal against decisions made by the ECB via the Bank's Administrative Board of Review. This five-strong committee car-

ries out, upon request, internal administrative reviews of the supervisory decisions taken by the ECB. The internal administrative review also extends to ensuring that ECB decisions comply with the procedural and substantive provisions of the SSM Regulation.

Any natural or legal person who is directly and individually affected by an ECB decision may submit a written application to the Administrative Board of Review requesting that that decision be examined. Applications for a review have no suspensory effect. The Administrative Board of Review will issue a written statement no later than two months after receipt of the application and refer the case to the Supervisory Board for the preparation of a new draft decision. The Supervisory Board will then submit a new draft decision that takes account of the statement to the ECB Governing Council without delay. The new draft will be deemed to have been accepted in the absence of any contradiction from the ECB Governing Council within a maximum period of ten working days.

Apart from this process, the right of recourse otherwise applicable in accordance with the EU treaties obviously also applies (proceedings before the European Court of Justice).

With regard to the binding decisions to be taken by the national competent authorities on less significant credit institutions, national procedural law and the successive stages of appeal (Federal Administrative Court and appeal to the Administrative Court or to the Constitutional Court as appropriate) continue to apply accordingly.

With regard to implementation of the SSM Regulation, the ECB is accountable to the European Parliament and the Council. It must, under the terms of the SSM Regulation, submit an annual report on the performance of its tasks to the European Parliament, Council and Commission and to the Eurogroup.

The Chair of the Supervisory Board then publicly presents this report to the European Parliament and the Eurogroup in the presence of representatives of the participating Member States whose currency is not the euro. The report will also be forwarded directly to the national parliaments of the participating Member States. National parliaments may submit justified statements on this report to the ECB.

COMPREHENSIVE ASSESSMENT OF SIGNIFICANT BANKS

At the end of 2013 far-reaching preparations based on the SSM Regulation were already being made in the euro countries, with the FMA and OeNB intensively involved in this process. As a result of these preparations, six Austrian banking groups are expected to come under the direct supervision of the ECB. The final decision on which banking groups are to be classed as significant in the context of the SSM will be taken in the first half of 2014. Around 650 banks will remain under the direct supervision of the FMA.

In what marks a first major step towards common supervision following the entry into force of the SSM Regulation, the ECB is to carry out a comprehensive assessment (CA) of 130 banks during the transitional phase. The plan is for this CA process to have been completed before the beginning of operational supervision in November 2014. In a first stage, and on the basis of an in-depth risk analysis, the particularly risk-sensitive portfolios of each bank will be defined. Then, the corresponding assets will be subjected to a thorough asset quality review. In particular, checks will be made to determine whether any value adjustments that have been made are adequate and whether appropriate provisions have been set aside. Finally, the banks will be subjected to detailed stress tests in order to simulate the impact of external shocks.

The aim of the comprehensive assessment is to ensure that the banks concerned have an appropriate capital cushion in line with their exposure to risk before being placed under the direct supervision of the ECB. The primary purpose is to prepare for the role of direct supervisor, and above all to create transparency and greater confidence in the banking sector.

The following banking groups are subject to comprehensive assessment in Austria: BAWAG P.S.K. AG, Erste Group Bank AG, Raiffeisenlandesbank Oberösterreich AG, Raiffeisenlandesbank Niederösterreich-Wien AG, Raiffeisen Zentralbank Österreich AG and Österreichische Volksbanken AG. Unicredit Bank Austria AG, as a subsidiary of the Italian UniCredit Group, is indirectly covered by the CA.

The comprehensive assessment is thus providing a strong foundation for the new system of European

banking supervision within the framework of the SSM and headed by the ECB.

INTERACTION BETWEEN THE ESFS AND ECB – SINGLE RULEBOOK AND SINGLE SUPERVISORY HANDBOOK

Pursuant to the SSM Regulation, the ECB is obliged to engage in close cooperation with the other authorities in the European System of Financial Supervision (ESFS), namely the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA), the European Securities and Markets Authority (ESMA) and the ESRB. The ECB is represented on the Board of Supervisors of the EBA as a responsible authority without voting rights.

Additionally, the ECB, in its capacity as a responsible authority, must, just like the national competent authorities, apply any relevant areas of EU law covering tasks that are conferred on it by the SSM Regulation. As well as the European regulations and directives drawn up by the European Commission, this includes, in particular, the Single Rulebook in the area of banking supervision. The EBA's primary mandate is to contribute in the form of guidelines and recommendations but above all in the form of binding technical standards (adopted by the Commission as EU regulations) to a uniform and harmonised body of banking supervision law in the EU.

The EBA has also been commissioned with the task, within the SSM, of working towards greater convergence in supervisory practice and cooperation between the supervisory authorities. It will therefore prepare a Single Supervisory Handbook stipulating uniform supervision methodologies for ongoing supervision. This supervisory handbook will also be for use by the ECB.

REGIONAL SCOPE AND INCORPORATION OF NON-EURO COUNTRIES

Initially, the regional scope of the SSM will be restricted to the Member States in the euro area. The aim, however, is for the SSM to encompass as many EU Member States as possible for the purposes of guaranteeing uniform EU-wide banking supervision.

Given the significant activities of Austrian banks in Central, Eastern and South-Eastern Europe (CESEE), the FMA is generally positively disposed towards broad participation by non-euro countries. Participation in the SSM by the national competent authorities of EU Member States that do not use the euro may take place in the form of a “close cooperation” with the SSM. States aiming for such a form of cooperation must ensure that their banking supervisors comply with the ECB’s regulations, guidelines and instructions and also submit all of their relevant information to the ECB for supervisory purposes. Efforts must also be made to ensure that such states are legally obliged to implement all ECB measures with regard to banks in the respective Member State.

If a close cooperation arrangement is entered into, the Member State will become a full member of the Supervisory Board. Members of a close cooperation will not, however, enjoy access to financing through the European Stability Mechanism (ESM). Should SSM measures not be complied with or in the event of other breaches, the close cooperation arrangement may be terminated by the ECB. Provision is also made for the non-euro Member State to voluntarily dissolve a close cooperation arrangement.

The single system of European supervision and resulting stepping-up of cross-border cooperation and close cooperation arrangements with the ECB are presenting the national supervisors with major challenges. These must be tackled head on in the interests of efficient and effective banking control.

AIFMG – SUPERVISION OF ALTERNATIVE INVESTMENT FUND MANAGERS

INTENT OF THE AIFM DIRECTIVE

Alternative investment fund managers (AIFMs) are responsible for the management of large sums of invested assets EU-wide, account for significant amounts of trading in financial markets and can exercise an important influence on markets and companies in which they invest. Recent turbulence in the financial markets has demonstrated that the activities of AIFMs can contribute to spreading or even amplifying risks via the financial system. It has also been recognised that many AIFM strategies are vulnerable to risks in relation to investors, other market participants and markets. Such needs to be avoided and addressed with the aid of an EU-wide solution.

In order to provide common arrangements for supervision, it is necessary to establish a framework capable of addressing those risks, taking into account the diverse range of investment strategies and techniques employed by AIFMs. The comprehensive AIFM regime, and in particular Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers (AIFM Directive), is aimed at monitoring those risks and enforcing coordinated management of those risks throughout the Union. The Directive focuses on uniform requirements for the authorisation and supervision of AIFMs, in order to protect investors and also to contribute to the stability of the financial markets.

The scope of the AIFM Directive is limited to entities managing alternative investment funds (AIFs) as a regular business, which raise capital from a number of investors with a view to investing that capital for the benefit of those investors in accordance with a defined investment strategy. This applies regardless of whether the AIF is of an open-ended or a closed-ended type, whatever the legal form of the AIF, and whether or not the AIF is listed.

Along with the AIFM Directive, the most important sources of legislation in this area include the Commis-

sion Delegated Regulation (EU) No 231/2013 (Level 2 Regulation), the Commission Implementing Regulation (EU) No 447/2013, the Guidelines on key concepts of the AIFMD, the Guidelines on sound remuneration policies under the AIFMD, the Alternative Investment Fund Managers Act (AIFMG; *Alternatives Investmentfonds Manager-Gesetz*) and the 2013 FMA Regulation on the AIF warning notice (*AIF-Warnhinweisverordnung*).

TRANSPOSITION OF THE AIFMD INTO AUSTRIAN LAW THROUGH THE AIFMG

The AIFMG entered into force on 22 July 2013. Through this legislation, Austria transposed the AIFMD into national law and in so doing has established a uniform supervisory regime for alternative investment fund managers (AIFMs).

There is one major difference clearly distinguishing the AIFMD from the regime for undertakings for collective investment in transferable securities (UCITS): unlike the UCITS Directive, the AIFMD is not a products directive, rather it directly addresses the AIFMs. Consequently, only the managers of such funds are the subject of regulation. The AIFMD contains only few provisions applying to AIFs. It has been stipulated that the regulation and supervision of AIFs will continue to be carried out at national level.

The AIFMG brings a number of currently unsupervised vehicles under supervision by the FMA in order to minimise the risk posed by unsupervised asset managers.

The new law specifically contains detailed requirements applying to the organisation and structure of managers and establishes the prerequisites enabling comprehensive risk and liquidity management of AIFs. It also specifies detailed requirements applying to AIFMs in reporting to the FMA.

AIFs are generally open to professional investors. In line with consumer protection concerns, the AIFMG

narrowly limits marketing to retail investors and specifies additional requirements applying in such cases.

WHO IS ADDRESSED?

All alternative investment fund managers in general fall under the scope of application of the AIFMG. An AIFM is any legal person whose regular business activity consists of managing one or more AIFs.

As the term is defined in the AIFMG, an AIF is any undertaking for collective investment including its investment compartments that gathers capital from a number of investors in order to invest it according to a predetermined investment strategy for the benefit of those investors. Key features are that the gathered capital does not directly serve any operational activity and that the fund does not fall under the UCITS Directive.

The AIFM can be either an external manager (external AIFM) or the AIF itself if the legal form of the AIF permits internal management.

Austrian AIFMs must either register or apply for authorisation with the FMA.

REGISTRATION PURSUANT TO THE AIFMG

WHEN DOES A REGISTRATION OBLIGATION APPLY?

All alternative investment fund managers in general fall under the scope of application of the AIFMD. The Directive does provide for a limited scope of application, however, in the case of what are referred to as “smaller AIFMs”, on grounds of proportionality. Subjecting such managers to the full AIFMD regime would entail for them a relatively great amount of bureaucracy.

This consideration played a role in transposition into national law, so that the AIFMG also applies only to a very limited extent to registered managers. This means that “small managers” within the meaning of Article 1 para. 5 AIFMG are only required to register with the FMA and need not submit to the relatively extensive authorisation procedures specified in the AIFMG. Moreover, such managers are required to comply with only certain information obligations vis-à-vis the FMA.

Since “small managers” are not exposed to the full obligations set forth in the AIFMD and the AIFMG, they do not benefit from the rights extended by the Directive either. Registered AIFMs are consequently not generally permitted to market any AIFs to retail investors as defined in Article 48 AIFMG, or furthermore to engage in cross-border marketing or cross-border management under the AIFM regime.

OBLIGATIONS OF REGISTERED AIFMS

Pursuant to Article 1 para. 5 AIFMG, AIFMs are required to register if they manage the portfolios of AIFs whose total assets under management (including assets acquired by the use of leverage) do not exceed a threshold value of €100 million. An obligation to register also applies if the AIFM’s total assets under management do not exceed a threshold value of €500 million, provided that the portfolios of these AIFs consist of AIFs that do not use leverage and that are not permitted to exercise any redemption rights for a period of five years after the first investment has been made in each of these AIFs.

Registered AIFMs must ensure that the total value of the assets managed under their responsibility is monitored on an ongoing basis. To this end, they are required to establish appropriate procedures that provide a current overview of the assets under management (e.g. subscriptions and redemptions, any capital draw-downs, capital distributions and the value of the assets invested in) at all times.

When calculating the total value, the following principles apply:

- AIFs managed by the AIFM and for which the AIFM has delegated functions are to be included in the calculation. Portfolios of AIFs that the AIFM manages only as part of a delegation arrangement are exempted when calculating the total value.
- All derivative positions, including all derivatives embedded in securities, are to be converted into equivalent positions in the underlying assets using the conversion methodologies specified in the Level 2 Regulation. The absolute value of these equivalent positions is then to be used for calculation of the total value of assets under management.

- Where an AIF invests in another AIF managed by the same externally appointed AIFM, that investment may be excluded from the calculation. The same applies where one investment compartment within an internally or externally managed AIF invests in another compartment of that AIF.

Monitoring the total assets under management is especially important because AIFMs are themselves responsible for assessing situations where relevant thresholds as described above are breached. The purpose of the assessment is to determine whether the relevant thresholds are breached temporarily or not.

A situation is not to be considered temporary if it is expected to continue for more than three months. Where the thresholds are breached, AIFMs are required to take the following steps, contingent on the outcome of the assessment:

- If the breach is not temporary: the FMA is to be notified of this situation immediately, providing a well-grounded assessment of the reasons why the breach should not be considered temporary. The registered AIFM must additionally apply to the FMA for authorisation. The application must be filed within 30 calendar days; the AIFM must consequently be capable of meeting the conditions specified in the AIFMG by no later than the date when authorisation is filed for.
- If the breach is temporary: this situation must also be reported to the FMA. The report is to include evidence for the AIFM's assessment that the situation is only of a temporary nature (i.e. description of the situation and an explanation of the reasons). Three months after the threshold was breached, the AIFM is required to re-calculate the total value of the assets under management and provide evidence that this total is below the thresholds (if that is indeed the case) and the AIFM is consequently not required to apply for authorisation.

Apart from the requirement to register with the FMA, such AIFMs are subject to other obligations, including specifically:

- to prove its identity and that of the AIFs it manages to the FMA at the time of registration;
- to submit to the FMA information on the investment

strategies of the AIFs it manages at the time of registration;

- to inform the FMA annually and on request of the main instruments it is trading in, and to inform the FMA annually of the greatest risks and concentrations of the AIFs it is managing in order to allow the FMA to conduct effective supervision of the systemic risks;
- to notify the FMA promptly of each issue of an AIF and of each commencement of liquidation of an AIF;
- to make a declaration not to market units or shares of the AIF to retail investors as defined in Article 48 AIFMG; and
- to notify the FMA promptly if it can no longer satisfy the preconditions for registration as specified in the AIFMG.

OPT-IN REGULATION

Pursuant to Article 1 para. 5 AIFMG, regardless of whether they exceed the threshold values, AIFMs can decide to submit themselves completely to the AIFMG and apply for authorisation pursuant to the AIFMG (referred to as an opt-in procedure). Only companies having authorisation as an AIFM are entitled to market and manage AIFs that are approved pursuant to the AIFMG throughout the entire territory of the Union, or to market units or shares of an AIF to retail investors in Austria while complying with certain conditions.

With regard to the documents required to be submitted in order to obtain authorisation, the same information and documents are to be submitted to the FMA as are required to be included as part of a regular application for authorisation pursuant to the AIFMG.

AUTHORISATION PURSUANT TO THE AIFMG

ACTIVITIES OF AN AUTHORISED AIFM

Where the provisions regulating registration are not applicable, the authorisation as an AIFM is required in order to manage and market AIFs, in which case an AIFM having its registered office in Austria is required to apply for authorisation with the FMA. It

should be noted in this case that compliance with the conditions for authorisation as specified in the AIFMG must be given at all times.

Beyond portfolio management and risk management, the AIFMG limits the activities permitted to be carried out by an external AIFM in general to the main ones listed in the following (in addition to those permitted by any authorisation possibly held pursuant to special laws on the management of UCITS):

- administration: examples of such include legal and fund management accounting services, customer enquiries, valuation and pricing including tax returns, regulatory compliance monitoring, unit/share issues and redemptions, etc.;
- marketing;
- activities relating to the assets of AIFs: such include services necessary to meet the fiduciary duties of the AIFM, facilities management, real estate administration, advising companies on capital structure, etc.

The FMA can also grant authorisation to an external AIFM permitting it to carry out these additional activities:

- individual portfolio management;
- ancillary services (investment advice, custody and technical management of units in undertakings for collective investments, receipt and transmission of orders involving financial instruments).

It should be noted here, however, that compliance with certain additional provisions specified in the 2007 Securities Supervision Act (WAG 2007; *Wertpapieraufsichtsgesetz*) is required when carrying out the additional activities mentioned above, the exception being the ancillary service of custody and technical management of units in undertakings for collective investment.

AUTHORISATION PROCEDURES

An Austrian AIFM is required to apply for authorisation as an AIFM by filing an application pursuant to Article 5 AIFMG with the FMA. It should be noted that compliance with the conditions for authorisation must be given at all times.

The following information and documents must be submitted during this official procedure:

- proof of compliance with the provisions of the AIFMG;
- information on capital requirements (initial capital and own funds);
- information on management personnel, including details of their reliability and professional qualifications;
- information on qualifying holdings in the AIFM and any close links;
- the business plan;
- information on the remuneration policy and any delegation of functions;
- information on the AIF's investment strategies;
- information on the depositary;
- the fund conditions, contract terms or statutes of the AIF; and
- other information as specified in Article 21 AIFMG.

When filing an application for authorisation, any information and documents previously presented to the FMA need not be submitted if still current. This may be the case in particular for UCITS management companies that have already been licensed pursuant to Article 1 para. 1 no. 13 of the Banking Act (BWG; *Bankwesengesetz*) in conjunction with Article 6 para. 2 of the 2011 Investment Fund Act (InvFG 2011; *Investmentfondsgesetz*), i.e. investment fund management companies, or for real estate investment fund management companies that have a licence pursuant to Article 1 para. 1 no. 13a BWG.

The FMA is required to hand down a decision on the application within three months of submission and must either grant authorisation or issue an official notice in rejection of the application. The period can be extended by up to three additional months if the FMA considers this necessary based on special circumstances and after suitably notifying the AIFM. Conditions, time limits and requirements may also be attached to the authorisation, especially with respect to the investment strategies of the AIFs which the AIFM is permitted to manage.

The authorisation procedures are completed with the issue of a written notice of authorisation. The FMA must withdraw the authorisation if the AIFM does not make use of it within twelve months, has not performed the activities authorised by it during the pre-

vious six months or waives the authorisation. There is also the possibility of the authorisation expiring pursuant to the provisions of Article 7 BWG.

MAIN REQUIREMENTS

In addition to meeting general and organisational requirements, the AIFM is required to give careful attention to its policy and practices in remuneration, to potential conflicts of interest, and to risk and liquidity management, complying with detailed specifications and provisions in these areas. The AIFM is also obliged to ensure that suitable, coherent procedures have been established for each AIF under its management, in order to allow a proper, independent valuation of the assets held in each individual AIF. The AIFM is additionally subject to various disclosure requirements, only one example of which is the annual report.

In light of the broad scope and complexity of the AIFM regime, only a selection of the most important rights and duties of AIFMs will be explained in the following.

DELEGATION OF FUNCTIONS

Pursuant to Article 18 AIFMG, the AIFM is entitled to delegate one or more of its functions to third parties. In such cases, the AIFM must ensure that the FMA is promptly notified of the delegation, giving reasons, after taking the decision but before it takes effect. In selecting the third party, the AIFM must additionally consider the competence and resources required and must monitor the third party as well as any sub-appointee, and is equally liable for the conduct of an appointee as for its own. The delegating AIFM thus retains responsibility.

It should also be noted that the AIFM may not delegate its functions to an extent that makes it a letterbox company.

The AIFM is required to observe additional requirements when delegating portfolio management or risk management to third parties. It should be specifically mentioned that the AIFM may not delegate both portfolio management and risk management to third parties and must always perform one of these main activities.

DEPOSITARY

The AIFM is required to ensure that a single depositary is appointed for each AIF that it manages. A credit institution or an investment firm with its registered office within the Union may, for example, exercise the duties of the depositary, whereas certain undertakings are not eligible to be appointed as a depositary for an AIF in order to avoid conflicts of interest. Special provisions apply to the appointment of depositaries for non-EU AIFs.

The main duty of the depositary is the safekeeping of the AIF's assets. It must also ensure that the calculation of the value of units or shares of the AIF as well as the marketing, issue, redemption, disbursement and cancellation of units or shares of the AIF are conducted in accordance with applicable law. It is also required to monitor the use of income and to carry out transactions involving the AIF's assets on instruction by the AIFM. Delegation of the depositary's responsibilities is possible only within a very limited scope. The depositary is liable towards the AIF or the investors for any loss of assets in safekeeping, even when the assets are entrusted to a third party.

MARKETING OF AIFs

As specified in Article 29 AIFMG, the authorisation procedures for the AIFM require an application for approval to be submitted for each AIF under management and certain provisions to be observed. This approval allows an AIFM authorised in Austria to market units or shares of the AIF to professional investors in Austria.

The AIFM regime also allows approved AIFs to be marketed throughout the entire territory of the Union once notification by the home authority has been made. The notification must include the Member States where the AIF will be marketed, and legal marketing is limited to those States.

An AIFM planning to market units or shares of an AIF to retail investors, where the AIF has been previously approved under Article 29 AIFMG, must additionally notify the FMA of this intention and meet the requirements specified in Article 48 AIFMG.

TRANSITIONAL PERIOD

Since publication of the AIFM Directive, those companies that fall under the AIFM regime have had the opportunity to prepare for the pending amendment to national law. Yet legislators were allowed some leeway with regard to implementation, while the authorisation procedures require a certain amount of time. The companies were therefore unable to fully meet the requirements of the AIFMG on entry into force. For this reason, the law specifies a transitional period until 22 July 2014, which is the same as the transitional period defined in the Directive. Companies are, however, required already during the transitional period to put forth their best efforts to comply with the provisions of the AIFMG before expiry of the periods or before individual authorisation is granted, in which case they must fully comply with the AIFMG without exception.

In this context it should be noted that not all companies can make use of the transitional provisions under Article 67 AIFMG; rather, this depends specifically on whether they performed the business activities now specified in the AIFMG prior to 22 July 2013. They may only carry out those types of business (e.g. the issue of special funds) until 21 July 2014 at the latest and must apply for authorisation or register with the FMA before that deadline. Special transitional arrangements exist for AIFs that are the object of an ongoing public offering by way of a prospectus and for closed-ended AIFs for which no further investments are made after 22 July 2013, or whose subscription period for investors expired before the AIFM Directive entered into force and which were issued for a period expiring no later than three years after the AIFMG entered into force.

SUPERVISION BY THE FMA

The FMA as competent authority of the home Member State is responsible for supervision of an Austrian AIFM. This holds regardless of whether the AIFM manages and/or markets AIFs in another Member State. The FMA is specifically responsible for monitoring the AIFMs subject to its supervision and for taking all measures necessary to ensure that the markets func-

tion properly in cases where the market activities of one or more AIFs might endanger proper functioning of the market. To this end, the FMA is empowered pursuant to Article 56 AIFMG, among other things, to inspect documents, request information, conduct announced and unannounced investigations on site, prohibit illegal practices or temporarily prohibit practice of the profession. Penalties may also be imposed, and fines of up to €150,000 have been defined for administrative offences.

The FMA is entitled to require information from any AIFM that has not been authorised or registered in Austria but manages or markets AIFs in Austria, and the FMA has the option of demanding that such an AIFM restore legal compliance, whereas the supervisory authority of the home Member State will have to be involved in the case by that time. The FMA is furthermore obliged in such cases as well to immediately take all measures necessary to ensure that the AIFM concerned submits the requested information or desists from the breach of law.

Even though the AIFMG is a very recent law with a one-year transitional period, the registration of five AIFMs with nine AIFs could be seen already in 2013. In addition, by the end of the year under review, three applications for authorisation had been received, including a total of 36 AIFs for approval.

EUROPEAN HARMONISATION PROCESS

The harmonised implementation of the AIFM Directive in each of the Member States is being spearheaded at European level primarily by the European Securities and Markets Authority (ESMA). The FMA is playing an active role in this process, by sitting both on the Board of Supervisors and on the Management Board of ESMA, as well as through active participation in the Investment Management Standing Committee (IMSC) and in the working groups established by the IMSC.

The topics covered in these bodies take in the entire scope of the AIFM Directive. Apart from preparing regulations, guidelines, FAQs and technical standards, it was necessary to establish the technical basis for the reports that the AIFM Directive requires AIFMs to submit regularly. This entailed issuing uniform re-

porting requirements in all Member States and coordinating the content of the underlying computerised databases that are maintained by the European regulators.

Article 20 of the AIFM Directive specifies regulations for the delegation of AIFM functions to third parties. Where the appropriate conditions are met, these provisions can be applied to allow individual AIFM functions to be delegated to undertakings registered in other Member States, in the European Economic Area or in third countries.

One of the prerequisites defined in the AIFM Directive for delegating risk management or portfolio management is that the undertaking on which these functions are conferred is subject to adequate supervision in its

home country. This prerequisite is met within the EU, since the AIFM Directive applies equally to all Member States.

If functions are to be delegated to undertakings registered in a third country, it is necessary, however, for the AIFM's supervisory authority and the third-country authority to conclude a Memorandum of Understanding (MoU).

The national supervisory authorities of the Member States have mandated ESMA to negotiate such memoranda with interested third countries. ESMA reached corresponding accords with 36 third countries during the year under review. The FMA has signed 15 such MoU to date. A list of concluded MoU can be viewed on the websites of the FMA and ESMA.

INTERNATIONAL COOPERATION

GLOBAL COOPERATION

INTERNATIONAL ASSOCIATION OF
INSURANCE SUPERVISORS (IAIS)

The International Association of Insurance Supervisors (IAIS) was established in 1994 and has more than 200 members from 140 jurisdictions. The FMA was one of the founding members and is represented by its Director of the Insurance and Pension Companies Supervision Department, Peter Braumüller, who is the current Chair of the IAIS Executive Committee.

As in previous years, the IAIS's work in 2013 focused to a major extent on global financial market stability. On the basis of the IAIS methodology for identifying global systemically important financial institutions, the Financial Stability Board (FSB) published a list of nine systemically important insurance undertakings in June 2013. Because these, and similar institutions, will be subject to enhanced supervision, the IAIS is developing supervisory standards to be applied to insurance groups with international operations and systemically important insurers. To this end, and in addition to the Common Framework for the Supervision of Internationally Active Insurance Groups (ComFrame), tools such as the Systemic Risk Management Plan (SRMP), basic capital requirements, higher loss absorbency requirements and, finally, a risk-based group-wide global insurance capital standard (ICS) are to be developed over several stages between now and the end of 2016.

The IAIS also adopted the Coordinated Implementation Framework (CIF) in 2013, designed to help with the strategic planning for implementation of the Insurance Core Principles (ICP). Also over the course of the year, self-assessment and peer reviews were carried out with regard to ICP 1 (Objectives, Powers and Responsibilities of the Supervisor), ICP 2 (Supervisor) and ICP 23 (Group-Wide Supervision), with ICP 22

(Anti-Money Laundering and Combating the Financing of Terrorism) being revised.

As of December 2013, supervisory authorities from 39 jurisdictions, among them the FMA, had completed the accession process for the IAIS Multilateral Memorandum of Understanding (IAIS MMoU), designed to promote the exchange of information and cooperation between IAIS members.

The General Meeting of the IAIS, as well as its annual conference, was held in Chinese Taipei in 2013. The main theme was "Building Sustainable Insurance Supervision in a Changing World", with discussions covering such subjects as "Ageing of Populations", "Supervisory Education", "Impacts of Global Climate Change and Catastrophes" and the partnership with the Access to Insurance Initiative (A2ii). In addition, there were information events devoted to ComFrame and IAIS reforms.

Further information is available at www.iaisweb.org.

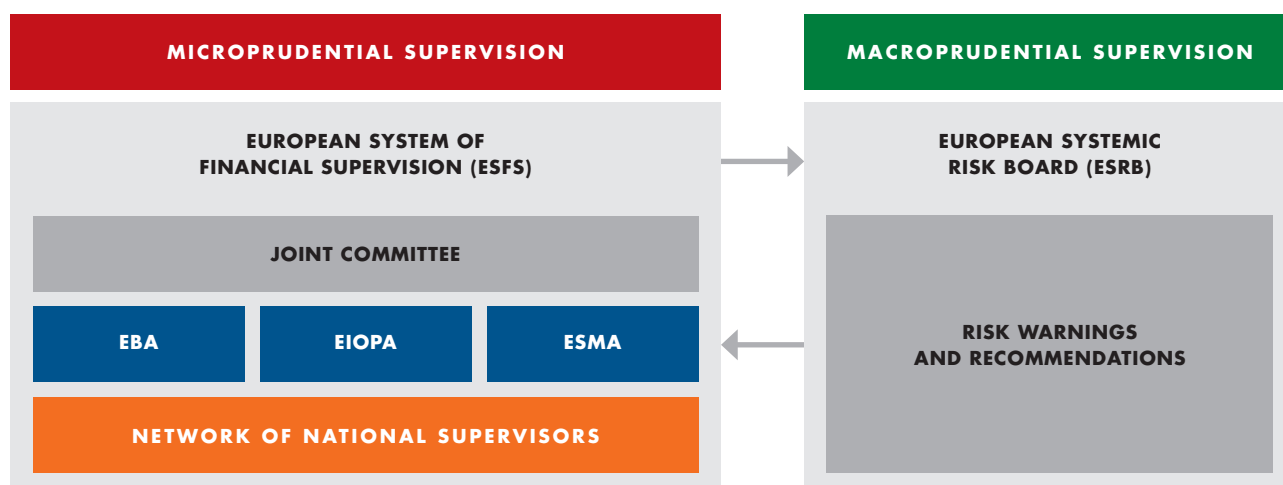
INTERNATIONAL ORGANISATION OF
PENSION SUPERVISORS (IOPS)

The International Organisation of Pension Supervisors (IOPS) was set up in 2004. It now encompasses some 70 members and observers from more than 60 countries with a diverse range of pension and supervision systems (particularly in terms of pension funds and *Pensionskassen*). The FMA is a founding member of the organisation.

At the IOPS 2013 General Meeting in Seoul, the following documents were accepted for publication: "IOPS Good Practices for Governance of Pension Supervisory Authorities" and "Stress Testing and Scenario Analysis of Pension Plans".

Work on the analysis of costs and fee structures and levels in various different member states continued in 2013, alongside analysis of stress testing in the pension sector. Other projects include a report on "Supervising Auto-enrolment" and on the sale of annuity

Figure 2: EUROPEAN SUPERVISORY ARCHITECTURE



products. Further information on IOPS is available at www.iopsweb.org.

INTERNATIONAL ORGANIZATION OF SECURITIES COMMISSIONS (IOSCO)

The International Organization of Securities Commissions (IOSCO) is the central organisation and point of contact for the regulation of international securities markets, and has an increasingly important role to play. In light of this, and in order to be able to react more flexibly to the challenges of global supervision, its structure has been reorganised. The Technical and Executive Committees have been replaced by a new executive body in the form of the IOSCO Board, chaired by Greg Medcraft, an Australian. There are 32 members of the IOSCO Board (rising to 34 as of 2014).

The key issues as defined by the G20 are OTC derivatives, financial benchmarks, credit rating agencies and shadow banking. The promotion of long-term financings via the capital market and the early identification of potential risks are further priorities of IOSCO.

A central aim of IOSCO is the promotion of worldwide cooperation and the exchange of information with a view to combating cross-border fraud, market abuse and other forms of misconduct in relation to securities. One of the available tools in this regard is the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and

the Exchange of Information (IOSCO MMoU). By the end of 2013, 99 supervisory authorities, among them the FMA, had signed the MMoU. Twenty-one were listed in Annex B, due to their not fulfilling all of the requirements. A list of members that have yet to submit an application has been available on the IOSCO website since February 2013. It currently comprises 26 supervisory authorities.

Further information on IOSCO is available at www.iosco.org.

EUROPEAN COOPERATION

The European System of Financial Supervision (ESFS) consists of three components (see Figure 2):

- macroprudential supervision through the European Systemic Risk Board (ESRB);
- microprudential supervision through the European Supervisory Authorities (ESAs);
- the national competent authorities (NCAs), which will continue to be responsible for the ongoing supervision of individual institutions/groups of institutions.

The ESRB, an independent body, is based at the European Central Bank (ECB) in Frankfurt. Its role lies in assessing and monitoring systemic risks in the financial system in order to strengthen the financial markets' ability to withstand shocks. The ESRB provides the Council of the European Union with regular assessments of the current situation, as well as providing warnings or recommendations as and when re-

quired to the EU as a whole or to one or more Member States, ESAs or NCAs.

Microprudential supervision at European level is the role of:

- the European Banking Authority (EBA) in London;
- the European Insurance and Occupational Pensions Authority (EIOPA) in Frankfurt;
- the European Securities and Markets Authority (ESMA) in Paris.

A Joint Committee coordinates cooperation between the ESAs and deals with cross-sectoral issues in four Sub-Committees: financial conglomerates, anti-money laundering, microprudential analyses of cross-sectoral developments, and consumer protection and financial innovation.

This system ensures that microprudential and macroprudential supervision mesh together perfectly.

In terms of their organisational structure, the three ESAs are all the same. The Board of Supervisors (BoS) is the decision-making body, on which the FMA is represented as a voting member. With regard to the EBA, the OeNB is also represented as a non-voting member. The BoS sets the guidelines for the authority's work, draws up its work programme and makes the regulatory decisions. The BoS is headed in each case by a full-time chair who is elected by the BoS members and represents the ESA externally. The current chairs are Andrea Enria (EBA), Gabriel Bernardino (EIOPA) and Steven Maijoor (ESMA).

The BoS elects a Management Board, composed of the Chairperson and six further voting members of the Board of Supervisors. Meanwhile, an Executive Director is responsible for the administrative management of the authority, preparing the work of the Management Board. The current Executive Directors are Adam Farkas (EBA), Carlos Montalvo (EIOPA) and Verena Ross (ESMA). A Board of Appeal has been set up to decide on appeals against decisions of the ESAs. Stakeholder groups have also been created to facilitate the process of consulting stakeholder representatives.

The ESAs are authorities with legal personality and both administrative and financial autonomy. They are accountable to the European Parliament and the Council. The ESAs have been entrusted with the following responsibilities and powers in particular:

- preparing regulatory and implementing technical standards;
- issuing guidelines and recommendations;
- verifying and enforcing supervisory convergence;
- consumer protection.

In this way, they have a key role to play in the creation of a level playing field on the European financial markets.

For the purposes of securing financial stability, half-yearly financial stability reports are prepared by the ESAs and the Joint Committee for the attention of the Financial Stability Table (FST) of the EU's Economic and Financial Committee.

With effect from 4 November 2014, banking supervision in the euro area is to be overhauled. As of this date, responsibility for the supervision of individual institutions will pass to the European Central Bank (ECB), which will organise this aspect of its work within the framework of the Single Supervisory Mechanism (SSM) entirely independently of its monetary policy functions (for further details see the Special Topic "The European Banking Union and Single Supervisory Mechanism" on page 26). The EBA will then primarily act as the EU's regulator, handling the European individual institution supervision agendas outside of the SSM.

EUROPEAN BANKING AUTHORITY (EBA)

The reporting year was dominated by intensive work in the regulatory sphere. The EBA defined in greater detail many important Capital Requirement Regulation (CRR) provisions in the form of draft Technical Standards (TS), which were submitted to the European Commission for a decision. These included in particular the Regulatory Technical Standards (RTS) applicable to banks' own funds, value adjustments, large exposures, market risk, remuneration rules, changes to internal models and implementing standards for the disclosure of own funds and regarding banks' further reporting obligations. The EBA also passed two sets of guidelines covering foreign currency loans for borrowers with no security and a narrower definition of the liquidity coverage report.

As the guardian of supervisory convergence, the EBA also adopted a range of recommendations. The capital maintenance recommendation was adopted in July, ►

FINANCIAL SECTOR ASSESSMENT PROGRAM: 2013 ASSESSMENT OF AUSTRIA

The Financial Sector Assessment Program (FSAP) is a joint initiative of the International Monetary Fund (IMF) and World Bank, established in 1999. The main aim of the programme is focused analysis of the financial systems of individual countries for the purpose of identifying measures to be taken for further reinforcing financial market stability.

Austria participated in the country assessment programme as part of the FSAP on a voluntary basis back in 2003 and 2007. In light of the global financial crisis, the IMF revised its FSAP criteria in 2010 and also identified 25 countries worldwide with a global systemically important financial sector. Such countries are now required to participate in the FSAP every five years. Austria ranks as one of the countries with a global systemically important financial sector.

STRICT ASSESSMENT

The following priorities were identified for the 2013 FSAP:

- analysis of the strengths and weaknesses of the financial sector, using stress tests;
- assessment of financial market stability with a particular focus on changes to regulatory and supervisory practices using an analysis of adherence to international standards and customs;
- Austria's basic parameters for crisis management;
- state of measures to implement the recommendations of the 2007 FSAP.

The FSAP country assessment of Austria is handled at national level by the Federal Ministry of Finance, the Oesterreichische Nationalbank (OeNB) and the Financial Market Authority (FMA), with the FMA retaining responsibility, as in earlier years, for national coordination and project secretariat services.

Comprehensive written documentation was prepared in anticipation of the on-site visits from a team of IMF experts. In terms of banking supervision, a self-assessment was carried out based on the Basel Committee's

Core Principles for Effective Banking Supervision. This self-assessment was supplemented with several questionnaires containing specific questions on the Austrian banking market and its supervision. In terms of other areas of financial market supervision, the IMF also requested detailed information on the basis of long lists of questions. Additionally, for the purposes of assessing the stability of the Austrian financial sector and its ability to withstand crisis, numerous stress tests were conducted together with the OeNB and their impact on the financial sector evaluated.

During two on-site visits by groups of IMF auditors covering seven weeks in total, various expert discussions were held during in excess of 170 meetings. These made a key contribution to the IMF's assessment of the Austrian financial sector, its basic legal parameters and its long-term strategic positioning. Alongside the public institutions, the Austrian credit institutions and insurance undertakings, interest groups, chartered public accountants and numerous other representatives of the private sector all prepared material for the IMF and made themselves available for interviews. Their input was very valuable in providing the IMF with a complete and multi-layered picture of the Austrian financial market, contributing to the smooth functioning of the process.

A GOOD REPORT

The FSAP findings were detailed in the Financial System Stability Assessment (FSSA) and presented for the first time at the press conference held in July 2013 in accordance with the Article IV mission of the IMF.

In particular, the IMF's report stated that:

- Austria's banking system is still facing strains, but
- the results of stress testing demonstrate the stability and resistance to shocks of Austrian banks,
- the FMA and the OeNB collaborate effectively, and
- the FMA performs well in supervising insurers and

Pensionskassen, and should continue with its preparations for Solvency II.

Other recommendations related to such issues as macroprudential supervision, deposit guarantee schemes and bank insolvency law. In this regard the IMF expressed its preference for the FMA being treated as a national resolution authority in the context of

the new European recovery and resolution system for banks.

The FSSA is published on the FMA website together with the report on the Article IV mission. Further IMF reports relating to Austria and prepared in the context of the 2013 FSAP are available on the IMF's website (www.imf.org).

aimed at strengthening the capital buffers held by major European banks. The minimum nominal amount of Common Equity Tier 1 capital prescribed in the EBA recapitalisation recommendation of December 2011 was thus enshrined as a floor with effect from July 2012 and until such time as the Capital Requirements Directive IV (CRD IV) is implemented in full. As far as Austria is concerned, this affects Erste Group and RZB.

With regard to the Single Supervisory Mechanism (SSM), the EBA issued a recommendation on the implementation of an Asset Quality Review (AQR) in 2014 to the national competent authorities. The aim of this review is to subject the corresponding assets of relevant major European banks to a thorough analysis and assessment with regard to the need for any impairment. The main thrust of this recommendation is to create a minimum level of harmonisation within the entire EU with regard to the review process. Another EBA recommendation to the national competent authorities related to the specific regulatory observance of banking activities in conjunction with the panels that set the EURIBOR reference interest rate.

In 2013, rather than conducting an EU-wide stress test, which was postponed until 2014 as a result of the SSM, the major banks in the EU were required to disclose specific risk parameters, a process coordinated by the EBA.

As far as consumer protection was concerned, the EBA issued two warnings relating to the risk potential of virtual currencies and of contracts for difference (CFDs). Alongside its role in securing the coherent functioning of the supervisory colleges, the EBA also began its initial work to develop a Single Supervisory Handbook. This will bring together the best supervisory practices of the national competent authorities, thereby making a further essential contribution to the harmonisation of supervision within the European Union.

Further information is available at www.eba.europa.eu.

EUROPEAN SECURITIES AND MARKETS AUTHORITY (ESMA)

The main focuses at the European Securities and Markets Authority (ESMA) during 2013 were the

direct supervision agendas with regard to credit rating agencies and trade repositories, and regulatory tasks relating to the European Market Infrastructure Regulation (EMIR) and the Alternative Investment Fund Managers Directive (AIFMD). Supervisory convergence in Europe was a further central topic.

One means of driving this convergence forward is to carry out peer reviews. These focus on implementation of EU legislation and the application of ESMA standards and guidelines in national supervisory practices.

Reports on two topics were published in 2013:

- "Supervisory Practices under MAD" – Mapping report, and Peer review report and Good Practices
- "Peer Review – Money Market Fund Guidelines"

The first on-site inspections of national authorities were also carried out in 2013 in order to obtain as detailed a picture as possible of the level of implementation.

With regard to the regulatory priorities, ESMA adopted regulatory standards on EMIR in 2013 and also drew up cooperation agreements with third countries on AIFMD. Also during the reporting year, eight working groups were set up to deal with the implementing measures expected in 2014 in relation to the Markets in Financial Instruments Directive (MiFID) and the Markets in Financial Instruments Regulation (MiFIR). Alongside the issues of market abuse and securities settlement/central securities depositories, this will be one of the central areas of ESMA's work over the next year.

Following his appointment to the FMA Executive Board in February 2013, Klaus Kumpfmüller now represents the FMA on ESMA's Board of Supervisors. He was also elected on to ESMA's Management Board, which is composed of six members in total, in July 2013. This provides a means of helping to actively shape ESMA's work programme and of being actively involved in other operational areas too, such as the budget and personnel planning. The period of office is two and a half years, with candidates eligible to stand for re-election once.

The Securities and Markets Stakeholder Group (SMSG) was reconvened in December 2013. The mandate of the 30 members begins on 1 January 2014 and expires in June 2016. Gabriele Zgubic

from the Austrian Chamber of Labour was reappointed to represent consumer interests on this group.

EUROPEAN INSURANCE AND OCCUPATIONAL PENSIONS AUTHORITY (EIOPA)

The work of the European Insurance and Occupational Pensions Authority (EIOPA) in 2013 focused on the new supervisory regime for insurance undertakings, Solvency II. In particular, EIOPA adopted four guidelines which, in preparation for the full application of the new regime in 2016, make sections of Solvency II applicable from as early as the start of 2014. The “comply or explain” reports from the responsible authorities were required to be submitted by the 2013 year-end. In addition to further technical contributions to the European Commission, ongoing work was carried out on the draft Implementing Technical Standards (ITS) and on Solvency II guidelines.

For the purposes of improving the efficiency and functioning of the supervisory colleges for insurance groups with cross-border operations, EIOPA devised action plans for colleges for 2013 and 2014/15 and also carried out a peer review into the functioning of the colleges.

With regard to pensions, EIOPA submitted its first draft ITS to the European Commission, concerning the form and formats of certain documents to be presented to the national competent authorities. Additionally, the annual Report on Market Developments in cross-border IORPs (Institutions for Occupational Retirement Provision) was published, as was a report on a peer review of the disclosure obligation to the competent authorities, and the intervention rights and obligations of these authorities.

Intensive work on financial stability issues has continued with ongoing analysis of the financial markets and of sector-specific and cross-sectoral risks, as well as a quarterly risk dashboard.

As far as consumer protection was concerned, EIOPA published several reports, including a revised Consumer Trends Report, a Report on Good Supervisory Practices regarding knowledge and ability requirements for distributors of insurance products, and a Report on Best Practices by Insurance Intermediaries in handling complaints. The EIOPA Guidelines on Com-

plaints-Handling by Insurance Undertakings, published during the previous year, were supplemented with corresponding guidelines for insurance intermediaries. These are to be applied with effect from 2014.

The EIOPA Consumer Strategy Days, staged annually to date, were replaced in June by a joint event staged by the three European Supervisory Authorities (EIOPA, EBA and ESMA) in a bid to stimulate cross-sector discussions in this key area.

The FMA is represented by its Director for Insurance Supervision, Peter Braumüller, on the Board of Supervisors. Since 2011 he has also been represented as one of the six elected members making up the Management Board of EIOPA. EIOPA is supported in its work by two stakeholder groups, one in the area of insurance and one in the area of occupational pensions. Martin Simhandl from Vienna Insurance Group is a member of the former, with Fritz Janda from the Association of Austrian Pension Funds belonging to the second. Further information is available at <https://eiopa.europa.eu>.

The European System of Financial Supervision, established in January 2011, is now to be reviewed after its first three years in operation. For this purpose, the European Parliament has commissioned a study into the three ESAs and the ESRB.

BILATERAL AND MULTILATERAL COOPERATION

MEMORANDA OF UNDERSTANDING

The FMA may enter into bilateral cooperation agreements (Memoranda of Understanding – MoU) with foreign supervisory authorities. These make practical supervisory activities in cross-border cases simpler and swifter. They also serve as a confidence-building measure, towards non-EEA Member States in particular, and as an instrument in the FMA’s efforts to continually strengthen operational cooperation with its sister authorities, mainly those situated in Central, Eastern and South-Eastern European countries. The main function of the MoUs is to define in practical terms the responsibilities and obligations in relation to cross-border cooperation with the other supervisory authority in question.

Twenty-four 24 MoUs were concluded on cooperation and the exchange of information in the context of monitoring alternative investment fund managers (AIFM) with the supervisory authorities of the following countries in 2013: Australia, Bermuda, British Virgin Islands, Canada, Cayman Islands, Dubai, Guernsey, Hong Kong, Isle of Man, Japan, Jersey, Malaysia, Singapore, Switzerland and the USA (see Table 4).

MULTILATERAL MEMORANDA OF UNDERSTANDING CONCLUDED

Similar to bilateral MoUs, Multilateral Memoranda of Understanding (MMoU) are also concluded with multilateral bodies in the interests of international cooperation on supervision. Of particular importance are those MMoUs that place the exchange of relevant information on a multilaterally agreed basis and thus help to harmonise and simplify the exchange of information between the participating authorities.

In 2013, a multilateral MoU, coordinated by EIOPA, was concluded on supervisory cooperation and the exchange of information between the EEA insurance supervisory authorities and the insurance supervisor in Bermuda (see Table 5 on page 48).

OTHER BILATERAL AND MULTILATERAL CONTACTS

The Group of Banking Supervisors from Central and Eastern Europe (BSCEE), of which the FMA is a member, staged the 26th BSCEE Annual Conference in Sarajevo, which was attended by the FMA. In June 2013, the FMA attended the Integrated Financial Supervisors Conference (IFSC) in Copenhagen, and also attended meetings of the Basel Consultative Group (BCG) – a subgroup of the Basel Committee on Banking Supervision – in February, May and October.

Table 4: BILATERAL MEMORANDA OF UNDERSTANDING CONCLUDED (including year of conclusion)

Country	Banking	Insurance Undertakings	Securities	AIFMD-MoU
Albania		2009		
Australia				2013
Bermuda				2013
British Virgin Islands				2013
Bulgaria	2005			
Canada				2013
Cayman Islands				2013
China			2008	
Croatia	2005	2008	2000	
Cyprus	2007		2002	
Czech Republic	2001	2004	1999	
Dubai				2013
France	1995			
Germany	2000			
Guernsey				2013
Hongkong				2013
Hungary	2001	2002	1998	
Isle Of Man				2013
Italy	1998			
Japan				2013
Jersey				2013
Liechtenstein	2009			
Malaysia				2013
Malta	2007			
Macedonia		2010		
Montenegro		2009		
Netherlands	1997			
Poland			1999	
Romania	2006	2005		
Russian Federation	2010			
Serbia		2009		
Singapur				2013
Slovak Republic	2003	2002		
Slovenia	2001		2001	
Switzerland	2012	2006		2013
United Kingdom		1994/1998		
USA				2013

The counterpart to the BSCEE, the Central Eastern and South-Eastern European Insurance Supervision Initiative (CESEE ISI), which the FMA had a role in initiating in 2011, held its fifth conference in Sarajevo in May and its sixth conference in Montenegro in October 2013.

Bilateral visits were also paid to the banking supervisors in Russia and Poland, while a delegation from the Russian central bank visited Vienna in December. With regard to activities in the insurance sector, the

Table 5: MULTILATERAL MEMORANDA OF UNDERSTANDING CONCLUDED (incl. year of conclusion)

Organisation	Topic	Banking	Insurance Undertakings	Pensionskassen	Securities
CEIOPS	Continued cooperation, exchange of information		1993		
CEIOPS	Supervision of insurance groups		2000		
CEIOPS	Cooperation in applying the Insurance Mediation Directive		2006		
CEIOPS	Supervision of cross-border IORPs			2006	
CESR	Continued cooperation, exchange of information				1999
IOSCO	Continued international exchange of information				2009
IAIS	Continued international exchange of information		2010		
All financial sector supervisory authorities, ECB, finance ministers	Cooperation both in times of crisis and in normal periods, as well as crisis management for coordinating efforts in cross-border crises	2008			
ECB	Crisis management	2003			
ECB	Payment systems	2001			
EER insurance supervisors/Bermuda	Supervisory cooperation and exchange of information		2013		

FMA, in its capacity as host of the EIOPA Equivalence Committee, welcomed delegations from nine CESEE countries, also in December.

At the traditional four-country meeting involving high-

level representatives from the supervisory authorities in Germany, Liechtenstein, Switzerland and Austria, held in Zurich in October, discussion focused on increased cooperation among the four authorities.

NATIONAL LEGISLATION

The following important legislative changes were introduced in the FMA's area of enforcement in 2013:

CHANGES TO EXISTING LAWS

COMPANY EMPLOYEE AND SELF-EMPLOYMENT PROVISIONS ACT (BMSVG; *BETRIEBLICHES MITARBEITER-UND SELBSTÄNDIGENVORSORGESETZ*) and other statutes, Federal Law Gazette I No. 4/2013

Changes were made to the BMSVG in order to include chartered engineering consultants (*Ziviltechniker*) in compulsory insurance as part of the statutory old-age pension scheme pursuant to the Act on Social Security for Self-Employed Persons (FSVG; *Freiberufliches Sozialversicherungsgesetz*) and to make technical modifications.

INSURANCE SUPERVISION ACT (VAG; *VERSICHERUNGS-AUFSICHTSGESETZ*) and other statutes, Federal Law Gazette I No. 12/2013

According to the ruling handed down by the European Court of Justice on 1 March 2011, Article 5(2) of Directive 2004/113/EC – which allows Member States to maintain exemptions from the unisex rule for calculating insurance premiums – runs counter to the prohibition on discrimination on grounds of gender as specified in the EU's Charter of Fundamental Rights. Consequently, Article 9 paras. 3 and 4 VAG were repealed through the amendment; Austrian legislation had made use of that "opening clause" in these paragraphs. It has instead been specified that differing premiums and benefits for women and men must not result when taking gender into account as a factor in insurance contracts.

PAYMENT SERVICES ACT (ZADiG; *ZAHLUNGSDIENSTGESETZ*), Federal Law Gazette I No. 20/2013

Regulation (EU) No 260/2012 (SEPA Migration Regulation) specifies the technical format requirements for SEPA direct debits and credit transfers, which will

apply uniformly throughout the euro area to credit institutions and payment institutions. The amendment to the ZADiG introduces legal provisions to accompany the SEPA Migration Regulation.

ACCOUNTING CONTROL ACT (RL-KG; *RECHNUNGS-LEGUNGS-KONTROLLGESETZ*), Federal Law Gazette I No. 21/2013

The RL-KG has instated the FMA as control authority over the accounting of companies whose securities are admitted to trading on a regulated market of the Vienna Stock Exchange (please refer to the special topic "Enforcement office for accounting standards" on page 130 for further details).

ALTERNATIVE INVESTMENT FUND MANAGERS ACT (AIFMG; *ALTERNATIVE INVESTMENTFONDS MANAGERGESETZ*) and other statutes, Federal Law Gazette I No. 135/2013

The AIFMG transposes Directive 2011/61/EU into national law. Alternative investment fund managers (AIFMs) are now under supervision by the FMA. Authorised AIFMs may in future market only certain types of alternative investment funds (AIFs) specified by law to small investors. The limit defined in the Capital Market Act (KMG; *Kapitalmarktgesetz*) for exemptions to the obligation to publish a prospectus in the case of offerings of securities or investments has been increased from a total equivalent value within the Union of €100,000 to €250,000. An exemption from the prospectus requirement was also introduced when offering shares in a cooperative belonging to an audit association, where the total equivalent value within the Union amounts to less than €750,000.

INCOME TAX ACT (ESiG; *EINKOMMENSTEUERGESETZ*) AND 2011 INVESTMENT FUND ACT (InvFG 2011; *INVESTMENTFONDSGESETZ*), Federal Law Gazette I No. 156/2013

This amendment serves to adapt the legal specifica-

tions that apply to investments in products belonging to the state-sponsored retirement provision in order to reflect the increasingly volatile capital market situation. The changes affect the required minimum share ratio, which has been rendered more flexible through a bandwidth scheme, and the options for investments, which have been broadened in respect to the approved exchanges. The change to the InvFG 2011 concerns the general provisions for investing in pension investment funds: investment fund management companies are now allowed to set up pension investment funds with a lower share ratio than was previously permitted (5% as opposed to 15%).

BANKING INTERVENTION AND RESTRUCTURING ACT (BIRG; BANKENINTERVENTIONS- UND -RESTRUKTURIERUNGSGESETZ), Federal Law Gazette I No. 160/2013

The BIRG requires all credit institutions not belonging to a group, an affiliation for liability purposes or an institutional protection scheme to draw up and submit to the FMA both a recovery plan and a resolution plan. The plans are to be updated on at least an annual basis and on any significant changes to the institution's legal or organisational structure. The superordinate credit institution of a group is responsible for preparing the plans for the group. The FMA is responsible for verifying the submitted recovery and resolution plans to ensure compliance with legal requirements, whereas it is required to obtain an expert opinion from the OeNB to determine whether those requirements have been met. In addition, the BWG has been supplemented with early intervention measures that are available to the FMA as official measures to be applied when certain triggering events specified in the statute occur.

BANKING ACT (BWG; BANKWESENGESETZ) and other statutes (implementation of Basel III), Federal Law Gazette I No. 184/2013

The BWG has been amended to implement Directive 2013/36/EU (CRD IV) and cleared of those legal provisions that are now found in Regulation (EU) No 575/2013 (CRR). Implementation of CRD IV results in harmonised rules to improve corporate governance in the credit institution sector and enhanced supervisory powers for the FMA. It is now also possible to require institutions to maintain capital buffers, which allow

losses to be absorbed more easily in times of stress and should mitigate the impact of financial crises. The CRR encompasses regulations that are aimed directly at the institutions and were previously contained in EU Directives that in turn were implemented in the BWG. The regulations include such pertaining in particular to minimum requirements designed to cover against various types of risk (credit risk, market risk, operational risk and others). Furthermore, capital requirements that are more stringent in both quantitative and qualitative terms have been introduced, as have harmonised liquidity requirements. The Financial Market Authority Act (FMABG; *Finanzmarktaufsichtsbehördengesetz*) was amended to provide for the establishment of a Financial Market Stability Board under the Federal Ministry of Finance. The responsibilities of the new body include monitoring financial stability, handling warnings and recommendations issued by the ESRB and providing the FMA with recommendations concerning the activation of macroprudential instruments.

FMA REGULATIONS

INFORMATION REQUIREMENTS REGULATION FOR INSURANCE UNDERTAKINGS (INFOV-VU; INFORMATIONSPFLICHTENVERORDNUNG VERSICHERUNGS-UNTERNEHMEN), Federal Law Gazette II No. 15/2013

The amendment published in Federal Law Gazette I No. 54/2012 introduces new items such as the "life-cycle model" (i.e. switch options for beneficiaries of the company old-age provision scheme). Insurance undertakings are legally obliged to provide information about certain circumstances prior to a switch. This FMA Regulation specifies the exact form this information must have.

SECURITIES LENDING AND REPURCHASE AGREEMENTS REGULATION (WPV; WERTPAPIERLEIH- UND PENSIONS-GESCHÄFTEVERORDNUNG), Federal Law Gazette II No. 101/2013

4th REGULATION ON RISK CALCULATION AND REPORTING OF DERIVATIVE INSTRUMENTS (4. DERIVATE-RISIKO-BERECHNUNGS- UND MELDEVERORDNUNG), Federal Law Gazette II No. 102/2013

The WPV was issued to implement ESMA guidelines specifying disclosure obligations, information to inves-

tors and restrictions on investments where management companies of UCITS and special funds invest in securities lending and repurchase agreements. The 4th Regulation on Risk Calculation and Reporting of Derivative Instruments was adapted to reflect the new provisions of the WPV.

REGULATION ON MONEY LAUNDERING AND TERRORIST FINANCING RISK (GTV; *GELDWÄSCHEREI- UND TERRORISMUSFINANZIERUNGSRIKO-VERORDNUNG*), Federal Law Gazette II No. 126/2013, Federal Law Gazette II No. 267/2013 and Federal Law Gazette II No. 485/2013

The amendments published in Federal Law Gazette II Nos. 126/2013, 267/2013 and 485/2013 excluded a number of states from the list of high-risk countries, based on the recommendation of the Financial Action Task Force (FATF): Bolivia, Cuba, Nigeria, São Tomé and Príncipe, Sri Lanka, Thailand and Vietnam. Algeria was added to the list.

REGULATION ON REPORTING SUSPICIOUS SHORT-SELLING TRANSACTIONS (SSV; *SHORT SELLING VERDACHTSMELDUNGSÜBERMITTLUNGSVERORDNUNG*), Federal Law Gazette II No. 176/2013

The SSV expired as of 30 June 2013, since the subject matter regulated by this legislation now falls within the scope of Regulation (EU) No 236/2012 (Short Selling Regulation – SSR).

REGULATION ON THE AIF WARNING NOTICE (AIF-WARNHINWEISVERORDNUNG), Federal Law Gazette II No. 224/2013

This Regulation specifies the requirements for warning notices, which are required to be included in all marketing materials for non-Austrian AIFs that are authorised for sale to retail investors in Austria.

FMA FEE REGULATION (FMA-GEBV; *FMA-GEBÜHRENVERORDNUNG*), Federal Law Gazette II No. 225/2013

The main content of this amendment was to introduce fees to be charged in cases falling under the AIFMG and a fee for a case subject to the BMSVG, as well as to increase several fees in cases falling under the ImmoInvFG and the InvFG 2011, and to adjust the fee applying where an exchange operating company re-

quests approval of changes to its general terms and conditions.

REGULATION ON OWNER CONTROL OF CENTRAL COUNTERPARTIES (ZG-EKV; *ZENTRALE GEGENPARTEIENEIGENTÜMERKONTROLLVERORDNUNG*), Federal Law Gazette II No. 247/2013

Pursuant to Article 31 of Regulation (EU) No 648/2012, the competent authority (FMA) must be notified of the intention to change qualifying holdings in a central counterparty. The ZG-EKV specifies a list of the items of information to be submitted when a party intends to acquire qualifying holdings in a central counterparty.

REGULATION ON THE INTERNATIONAL EXCHANGE OF DATA FROM THE MAJOR LOANS REGISTER (GKE AUUSTAUSCHV; *GROSSKREDITEVIDENZAUSTAUSCHVERORDNUNG*), Federal Law Gazette II No. 256/2013

REGULATION ON MAJOR LOAN REPORTING (GKM-V; *GROSSKREDITMELDUNGS-VERORDNUNG*), Federal Law Gazette II No. 359/2013

The legal terminology associated with supervision has changed as of 1 January 2014 due to the amendment to the BWG published in Federal Law Gazette I No. 184/2013, occasioned by the CRR and CRD IV. The GKE-AustauschV (now referred to as the Regulation on the International Exchange of Data from the Central Credit Register – ZKR-AustauschV; *Zentralkreditregister-Austauschverordnung*) and the GKM-V were adapted accordingly.

REGULATION ON THE QUARTERLY FINANCIAL STATEMENTS FOR CORPORATE PROVISION FUNDS (BVQA-V; *BETRIEBLICHE VORSORGEKASSEN-QUARTALSAUSWEISVERORDNUNG*), Federal Law Gazette II No. 269/2013

As a consequence of adopting the AIFMG, the amendment requires corporate provision funds to report the AIFs and the number of AIFs in which they invest to the supervisory authority. This required modifications to the annexes of the BVQA-V.

FMA COST REGULATION (FMA-KVO; *FMA-KOSTENVERORDNUNG*), Federal Law Gazette II No. 302/2013

The amendment, introduced as part of implementing EMIR, specifies for the first time that central counter-

parties and their clearing members are liable, based on the AIFMG, to pay costs as members of accounting group 3 (RK 3) as of 1 January 2014, and that financial holding companies are similarly subject to contributions, based on the BIRG, as members of RK 1 as of the same date. Due to the amendment of the AIFMG, management companies and real estate investment fund management companies were assigned to RK 3 instead of RK 1 as of 1 January 2014, with costs now calculated based on commission income instead of capital requirements. The minimum lump sum to be paid by members of RK 3 was increased in some cases and set at uniform levels of € 500 and € 1,000.

TRADING TRANSPARENCY EXCEPTIONS REGULATION (HTAUSV; *HANDELSTRANSPARENZAUSNAHMEN-VERORDNUNG*), Federal Law Gazette II No. 306/2013

The amendment expands the transparency exemption required for iceberg orders to include limit orders with a validity of up to 360 days as a legally permissible expansion of trading options.

FMA REGULATION ON THE INCOMING PLATFORM (FMA-IPV; *FMA-INCOMING-PLATTFORMVERORDNUNG*), Federal Law Gazette II No. 319/2013

The amendment introduces editorial changes to the FMA's electronic reporting system, adapting it to the legal situation arising in the wake of CRD IV and the CRR, and supplementing it with the addition of the reports specified in the AIFMG.

INFORMATION REQUIREMENTS REGULATION FOR PENSIONS KASSEN (INFOV-PK; *INFORMATIONSPFLICHTENVERORDNUNG PENSIONS KASSEN*), Federal Law Gazette II No. 347/2013

Due to the amendment to the *Pensionskassen Act* (PKG; *Pensionskassengesetz*) published in Federal Law Gazette I No. 184/2013, the information pursuant to Article 19b para. 1 PKG must now also mention the effects of a switch from a pension company commitment with minimum yield guarantee to a security-oriented investment and risk sharing group. The Info-V-PK was adapted accordingly.

4th REGULATION ON RISK CALCULATION AND REPORTING OF DERIVATIVE INSTRUMENTS (4. *DERIVATE-*

RISIKOBERECHNUNGS- UND MELDEVERORDNUNG), Federal Law Gazette II No. 355/2013

The format for reporting derivatives, originally specified in the 2011 Regulation on a Derivative Reporting System (DMV 2011; *Derivate-Meldesystemverordnung*), was included in adapted form in the 4th Regulation on Risk Calculation and Reporting of Derivative Instruments, and the DMV 2011 repealed. References were also revised.

2013 REGULATION ON THE PROVISION FOR ADMINISTRATIVE EXPENSES (VKRSTV 2013; *VERWALTUNGSKOSTENRÜCKSTELLUNGSVERORDNUNG*), Federal Law Gazette II No. 381/2013

This Regulation formally repealed the previously valid regulation of the Federal Ministry of Finance and replaced it by a new FMA Regulation. The maximum permissible assumed interest rate for measuring the provision for administrative expenses was simultaneously reduced from 4% to 3%, while syndicate-led pension company commitments are required to establish the provision for administrative expenses with those participating *Pensionskassen* that actually manage the benefits.

CRR MAPPING REGULATION (CRR-MAPPINGV; *MAPPING-VERORDNUNG*), Federal Law Gazette II No. 382/2013

Pursuant to Article 103q no. 5 BWG as amended by Federal Law Gazette I No. 184/2013, this Regulation takes over without modification the mapping of credit assessments as specified in the previous FMA Mapping Regulation, pending issue of the implementing technical standards by EBA, EIOPA and ESMA as specified in Article 136(3) of the CRR.

MAXIMUM INTEREST RATE REGULATION (*HÖCHSTZINSSATZVERORDNUNG*), Federal Law Gazette II No. 396/2013

PROFIT-SHARING REGULATION (GBVVU; *GEWINN-BETEILIGUNGS-VERORDNUNG*), Federal Law Gazette II No. 397/2013

ACTUARY'S REPORT REGULATION (*AKTUARSBERICHTS-VERORDNUNG*), Federal Law Gazette II No. 398/2013

In view of the consistently low interest rates in capital markets, the Maximum Interest Rate Regulation was amended to encourage insurance undertakings to closely monitor the risk posed by the potential inabil-

ity to generate revenues to cover guarantees, and to make appropriate provisions if warranted. The amendment to the Profit-sharing Regulation prescribes that the additional interest provision must not be allocated at the expense of the insured but must be fully funded by the insurance undertakings themselves. The Actuary's Report Regulation was revised to require the responsible actuary to include in the actuary's report details of how the interest provision was established.

REGULATION ON INVESTMENTS (KAVO; *KAPITALANLAGEVERORDNUNG*), Federal Law Gazette II No. 409/2013
The Regulation provides insurance undertakings with the new option of granting loans to companies without specific collateral when complying with risk-sensitive considerations.

REGULATION ACCOMPANYING THE CRR (CRR-BV; *CRR-BEGLEITVERORDNUNG*), Federal Law Gazette II No. 425/2013
The Regulation exercises various options accorded to authorities by the CRR and defines the main percentage thresholds and factors used in the transitional provisions applying to own funds requirements.

2013 REGULATION ON AUDITING ACTUARIES AND AUDIT REPORTS (*PRÜFAKTUAR-PRÜFBERICHTVERORDNUNG*), Federal Law Gazette II No. 436/2013
This Regulation represents a revision of the previous Regulation on Auditing Actuaries and Audit Reports, adapting it to the current version of the PKG.

REGULATION ON PAYMENT INSTITUTION AND E-MONEY INSTITUTION REPORTS (*ZEIMV; ZAHLUNGS- UND E-GELD-INSTITUTE-MELDEVERORDNUNG*), Federal Law Gazette II No. 459/2013
The amendment supplements the Regulation with the changes arising from the CCR and CRD IV that result for reporting by payment institutions and e-money institutions.

REGULATION ON MASTER DATA REPORTING (STDM-V; *STAMMDATENMELDUNGS-VERORDNUNG*), Federal Law Gazette II No. 482/2013
The amendment to the BWG published in Federal Law Gazette I No. 184/2013 (implementation of Basel III) required the revision of certain references. Further-

more, additions were made to the Annex and one item eliminated.

REGULATION ON PROOF OF COMPLIANCE WITH REGULATORY PROVISIONS (ONA-V; *ORDNUNGSNORMEN-AUSWEIS-VERORDNUNG*), Federal Law Gazette II No. 484/2013

The majority of the reports previously required to be made pursuant to the ONA-V now fall within the scope of an implementing technical standard of the EBA. The Regulation was consequently renamed Regulation on Proof of Compliance with Liquidity Provisions (LiA-V; *Liquiditätsausweis-Verordnung*) and the scope of reporting obligations was limited to reports concerning compliance with liquidity provisions.

FMA FEE REGULATION (FMA-GEBV; *FMA-GEBÜHREN-VERORDNUNG*), Federal Law Gazette II No. 486/2013
With the BIRG, the CRR and the BWG as amended by Federal Law Gazette I No. 184/2014 entering into force on 1 January 2014 and Regulation (EU) No 648/2012 (EMIR) taking effect, additional cases requiring approval have arisen, which are now included in the FMA GebV. Furthermore, the costs for supervision of the BMSVG, InvFG 2011 and the ImmoInvFG have been assigned to RK 3, while the details of several fee cases were adjusted.

REGULATION ON CREDIT INSTITUTION RISK MANAGEMENT (KI-RMV, *KREDITINSTITUTE-RISIKOMANAGEMENT-VERORDNUNG*), Federal Law Gazette II No. 487/2013
This Regulation specifies, pursuant to Article 39 para. 4 BWG as amended by Federal Law Gazette I No. 184/2013, the minimum requirements for risk management for the purpose of duly capturing, controlling, monitoring and limiting the types of risk specified in Article 39 para. 2b BWG.

REPEAL OF THE LIQUIDITY RISK MANAGEMENT REGULATION (LRMV; *LIQUIDITÄTSRISIKOMANAGEMENTVERORDNUNG*), Federal Law Gazette II No. 488/2013
The LRMV was to be repealed by 31 December 2013 as a result of the amendment published in Federal Law Gazette I No. 184/2013. The minimum requirements applying to the liquidity risk management of credit institutions are now specified in the KI-RMV.

INTERNATIONAL LEGISLATION

LEGISLATION ADOPTED IN 2013

I The following legislation of relevance to the areas of responsibility of the Financial Market Authority (FMA) was adopted in the banking, insurance, pension company and securities sectors at European level in 2013:

REGULATIONS AND DIRECTIVES

REGULATION (EU) No 1024/2013 CONFERRING SPECIFIC TASKS ON THE EUROPEAN CENTRAL BANK CONCERNING POLICIES RELATING TO THE PRUDENTIAL SUPERVISION OF CREDIT INSTITUTIONS and REGULATION (EU) No 1022/2013 AMENDING REGULATION (EU) NO 1093/2010 ESTABLISHING A EUROPEAN SUPERVISORY AUTHORITY (EUROPEAN BANKING AUTHORITY) AS REGARDS THE CONFERRAL OF SPECIFIC TASKS ON THE EUROPEAN CENTRAL BANK PURSUANT TO COUNCIL REGULATION (EU) No 1024/2013

These regulations specify how competences are to be distributed between the EU Member States and the European Central Bank (ECB). In essence, in the field of banking supervision comprehensive supervisory and sanctioning powers are conferred by the national authorities on the ECB. With establishment of the banking union, a uniform yet decentralised supervisory regime has been set up between the ECB and Member States over all credit institutions in the euro area and over credit institutions from those Member States that will participate in the Single Supervisory Mechanism (SSM). The European Banking Authority (EBA) will continue to exist under the new supervisory regime and continue to carry out its tasks within the scope of European legislation (e.g. technical standards – TS), the development of guidelines and recommendations, and exercise special law-making powers, within the scope of proceedings in the case of breaches of law, emergency situations and disagreements. Changes have been made to the SSM Regulation (the ECB be-

comes a competent authority without voting rights, a majority is required for certain votes, etc.).

Entry into force: Regulation (EU) No 1022/2013 on 30 October 2013 and Regulation (EU) No 1024/2013 on 9 January 2014.

REGULATION (EU) No 575/2013 ON PRUDENTIAL REQUIREMENTS FOR CREDIT INSTITUTIONS AND INVESTMENT FIRMS AND AMENDING REGULATION (EU) No 648/2012 (CRR) and

DIRECTIVE 2013/36/EU ON ACCESS TO THE ACTIVITY OF CREDIT INSTITUTIONS AND THE PRUDENTIAL SUPERVISION OF CREDIT INSTITUTIONS AND INVESTMENT FIRMS (CRD IV)

The previous directives on capital (Directive 2006/48/EC – Capital Requirements Directive (CRD) and Directive 2006/49/EC – Capital Adequacy Directive (CAD)) have been replaced by:

- Directive 2013/36/EU on the authorisation of credit institutions and the supervision of credit institutions and investment firms (see below) and
- the above-mentioned regulation on prudential requirements for credit institutions and investment firms (capital, liquidity, counterparty credit risk, introduction of a borrowing ratio).

The overriding objective is to make the EU's banking sector more robust while at the same time ensuring that the banks can continue to finance industry and growth. Entry into force: 26 June 2013 (Regulation) and 17 July 2013 (Directive); implementation by 31 December 2013.

REGULATION (EU) No 462/2013 AMENDING REGULATION (EC) No 1060/2009 ON CREDIT RATING AGENCIES

The main objectives of the Regulation are:

- to diminish the impact of “cliff” effects on financial institutions and markets by reducing reliance on external ratings;
- to mitigate the risks of contagion effects linked to sovereign ratings changes;

- to improve credit rating market conditions, since there is limited choice and competition in the credit rating market, with a view to improving the quality of ratings;
- to ensure a right of redress for investors, since users who have suffered losses due to a credit rating issued in violation of the CRA Regulation are inadequately protected;
- to improve the quality of ratings by reinforcing the independence of credit rating agencies (CRAs) and by promoting sound credit rating processes and methodologies;
- to reduce the overreliance of financial institutions on external ratings by reducing the importance of external ratings in financial services legislation;
- to disclose details regarding the underlying asset pools of structured finance products to help investors to make their own credit risk assessment, rather than leaving them to rely solely on external ratings.

Entry into force: 20 June 2013.

REGULATION (EU) No 345/2013 ON EUROPEAN VENTURE CAPITAL FUNDS

This Regulation creates a common uniform framework of rules for marketing qualifying venture capital funds under the designation "EuVECA". A qualifying venture capital fund must meet three important requirements:

- 1) It invests at least 70% of the capital collected from investors in small and medium-sized enterprises (SMEs);
- 2) It provides these SMEs with equity or quasi-equity (fresh capital);
- 3) It does not make use of any leverage whatsoever (i.e. the fund does not invest any more capital than the investors have paid in and thus does not go into debt).

All managers of qualifying venture capital funds are to be able to acquire a European marketing passport, providing access to eligible investors EU-wide. This represents a substantial improvement over existing equity management regulations, since the current passport pursuant to the Alternative Investment Fund Managers Directive (AIFMD) applies only to funds managing a volume of more than €500 million. In

addition, the rules of the AIFMD are relevant mainly to hedge funds and private investment fund management companies, and are less suited to typical venture capital funds. The latter have thus now been provided with a tailored framework of their own.

Entry into force: 15 May 2013.

DIRECTIVE 2013/14/EU AMENDING DIRECTIVE 2003/41/EC ON THE ACTIVITIES AND SUPERVISION OF INSTITUTIONS FOR OCCUPATIONAL RETIREMENT PROVISION, DIRECTIVE 2009/65/EC ON THE COORDINATION OF LAWS, REGULATIONS AND ADMINISTRATIVE PROVISIONS RELATING TO UNDERTAKINGS FOR COLLECTIVE INVESTMENT IN TRANSFERABLE SECURITIES (UCITS) and DIRECTIVE 2011/61/EU ON ALTERNATIVE INVESTMENT FUND MANAGERS IN RESPECT OF OVER-RELIANCE ON CREDIT RATINGS

One of the aims of this Directive is to revise the provisions of Directive 2009/65/EC and Directive 2011/61/EC as regards the risk management process. The management or investment company or alternative investment fund managers are now required to not solely or mechanistically rely on external credit ratings for assessing the creditworthiness of UCITS or AIF assets. External credit ratings may be used as one factor among others but must not be used as the sole basis for decisions.

Entry into force: 20 June 2013; implementation by 21 December 2014.

DIRECTIVE 2013/50/EU AMENDING DIRECTIVE 2004/109/EC (TRANSPARENCY DIRECTIVE)

This Directive is intended to improve the provisions of the Transparency Directive (Directive 2004/109/EC). The amendments include the definition of a default home Member State for third country issuers, elimination of the requirement to publish interim management statements and quarterly reports, and a broader definition of financial instruments subject to the notification requirement.

Entry into force: 26 November 2013; implementation by 26 November 2015.

DIRECTIVE 2013/58/EU AMENDING DIRECTIVE 2009/138/EC (SOLVENCY II) AS REGARDS THE DATE FOR ITS TRANSPOSITION AND THE DATE OF ITS

APPLICATION, AND THE DATE OF REPEAL OF CERTAIN DIRECTIVES (SOLVENCY I)

The date of implementation and applicability of Directive 2009/138/EC has been postponed until 1 January 2016 in order to avoid the Member States having an excessive volume of legislative obligations as a result of this Directive and later due to the new supervisory architecture that is planned as part of the Omnibus II proposal. This should allow the supervisory authorities and the insurance and reinsurance undertakings sufficient time to prepare for the new architecture. Entry into force: 19 December 2013; implementation by 1 January 2016.

COMMISSION DELEGATED REGULATIONS AND IMPLEMENTING REGULATIONS

The following nine Delegated Regulations were issued in relation to Regulation (EU) No 648/2012 (OTC derivatives):

COMMISSION DELEGATED REGULATION (EU) No 148/2013 SUPPLEMENTING REGULATION (EU) 648/2012 WITH REGARD TO REGULATORY TECHNICAL STANDARDS ON THE MINIMUM DETAILS OF THE DATA TO BE REPORTED TO TRADE REPOSITORIES

This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority (ESMA) to the Commission. It reflects the relevance of the role of trade repositories to improve transparency of markets towards the public and regulators, the data to be reported to, collected by and made available by trade repositories depending on derivative class and the nature of the trade.

Entry into force: 15 March 2013.

COMMISSION DELEGATED REGULATION (EU) No 149/2013 SUPPLEMENTING REGULATION (EU) 648/2012 WITH REGARD TO REGULATORY TECHNICAL STANDARDS ON INDIRECT CLEARING ARRANGEMENTS, THE CLEARING OBLIGATION, THE PUBLIC REGISTER, ACCESS TO A TRADING VENUE, NON-FINANCIAL COUNTERPARTIES, AND RISK MITIGATION TECHNIQUES FOR OTC DERIVATIVES CONTRACTS NOT CLEARED BY A CCP

This Regulation serves to explain in detail the terms used in Regulation (EU) 648/2012 (e.g. indirect

client, indirect clearing arrangement, etc.) as well as to specify requirements related to clearing and various valuation criteria (e.g. used for marking-to-model).

Entry into force: 15 March 2013.

COMMISSION DELEGATED REGULATION (EU) No 150/2013 SUPPLEMENTING REGULATION (EU) No 648/2012 WITH REGARD TO REGULATORY TECHNICAL STANDARDS SPECIFYING THE DETAILS OF THE APPLICATION FOR REGISTRATION AS A TRADE REPOSITORY

This Regulation specifies the information required to be submitted to the European Securities and Markets Authority (ESMA) when applying for registration as a trade repository pursuant to Article 56 of Regulation (EU) 648/2012.

Entry into force: 16 March 2013.

COMMISSION DELEGATED REGULATION (EU) No 151/2013 SUPPLEMENTING REGULATION (EU) No 648/2012 WITH REGARD TO REGULATORY TECHNICAL STANDARDS SPECIFYING THE DATA TO BE PUBLISHED AND MADE AVAILABLE BY TRADE REPOSITORIES AND OPERATIONAL STANDARDS FOR AGGREGATING, COMPARING AND ACCESSING THE DATA

This Regulation specifies the main details concerning the data to be published by trade repositories and the persons having access to trade repository data.

Entry into force: 15 March 2013.

COMMISSION DELEGATED REGULATION (EU) No 152/2013 SUPPLEMENTING REGULATION (EU) No 648/2012 WITH REGARD TO REGULATORY TECHNICAL STANDARDS ON CAPITAL REQUIREMENTS FOR CENTRAL COUNTERPARTIES

This Regulation specifies the capital requirements for CCPs as a means of ensuring that a CCP is at all times adequately capitalised against credit risks, counterparty risks, market risks, operational risks, legal and business risks which are not already covered by those specific financial resources and that it is able to conduct an orderly winding down or restructuring of its operations if necessary.

Entry into force: 15 March 2013.

COMMISSION DELEGATED REGULATION (EU) No 153/2013 SUPPLEMENTING REGULATION (EU)

№ 648/2012 WITH REGARD TO REGULATORY TECHNICAL STANDARDS ON REQUIREMENTS FOR CENTRAL COUNTERPARTIES

This Regulation specifies provisions relating to the organisation of a CCP (e.g. internal auditing, disclosure obligations).

Entry into force: 15 March 2013.

COMMISSION DELEGATED REGULATION (EU) № 876/2013 SUPPLEMENTING REGULATION (EU) № 648/2012 WITH REGARD TO REGULATORY TECHNICAL STANDARDS ON COLLEGES FOR CENTRAL COUNTERPARTIES

This regulation specifies the arrangements for the participation in the colleges for CCPs to facilitate the exercise of the tasks specified in Regulation (EU) № 648/2012.

Entry into force: 3 October 2013.

COMMISSION DELEGATED REGULATION (EU) № 1002/2013 AMENDING REGULATION (EU) № 648/2012 WITH REGARD TO THE LIST OF EXEMPTED ENTITIES

This Regulation lists the countries that are exempt from the clearing and reporting obligation applicable to OTC derivatives.

Entry into force: 8 November 2013.

COMMISSION DELEGATED REGULATION (EU) № 1003/2013 SUPPLEMENTING REGULATION (EU) № 648/2012 WITH REGARD TO FEES CHARGED BY THE EUROPEAN SECURITIES AND MARKETS AUTHORITY TO TRADE REPOSITORIES

This Regulation specifies the fees which ESMA charges to trade repositories.

Entry into force: 22 October 2013.

The following Delegated Regulation was issued in relation to Directive 2011/61/EU (alternative investment fund managers):

COMMISSION DELEGATED REGULATION (EU) № 231/2013 SUPPLEMENTING DIRECTIVE 2011/61/EU WITH REGARD TO EXEMPTIONS, GENERAL OPERATING CONDITIONS, DEPOSITARIES, LEVERAGE, TRANSPARENCY AND SUPERVISION

This Delegated Regulation is a prerequisite for the ap-

plication of the AIFMD in the EU Member States and was adopted to supplement certain provisions of that Directive. These provisions concern:

- the conditions and procedures for the designation and authorisation of AIFMs, including the capital requirements applicable to such;
- the general operating conditions for AIFMs, including remuneration, conflicts of interest, risk management, liquidity management, investments in securitisation positions, organisational requirements and valuation rules;
- the conditions for delegating functions;
- rules applying to depositaries, including functions and liability;
- accounting requirements and calculation of leverage;
- rules governing cooperation arrangements.

Entry into force: 11 April 2013.

The following Implementing Regulation was issued in relation to Regulation (EU) № 575/2013 (CRR):

COMMISSION IMPLEMENTING REGULATION (EU) № 1423/2013

laying down implementing technical standards with regard to disclosure of own funds requirements for institutions according to Regulation (EU) № 575/2013 This Regulation provides a set of disclosure templates for own funds and the features of capital instruments in order to ensure the uniform application of Regulation (EU) № 575/2013. These templates facilitate a detailed view of the institute's capital position and a picture of the features of the institute's capital instruments in sufficient detail.

Entry into force: 20 January 2014.

The following Delegated Regulation was issued in relation to Regulation (EU) № 809/2004:

COMMISSION DELEGATED REGULATION (EU) № 759/2013 AMENDING REGULATION (EC) № 809/2004 AS REGARDS THE DISCLOSURE REQUIREMENTS FOR CONVERTIBLE AND EXCHANGEABLE DEBT SECURITIES

This Regulation essentially specifies a form for reporting securities.

Entry into force: 28 August 2013.

EUROPEAN LEGISLATIVE PROJECTS

The following legislative projects of special relevance to the FMA's activities were tackled at European level in 2013 but have not yet been concluded or published:

AMENDMENT OF DIRECTIVE 94/19/EC ON DEPOSIT-GUARANTEE SCHEMES – COMMISSION PROPOSAL COM(2010) 369

This proposal aims to extend the protection given to customers in the event of a credit institution becoming insolvent by maintaining a Europe-wide level of cover of €100,000 (since Directive 2009/14/EC), quicker payment (within seven days), less bureaucracy and better information about the deposit-guarantee system.

AMENDMENT OF DIRECTIVE 97/9/EC ON INVESTOR-COMPENSATION SCHEMES – COMMISSION PROPOSAL COM(2010) 371

The aim of this proposal is to bring the scope of investor compensation into line with MiFID and, additionally, to increase the covered amount to €50,000. Claims in the event of market abuse are excluded.

OMNIBUS II DIRECTIVE – AMENDMENT OF DIRECTIVES 2003/71/EC AND 2009/138/EC IN RESPECT OF THE POWERS OF THE EUROPEAN INSURANCE AND OCCUPATIONAL PENSIONS AUTHORITY AND THE EUROPEAN SECURITIES AND MARKETS AUTHORITY – COMMISSION PROPOSAL COM(2011) 8

The draft Directive is designed to regulate the powers of EIOPA and ESMA, and to amend both the Solvency II Directive (Directive 2009/138/EC) and the Prospectus Directive (Directive 2003/71/EC). The plan is to extend the areas already referred to in the Omnibus Directive (Directive 2010/78/EU) within the scope of which the Commission can introduce technical standards and regulations in the form of delegated acts or implementing measures. Transitional periods are stipulated that allow application of the capital requirements set out in the Solvency II Directive to be suspended for a period of up to ten years at most.

SOLVENCY II LEVEL 2 IMPLEMENTING MEASURES – COMMISSION CONSULTATIONS

The European Commission carried out a public consultation process with regard to the enactment of implementing measures for the Solvency II Directive (Directive 2009/138/EC) between 24 November 2010 and 26 January 2011. The implementing measures proposed relate primarily to technical regulations (such as the risk margin, minimal capital requirement, Pillar II dampener, etc.) but also concern supervisory reporting and publication issues, in order to specify the aims of the Solvency II Directive (Directive 2009/138/EC). The Commission is waiting for political agreement to be reached on its proposed Omnibus II Directive (particularly transitional periods) before presenting an implementing regulation.

REGULATION ON INSIDER DEALING AND MARKET MANIPULATION – MAR PROPOSAL OF THE COMMISSION COM(2011) 651 and

DIRECTIVE ON CRIMINAL SANCTIONS FOR INSIDER DEALING AND MARKET MANIPULATION – MAD PROPOSAL OF THE COMMISSION COM(2011) 654

The proposal for the Directive provides for EU-wide minimum requirements for criminal sanctions applicable to insider dealing and market manipulation. Besides the definition of insider dealing and market manipulation, criminal sanctions are also set out for inciting and aiding market abuse. In this context, criminal and non-criminal liability also applies to legal persons. The proposal for the Regulation is intended to revise the Market Abuse Directive (Directive 2003/6/EC) by expanding the scope of the definition of market manipulation to include financial instruments on new trading platforms and OTC markets, and to improve government authorities' ability to carry out investigations and to impose sanctions. The proposal also sets out higher fines and an obligation on the part of the Member States to introduce criminal penalties for wilful breaches of the statutory provisions.

REGULATION ON MARKETS IN FINANCIAL INSTRUMENTS – MiFIR PROPOSAL OF THE COMMISSION COM(2011) 652 and

DIRECTIVE ON MARKETS IN FINANCIAL INSTRUMENTS – MiFID PROPOSAL OF THE COMMISSION COM(2011) 656

These Commission proposals are designed to replace the Markets in Financial Instruments Directive (MiFID)

including its implementing acts. The key goals are as follows:

- to improve transparency and monitoring of regulated markets, including derivative markets, as well as to curb excessive price volatility on the commodity markets;
- to expand the definition of instruments admitted to trading;
- to define an “organised trading facility” (OTF) and automated “crossing systems”;
- to expand the definition of “automated trading” to include “high frequency trading”;
- to introduce a small and medium-sized enterprises market (SME market);
- to expand transaction reporting (to include, for example, instruments traded via a multi-trading facility (MTF));
- to provide supervisory authorities with the power to ban, in consultation with ESMA, certain products, services or practices that pose a risk to investor protection, financial stability or the proper functioning of markets.

REGULATION ON SPECIFIC REQUIREMENTS REGARDING STATUTORY AUDIT OF PUBLIC-INTEREST ENTITIES – COMMISSION PROPOSAL COM(2011) 779

The Commission proposes introducing a mandatory regular rotation of auditors to encourage competition in the auditing sector. By prohibiting auditors from providing non-audit services (e.g. tax consultancy) in addition to the audit, the intention is to bolster auditors’ independence.

REGULATION ON IMPROVING SECURITIES SETTLEMENT IN THE EUROPEAN UNION AND ON CENTRAL SECURITIES DEPOSITORIES (CSDS) – COMMISSION PROPOSAL COM(2012) 73

The proposal introduces an obligation to represent all transferable securities in book entry form and to record these in CSDs before trading them on regulated venues. Furthermore, it harmonises settlement periods and settlement discipline regimes across the EU, and introduces a common set of rules inspired by international standards addressing the risks of the CSDs’ operations and services. As all CSDs will be subject to identical substantive rules across the EU, they will

benefit from uniform requirements for licensing and an EU-wide passport, which will help remove the existing barriers to access.

DIRECTIVE ESTABLISHING A FRAMEWORK FOR THE RECOVERY AND RESOLUTION OF CREDIT INSTITUTIONS AND INVESTMENT FIRMS – COMMISSION PROPOSAL COM(2012) 280

To manage bank failures in an orderly way and to avoid contagion to other institutions, and in particular to address banking crises pre-emptively and to safeguard financial stability, three types of powers should be conferred on the relevant authorities:

- preparatory steps and plans to minimise the risks of potential problems (preparation and prevention);
- in the event of incipient problems, powers to arrest a bank’ deteriorating situation at an early stage so as to avoid insolvency (early intervention);
- if insolvency of an institution presents a concern as regards the general public interest, a clear means to reorganise or wind down the bank in an orderly fashion while preserving its critical functions and limiting to the maximum extent any exposure of taxpayers to losses in insolvency (resolution).

DIRECTIVE AMENDING DIRECTIVE 2009/65/EC ON THE COORDINATION OF LAWS, REGULATIONS AND ADMINISTRATIVE PROVISIONS RELATING TO UNDERTAKINGS FOR COLLECTIVE INVESTMENT IN TRANSFERABLE SECURITIES (UCITS) AS REGARDS DEPOSITARY FUNCTIONS, REMUNERATION POLICIES AND SANCTIONS – COMMISSION PROPOSAL COM(2012) 350

The following five issues are dealt with in the revision of the UCITS Directive:

- eligibility and obligations of a depositary of financial instruments;
- criteria for delegating custody;
- liability for the loss of financial instruments held in custody;
- remunerations of UCITS managers; and
- sanctions for breaches of the UCITS rules.

REGULATION ON KEY INFORMATION DOCUMENTS FOR INVESTMENT PRODUCTS (PRIIPS REGULATION) – COMMISSION PROPOSAL COM(2012) 352

This proposal is about improving transparency in the

investment market for retail investors, particularly in the case of investment products such as investment funds, retail structured products (packaged retail investment products – PRIPs) and certain types of insurance contracts used for investment purposes. European retail investors should always receive short, comparable and standardised disclosures in the form of a Europe-wide and uniform key information document (KID), whatever the investment product they are considering. The proposal in essence contains provisions on content and preparation of the KID, as well as the obligation to provide such.

DIRECTIVE ON INSURANCE MEDIATION (IMD2) –
COMMISSION PROPOSAL COM(2012) 360

This proposal aims to amend Directive 2009/92/EU (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. The IMD2 project is intended to achieve the following improvements:

- to expand the scope of application of IMD1 to all distribution channels (e.g. direct writers, car rentals, etc.);
- to identify, manage and mitigate conflicts of interest;
- to raise the level of harmonisation of administrative sanctions and measures in response to any breach of key provisions of the current Directive;
- to enhance the suitability and objectiveness of advice;
- to ensure that sellers' professional qualifications match the complexity of products sold;
- to simplify and approximate the procedure for cross-border entry to insurance markets across the EU.

REGULATION ON INFORMATION ACCOMPANYING
TRANSFERS OF FUNDS – COMMISSION PROPOSAL
COM(2013) 44

The Regulation is intended to ensure the complete traceability of transfers of funds as a means of facilitating the prevention, detection and investigation of money laundering and terrorist financing. The Commission has proposed the Regulation to implement the recommendations made by the Financial Action Task Force (FATF) in 2012.

DIRECTIVE ON THE PREVENTION OF THE USE OF
THE FINANCIAL SYSTEM FOR THE PURPOSE OF MONEY
LAUNDERING AND TERRORIST FINANCING –
COMMISSION PROPOSAL COM(2013) 45

This proposal is aimed at:

- strengthening the internal market by eliminating international barriers;
- protecting the interests of society from criminal and terrorist activities;
- preserving the prosperity of the European Union by ensuring efficient overall conditions for businesses.

These goals are to be achieved by ensuring the coherence of procedures at EU and international levels as well as coherence between national provisions of law and flexibility in implementing them.

DIRECTIVE ON THE COMPARABILITY OF FEES RELATED
TO PAYMENT ACCOUNTS, PAYMENT ACCOUNT
SWITCHING AND ACCESS TO PAYMENT ACCOUNTS
WITH BASIC FEATURES – COMMISSION PROPOSAL
COM(2013) 266

The Commission wishes to give all EU citizens access to a basic payment account, make switching bank accounts – in particular between countries – easier and improve bank account fees to make them more transparent and comparable.

REGULATION ON EUROPEAN LONG-TERM INVESTMENT
FUNDS – COMMISSION PROPOSAL COM(2013) 462

Through the creation of a new type of investment fund, the EU Long Term Investment Fund (ELTIF), the European Commission intends to attract “patient capital” from both professional investors and retail investors, for infrastructure projects, real estate and unlisted companies.

REGULATION ESTABLISHING UNIFORM RULES AND A
UNIFORM PROCEDURE FOR THE RESOLUTION OF CREDIT
INSTITUTIONS AND CERTAIN INVESTMENT FIRMS IN THE
FRAMEWORK OF A SINGLE RESOLUTION MECHANISM
AND A SINGLE BANK RESOLUTION FUND – COMMISSION
PROPOSAL COM(2013) 520

The Commission intends for future decisions on the resolution of banks in the Member States participating in the SSM to be taken by the Commission and by a

new Resolution Committee. In addition, a Single Bank Resolution Fund is to be established to finance resolution costs.

DIRECTIVE ON PAYMENT SERVICES IN THE INTERNAL MARKET AND AMENDING DIRECTIVES 2002/65/EC, 2013/36/EU AND 2009/110/EC AND REPEALING DIRECTIVE 2007/64/EC – COMMISSION PROPOSAL COM(2013) 547 and

REGULATION ON INTERCHANGE FEES FOR CARD-BASED PAYMENT TRANSACTIONS – COMMISSION PROPOSAL COM(2013) 550

According to Michel Barnier, Commissioner for Internal Market and Services, the payment services market in the EU is fragmented and too costly, incurring annual costs of more than 1% of the EU's GDP or €130 billion. The proposal is aimed at reducing the expense of payments via internet and making these services safer, in this way adding stimulus to the digital internal market. The proposed changes are also designed to eliminate a major barrier between national payment services markets and put an end to unreasonably costly fees.

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 the fund manager to gain a better understanding of its 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 face 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 MMFs invest. These valuation rules will restore the evident truth that MMFs are normal mutual funds whose investment assets are subject to price fluctuations.

SUPERVISION OF BANKS

MARKET DEVELOPMENT

BUSINESS DEVELOPMENT¹

The business volume of Austrian credit institutions totalled €909 billion by the end of 2013 and had thus decreased by 4.6% compared with the previous year. The building societies were the only sector that saw growth (+7.6%). The largest decrease by far was recorded for industrial credit cooperatives (-11.4%). In terms of business volume, rural credit cooperatives were able to slightly expand their market lead by 0.6 percentage points, accounting for a market share of 31.3%. Joint stock banks continue to hold the second largest market share (27.1%), followed by the savings banks (17.6%). The market shares resulting when branches from EEA countries in Austria (Article 9 BWG) and corporate provision funds are included are shown for purposes of comparison in Chart 15.

In spite of a decrease in volume of 1.4%, claims on non-banks continued to account for the largest share on the asset side of the Austrian banking sector in 2013, at 47.4%. Total assets decreased to a greater extent, so that the share of the balance sheet item at-

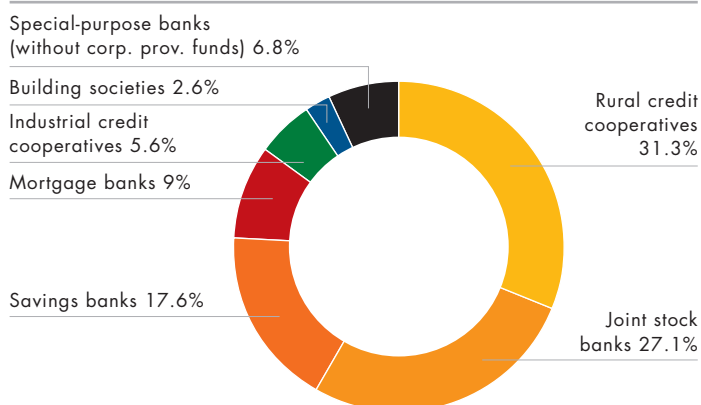
tributed to claims on non-banks could be increased by 1.5 percentage points compared with 2012. Liabilities to non-banks increased both in terms of volume (+2.2%) and of share (+2.6 percentage points), accounting at 38.8% for the largest share on the liability side. At 26.1%, claims on credit institutions accounted for the second-largest share on the asset side of the balance sheet, while at 24.1% liabilities to credit institutions represented the comparable share on the liability side. Both of these balance sheet items decreased in a year-on-year comparison, claims by 8% and liabilities by 14.3% (see Charts 16 and 17 on page 66).

EARNINGS

A non-consolidated operating result of about €6 billion is expected for Austrian banks as at the end of 2013. This represents an 8.5% decrease compared with the previous year. The reason for this development is an increase in operating expenses (+4.6%) while operating income remained constant. The positive trend in net interest income in recent years reversed in 2012 (-8.4%) and stagnated in 2013 (-0.2%). Net interest income is therefore at a level comparable to that in 2009. At 46.9%, net interest income continues to account for a significant share of operating income (see Chart 18 on page 66).

Whereas the Austrian credit institutions finished the 2012 financial year at a very positive level with net income of €2.1 billion, the figures for 2013 would suggest that net income, will decline considerably. Although the final figures are not yet available, the

Chart 15: MARKET SHARES 2013



¹ The following data is based on that provided as part of credit institutions' financial statements for 2009 to 2012 and their quarterly reporting on asset, income and risk statements (on a non-consolidated basis) for 2013 as at the reporting date of 31 December 2013. In order to guarantee comparability of the values from the audited financial statements with those from the asset, income and risk statements, branches from EEA countries in Austria (Article 9 BWG), guarantee banks and corporate provision funds are not considered.

Table 6: MARKET DEVELOPMENT OF THE AUSTRIAN BANKING SECTOR 2009–2013

(Source: OeNB; 2009–2012 financial statement figures; 2013 asset, income and risk statements)

	2009	2010	2011	2012	2013 (prel.)
TOTAL ASSETS IN TERMS OF SECTORS (non-consolidated, in € millions)					
Total assets non-consolidated (sum total) ¹	1,005,171	954,437	992,536	952,804	909,265
Joint stock banks	286,251	244,732	257,415	258,681	246,653
Savings banks	168,529	162,292	167,818	171,821	159,999
Mortgage banks	93,486	91,959	88,646	84,141	81,704
Rural credit cooperatives	275,842	281,015	309,043	292,316	284,253
Industrial credit cooperatives	76,578	71,825	70,791	57,307	50,772
Building societies	20,883	21,466	21,935	22,382	24,073
Special-purpose banks ²	83,602	81,148	76,887	66,157	61,811
DEVELOPMENT OF ASSETS AND LIABILITIES (non-consolidated, in € millions)					
Total assets non-consolidated (sum total) ¹	1,005,171	954,437	992,536	952,804	909,265
Claims on credit institutions	326,393	274,170	288,876	258,320	237,628
Claims on non-banks	417,184	427,822	442,267	437,079	430,815
Debt securities and other fixed-income securities	103,831	97,450	93,461	78,696	68,408
Shares and other variable-yield securities	17,450	16,367	14,406	12,341	10,937
Other asset items	140,314	138,628	153,526	166,368	161,477
Liabilities to credit institutions	304,742	262,778	284,436	255,924	219,303
Liabilities to non-banks	322,351	325,295	340,307	344,826	352,510
Securitised liabilities	237,427	227,980	223,882	203,959	190,258
Other liability items	140,651	138,384	143,910	148,096	147,194
NET INCOME IN TERMS OF SECTORS (consolidated, in € millions)					
Total assets non-consolidated (sum total) ¹	-455	3,326	849	2,078	565
Joint stock banks	425	438	-189	246	418
Savings banks	757	1,326	396	616	534
Mortgage banks	-1,606	-445	-133	5	-1,974
Rural credit cooperatives	1,31	1,531	2,509	1,433	1,588
Industrial credit cooperatives	-1,222	76	-1,394	-104	-174
Building societies	75	78	71	79	63
Special-purpose banks ²	-15	322	-412	-198	110
EARNINGS (non-consolidated ¹ , in € millions)					
Net interest income	8,697	8,971	9,489	8,696	8,679
Operating income	17,654	18,837	19,110	18,525	18,523
Operating expenses	10,922	11,192	11,499	11,973	12,529
Operating result	6,732	7,645	7,611	6,552	5,994
Cost-income ratio (in %)	61.86	59.41	60.17	64.63	67.64
EXPOSURE TO CESEE (end of period in € millions) ³					
Total assets of CESEE subsidiary banks	254,356	263,810	270,045	280,735	264,998
NMS-2004 ⁴	126,916	130,530	126,737	136,631	130,478
NMS-2007 ⁵	40,488	41,275	42,309	40,886	39,764
SEE ⁶	48,676	49,122	51,489	50,976	50,209
CIS ⁷	38,285	42,883	49,510	52,242	44,547

¹ Branches from EEA countries in Austria (Article 9 BWG), credit guarantee banks and corporate provision funds not included.² Credit guarantee banks as specified in Article 5 no. 3 KStG not included.³ The joint venture (not fully consolidated) of Bank Austria in Turkey not included.⁴ NMS-2004: Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, Slovenia.⁵ NMS-2007: Bulgaria, Romania.⁶ SEE: Albania, Bosnia and Herzegovina, Croatia, Kosovo, Macedonia, Montenegro, Serbia, Turkey.⁷ CIS: Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Republic of Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan.

Chart 16: DEVELOPMENT OF THE AUSTRIAN BANKING SECTOR'S ASSETS 2009–2013 (non-consolidated)

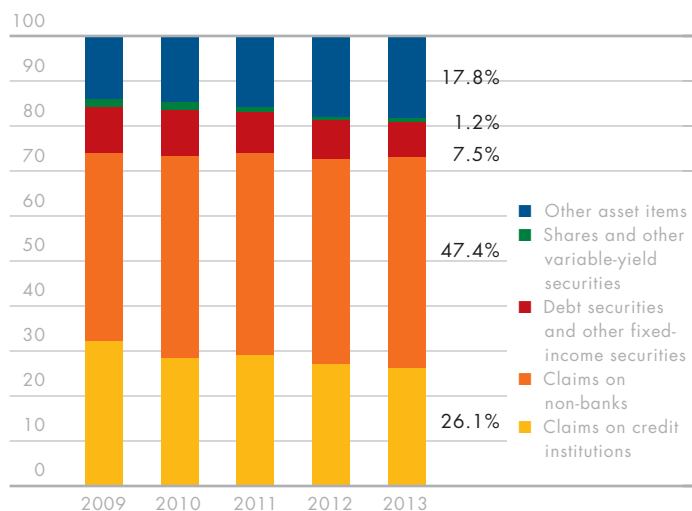


Chart 17: DEVELOPMENT OF THE AUSTRIAN BANKING SECTOR'S LIABILITIES 2009–2013 (non-consolidated)

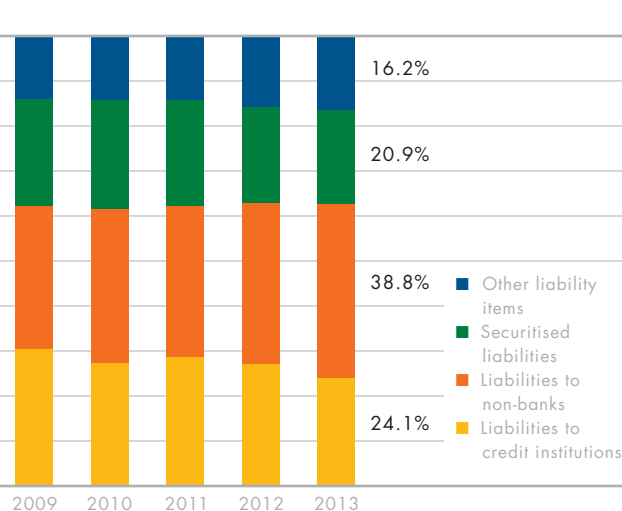
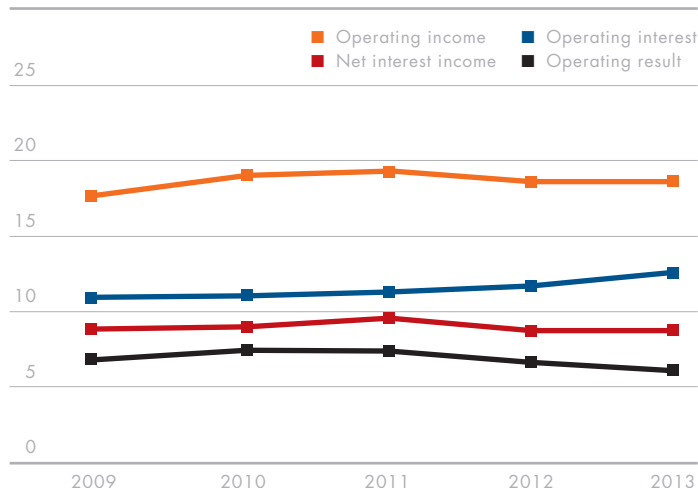


Chart 18: EARNINGS 2009–2013 (in € millions)



credit institutions are forecasting net income of approximately €0.6 billion for the 2013 financial year, which would represent a result comparable to 2011. With the exception of mortgage banks and industrial credit cooperatives, the individual sectoral results were all positive in 2013. The rural credit cooperatives showed a slight increase in net income on 2012 and at €1.6 billion continued to account for the largest share. At €0.5 billion, the savings banks achieved a slightly lower result than in the previous year, while, at €0.4 billion, the joint stock banks showed a significantly better result than in 2012. Mortgage banks, in contrast, suffered a loss of €2 billion for the year,

though having had a slight net surplus the previous year. The industrial credit cooperative sector also recorded a small loss of €0.2 billion for the year. With regard to the provisions for risk (value adjustments), credit institutions are expecting a clear increase for 2013, rising to €5.1 billion. Risks provisions had amounted to €3.3 billion in 2012.

MARKET PRESENCE OF AUSTRIA'S MAJOR BANKS IN CENTRAL, EASTERN AND SOUTH-EASTERN EUROPE

At the end of the third quarter of 2013, the 63 fully consolidated subsidiary banks in Central, Eastern and South-Eastern Europe (CESEE) reported aggregate total assets of €265 billion. Almost half of this figure (49.2%) was accounted for by the Member States that acceded to the EU in 2004 (NMS-2004), followed by the South-Eastern European countries (SEE) at 18.9%, the countries in the Commonwealth of Independent States (CIS) at 16.8%, and the Member States that acceded to the EU in 2007 (NMS-2007) at 15.0%. After increases in the growth rate in previous years, growth among Austrian CESEE subsidiary banks in 2013 was, at -5.6%, again negative for the first time since 2009.

The return on assets of Austrian subsidiary banks in CESEE came to 0.9% in 2013 (2012: 0.8%), and the return on equity rose to 6.9% (2012: 6.7%). The cost-

income ratio decreased slightly to 50.1% (2012: 50.8%).

LEGAL BASIS

The pivotal federal statute of Austrian banking law is the Banking Act (BWG; *Bankwesengesetz*); Articles 69 et seq. BWG specify provisions relating to the supervision of credit institutions. It includes a provision requiring the FMA, notwithstanding the duties assigned to it in other federal acts, to monitor domestic credit institutions, credit institutions conducting business in Austria by way of the freedom of establishment or the freedom to provide services, and representative offices of foreign credit institutions, in order to ensure compliance with the provisions of the BWG and other specifically listed federal statutes. Since 1 January 2014, the Banking Intervention and Restructuring Act (BIRG; *Bankeninterventions- und -restrukturierungsgesetz*) represents an additional source of legal provisions that govern the FMA's administrative activities.

Other important federal acts, compliance with which the FMA is required to verify in the banking sector, are the Savings Banks Act (SpG; *Sparkassengesetz*), the Building Society Act (BSpG; *Bausparkassengesetz*), the Mortgage Bank Act (HypBG; *Hypothekbankgesetz*), the Investment Fund Act (InvFG; *Investmentfondsgesetz*), the Financial Conglomerates Act (FKG; *Finanzkonglomeratengesetz*), the Payment Services Act (ZaDiG; *Zahlungsdienstegesetz*) and the E-Money Act (E-GeldG; *E-Geldgesetz*). With regard to its supervisory activities, the FMA must especially act in consideration of the national economic interest in a functioning banking sector and of the stability of the financial market. Further important legal bases for the FMA's activities are numerous regulations enacted on the basis of the BWG and other laws, in addition to directly applicable legal acts of the EU, as well as guidelines and recommendations issued by the European Banking Authority (EBA).

The EBA issued the following guidelines and recommendations in 2013, which the FMA applies within the framework of its administrative activities:

"Recommendations on supervisory oversight of activities related to banks' participation in the Euribor

panel" were issued by the EBA at the beginning of the year under review. The EBA also published a "Recommendation on the development of recovery plans" and a follow-up report on the capital exercise that took place in 2012. The latter included new recommended measures to replace the "Recommendation on the preservation of core Tier 1 capital during the transition to the Capital Requirements Directive/Capital Requirements Regulation framework" (capital buffers), published in December 2011. Concerning the topic of the banking union, the EBA presented specific minimum requirements for asset quality reviews (AQRs).

Two sets of guidelines were issued during the first six months of 2013. The "Guidelines on retail deposits subject to different outflows for the purposes of liquidity reporting" specify the criteria to be applied by credit institutions in allocating liquid assets in retail deposits to higher outflow categories (i.e. greater than 0%, 5% or 10%) for the purpose of reporting within the framework of the liquidity coverage ratio (LCR). The "Guidelines on capital measures for FX lending to unhedged borrowers under the SREP" were also published, with the aim of harmonising supervisory practices of competent authorities for addressing the risk associated with foreign currency (FX) lending to those borrowers that are considered unhedged under the Supervisory Review and Evaluation Process (SREP).

AMENDMENTS TO THE BWG

A total of four amendments to the BWG were adopted in 2013. The BWG underwent far-reaching changes through the transposition of the European Directive towards implementing Basel III (Capital Requirements Directive – CRD IV) into national law; the amendments were published in Federal Law Gazette I No. 184/2013. The subject of this major amendment to the BWG included elimination of regulatory provisions which are exclusively specified in the Capital Requirements Regulation (CRR) as of 1 January 2014, such as those applying to own funds and large exposures. The BWG was also adapted to accommodate the new governance requirements (fitness and propriety) as well as novel measures introduced as part of macroprudential supervision, such as the future capital buff-

Table 7: NUMBER OF CREDIT INSTITUTIONS 2004–2013

	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Joint stock and special-purpose banks	104	101	102	97	98	96	91	89	87	84
Savings banks	59	57	56	56	55	55	54	51	51	49
Rural credit cooperatives	580	571	564	558	551	545	539	530	520	509
Industrial credit cooperatives	67	67	66	70	68	68	67	67	64	61
Mortgage banks	10	10	10	11	11	11	11	11	11	11
Building societies	4	4	4	4	4	4	4	4	4	4
Investment fund management companies	27	27	28	29	30	30	30	29	29	29
Corporate provision funds	9	9	9	9	9	9	10	10	10	10
Exchange offices/remittance services	7	14	12	12	10	8	7	3	3	3
EU branches	21	25	25	25	32	30	30	30	29	30
Total	888	885	876	871	868	856	843	824	808	790

er rules. Furthermore, additions were made to the catalogue of supervisory tools (Article 70 BWG) and the provisions governing sanctions made more stringent (Articles 98 et seq. BWG).

Along with the publishing of the BIRG in Federal Law Gazette I No. 160/2013, provisions governing early intervention were also introduced to the BWG (Articles 71a and 71b). As of 1 January 2014, the FMA has the option of taking measures at an early stage when a triggering event occurs, which signifies the need for early intervention. This option is designed to allow crisis situations in banking to be averted in future. A need for early intervention exists for example when a bank violates or runs the risk of violating capital or liquidity requirements.

Separate regulations governing administrative procedures in financial market supervision have been specified in Federal Law Gazette I No. 70/2013. The BWG has undergone minor revision in this regard (Article 41 BWG). The BWG was adapted to the Alternative Investment Fund Managers Act (AIFMG; *Alternatives Investmentfonds Manager-Gesetz*) through the amendments published in Federal Law Gazette I No. 135/2013.

OFFICIAL TASKS

SUPERVISED COMPANIES

As at 31 December 2013, there were 790 credit institutions in Austria, including those 30 branches of

credit institutions operating in Austria pursuant to Article 9 BWG under the European Union's freedom of establishment (see Table 7). To be categorised as a "credit institution" within the meaning of the BWG, an establishment must hold a licence to carry out at least one banking transaction pursuant to Article 1 para. 1 BWG. The total number of credit institutions fell and was down by 18 from 2012, marking the continuation of a trend in evidence for years now. Further consolidation affected particularly the decentralised sectors (rural credit cooperatives, savings banks, industrial credit cooperatives) in particular, with a drop in the number of credit institutions from 635 to 619.

PAYMENT INSTITUTIONS

Payment institutions are legal entities that are entitled to commercially provide payment services. Examples of such services include credit transfers and the issuing of payment instruments. Three payment service providers were licensed in Austria as at 31 December 2013 (see Table 8). In addition, there were four branches of payment institutions active in Austria under the EU's freedom of establishment.

LICENSING PROCESSES

Pursuant to Article 4 para. 1 BWG and Article 5 para. 1 of the Payment Services Act (*ZaDiG; Zahlungsdienstegesetz*), a licence is required from the FMA in order to carry out the banking transactions or payment services listed in Article 1 para. 1 BWG or

Article 1 para. 2 ZaDiG.

The FMA initially carries out what is referred to as a “licensing process” to verify that the application is complete. The FMA specifically ensures that all details required by the BWG or ZaDiG have been provided and all documents submitted in their entirety. If all requirements have been met, the actual investigation process is instigated. The examination entails comparing the planned activity with the type of licence that has been applied for. This is done in order to preclude any

“shell licences” from the outset, which is the case for example where a credit institution outsources its banking activities and therefore exists only as an “empty shell”, or any possible exceeding of the scope of the licence. The corporate structure, the articles of association, the suitability of the owners and managers – usually based on a “fit and proper” test – as well as the structure of the credit institution, the business plan and the risk management system are also reviewed.

The hearing process is conducted in parallel to the investigation process described above, and gives the Federal Ministry of Finance (BMF), the Oesterreichische Nationalbank (OeNB) and the deposit guarantee institutions the opportunity to make statements. In a final step, the documentary evidence presented is considered in full and a decision made on whether to grant a licence, which may be subject to requirements and conditions. The decision is delivered to the applicant in the form of an administrative decision (*Bescheid*), informing the party that the licence has been granted or refused.

No new licences pursuant either to the BWG or the ZaDiG were granted in 2013. There was an increase in the number of approved licence extensions, from a total of three in 2012 to nine in 2013. A total of 18

Table 8: PAYMENT INSTITUTIONS 2009–2013

	2009	2010	2011	2012	2013
Licensed payment institutions	0	0	3	4	3
Licensing processes pending as at 31 December	0	8	3	1	0
Passive notifications	0	31	53	34	66

Table 9: LICENSING PROCESSES 2009–2013

	2009	2010	2011	2012	2013
Valid licences ¹	826	813	794	779	760
Licences granted (new licences incl. ZaDiG)	3	1	3	3	0
Licences extended	10	7	10	3	9
License refused pursuant to Article 5 para. 1 BWG	5	1	2	1	0
Licence revoked or lapsed pursuant to Articles 6 and 7 BWG	5	4	9	5	18
FREEDOM TO PROVIDE SERVICES AND FREEDOM OF ESTABLISHMENT					
Passive notification pursuant to Article 9 BWG	40	36	30	25	33
Active notification pursuant to Article 10 BWG	32	25	8	21	53

¹ Number of credit institutions licensed in Austria (excl. branches from EEA/non-EEA countries)

licences were declared expired or revoked in the year under review. As at 31 December 2013, two licence extension processes pursuant to the BWG were pending.

Credit institutions and financial institutions that are licensed in another Member State of the EEA do not require a licence from the FMA. These financial institutions may, on the basis of the fundamental freedoms applicable in the EEA, also offer their services in Austria. Given what is referred to as a “notification”, this may be done either under the freedom of establishment by setting up a branch or under the freedom to provide services through direct cross-border operations. A notification involves the competent home country supervisory authority informing the FMA that the institution concerned has a licence and detailing the banking transactions covered by that licence. At the same time, the home country authority confirms that the institution for which notification is provided is subject to supervision by the relevant home supervisor. In the period under review, 33 credit institutions and 66 payment institutions from other Member States provided “passive” notification of their being active in Austria (see Table 9). A total of 53 Austrian credit institutions provided notification via the FMA to the supervisory authorities in other Member States of their

plans to make use of the freedom of establishment or the freedom to provide services (“active notification”). These figures include new notifications and changes to existing notifications in 2013.

SOURCES OF INFORMATION FOR SUPERVISION

CREDIT INSTITUTIONS AND PAYMENT INSTITUTIONS: REPORTING, NOTIFICATION AND INFORMATION OBLIGATIONS

Banking supervision in Austria is based on several interdependent control bodies at different levels. The managing directors, the internal audit unit and the supervisory board of a credit institution act as its first control body. Auditors and bank auditors serve as the second control body. State supervision, conducted by state commissioners, FMA and OeNB, follows almost immediately after these lower levels.

An important source of information arises from the extensive reporting, notification and information obligations with which credit institutions are required to comply by law. The main provisions governing reporting are found in Article 74 BWG and Article 20 ZaDiG. According to these articles, credit institutions and payment institutions are obliged to provide the supervisory authority with economic key figures at periodic intervals. Annual asset, income and risk statements (VERA) contain the figures that the supervisory authority requires to assess the institutions’ economic situation and their adherence to risk-specific due diligence obligations. The proof of compliance document (ONA) must be submitted on a monthly basis, providing insight into whether the credit institutions are complying with the main provisions of the BWG, particularly with regard to capital requirements and limits on large exposures. Further reporting obligations apply to foreign currency and liquidity risks, the positions of the trading book and the credit institutions’ master data. Credit institutions are required to report this information to the OeNB, as specified in an FMA regulation. The OeNB performs analyses to compile the generated data and then makes it available to the FMA.

Notification obligations as set out in Articles 20 and 73 BWG relate mainly to two different categories of facts:

- planned or initiated acts, such as a change of managing director or supervisory board chairperson; or
- facts that reveal a direct risk, such as the occurrence of insolvency or over-indebtedness.

In 2013, the FMA received notification of a change in managing director in 191 cases and of a change in supervisory board chairperson in 33 cases. The requirement to provide notification of a change in the supervisory board chairperson applies only to institutions having total assets exceeding €750 million at the time when the chairperson is elected. In each of these cases the FMA is required to verify whether the individual holding the new position is personally and professionally qualified for the office.

In addition to the reports and notifications received from the credit institutions through the individuals charged with submitting the reports on their behalf, the FMA also actively approaches the supervised banks. Pursuant to Article 70 para. 1 no. 1 BWG and Article 63 para. 2 no. 2 ZaDiG, the FMA may request information at any time from the supervised credit institutions and payment institutions and inspect their business documents. In this way the FMA can obtain additional information or examine and verify data provided in reports. There were 433 instances of information being obtained or of documentation being inspected in 2013. Yet the FMA may obtain information not only from the credit institutions themselves but also from bank auditors and auditing associations, from protection schemes as well as from government commissioners. The FMA issued 19 such requests for information in 2013.

BANK AUDITORS AND STATE COMMISSIONERS

The financial statements of each credit institution and payment institution as well as the consolidated financial statements of each group of credit institutions pursuant to Article 59 para. 1 BWG, including the accounting and the management report as well as the consolidated report, where applicable, must be examined by the bank or statutory auditors to verify their compliance with the law. Among other things this involves verifying the substantive correctness of the measurement, including compliance with the regulatory provisions of the BWG or the ZaDiG as well as the

Table 10: SOURCES OF INFORMATION 2009–2013

	2009	2010	2011	2012	2013
Notification of changes in the persons appointed as directors pursuant to Article 73 para. 1 no. 3 BWG	140	219	149	166	191
Notification of the election of a new chairperson of the supervisory board pursuant to Article 28a para. 4 BWG	31	52	34	24	33
Notification by the director of danger to creditors, possible insolvency or over-indebtedness pursuant to Article 73 para. 1 nos. 5 or 6 BWG or Article 11 para. 1 nos. 5 or 6 ZaDiG	2	1	1	0	2
Information obtained from or inspection at credit institution pursuant to Article 70 para. 1 no. 1 BWG	307	382	384	402	433
Information obtained from bank auditor, protection scheme and government commissioner pursuant to Article 70 para. 1 no. 2 BWG	5	30	13	29	19
Notification of facts required to be reported by bank auditors pursuant to Article 63 para. 3 BWG	36	31	42	39	29
Bank auditor/early recognition meetings	40	47	52	43	40
Management talks	78	73	63	61	62

allocation of items in the trading book. The result of this audit is included in an annex to the audit report. This annex must be submitted to the management and the supervisory body under company law, together with the audit report on the financial statements. The FMA must be immediately notified of any relevant facts of particular significance that auditors identify as part of their activities.

The FMA holds regular discussions with all the bank auditors of Austrian credit institutions. Of particular relevance in this regard are the meetings with the auditing associations of the decentralised sectors, held at regular intervals, as well as the meetings with the auditors, held at least once every quarter. The FMA holds such meetings, referred to as early recognition meetings, with representatives of the protection schemes of each of the sectors. In the course of 2013, 40 such bank auditor and early recognition meetings were held in total (see Table 10).

The Federal Minister of Finance must appoint state commissioners for all credit institutions with total assets of €1 billion upwards. These officials are entitled to attend all AGMs or general meetings and supervisory board meetings and sit on all supervisory board committees with decision-making powers. The state commissioner must immediately inform the FMA of any threat to the credit institution that becomes known to them in the course of their activities. State commissioners are obliged to raise objections against resolutions of the above-mentioned bodies that they con-

sider to violate banking supervision requirements. They are also required to report to the FMA on their activities.

MANAGEMENT TALKS

The FMA conducts regular structured talks with the management of the credit institutions. Such talks represent a valuable source of supplementary information for the FMA. Management talks held at major banks according to a set schedule therefore play a significant part in routine analysis. One of the purposes of the meetings is to maintain contact with the management of credit institutions and to examine in greater detail their risk assessment and strategy. Depending on the issue focused on, a distinction is made in this context between management talks, risk talks and CESEE talks. In the period under review, 62 such meetings were held (see Table 10).

ON-SITE INSPECTIONS

On-site inspections at the credit institutions are a key source of information for the supervisory authority. Such inspections are either carried out routinely or in response to particular issues. Since 2008 on-site inspections for the purpose of banking supervision have generally been conducted by the OeNB – based on an audit engagement issued by the FMA. To this end, the FMA and the OeNB each year jointly stipulate an audit plan for the following year (Article 70 para. 1b BWG). On-site inspections serve as an important

Table 11: AUDIT ENGAGEMENTS 2009–2013

	2009	2010	2011	2012	2013
Audit engagements issued to the OeNB pursuant to Article 70 para. 1 no. 3 BWG and Article 63 para. 1 no. 4 ZaDiG	49	39	43	47	47

basis for the analyses carried out by the OeNB. A total of 47 audit engagements were issued to the OeNB in 2013 (see Table 11). Topics relating to overall bank risk management were the focus of the audit programme in 2013.

In view of the significance of the CESEE region for Austrian credit institutions, on-site inspections of credit institutions in that region are being conducted with greater frequency within the framework of consolidated supervision. Such inspections are held with the consent of the competent supervisory authority in the particular case.

Additionally, an expert opinion to be prepared by the OeNB as part of the model approval process regularly requires additional on-site presence of the OeNB. A total of twelve on-site activities related to model approval took place in 2013.

SUPERVISORY PROCEDURES

GENERAL AND OFFICIAL MEASURES PURSUANT TO ARTICLE 70 BWG AND ARTICLE 64 ZADiG

In accordance with its statutory mandate, the FMA is charged with monitoring the credit institutions' compliance with statutory provisions pertaining to banking, with ascertaining facts in cases involving the endangering of creditors' interests and with introducing appropriate remedial measures where necessary. The relevant statutory provisions in this regard are Article 70 BWG and Article 64 ZaDiG, which provide the FMA with the means of implementing these objectives, including powers to intervene and impose sanctions.

If there is a risk of a credit institution or payment institution being unable to fulfil its obligations to creditors and customers, the FMA may take appropriate measures. The FMA may, for example, demand that the distribution of capital or profit be prohibited, a government commissioner be appointed, the managers be

dismissed or the continuation of business operations be prohibited. The FMA ordered measures as specified in Article 70 para. 2 BWG in two cases in 2013.

One official power that is particularly relevant in practice is the one specified in Article 70 para. 4 BWG. In

cases where a licensing requirement is no longer met or where a credit institution violates provisions of the BWG or another specific law, the FMA may introduce measures as described in the following. Firstly, the credit institution will be issued with a request to restore compliance with the statutory provisions or be subject to a coercive penalty. Should the institution fail to comply with this request fully or at all, the FMA is required to prohibit, in full or in part, the managers from managing the business; an exception is where this would be an inappropriate measure given the type and severity of the violation and it is expected that renewed imposition of the first measure will result in compliance with the statutory provisions being restored. In such a case, the FMA is required to impose the threatened coercive penalty and to re-issue the request under threat of a more severe penalty. If these measures are not sufficient to guarantee the ability of the credit institution to function, the institution's licence is to be revoked as a last resort. On seven occasions during the period under review, the FMA ordered credit institutions, under threat of a coercive penalty, to establish compliance with statutory provisions within an appropriate period of time.

Para. 4a of Article 70 BWG makes provision for a special power. If in the case of a credit institution, group of affiliated credit institutions or group of credit institutions the risks arising from banking transactions and banking operations are inadequately limited, and if these risks are not expected to be limited in the short term, the FMA must, irrespective of any other measures, impose a minimum capital requirement that is higher than the statutory minimum capital requirement ("capital add-on" measure). A capital add-on was required once during the year under review.

A further general supervisory measure designed to enforce compliance with the statutory provisions is specified in Article 97 BWG. Accordingly, the FMA is

Table 12: OFFICIAL MEASURES PURSUANT TO ARTICLES 70 AND 97 BWG 2009–2013

	2009	2010	2011	2012	2013
Measures against danger to creditors pursuant to Article 70 para. 2 BWG	3	0	1	0	2
Measures to restore legal compliance pursuant to Article 70 para. 4 nos. 1 to 3 BWG	27	3	5	9	7
Interest imposed pursuant to Article 97 BWG	51	37	32	24	16

Table 13: NOTIFICATIONS AND APPROVALS PURSUANT TO §§ 20 et seq. BWG 2009–2013 AND § 11 ZaDiG 2011–2013

NOTIFICATIONS AND APPROVALS PURSUANT TO BWG	2009	2010	2011	2012	2013
Notification of qualifying holdings in an Austrian credit institution pursuant to Article 20 para. 1 BWG	31	16	20	14	68
Procedure completed with expiry of assessment period (i.e. non-prohibition of acquisition) or non-prohibiting administrative decision prior to expiry of the period pursuant to Article 20a para. 2 BWG	24	13 (excl. 5 procedures pending from 2009)	4 (excl. 2 procedures pending from 2010)	12 (excl. 1 procedure pending from 2011)	55
Procedure completed with prohibition of the acquisition pursuant to Article 20a para. 2 BWG	0	0	1	0	0
Procedure completed through withdrawal of the notification pursuant to Article 20a para. 2 BWG	2	0	15	1	2
Current procedures pursuant to Article 20 para. 11 BWG	5	3	1 (from 2010)	0	11
Approval of mergers pursuant to Article 21 para. 1 no. 1 BWG	9	11	10	13	21
Approval of demergers pursuant to Article 21 para. 1 no. 6 BWG	3	2	2	4	1
NOTIFICATIONS AND APPROVALS PURSUANT TO ZaDiG*			2011	2012	2013
Notification of qualifying holdings in an Austrian payment institution pursuant to Article 11 para. 2 ZaDiG			3	4	0
Procedure completed with expiry of assessment period (i.e. non-prohibition of acquisition) or non-prohibiting administrative decision prior to expiry of the period pursuant to Article 11 para. 2 ZaDiG			0	2 (excl. 1 procedure pending from 2011)	0
Procedure completed with prohibition of the acquisition pursuant to Article 11 para. 2 ZaDiG			0	0	0
Procedure completed through withdrawal of the notification pursuant to Article 11 para. 2 ZaDiG			0	1 (excl. 1 procedure pending from 2011)	0
Current procedures pursuant to Article 11 para. 2 ZaDiG			2	1	0

* The ZaDiG entered into force in November 2009.

required to charge interest in the event of breaches of the law involving failure to comply with thresholds, either by exceeding or falling below them. This occurs in cases where, for instance, large exposure limits are exceeded or minimum capital requirements are not met. The additional costs are intended to motivate the credit institutions to comply with the regulatory provisions. This may also compensate for any competitive advantages that might arise through infringements of the law. Interest was charged in 16 such cases (pursuant to Article 97 BWG) in 2013, eight fewer than in 2012 (see Table 12).

OWNERSHIP PROVISIONS AND APPROVALS

A qualifying holding exists in the case where a party

acquires more than 10% of the capital or voting rights in a credit institution or payment institution. Any person who resolves to acquire such a holding or to increase their existing holding such that the thresholds of 20%, 30% or 50% of the capital or the voting rights will be exceeded must notify the FMA.

The reverse also applies, i.e. where holdings will fall below the corresponding thresholds as a result of a sale, the FMA is authorised to prohibit the planned participation within 60 working days. This applies if the new owners do not meet the requirements set in the interests of the sound and prudent management of a credit institution. This is specified in Article 20 para. 2 in conjunction with Article 20b BWG.

As seen in Table 13, a total of 68 notifications of

Table 14: MODEL APPROVALS 2009–2013

	2009	2010	2011	2012	2013
CREDIT RISK					
Approval for the internal ratings based approach pursuant to Article 21a para. 1 BWG	12	12	10	11	6
Approval for the internal ratings based approach with own estimate of loss given default and conversion factors pursuant to Article 21a para. 1 in conjunction with Article 22b para. 8 BWG	1	1	0	0	0
Provisional or final approval to use the IRB approach pursuant to Article 21a para. 1 in conjunction with Article 103e no. 2 BWG	13	0	21	0	0
Approval for use of own volatility estimates (comprehensive method) pursuant to Article 21c para. 1 BWG	0	0	0	0	0
Approval for internal models for calculating the exposure value for transactions as specified in Article 21f para. 1 nos. 1 to 5 BWG pursuant to Article 21f para. 3 BWG	1	0	0	0	0
MARKET RISK					
Approval for internal market risk models pursuant to Article 21e para. 1 BWG	0	2	1	6	2
OPERATIONAL RISK					
Approval for the advanced measurement approach for operational risk pursuant to Article 21d para. 1 BWG	2	3	4	7	4
OF THESE					
Cross-border processes pursuant to Article 21g para. 1 BWG	3	7	11	8	6

planned acquisition of a holding in an Austrian credit institution or payment institution were submitted to the FMA in 2013. Of these, 55 resulted in the acquisition not being prohibited while two notifications were withdrawn. The proceedings in the remaining eleven cases were not yet completed in 2013. The FMA also approved 21 mergers of credit institutions and one demerger during the reporting period.

MODEL APPROVALS

Credit institutions have been able to apply their own estimates of loss given default as well as of the conversion factors in the area of the IRB approach since 2008. Additionally, they have been able to apply the advanced measurement approach (AMA) for operational risk.

The classic procedure, when a credit institution applies for approval of a model solely for the Austrian market, is as follows. The application, which is required to be submitted to the FMA, is first checked to ensure that it meets the formal requirements and to verify that all of the necessary documentation has been submitted. The OeNB is subsequently requested to provide an expert opinion. On the basis of the review of all documents and the OeNB opinion, the model is then either approved or rejected. In 2013,

six models relating solely to the Austrian market were approved in total.

In the case of cross-border approval for a model, the official process is far more comprehensive. If a superordinate EEA parent credit institution applies to have a risk model approved for itself and its subsidiary banks, the approval must be issued jointly by all of the supervisory authorities affected. The home supervisor, i.e. the supervisory authority responsible for the superordinate credit institution, has a central role to play in this process. In addition to its activity as a home supervisor for Austria's largest banks, the FMA is involved in other cross-border processes in the capacity of host supervisor. During the period under review, the FMA in its capacity as home supervisor was able to bring six cross-border approval processes to a successful conclusion (see Table 14).

CONSOLIDATING SUPERVISION

COLLEGES AS AN INSTRUMENT

OF CONSOLIDATED SUPERVISION

The FMA collaborates in international organisations, in some cases in a leading capacity. In addition, maintaining bilateral and multilateral relations with other supervisory authorities plays an important role.

Table 15: SUPERVISORY COLLEGES 2009–2013

	2009	2010	2011	2012	2013
Colleges established as specified in Article 131 CRD (FMA as home supervisor)	4*	4*	4	14	14
College meetings held	6*	7*	7	9	4

* The requirement to hold supervisory colleges (Article 77b BWG) entered into force on 31 December 2010.

In line with the activities of Austrian credit institutions, the Central, Eastern and South-Eastern European (CESEE) region is a focus of such contacts.

Supervisory colleges are a key instrument for realising consolidated supervision of cross-border credit institutions. On the one hand, the colleges entail Basel II Pillar 1 procedures, e.g. reaching joint decisions in model approval cases. On the other hand, they are a venue for dealing with issues arising during continued supervision. A specific example of such an issue is the overall risk situation and management of a group of credit institutions as defined under Pillar 2 of Basel II (Supervisory Review and Evaluation Process – SREP).

Specifically, the issues raised during continued supervision are discussed and then brought together in an overall view, with the members of the college annually reaching a joint decision on the capital requirements for the group of credit institutions, based on a joint risk assessment (Joint Risk Assessment And Decision Process – JRAD). Based on this decision, the members of the college annually stipulate a supervisory action plan, defining the further procedures of the supervisory authorities in the case of the particular banking group.

In view of the special significance of the CESEE region for Austrian banking industry, and as a means of promptly assessing the economic situation of a group of credit institutions at the consolidated level, on-site inspections of credit institutions are being conducted with greater frequency in that region within the framework of consolidated supervision.

As of the end of 2013, the FMA had established a total of four supervisory colleges for banking groups operating on a cross-border basis that have at least two significant subsidiary institutions or branch offices in other EEA Member States; each of the colleges is required to hold an annual meeting. Another ten supervisory colleges with a more flexible structure

existed as of the end of 2013. Supervisory colleges have gained in significance, particularly as a result of the entry into force, on 31 December 2010, of Article 77c BWG, which defines the cross-border decision-making procedure. Consequently, the authorities participating in the supervisory colleges now also consult on possible additional capital requirements and coordinate joint actions in any crisis situation.

Within the scope of this coordinating role, the FMA in its capacity as home supervisor held a total of four college meetings devoted to cross-border groups of credit institutions in 2013 (see Table 15). Representatives of the competent EEA and third-country authorities as well as EBA staff members also participated in the college meetings.

MANAGEMENT TALKS

Austrian credit institutions are prominent in Central and Eastern Europe, and thus great significance is associated with this region for the business development of Austria's major credit institutions. Correspondingly, priority is given to discussing the risk situation in the CESEE in the context of management talks involving the major banking groups with a strong CESEE commitment. The purpose of the talks is to develop a clear view of the structure and business activities of CESEE subsidiaries as well as of the risks to which they are exposed. Detailed information is also provided by the banks concerning their strategy for Eastern Europe, the group risk management system and the development of their most significant subsidiaries abroad.

EUROPEANISATION OF BANKING SUPERVISION

As of November 2014, the European Central Bank will assume supervision of all banks within the euro area as part of the Single Supervisory Mechanism (SSM). Supervision will subsequently be conducted in close cooperation with national supervisory institu-

tions within the framework of a decentralised system. Yet, prior to this a comprehensive assessment of the balance sheets and risk situations of Europe's major banking groups will need to be completed.

In future the most significant credit institutions within the euro area, numbering roughly 130, will be subject to direct supervision by the ECB, while all other banks will remain the direct responsibility of national supervisors. Yet, in accordance with the principle of proportionality, the same supervisory criteria will apply to all banks. It is anticipated that six Austrian groups of credit institutions will come under direct supervision by the ECB. Conversely, roughly 650 banks will continue to be under the direct oversight of the FMA. Supervision at both levels will nonetheless be conducted in very close cooperation between the ECB and the national institutions. This step will utilise existing expertise to the best possible extent and take full advantage of synergy effects.

NEW BANK RESTRUCTURING REGIME

The Banking Intervention and Restructuring Act (BIRG; *Bankeninterventions- und -restrukturierungsgesetz*), passed by Austrian legislators in 2013, is a first step at national level towards establishing a single European regime for the restructuring and resolution of banks. Banks are required to draw up recovery and resolution plans as a preventive measure. The FMA is authorised to order appropriate recovery and restructuring measures at an early stage. The legal basis for a Europe-wide regime and system for bank resolution is currently under final negotiation within the EU legislative process. Ongoing efforts are also aimed at finalising harmonised rules for deposit guarantees to apply Europe-wide.

Details of the BIRG are discussed under a special topic (see opposite page).

THE BIRG – THE NEW RECOVERY AND RESOLUTION TOOLS IN THE BANKING SECTOR

The Banking Intervention and Restructuring Act (BIRG; *Bankeninterventions- und -restrukturierungsgesetz*) entered into force on 1 January 2014, obliging banks and groups of credit institutions to draw up recovery and resolution plans and to submit these to the FMA. The aim is for credit institutions and the supervisory authority to be better prepared for crisis than has previously been the case. Additionally, in the form of early intervention, the FMA is now able to get involved at an early stage as soon as signs begin to emerge that a bank has a problem.

“TOO BIG TO FAIL” AND INTERNATIONAL SOLUTIONS

The global financial crisis showed the extent to which serious problems facing large and complex banking groups can have severe consequences for the economy as a whole, extending far beyond the losses suffered by the credit institutions' direct creditors. Against this background, vast sums of public money were required in the years following 2008 to avert the collapse of many banks.

Several international initiatives subsequently emerged, developing approaches to improve the handling of banking crises and in order to avoid the need for bailouts, i.e. the use of tax revenues to rescue banks. In October 2011, the Financial Stability Board published its highly acclaimed paper “Key Attributes of Effective Resolution Regimes for Financial Institutions” and in June 2012 the European Commission presented its proposal for an “EU framework for bank recovery and resolution”. This proposal formed the basis of the Bank Recovery and Resolution Directive (BRRD), which is set to be adopted and will form the future basis for the recovery and resolution of ailing banks in the EU. At the same time, negotiations have been taking place at EU level since July 2013 to devise a Single Resolution Mechanism (SRM), by means of which responsibility for bank resolution across

Europe would be held by a central European resolution authority.

All of these approaches revolve around preventive and preparatory measures designed to reduce the probability of a credit institution becoming insolvent in the first place and to ensure that periods of good economic health are used to structure banks in such a way that, should a resolution be required, it can be achieved without jeopardising the stability of the financial market as a whole and without resorting to a bailout. Enshrining the obligation to prepare recovery and resolution plans, the BIRG provides for such preparatory measures. In terms of the preventive approach, the early intervention option open to the FMA is key.

RECOVERY AND RESOLUTION PLANS

Recovery plans are plans drawn up by credit institutions to show the supervisory authority what measures they would use to re-establish their financial stability were their financial position to deteriorate significantly. The banks define triggering events, the occurrence of which would result in recovery measures being introduced. These triggering events must be expressed using quantitative or qualitative indicators, and they must also be future-oriented and easy to monitor. Examples of possible indicators include failure to meet specific equity or liquidity thresholds. Recovery plans also contain a list of recovery options. Each measure must be accompanied by a description of the bank employees responsible for implementation, the specific procedure to be followed, the timescale involved and the expected effects. Any potential obstacles must be identified and eliminated as far as possible. The recovery options included in a recovery plan are not strictly allocated to particular triggering events. Rather, in the event of a crisis, the bank's managers should be able to select and implement a package of appropriate measures from a pool

of available recovery options, thereby stabilising the bank.

Whilst recovery plans should improve banks' ability to "heal themselves", resolution plans help the supervisory authority to prepare for a credit institution's potential insolvency. In their resolution plans, banks must provide a detailed breakdown of their organisational structure, particularly with regard to the links and dependencies between different units (e.g. commonly used systems, etc.) that could be relevant during a resolution process. A further key component of a resolution plan is the identification of critical functions. These are the activities of a credit institution that, if suspended, could impact on the stability of the financial markets or real economy. It is therefore particularly important that such activities be maintained in the event of a crisis. Based on this information, the resolution plan must set out strategies for reorganising or liquidating an insolvent bank in a way that avoids any negative fallout for the financial systems or the need for a public bailout.

With regard to groups of credit institutions, groups of affiliated credit institutions and institutional deposit guarantee schemes, recovery and resolution plans are not prepared at the level of individual institutions but in the form of group plans covering the entire group or system. (Group) recovery and (group) resolution plans must be submitted to the FMA, which will subject them to an official review based on expert opinions from the OeNB. Should obstacles to a possible recovery or resolution be identified and should the bank fail to provide a sufficient response to the request that these be remedied, the FMA may order the introduction of measures to ensure that the bank is capable of being the subject of recovery or resolution. Such measures range from the required provision of additional information by the bank, to the signing of service level agreements and to assets being sold or changes being made to the bank's organisational structure.

EARLY INTERVENTION

Together with BIRG, Articles 71a and 71b BWG, which regulate the terms of early intervention, have been supplemented. Based on the changes, the FMA may intervene at an early stage if there are signs of a crisis at a bank.

The supervisory authority may order the introduction of early intervention measures as soon as there is a significant deterioration in a credit institution's financial or liquidity situation to the extent that it is justified to assume that fulfilment of that bank's obligations is at risk. It is irrelevant in this regard whether the statutory capital or liquidity requirements have already been breached. The list of possible early intervention measures includes, among other options, implementing recovery measures detailed in the bank's recovery plan, making specific improvements to risk management, convening a general meeting to introduce a capital measure or calling on the bank to draw up a negotiation plan for the voluntary restructuring of its liabilities.

TIMETABLE AND OUTLOOK

Banks and banking groups with assets in excess of €30 billion must submit their recovery plans to the FMA for the first time by 1 July 2014, with their resolution plans required by 31 December 2014. Smaller credit institutions and groups will be required to prepare their plans for the first time in 2015. Both recovery and resolution plans must be updated annually.

It is expected that the BRRD will need to be transposed by 2015, with special resolution tools for banks in addition to the preventive and preparatory measures. The creation of a resolution fund will also be required, funded by contributions from the banks and drawn on to finance resolution processes. The European Single Resolution Mechanism, under which resolutions would be implemented by a central European resolution authority, is planned from 2016 onwards.

SUPERVISION OF CORPORATE PROVISION FUNDS

MARKET DEVELOPMENT

The upward trend on the equity markets, the emergence from recession, and the easing of the uncertainty on the financial markets impacted positively on the business of corporate provision funds. By the reporting date of 31 December 2013 the number of membership contracts, measured on the basis of employer account numbers, had increased by 8.1% from 997,691 to 1,078,551 (see Chart 19). Provision for employees grew by 6.06% during the year under review (from 511,054 to 542,014 contracts), while provision for the self-employed rose by 10.25% (from 486,637 to 536,537 contracts). It should be kept in mind, however, that several employer account numbers may be assigned to one and the same employer.

Measured in terms of current contributions, corporate provision funds received a total of €1.123 billion in 2013, of which €1.024 billion related to provision for employees and €99.01 million to self-employed provision. This compares with a total of €1.043 billion during the previous year (of which €945.17 million in contributions for employees and €97.73 million for the self-employed). Overall, this equates to an increase of 7.71%, with employee provision growing by 8.37% and provision for the self-employed up by 1.31%.

The total assets managed in 2013 by all of the corporate provision funds rose from €5.27 billion to €6.22 billion, a jump of €946.49 million or 17.95% (see Chart 20).

During the period from the system's introduction on 1 January 2004 until the end of 2013, a total of €1.46 billion has been paid out to 1,909,557 beneficiaries (entitled). Over the same period, 75,922 beneficiaries (entitled) have taken advantage of the legal option of transferring their pension expectancies to another corporate provision fund, moving a total of €61.07 million. Additionally, as many as 600 indivi-

Chart 19: MEMBERSHIP CONTRACTS 2013

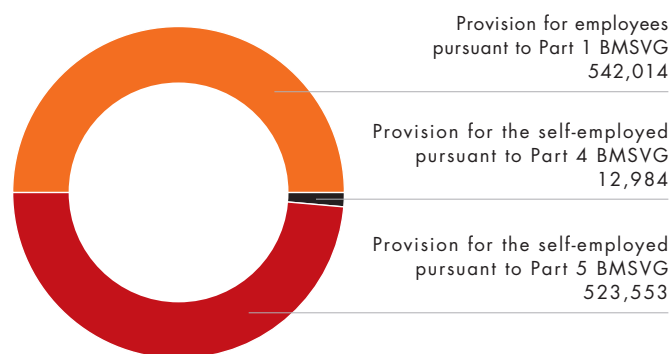


Chart 20: TOTAL ASSETS OF CORPORATE PROVISION FUNDS 2009–2013 (in € billions)

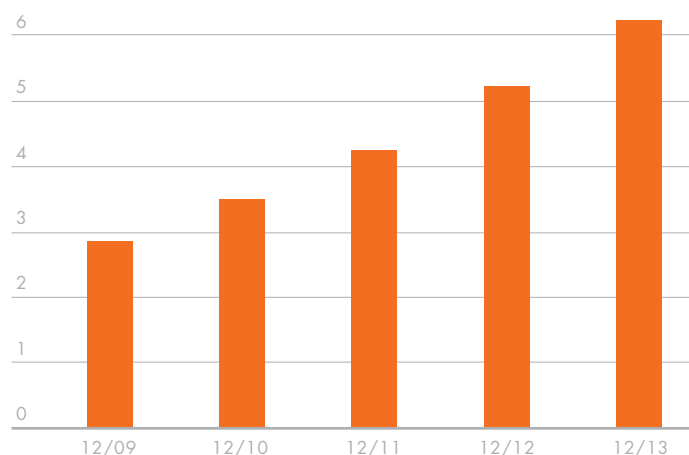
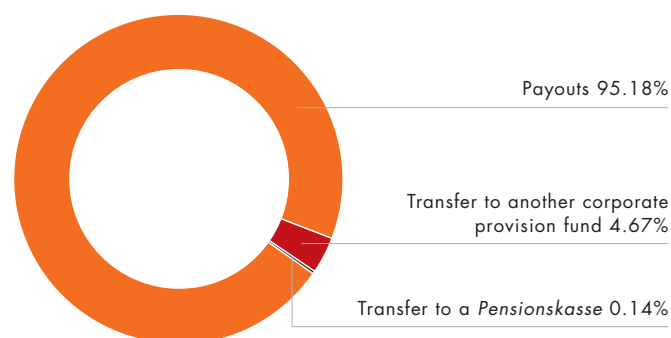


Chart 21: DISPOSAL OPTIONS OF BENEFICIARIES (ENTITLED) 2013 (pursuant to Article 17 BWG)



duals have transferred a total of €1.64 million to a *Pensionskasse* or supplementary pension insurance scheme. As in the previous year, most severance pay expectancies were paid out by the corporate provision funds in the form of a capital sum (see Chart 21 on page 79).

The Company Employee and Self-Employment Provisions Act (BMSVG; *Betriebliche Mitarbeiter- und Selbständigenvorsorgegesetz*) obliges corporate provision funds to guarantee accrued severance pay funds, as well as any transferred existing severance pay entitlement and any severance pay expectancies transferred from another corporate provision fund. This guarantee as defined in Article 24 para. 1 BMSVG is referred to as the capital guarantee. Moreover, under the terms of Article 24 para. 2 BMSVG, corporate provision funds may also grant an interest guarantee to their beneficiaries (entitled) that exceeds this minimum amount. Up until the end of 2005, this interest guarantee was offered by ÖVK Vorsorgekasse AG. Since 2010, it has been available from fair-finance Vorsorgekasse AG.

As a result of the statutory capital guarantee, the corporate provision funds invest very conservatively. For this reason, investments are primarily made in bonds, either directly, or indirectly via investment funds (see Chart 22). Most corporate provision funds consider a range of sustainability criteria when making their investment decisions. An investment advisory committee is often also involved in the investment process.

During the reporting year the corporate provision funds recorded an investment result of 2.82%, down

on the clearly positive performance of 4.28% recorded in 2012 (2009: +3.65%; 2010: +2.58%; 2011: +0.2%).

LEGAL BASIS

The BMSVG defines the remit of the corporate provision funds and places them under the supervision of the FMA. Furthermore, pursuant to the BMSVG, the acceptance and investment of severance payment contributions are deemed to be banking transactions pursuant to Article 1 para. 1 no. 21 of the Banking Act (BWG; *Bankwesengesetz*) that require a licence. Consequently, the corporate provision funds, in their capacity as special-purpose credit institutions, must apply and adhere to the terms of the BWG, unless they are explicitly exempted.

OFFICIAL TASKS

In accordance with the BMSVG, corporate provision funds are subject to continued supervision by the FMA once they have been granted a licence. The FMA, in the context of its supervisory activities, is responsible for introducing and managing supervisory proceedings and for processing notifications and reports submitted in accordance with the BWG. It is thus also responsible for examining the suitability of the management, conducting a “fit and proper” test where applicable. The FMA must also be informed of the original investment conditions as well as any subsequent changes to them, and approve them. Corporate provision funds’ compliance with the capital requirements set out in Article 20 BMSVG and with the investment provisions of Article 30 BMSVG are further areas monitored by the FMA. Finally, the appointment of or any change of custodian bank has to be approved by the FMA. During the reporting year, changes to the investment conditions of two corporate provision funds were approved by the FMA in the course of its supervisory activities.

SUPERVISED COMPANIES/LICENSING

As at 31 December 2013, ten corporate provision funds held licences in Austria. Each of these ten li-

Chart 22: INVESTMENT INSTRUMENTS OF CORPORATE PROVISION FUNDS 2013

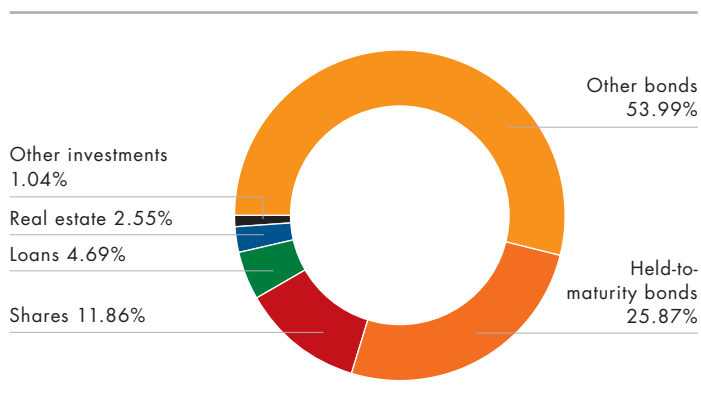


Table 16: MARKET DEVELOPMENT OF CORPORATE PROVISION FUNDS 2009–2013 (source: Association of Occupational Provision Funds)

	2009	2010	2011	2012	2013
GENERAL DATA					
Number of membership contracts	750,586	834,966	926,341	997,691	1.078,551
Assets of corporate provisions funds (in € millions)	2,830	3,570	4,286	5,274	6,220
Current contributions (in € millions)	786	853	944	1,043	1,123
Payouts (in € millions)	192	197	229	296	314
Performance of corporate provision funds (in %)	3.65	2.58	0.20	4.28	2.82
DISPOSAL OPTIONS (in € millions)					
Payouts	192.33	197.11	229.08	225.99	314.11
Transfer to another corporate provision fund	6.06	8.00	9.59	11.00	15.42
Transfer to a <i>Pensionskasse</i>	0.24	0.41	0.39	0.37	0.47
Total	198.63	205.52	239.06	307.36	330.00
INVESTMENT INSTRUMENTS (in %)¹					
Held-to-maturity bonds	–	–	–	–	25.9
Other bondss	89.4	88.0	93.3	88.3	54.0
Shares	9.5	6.1	4.3	8.6	11.9
Loans	–	–	–	–	4.7
Real estate	1.2	1.4	2.4	3.1	2.6
Other investments	–	–	–	–	1.0

¹ In 2013, the data source used different criteria for presenting the investment instruments compared with previous years.

The investment instruments euro-denominated and non-euro-denominated bonds included loans and bonds classed as held to maturity.

censed funds currently manages one collective investment undertaking.

CONTINUED SUPERVISION

REPORTING AND INFORMATION SOURCES

Not least to ensure that the FMA can fulfil its supervisory remit, corporate provision funds are subject to extensive reporting obligations. Pursuant to the FMA Regulation on the Quarterly Financial Statements for Corporate Provision Funds (BVQA-V; *Betriebliche Vorsorgekassen-Quartalsausweisverordnung*), corporate provision funds must submit reports on their quarterly financial statements to the OeNB within four weeks of the end of each calendar quarter. The information to be provided in the BVQA report by the corporate provision funds includes details on own funds and a statement of net assets for the collective investment undertaking. In addition, corporate provision funds must submit their audited financial statements, the annex to the audit report, as well as the audited report on activities of the collective investment undertaking and

the audit report on the report on activities to the FMA every year in good time. Additionally, the state commissioners appointed for the corporate provision funds are required to report regularly to the FMA.

DISCLOSURE OBLIGATIONS

Pursuant to the BMSVG, all beneficiaries (entitled) of corporate provision funds are to be informed every year of the severance pay expectancy acquired as of the last balance sheet date, the contributions made by the employer during that financial year, the cash and administrative expenses charged to them, the investment income allocated to them and the acquired severance pay expectancy in total. This information is to be provided by the respective corporate provision fund in the form of an account statement. In this context, the FMA has made use of its statutory power and published Minimum Standards covering how this account information is to be presented. Upon request, the corporate provision funds are also required to send the reports on activities of the collective investment undertakings to the employers who

have paid contributions and to the responsible works councils.

INSPECTIONS AND EXAMINATIONS ON SITE

For the purposes of fulfilling its statutory remit, the FMA may use a number of different supervisory measures. It may, for example, inspect the documents held by corporate provision funds and request information. It also has the right to prohibit or intervene in activities, and may carry out on-site inspections and examinations. The FMA makes regular use of these powers in the context of its supervisory activities. During the reporting year, for example, an on-site inspection was carried out at one corporate provision fund.

MANAGEMENT TALKS

The FMA regularly invites representatives of the corporate provision funds to attend management talks. At these talks, the managers report on such aspects as

their performance and results during the past year, investment activities, changes in their organisational structure, deviations from the business plan and any current concerns. The FMA will also ask questions on these matters. Management talks were held with all ten corporate provision funds during the year under review.

SUPERVISORY PROCEDURES

No supervisory proceedings pursuant to Article 70 para. 4 BWG were required in 2013 for the purposes of restoring compliance with the statutory provisions of the BMSVG. Two corporate provision funds had an application for the lifting of a dedication pursuant to Article 31 para. 1 no. 3a BMSVG approved. According to this provision, debt securities that have been classed as held to maturity by the corporate provision funds must, under certain circumstances, again be valued at their net current value.

SUPERVISION OF PENSION COMPANIES

MARKET DEVELOPMENT

ASSETS MANAGED

As at 31 December 2013, assets of about €17.4 billion were being managed within the Austrian pension company market. This figure represents an increase of about 6.7% on the previous year. The change in assets managed can be attributed for the most part to contributions, pension benefits, inflows of funds from first-time pension company contracts and to the investment result.

The three largest providers, namely VBV Pensionskasse AG, Valida Pension AG and APK Pensionskasse AG, combine to account for a 73% share of the market, measured in terms of assets under management. This share has risen slightly compared with the previous year. Measured within the market overall, single-employer *Pensionskassen* account for around 11.2% of the assets under management. This share has decreased by about 6.3% year-on-year, a development to be attributed to the transfer of investment and risk sharing groups (IRGs) from single-employer to multi-employer *Pensionskassen*.

The occupational group insurance schemes offered by insurance undertakings are a form of company old-age provision that is very similar in structure to the *Pensionskassen*. The assets managed in this sector increased by around 20% on the previous year to €643.4 million. By way of comparison, this equates to some 2.7% of all assets managed by *Pensionskassen*.

Thus, the sum of the assets managed within these two types of company old-age pension provision roughly equalled 5.4% of Austrian gross domestic product at the 2012 year-end¹.

¹ Austrian gross national product in 2012: €309.9 billion (source: Statistics Austria); data for 2013 were not yet available at the time of this report being prepared.

NUMBER OF BENEFICIARIES IN THE PENSION COMPANY SYSTEM

There were about 835,000 beneficiaries at the end of 2013, representing a year-on-year increase of about 1.8% (see Chart 23), 9.6% of whom are already drawing pension benefits. The vast majority of the beneficiaries are therefore still in the savings period for a pension benefit. However, the number of beneficiaries (recipients) is rising in absolute terms.

Compared with 2012, the number of beneficiaries has fallen slightly. In 2012, of all dependently employed persons in Austria, 20.1% held an entitlement to a pension from a *Pensionskasse*.

NUMBER OF PENSIONS KasSEN AND INVESTMENT AND RISK SHARING GROUPS

The number of *Pensionskassen* has decreased during the last six years from 19 to 16 companies. This can be attributed to single-employer *Pensionskassen* discontinuing activities, with their investment and risk sharing groups (IRGs) being transferred to existing multi-employer *Pensionskassen*.

Chart 23: CHANGES IN NUMBERS OF BENEFICIARIES 2009–2013 (in thousands)

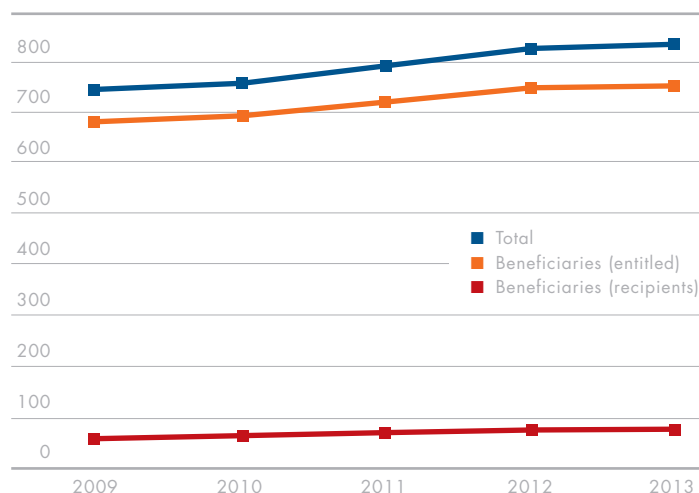


Table 17: MARKET DEVELOPMENT *PENSIONS*KASSEN 2009–2013 (source: FMA, unless indicated otherwise)

	2009	2010	2011	2012	2013
ASSETS MANAGED IN THE PENSION COMPANY MARKET					
Assets managed by <i>Pensionskassen</i> (total)	13,673	14,912	14,764	16,278	17,384
Single-employer	1,997	1,806	1,805	2,077	1,953
Multi-employer	11,675	13,106	12,959	14,201	15,431
Market share of the three largest <i>Pensionskassen</i> (as a % of total)	70.24	71.39	71.54	71.32	73.03
NUMBER OF BENEFICIARIES IN THE PENSION COMPANY SYSTEM					
Number of beneficiaries (total)	742,389	761,831	791,971	820,109	835,128
Single-employer	239,287	241,837	244,313	250,158	252,474
Multi-employer	503,102	519,994	547,658	569,951	582,654
Beneficiaries (entitled)	680,227	695,671	720,649	743,612	754,571
Beneficiaries (recipients)	62,163	66,160	71,322	76,497	80,557
Beneficiaries (recipients) (as a % of total)	8.37	8.68	9.01	9.33	9.65
Beneficiaries (entitled) (as a % of dependently employed persons in Austria ¹)	19.26	19.44	19.83	19.57	20.52
NUMBER OF <i>PENSIONS</i>KASSEN AND IRGS					
Number of <i>Pensionskassen</i>	19	17	17	17	16
Number of investment and risk sharing groups	135	142	142	140	124
Number of security-oriented IRGs ²	–	–	–	–	5
Number of sub-IGs ²	–	–	–	–	16
INVESTMENT PERFORMANCE (in %)³					
Investment performance (total)	9.04	6.48	–2.96	8.40	5.10
Single-employer	12.60	5.84	–0.47	9.23	3.90
Multi-employer	–8.45	6.57	–3.30	8.28	5.30

¹ Number of dependently employed persons: Statistics Austria. The annual average was used for the years from 2009 to 2012. The Q2 2013 figure was used for the year 2013 due to the annual average not yet having been calculated.

² Numbers of security-oriented IRGs and sub-IGs collected for the first time in 2013.

³ Source: OeKB

Following the amendment to the PKG (Federal Law Gazette I No. 54/2012), which entered into force on 1 January 2013, the beneficiary (entitled) is entitled to select an investment strategy up to three times. Due to this switch option now being offered, the number of IRGs has dropped. At the end of 2013 there were 124 IRGs, 5 security-oriented IRGs and 16 sub-IGs.

INVESTMENT PERFORMANCE

The Oesterreichische Kontrollbank AG (OeKB) is mandated by the *Pensionskassen* to calculate their investment performance figures each quarter on the basis of the investment data that they provide. However, it should be noted that actual performance does not have an automatic bearing on the monthly pension

benefit as other factors also play a role, including the technical account balance, the amount of the volatility reserve and any deficits arising from changes in mortality charts.

All *Pensionskassen* taken together achieved an average investment result of 5.1% in 2013. The results for the individual investment and risk sharing groups range from +0.4% to +5.8%.

The average performance recorded by the *Pensionskassen* is 3.4% per year for the past three years, 5.1% during the past five years and 3.7% for the last ten years. Investment performance during the past five years has generally been highly volatile: the worst performance was seen in 2008, at –12.93%, and the best in 2009, at +9.04%.

LEGAL BASIS

The Pensionskassen Act (PKG; *Pensionskassengesetz*) of 1990 serves as the legal basis for the pension company sector. Article 2 para. 4 of the Financial Market Authority Act (FMABG; *Finanzmarktaufsichtsbehördengesetz*) assigns the FMA responsibility for the official tasks and the powers which have been defined by the provisions of the PKG² and the Company Pension Act (BPG; *Betriebspensionsgesetz*). Article 33 para. 2 PKG requires that the FMA monitor compliance with the provisions of that federal act. In this context, it must take both the national economic interest in a functioning pension company system and the interests of the beneficiaries into account. The main powers of the FMA are laid down in Article 33 para. 3 PKG.

AMENDMENTS TO THE LEGAL BASIS

2013 AMENDMENT TO THE PKG

The PKG was amended as at 7 August 2013 (Federal Law Gazette I No. 184/2013). According to the amendment, pension company commitments may be managed in an IRG with a sub-IG both with and without options to switch. Likewise, the new version makes it clear that the exclusion of the minimum yield guarantee in the pension company contract and in the employment agreement is not a prerequisite in order for individual beneficiaries (entitled) to switch to the security-oriented IRG.

SWITCH FROM *PENSIONSKASSE* TO INSURANCE (OCCUPATIONAL GROUP INSURANCE)

All individuals who were beneficiaries (recipients) of a *Pensionskasse* on 31 December 2012 and who had a pension commitment without an unlimited obligation to make additional contributions were entitled to switch to an occupational group insurance scheme. The switch had to be declared to the *Pensionskasse* in writing by 31 October 2013 and became effective on 1 January 2014.

In general, the law does not provide a switch option for beneficiaries (recipients). However, owing to the

switch options being introduced for the first time, beneficiaries (recipients) were given a one-time opportunity to switch, which was restricted to a period ending in 2013.

OFFICIAL TASKS

SUPERVISED COMPANIES

Among *Pensionskassen*, two different types of pension company need to be distinguished: single-employer and multi-employer *Pensionskassen*.

SINGLE-EMPLOYER *PENSIONSKASSEN*

These are entitled to operate the pension company business for the beneficiaries of only one employer or company group. Single-employer *Pensionskassen* were primarily founded as subsidiaries of international groups. Employees can thus be offered benefits from their “own” *Pensionskasse* while at the same time the parent companies can exert a stronger influence on the type of investment and design of the conditions. In the 2013 financial year, the following companies held a licence for the provision of single-employer pension company services:

- Bundespensionskasse AG
- EVN Pensionskasse AG
- Generali Pensionskasse AG
- IBM Pensionskasse AG
- Infineon Technologies Austria Pensionskasse AG
- Porsche Pensionskasse AG
- Sozialversicherungspensionskasse AG
- Wirtschaftskammern Pensionskasse AG

MULTI-EMPLOYER *PENSIONSKASSEN*

These can operate the pension company business for the beneficiaries of more than one employer. In the 2013 financial year, the following companies held a licence for the provision of multi-employer pension company services:

- Allianz Pensionskasse AG
- APK Pensionskasse AG
- BAV Pensionskasse AG
- Bonus Pensionskasse AG
- Valida Industrie Pensionskasse AG
- Valida Pension AG

² The PKG specifies in Article 33 para. 1 that *Pensionskassen* are subject to the FMA’s supervision.

Table 18: ON-SITE ACTIVITIES 2009–2013 (source: FMA)

	2009	2010	2011	2012	2013
ON-SITE INSPECTIONS					
Acc. to inspection plan	4	3	3	6	6
Non-scheduled	0	1	0	0	0
BRIEF INSPECTIONS					
Acc. to inspection plan	0	0	0	0	0
MANAGEMENT TALKS					
Acc. to inspection plan	25	21	17	15	11
COMPANY VISITS					
Acc. to inspection plan	0	0	0	0	0
Non-scheduled	0	0	0	0	1

Table 19: APPROVAL OF BUSINESS PLANS 2009–2013 (source: FMA)

	2009	2010	2011	2012	2013
Approval of business plans	19	16	16	33	36

- VBV Pensionskasse AG
- Victoria-Volksbanken Pensionskasse AG

LICENSING

Companies with head offices situated in Austria that hold the appropriate licence granted by the FMA are entitled to operate pension company business in this country. Such a licence is granted if the prerequisites stipulated in the PKG are fulfilled. These are specifically: sufficient capital, submission of an approvable business plan which includes suitable actuarial bases, as well as proper qualifications of the management board members and the shareholders. In order to be eligible for a licence, the company must also have the legal form of a joint stock company (*Aktiengesellschaft*).

In 2013, no applications for the granting of a licence were filed.

CONTINUED SUPERVISION

Among the most important tasks making up the FMA’s mandate are the ongoing analysis of the development of the pension company market and of individual *Pen-*

sionskassen and IRGs, the verification of compliance with the provisions stipulated in the PKG, i.e. concerning investment limits, coverage of the technical provisions and an adequate level of own funds as prescribed, as well as the verification of compliance with the Risk Management Regulation for *Pensionskassen* (RIMAV-PK; *Risikomanagementverordnung Pensionskassen*).

SOURCES OF INFORMATION

Several standardised sources of information are available to Pension Companies Supervision, these are:

- the quarterly report on investment data;
- performance figures (reported quarterly);
- reports by the state commissioners on the meetings of the pension company bodies (provided quarterly);
- audit reports and reports on activities of the *Pensionskassen* and IRGs;
- risk management manuals;
- the set of investment policy principles for each IRG.

Apart from the information that originates from these standardised reporting sources, Pension Companies Supervision may also, pursuant to Article 33 para. 3 no. 1 PKG, at any time demand information on all business matters from the *Pensionskassen* and inspect all of their books, documents and data media. In addition, *Pensionskassen* are subject to the notification obligations as stipulated under Article 36 PKG.

ON-SITE INSPECTIONS

In 2013, on-site inspections were performed at six *Pensionskassen*. The focus of inspections in the area of actuarial supervision included payment of lump-sum settlements, contribution policy, portfolio management and the technical account balances. The focus of inspections in the area of financial supervision was on compliance with the RIMAV-PK, the minimum standards for the risk management process and the structure of risk management at *Pensionskassen*.

MANAGEMENT TALKS

In addition to the six on-site inspections, the FMA held eleven management talks during the year under review (see Table 18 on the opposite page). In these talks, the FMA discusses current economic and supervisory topics, as well as current issues with the management board members. A main subject of these talks is the result of the analysis of the financial statements of the *Pensionskassen* and any consequent issues.

APPROVAL OF BUSINESS PLANS

Pursuant to Article 20 PKG, the *Pensionskasse* must draw up a business plan containing all details and actuarial bases required for the operation of the pension company business. The business plan, as well as any amendment to the business plan, require the FMA's approval, which may also stipulate relevant conditions and time limits. The application for approval must include a report of the auditing actuary, who must audit the business plan as well as any amendment to it.

In the 2013 reporting year, 36 business plans were submitted for approval (see Table 19 on the opposite page).

SUPERVISION OF INSURANCE UNDERTAKINGS

MARKET DEVELOPMENT

Following the slight decrease in premiums recorded during 2011 and 2012, the figures were up again in the 2013 financial year, increasing by 1.6% overall. This rise in premiums is due to increases in the health and non-life/accident insurance sector. The life assurance sector recorded drops in premiums, particularly in the case of life assurance policies with regular premiums and in the case of index-linked products.

INSURANCE DENSITY AND INSURANCE PENETRATION

The state of development of a country's insurance industry can be evaluated statistically in terms of insurance density and insurance penetration. Insurance density specifically refers to the ratio of premium revenues to total population. In the area of life assurance, insurance density stagnated compared with 2012 at a level of €762, whereas for the non-life sector the figure increased by 3.0% to €1,209. These results continue to place Austria in a mid-table position compared with the rest of Europe. In 2012, premium revenues per person within the EU averaged €1,083 for life assurance and €760 for non-life, of which €190 related to health insurance, as in 2011. Insurance penetration is defined as the ratio of premiums to gross domestic product. In Austria insurance penetration in 2013, at 5.41%, was almost identical to 2012, when it stood at 5.43%. In terms of the European average, the percentage of 7.6% recorded for the previous year stagnated in 2012¹.

BUSINESS DEVELOPMENT

PREMIUMS WRITTEN

The volume of premiums written (direct gross amount) rose by 1.6% in the 2013 financial year compared with the previous year (2012: +1.2%) and totalled €16.61 billion.

With regard to the life assurance balance sheet group, premiums fell slightly from €6.43 billion in 2012 to €6.42 billion in 2013. The proportion of premiums from unit-linked and index-linked life assurance, on the other hand, declined and was at 28.4% by the end of 2013 (2012: 28.7%). Payments for claims, amounting to €6.3 billion, were at a similarly high level in 2013 as in 2012.

The balance sheet group of non-life and accident insurance showed an increase on the previous year, with premiums written rising by 2.6% to a total of €8.4 billion. Claims payments in this group rose to €5.3 billion, representing an increase of 3.1%.

With premiums written totalling €1.8 billion in 2013, the health insurance balance sheet group achieved an increase of 3.8% on the previous year. Premiums have continuously increased in the long term. Totalling €1.2 billion, payments for claims were up by 3.3% in this group.

TECHNICAL ACCOUNT BALANCE, FINANCIAL RESULT, RESULT FROM ORDINARY ACTIVITIES

The technical account balance totalled €592 million in 2013 (2012: €455 million). Mainly responsible for this balance was the somewhat higher level of business as well as a similarly high financial result as in 2012. Predominantly as a result of lower income from investments and interest, the financial result declined by 1.5% in 2013, from €3.4 billion to €3.3 billion. Overall, the result from ordinary activities was €1.5 billion in 2013, marking a 9.2% improvement on the previous year (2012: €1.4 billion).

¹ Source: CEA Statistics No. 48, European Insurance in Figures, February 2014, page 16 et seq.; figures for 2013 were not yet available at the time of this report being prepared.

Table 20a: MARKET DEVELOPMENT OF AUSTRIAN INSURANCE UNDERTAKINGS 2009–2013

(Source: FMA, Statistics Austria, CEA, www.economic-growth.eu)

	2009	2010	2011	2012	2013
PREMIUMS WRITTEN IN AUSTRIA (in € millions, direct gross amount)					
Life assurance	7,318	7,438	6,899	6,434	6,420
Unit-linked life assurance	1,525	1,895	1,766	1,537	1,638
Index-linked life assurance	996	965	489	309	184
Health insurance	1,591	1,638	1,697	1,754	1,821
Non-life and accident insurance	7,440	7,576	7,940	8,152	8,367
Total premiums written in Austria	16,349	16,652	16,536	16,340	16,608
PAYMENTS FOR CLAIMS (in € millions)					
Life assurance	5,777	5,819	6,624	6,328	6,315
Health insurance	1,087	1,115	1,134	1,129	1,217
Non-life and accident insurance	4,954	4,939	4,749	4,975	5,258
PREMIUMS WRITTEN ABROAD (groups, in € millions)					
Western Europe	1,521	1,793	1,834	1,660	2,150
CESEE – EEA	5,346	5,347	5,857	6,845	6,465
CESEE – NON-EEA	509	1,052	753	941	794
Total premiums written abroad	7,376	8,192	8,444	9,446	9,409
Percentage foreign countries (groups, in %)	36.01	43.62	44.05	46.10	...
PREMIUM DEVELOPMENT SERVICES AND BRANCHES OF EEA INSURERS IN AUSTRIA (in € millions)					
Services	572	517
Branches	302	325
Total premiums services and branches	874	842
Technical account balance (in € millions)	132	524	295	455	592
Financial result (in € millions)	2,730	3,203	2,964	3,391	3,354
Result from ordinary activities (in € millions)	744	1,101	1,162	1,395	1,524
INSURANCE DENSITY (in €)					
Life assurance	875	885	823	762	762
Non-life assurance	1,080	1,097	1,149	1,174	1,209
Total	1,955	1,982	1,972	1,936	1,971
Insurance penetration (in %)	5.96	5.91	5.78	5.43	5.41

ASSET STRUCTURE

As at the end of December 2013, assets totalled €84.8 billion (excluding deposits retained, investments in relation to unit-linked and index-linked life assurance and pro rata interest), which corresponds to a rise of 1.3% compared with the previous year.

*Deckungsstock*² and covering assets account for by far the largest share of investments. They are used to cover technical provisions and thereby secure the

obligations of the insurance undertaking towards the insured party. At the 2013 year-end, including unit-linked and index-linked life assurance and state-sponsored retirement provision plans, they totalled €92.1 billion, which represents an increase of 2.4% compared with the previous year. The biggest share, at

² Translator's note: The *Deckungsstock* is a fund which is administered separately from the other assets of the insurance undertakings. It is exempt from creditors' attachment and designed to satisfy the claims of the policyholders in the event of an insolvency of the insurance undertaking.

Table 20b: MARKET DEVELOPMENT OF AUSTRIAN INSURANCE UNDERTAKINGS 2009–2013 (source: FMA)

	2009	2010	2011	2012	2013	in %
<i>DECKUNGSSTOCK AND COVERING ASSETS (carrying amounts, in € millions)</i>						
Debt securities	35,809	37,474	37,168	36,967	38,574	51.39
Shares and participation certificates, listed and unlisted, share-based investment funds, equity risk in mixed funds	9,706	8,589	7,923	8,224	8,083	10.77
Bond funds, bond content of mixed funds	12,655	13,895	14,442	15,960	15,942	21.24
Loans and prepayments on policies	3,907	3,623	3,758	3,481	3,189	4.25
Real estate investments	4,975	4,822	4,816	4,926	5,223	6.96
Hedge funds	709	664	581	444	239	0.32
Cash at bank and in hand	2,753	1,852	2,368	2,217	2,308	3.07
Assets according to opening clause (<i>Öffnungsklausel</i>) and rights from derivative financial instruments	1,531	1,509	1,551	1,690	1,499	2.00
Total	72,046	72,427	72,606	73,909	75,058	100.00
<i>DECKUNGSSTOCK AND COVERING ASSETS CLASSIC LIFE ASSURANCE (in € millions)</i>						
Debt securities	29,093	29,041	28,429	28,034	28,695	58.32
Shares and participation certificates, listed and unlisted, share-based investment funds, equity risk in mixed funds	4,114	3,869	3,140	3,174	3,017	6.13
Bond funds, bond content of mixed funds	8,890	8,992	9,217	9,856	9,749	19.81
Loans and prepayments on policies	3,122	2,874	3,057	2,836	2,626	5.34
Real estate investments	3,266	3,081	3,001	3,098	3,312	6.73
Hedge funds	603	474	298	222	131	0.27
Cash at bank and in hand	1,433	824	1,031	1,101	1,129	2.29
Assets according to opening clause (<i>Öffnungsklausel</i>) and rights from derivative financial instruments	555	519	838	662	542	1.10
Total	51,075	49,674	49,011	48,983	49,200	100.00

€38.6 billion, relates to debt securities, which marks an increase of 5.5% compared with 2012. At 43.5%, the percentage of government bonds in the debt securities segment remains high. The core share ratio (listed shares, share-based investment funds, equity risk in mixed funds), which had been falling ever since 2006, grew slightly in 2012 and ended 2013 back at 4.0%. The extended share ratio (listed shares, unlisted shares, share-based investment funds, equity risk in mixed funds, structured debt securities without capital guarantee, structured loans without capital guarantee) dropped slightly from 15.7% in 2012 to 15.5% in 2013.

LIFE ASSURANCE

The sum of all assets secured as special funds in the life assurance sector (excluding unit-linked and index-linked life assurance) amounted to €49.2 billion as

at the end of 2013, marking a slight increase of 0.4% on the previous year. Accounting for 58.3%, debt securities made up more than half of the investments in life assurance *Deckungsstock*. There was a rise in the proportion of government bonds in total life assurance assets, from 22.4% in 2012 to 24.1% in the year under review. During the same period the share ratio also rose slightly, up from 4.1% to 4.2%. The extended share ratio decreased from 7.2% at the 2012 year-end to 6.9% by the end of 2013 and has thus continued to fall.

LEGAL BASIS

The main basis for supervision of insurance undertakings is provided by the Insurance Supervision Act (VAG; *Versicherungsaufsichtsgesetz*) as well as associated regulations. On the basis of this legislation, the

Financial Market Authority (FMA) monitors all business operations within the insurance sector, as well as the net assets, financial position and results of operations of insurance undertakings. In accordance with the principle of supervision by the home country set forth in EU law, this activity also extends to all transactions in the European Economic Area (EEA). Safeguarding the interests of the insured and ensuring the continued ability to fulfil the obligations arising from insurance contracts are the core tasks of insurance supervision.

OFFICIAL TASKS

SUPERVISED COMPANIES/LICENSING

As at the end of 2013, 100 Austrian insurance undertakings had a licence granted by the FMA (see Table 21) and were therefore subject to continued supervision by the authority. The number of insurance companies has fallen by 21 since 2000.

JOINT STOCK COMPANIES AND LARGE MUTUAL ASSOCIATIONS

Excluding small mutual associations, a total of 47 domestic insurance undertakings were operating in Austria in 2013. Six of these were mutual associations, and 41 joint stock companies. The classes of insurance in which these joint stock companies and large mutual associations operate are detailed in Table 22.

Austria is traditionally dominated by composite insurers. This refers to insurance undertakings that operate in more than just one balance sheet group (i.e. life assurance, health insurance, non-life and accident insurance). The regulation on the separation of insurance classes, which became effective in Austria with the signing of the EEA Treaty on 2 May 1992, does not apply to numerous Austrian insurance undertakings. This is because they were already operating as composite insurers before the Treaty was signed and are thus permitted to continue their operations without limitation.

Table 21: LEGAL FORMS OF DOMESTIC INSURANCE UNDERTAKINGS 2009–2013
(Source: FMA)

	2009	2010	2011	2012	2013
Mutual associations (excluding small mutuals)	6	6	6	6	6
Small mutual associations	56	54	53	53	53
Joint stock companies	44	45	46	42	41
Total	106	105	105	101	100
Mutual associations dealing in asset management/private foundations	6	6	6	6	6

Table 22: BUSINESS AREAS OF INSURANCE UNDERTAKINGS 2009–2013
(excluding small mutuals; source: FMA)

	2009	2010	2011	2012	2013
Reinsurance only	3	3	3	3	3
Life assurance	31	31	31	30	30
Health insurance	10	10	10	8	8
Non-life and accident insurance	42	42	42	41	38

Table 23: SMALL MUTUAL ASSOCIATIONS BY FIELD OF ACTIVITY 2009–2013
(Source: FMA)

	2009	2010	2011	2012	2013
Fire insurance associations	37	35	35	35	35
Animal insurance associations	18	18	17	17	17
Death benefit funds	0	0	0	0	0
Reinsurance associations for small mutuals	1	1	1	1	1
Total number of associations	56	54	53	53	53

SMALL MUTUAL ASSOCIATIONS

As at the end of December 2013 the FMA was supervising a total of 53 small mutuals, of which around two thirds operate in the form of fire insurers, with the remaining third involved in animal insurance. In addition, there is one reinsurance association for small mutual associations (see Table 23).

EEA AND THIRD-COUNTRY INSURERS

Since the beginning of July 1994, the country of origin principle has applied to the Europe-wide licensing of insurance undertakings within the European internal insurance market, which entails all EEA countries. Consequently, Austrian policyholders and policyholders from other EEA countries may also take out insurance with insurance undertakings that have their regis-

Table 24: EEA INSURERS IN AUSTRIA 2009–2013 (source: FMA)

REGISTERED EEA INSURERS	2009	2010	2011	2012	2013
Operating through branches	23	27	26	28	29
Providing services directly	804	845	878	897	903

tered office in another EEA Member State, rather than being restricted to insurance undertakings based in their own country. The European internal insurance market allows insurance undertakings that have their registered office in another EEA Member State as well as a valid licence there to operate through a branch and/or under the freedom to provide services without needing to acquire a new licence (single licence principle) from the competent foreign supervisory authority (host authority). In order to take up insurance activities in another EEA country, the insurance undertaking is required to register with the authority of its country of origin and to submit certain documents. The home country authority is the authority in the country where the insurance undertaking has its registered offices.

It is the home country authority and not the foreign supervisory authority of the country where the insurance undertaking operates that is principally responsible for supervision.

As at the end of December 2013, 29 insurance undertakings from within the EEA were operating in Austria through a branch. An additional 903 companies were registered to provide services here. This is six more than in 2012 (see Table 24).

Since 2010 only one foreign insurance undertaking from a third country (outside the EEA) has remained licensed in Austria, namely Helvetia Versicherungen AG from Switzerland.

CONTINUED SUPERVISION

ANALYSES

Once every three months, the FMA carries out a risk-oriented analysis of the net assets, financial position and the results of operations of the supervised insurance undertakings. The data required for the analysis is reported by the companies electronically. Based on these routine analyses, the FMA has published a report on the performance of the Austrian insurance

sector once every quarter since 2010.

The reports can be viewed on the FMA website at www.fma.gv.at/en/statistics-reporting/statistics-companies/insurance-undertakings.html

Pursuant to Article 100 para. 1 VAG, the FMA is entitled to make use of its

right to information at any time. Information on solvency status during the course of the year and the monthly development of hidden reserves may be requested from insurance undertakings so that any potential threats to capital requirements can be recognised at the earliest possible time. Additionally, a cash flow forecast for a five-year period helps to reveal whether sufficient liquidity is available to fulfil the obligations arising from insurance contracts. It can also be recognised whether companies will be able to hold conservatively valued securities until redemption or be forced to realise losses through the premature sale of the securities.

The data, which is reported as part of standard procedures, together with the FMA's analyses based on this data, also serve as a basis for deciding whether any additional supervisory measures are required:

- Article 104a para. 1 VAG: The FMA will call on the supervised insurance undertakings to submit a solvency plan if the solvency margin is judged insufficient or if the FMA has legitimate reason to assume that an insurance undertaking will no longer have sufficient own funds at its disposal in the foreseeable future.
- Article 104a para. 2a VAG: If, due to a deterioration in the financial situation of an insurance undertaking, the supervisory authority has reason to assume that a sufficient solvency margin is no longer likely to be guaranteed in the long term, the authority may call on the undertaking to submit a reorganisation plan setting out the planned development for the next three financial years.
- Article 104a para. 2 VAG: If the own funds of an insurance undertaking are not in line with the scope of the guarantee fund, the FMA will require a financing plan, which it must approve.

In order to better estimate future risk potential, the FMA additionally performs regular stress tests. These are conducted twice a year in the life assurance sec- ►

THE LONG ROAD TO SOLVENCY II – THE EIOPA PREPARATORY GUIDELINES

Key steps on the road to Solvency II, the new supervisory regime for insurance undertakings, were mapped out at the end of 2013. As part of this process, Directive 2013/58/EU of the European Parliament and of the Council of 11 December 2013, known as the Second Quick Fix Directive and amending Directive 2009/138/EC (Solvency II), was adopted. Under the terms of this Directive, the timetable for the transition from the current Solvency I system to Solvency II has been revised. Additionally, the tripartite negotiations on the Directive of the European Parliament and of the Council amending Directives 2003/71/EC and 2009/138/EC (Omnibus II Directive) in respect of the powers of the European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA) were brought to a conclusion.

SECOND QUICK FIX AND OMNIBUS II

The Second Quick Fix Directive postpones the deadline for the transposition of Solvency II from 30 June 2013 to 31 March 2015, with the date from which Solvency II is to be applied and the existing Solvency I rules repealed being pushed back from 1 January 2014 to 1 January 2016.

The Omnibus II Directive brings the Solvency II Directive into line with the Treaty on the Functioning of the European Union and with the new supervisory architecture, headed by the European insurance supervision authority EIOPA. Consequently, the authorisation of the Commission to adopt implementing measures, as defined in the Solvency II Directive, has been replaced by the power to adopt delegated and implementing acts. Additionally, the role and responsibilities of EIOPA with regard to Solvency II have been fleshed out. However, the Omnibus II Directive also contains provisions on the treatment of insurance products with long-term guarantees and on transitional measures, covering such aspects as own funds.

The most important tools for handling long-term insurance obligations are the following:

- Volatility adjustment: mark-up on the risk-free yield curve based on reference portfolios at currency and country level.
- Matching adjustment: mark-up on the risk-free yield curve with matching incoming and outgoing cash flows.
- Adjustment upon extrapolation: extrapolation of the risk-free yield curve beyond the date on which the markets cease to be “active, deep, liquid and transparent”.
- Transitional provisions for existing contracts within a period of 16 years.

EIOPA GUIDELINES

The delays caused by some of the negotiations on the Omnibus II Directive, and the need to implement and test some undisputed and unaffected elements of the new supervisory law through these negotiations on time, prompted EIOPA to issue its “Guidelines on preparing for Solvency II”. These Guidelines, published on 31 October 2013, provide for the application of selected Pillar 2 and Pillar 3 requirements with effect from 1 January 2014.

Solvency II presents insurance and reinsurance undertakings, and also the supervisory authorities, with major challenges. To ensure that both sides are in a position to comply with the new requirements as of 1 January 2016 when Solvency II enters into full effect, it is vitally important that preparations for the new supervisory regime are made at an early stage. These preparations should be as coordinated as possible and harmonised on a Europe-wide basis to create a consistent and convergent system of supervision in the EU and to avoid divergent national solutions during the preparatory phase.

The EIOPA Guidelines tackle such issues as the system of governance including a forward looking assessment

of the undertaking's own risks reporting to national supervisors and the pre-application process for internal models.

GUIDELINES ON SYSTEM OF GOVERNANCE

The Guidelines on System of Governance are based on Articles 40 to 49, 93, 132 and 246 of the Solvency II Directive, and stipulate that insurance and reinsurance undertakings should establish a system of governance in accordance with the terms of the Directive and the more detailed information provided in the EIOPA Guidelines so that the sound and cautious management of insurance business is guaranteed. This encompasses, among other elements, the creation of an effective risk management system incorporating the strategies, processes and reporting procedures needed to recognise, measure, monitor, manage and report on existing and potential risks and their interdependence on an ongoing basis.

In accordance with the guidelines on the prudent person principle, insurance and reinsurance undertakings are expected to take this principle into account alongside the existing system of regulatory quantitative maximum limits. Therefore, progress is already to be made during the preparatory phase with regard to the required transition to all of the required governance structures relating to investments. It does not mean, however, that investment portfolios are already to be reorganised in the manner that the undertakings would expect to be required once the terms of Solvency II are fully effective.

GUIDELINES ON FORWARD LOOKING

ASSESSMENT OF OWN RISKS

These Guidelines are based on Articles 41, 44, 45 and 246 of the Solvency II Directive and provide for insurance and reinsurance undertakings carrying out a forward looking assessment, based on the ORSA principles, of their own risks from 2014 onwards.

The assessment of ongoing adherence to the regulatory capital requirements and to the requirements relating to technical provisions pursuant to Article 45(1)(b) of

the Solvency II Directive and the measurement of the significance of the own risk profile's deviation from the assumptions underlying the calculation of the Solvency Capital Requirement pursuant to Article 45(1)(c) of the Directive are closely related to the quantitative requirements of Pillar 1, which need not yet be implemented during the preparatory phase. Insurance and reinsurance undertakings are therefore expected to carry out these assessments as of 2015 at the earliest, based on technical specifications to be provided by EIOPA during the first half of 2014.

GUIDELINES ON SUBMISSION OF INFORMATION

TO NATIONAL COMPETENT AUTHORITIES

The Guidelines on Submission of Information to National Competent Authorities are based on Articles 35, 220 and 254 of the Solvency II Directive and provide for insurance and reinsurance undertakings submitting additional information to the supervisory authorities, in addition to the existing reporting requirements, as a means of preparing for future reporting requirements.

GUIDELINES ON PRE-APPLICATION

OF INTERNAL MODELS

These Guidelines are based on Articles 112, 113, 115, 116, 120 to 126, 230 and 231 of the Solvency II Directive and should be used to structure the proceedings prior to submitting an application for an internal model.

THE FMA'S ROLE IN PREPARATION

The FMA expects undertakings to study the Guidelines intensively and to carry out in good time the steps required to implement the elements of the new supervisory regime contained in it. The FMA will play an active part in shaping the preparatory phase, structuring and stepping up the dialogue that is already taking place with the undertakings concerned. It will submit a progress report on the application of the Guidelines to EIOPA by 28 February 2015.

tor and once a year in the classes of non-life/accident insurance and health insurance.

OFFICIAL PROCESSES, DISCLOSURES, LICENSING, ON-SITE ACTIVITIES

Pursuant to Article 116 para. 1 VAG, the FMA periodically publishes information on legal requirements relevant to the insurance industry and on activities involving individual insurance undertakings. The latter include information regarding licences granted, transformations of companies, liquidations, the establishment of branch offices and the commencement of the provision of services by EEA-based companies. Since 2001 such disclosures have been available to view on the FMA website at www.fma.gv.at/en/companies/insurance-undertakings/disclosures-concerning-insurance-undertakings.html.

Both undertakings with their head office in Austria and foreign insurers with their head office situated outside the EEA (third-country insurers) require a licence from the FMA in order to conduct contractual insurance business in Austria. Licences granted to Austrian insurance undertakings are valid for the entire EEA (single licence principle), while a licence granted to a third-country insurer is only valid for Austria.

An undertaking applying for a licence must fulfil a number of conditions before being granted a licence by the FMA. Examples of the requirements include the establishment of a company in the legal form of a joint stock company or a mutual association, and funding it with the required level of own funds. The members of the management board must be personally and professionally qualified for their functions, and shareholders must also meet certain requirements. A business plan must be presented providing precise information on the field and scope of activities, as well as the nature of the planned business activities. A separate licence to operate is granted for each individual insurance class.

The FMA did not need to act on any licensing cases in 2013. However, there was one case of a merger. Overall, there were 20 cases of articles of association

Table 25: OFFICIAL TASKS 2009–2013 (source: FMA)

	2009	2010	2011	2012	2013
Licensing issues	3	3	3	5	0
Transfers of portfolio	0	2	2	5	1
Outsourcing pursuant to Article 17a VAG	18	13	12	24	12
Amendments to articles of association (insurers and small mutuals)	17	31	8	19	20
Trustee appointments	25	24	11	24	25
Branches	0	4	2	2	0
Services	76	68	55	91	78

Table 26: BUSINESS PLANS/ACTUARIAL BASES 2009–2013 (source: FMA)

	2009	2010	2011	2012	2013
Number of annually submitted premiums	116	134	156	136	99

being amended during the year under review, and 78 cases were processed in connection with the provision of services in 2013. The figures relating to outsourcing pursuant to Article 17a VAG and the appointment of trustees can be found in Table 25.

In compliance with the legal requirements set forth in Article 18 para. 2 VAG, 99 business plans disclosing the premiums for life assurance and health insurance were submitted to the FMA in 2013 (see Table 26).

With regard to on-site activities, a distinction is made between the different types according to the degree of intensity. The following terminology is applied in insurance supervision:

- **On-site inspections:** an inspection as specified in Article 101 of the VAG or Article 33 of the *Pensionskassen Act* (PKG; *Pensionskassengesetz*). Such inspections adhere to a predefined inspection plan. Inspections may also be carried out on an ad hoc basis if necessary.
- **Brief inspections:** on-site activity focused on a specific item of inspection or investigation.
- **Management talks:** meetings with senior representatives of an insurance undertaking concerning topics specifically related to the undertaking.
- **Company visits:** on-site presence for the purpose of discussing current information.

As in the previous years, personnel resources for carrying out on-site activities were limited due to

Table 27: ON-SITE PRESENCE 2009–2013 (source: FMA)

	2009	2010	2011	2012	2013
Inspections	41	31	14	14	15
Brief inspections	3	6	7	9	6
Management talks	33	55	19	34	37

preparations for Solvency II and the preliminary implementation tasks. This fact was taken into account when scheduling.

During 2013, on-site inspections were held with regard to such subject areas as risk management of investments, internal auditing and internal control system, formation of an appropriate level of provisions for outstanding insurance claims, risk-bearing capacity, actuarial bases, preventing and tackling money laundering and terrorist financing, analysis of profits and costs – cost allocation, minimum standards for information requirements in life assurance, profit participation, conclusion of contracts and portfolio management.

In addition to on-site inspections, several brief inspections were held at insurance undertakings in 2013. As in the previous year, one of the focuses was the current status of the risk management process among insurance undertakings. The suitability of risk management for Solvency II is also being evaluated.

In addition, company visits and management talks also touched on annual reports for 2012, current developments in 2013 and company strategies, as well as other company-specific topics (see Table 27).

An inspection database has been established to store information on the current situation of insurance undertakings and to enable developments to be traced at a later stage.

ACTIVITIES ABROAD IN CONNECTION WITH INSURANCE GROUPS

Alongside supervision of insurance undertakings at the level of the individual companies involved, the additional supervision of insurance groups represents an important aspect of supervisory activity. This additional supervision comprises the monitoring of sufficient solvency at the group level, as well as changes

in levels of foreign business in relation to the associated risk exposure.

Austrian insurance groups operate outside Austria in 26 different countries through participations. Of the 107 foreign holdings of Austrian insurance groups in 2013 (2012: 107 foreign holdings), 95 (2012: 95) are located

in Central, Eastern and South-Eastern Europe (CESEE). Austrian insurance groups recorded €9.41 billion of premiums written abroad in 2013 (2012: €9.45 billion), €7.26 billion of which was attributed to CESEE countries (2012: €7.79 billion). This meant that 77% (2012: 82%) of premiums written abroad by Austrian insurance groups was achieved through holdings in CESEE. From the perspective of Austrian insurance groups, the Czech Republic, Poland and the Slovak Republic are vitally important markets, accounting for more than two thirds of the total CESEE premiums generated.

The share of premiums from abroad relative to the total premium volume of Austrian insurance groups has increased constantly since 2006. While this figure was 32.31% in 2006, it was 46.10% as at the end of 2012.

Table 28 (on the next page) shows which insurance groups are active through a subsidiary in which countries.

The Vienna Insurance Group Wiener Versicherung Gruppe (VIG) and Uniqa Versicherungen AG (Uniqa Group) have the most foreign holdings. Additionally, Grazer Wechselseitige Versicherung Aktiengesellschaft (GraWe Group) also engages in a high level of foreign activity. Whilst the VIG and the Uniqa Group began by extending their business activities to neighbouring states, the GraWe Group was primarily active in the Balkans from the outset.

In order to ensure efficient additional supervision of cross-border insurance groups, the regular exchange of information between the national competent insurance supervisors is vital. One of the ways through which this is being achieved is the establishment of supervisory colleges for each cross-border insurance group. The objective of the supervisory colleges, by integrating the local insurance supervisor's knowledge of the market and companies it supervises, is to pro-

vide a thorough overview of the business activities and risk profile of an insurance group, and to ensure a common level of knowledge among the relevant competent supervisory authorities.

In 2013, supervisory college meetings were held for VIG, Uniqa Group, GraWe Group and Merkur Versicherung Aktiengesellschaft (Merkur Group). In addition to the exchange of information amongst the supervisory authorities in attendance, the meetings also focused on the approval process for the partial internal models, an issue that is becoming vitally important in the context of the Solvency II regime. As in the previous year, supervisory authorities from countries outside the EEA were also included in the work of the supervisory colleges.

Table 28: INTERNATIONAL ACTIVITIES OF AUSTRIAN INSURANCE GROUPS (as at 25 Feb. 2014; source: FMA)

	VIG	Uniqa	GraWe	Merkur	Wüstenrot	Ergo (form. Victoria)
WESTERN EUROPE						
Germany	■					
Italy		■				
Liechtenstein	■	■				
Luxembourg	■					
Switzerland		■				
CESEE COUNTRIES						
Albania	■	■				
Belarus	■					
Bosnia and Herzegovina	■	■	■	■		
Bulgaria	■	■	■			
Croatia	■	■	■	■	■	■
Cyprus			■			
Czech Republic	■	■				■
Estonia	■					
Georgia	■					
Hungary	■	■	■			■
Kosovo		■	■			
Macedonia	■	■	■			
Moldavia			■			
Montenegro	■	■	■	■		
Poland	■	■				
Romania	■	■	■			
Russia		■				
Serbia	■	■	■	■		
Slovak Republic	■	■			■	■
Slovenia			■	■		
Turkey	■					
Ukraine	■	■	■			
OTHER COUNTRIES						
United Arab Emirates		■				

SUPERVISION OF INVESTMENT FUNDS, REAL ESTATE FUNDS AND ALTERNATIVE INVESTMENT FUNDS

MARKET DEVELOPMENT

INVESTMENT FUNDS AND ALTERNATIVE INVESTMENT FUNDS

Equity markets worldwide recorded sometimes strong price increases again in 2013. Low interest rates and a consequent abundance of liquidity reinforced this trend. In addition, the leading business

cycle indicators in the US improved. In Japan the measures taken by the government and national bank to devaluate the yen benefited especially the export industry, while in Europe the end of the long recession and the fact that the sovereign debt crisis was largely resolved provided upward impetus to equity markets. The total fund assets managed by the 24 Austrian investment fund management companies (excluding fund assets managed by real estate investment fund management companies) slightly increased from €144.41 billion as at 31 December 2012 to €145.29 billion as at 31 December 2013. This equates to an increase of €0.88 billion or 0.01%. By way of comparison, the total fund assets as at 31 December 2009 were €136.67 billion (see Chart 24), while totalling €126.04 billion at the end of 2008.

The net outflow of funds during 2013 totalled €825.09 million. The largest volumes were taken out in November and December. The highest inflow was recorded in January. All categories with the exception of share-based investment funds recorded net outflows of funds. During the year under review, net outflows of funds were seen in the investment categories of (short-term) money market funds (–€166.32 million), bond funds (–€269.70 million), mixed funds (–€370.63 million), hedge funds of funds (–€80.03 million), alternative funds (–€356.71 million) and funds complying with directives that have a considerable derivative strategy (–€1.16 million). As in the year previously reviewed, mixed funds were the most strongly affected. Net inflows of funds, at €419.48 million, were observed only in the category of share-based investment funds (see Chart 25).

The dominant position of bond funds is reflected in the breakdown of the overall fund volume figures. As at 31 December 2013, this category accounted for a total of €57.62 billion or 39.6% of the total volume. Mixed funds followed closely in second place, accounting for a volume of €57.30 billion or 39.4%. At the 2013 year-end, there were fewer fund assets in-

Chart 24: FUND ASSETS OF INVESTMENT FUNDS 2009–2013 (in € billions)

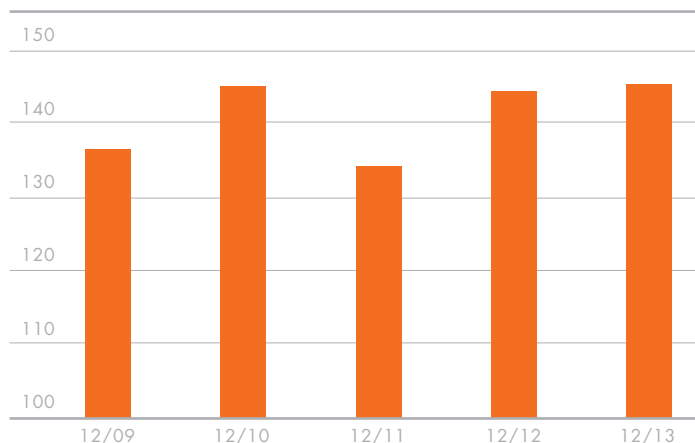


Chart 25: NET GROWTH BY INVESTMENT CATEGORY 2013 (in € billions)

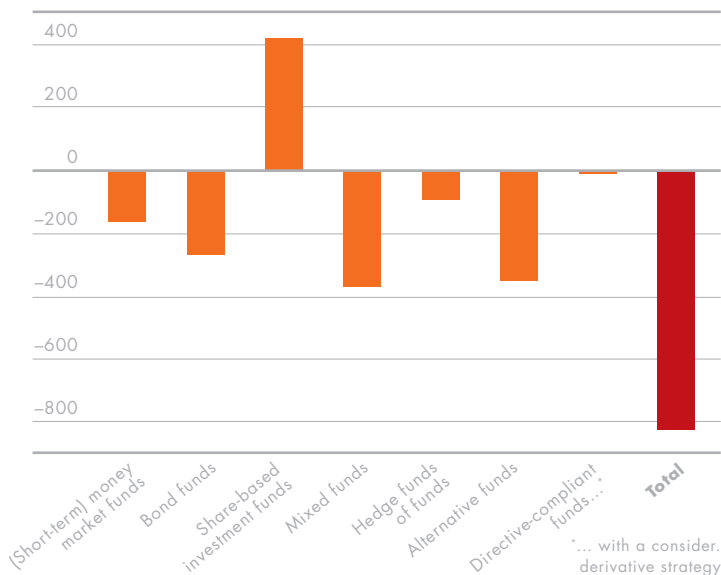


Table 29: KEY FIGURES OF THE AUSTRIAN INVESTMENT FUND MARKET 2009–2013 (source: FMA)

	2009	2010	2011	2012	2013
DOMESTIC FUNDS					
Article 2 paras. 1 and 2 InvFG	1,127	1,131	1,100	1,095	1,102
Article 166 InvFG 2011	248	215	210	198	140
Article 166 > 10% units in undertakings for collective investment	138	138	123	110	80
Article 168 et seq. InvFG 2011	3	3	3	3	3
Article 168 et seq. InvFG 2011 in conj. with Art. 108g et seq. EStG	21	19	19	19	19
Real estate funds	7	6	6	7	7
Special funds	690	641	765	795	831
Article 75 InvFG 2011	4	5	6	3	3
Total	2,238	2,158	2,232	2,230	2,185
FOREIGN FUNDS					
Article 181 InvFG 2011	39	34	29	34	27
Article 140 InvFG 2011	5,089	5,333	5,558	5,626	5,669
Article 181 InvFG 2011 (foreign real estate funds)	8	4	4	3	3
Total	5,136	5,371	5,591	5,663	5,699

vested in the asset classes of (short-term) money market funds (€216.51 million), (short-term) bond funds (€8.04 billion), share-based investment funds (€21.34 billion), hedge funds of funds (€457,32 million), alternative funds (€290.40 million) and funds complying with directives that have a considerable derivative strategy (€19.11 million) (see Chart 26).

When broken down by target group, 46.8% of investors held retail funds, 45.4% special funds and 7.8% retail funds for large-scale investors as at the end of 2013 (see Chart 27).

The figures listed above also include investment funds that, while having fallen within the scope regulated by the Alternative Investment Fund Managers Act (AIFMG; *Alternative Investmentfonds Manager-Gesetz*) since 22 July 2013, were not yet licensed under the AIFMG due to the transitional period. The alternative investment fund managers (AIFMs) that were already registered under the AIFMG nonetheless managed alternative investment funds (AIFs) with a total volume of €321.33 million as at 31 December 2013.

REAL ESTATE FUNDS

Austria recorded the greatest increase in residential property prices among all EU countries within recent

Chart 26: FUND VOLUMES BY FUND CATEGORY (as at 31 Dec. 2013)

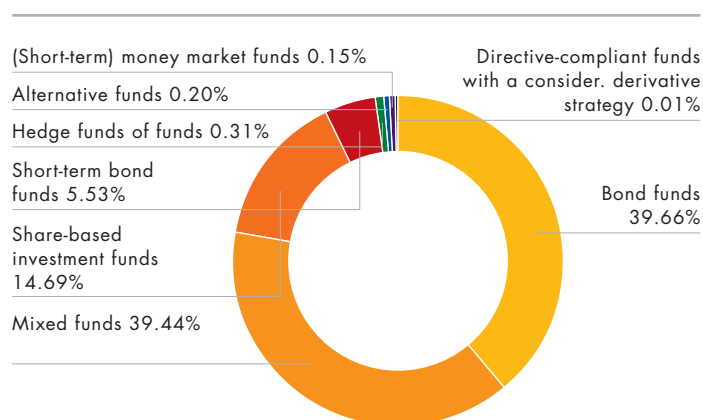


Chart 27: FUND VOLUMES BY TARGET GROUP (as at 31 Dec. 2013)

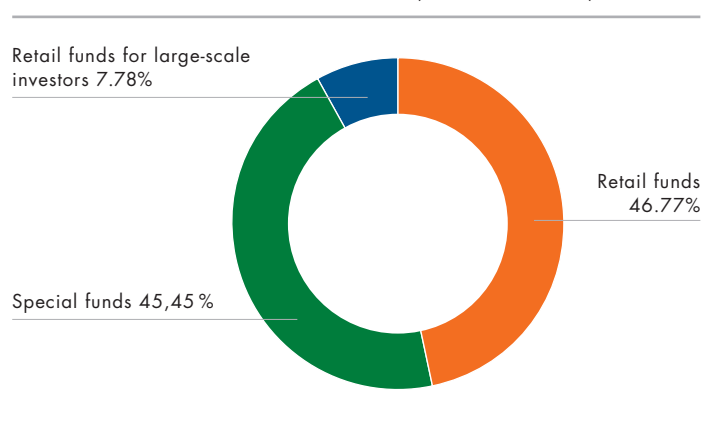
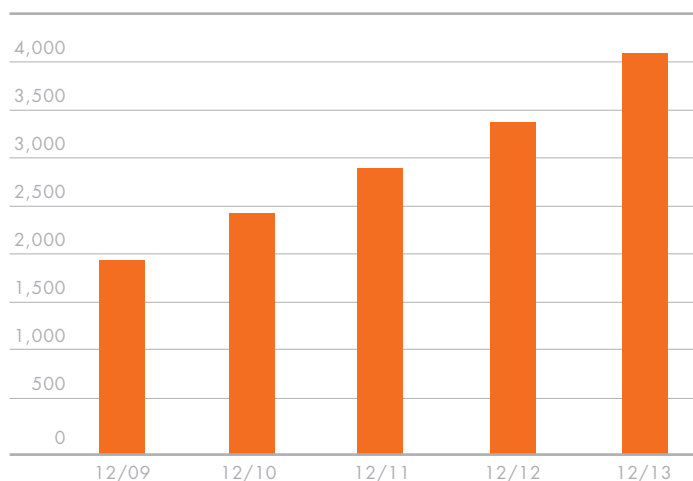


Chart 28: FUND ASSETS OF REAL ESTATE FUNDS 2003–2013 (in € millions)



years. This dynamic development in the Austrian residential property market – especially affecting the urban market in Vienna – lost momentum, however, during the second half of 2013. A recently developed fundamental price indicator currently reveals that residential property in Vienna was overvalued by just over 20% in Q4 2013, while it was undervalued by about 8% overall in Austria. Residential space and building lots in urban agglomerations are in high demand due to demographic trends. The low-interest environment, the ready availability of loans and the low attractiveness of alternative financial investment options have contributed to this tendency. The proportion of buyers' own capital in financing real estate purchases continues to persist at a very high level.

The return on commercial property continues to show a slight decline, amounting for example to about 5% for office space in 2013. The Austrian market including property values can thus be regarded as relatively stable. The office space market in Vienna has a vacancy rate of about 7% to 8%, which is average for Europe.

New office buildings continue to be erected at a low rate, whereas space previously used commercially is in some cases converted into luxury flats or hotels. For this reason, the vacancy rate is persistently low. Commercial space in premium locations continues to yield high rental fees, and exclusive brands are opening new stores particularly in Vienna.

As at the reporting date of 31 December 2013, five

real estate investment management companies were managing a total fund volume of €4.12 billion, which equates to an increase of 20.9% in the assets under management. In 2012, by way of comparison, the fund volume was €3.41 billion. The fund assets being managed by real estate funds have risen over the past five years, with the total amount more than doubling since 2009 (see Chart 28).

LEGAL BASIS

When the AIFMG entered into force, the intention was to register all AIFMs and submit their activities to regulation and supervision for the first time. Detailed requirements have been defined for AIFMs, specifically with regard to how they are organised (e.g. risk management and handling of conflicts of interest), and simplified and uniform options have been created for the cross-border management and marketing of AIFs throughout the EU. All companies coming under the AIFMG are required to comply with the new provisions by no later than 21 July 2014.

In order to manage an AIF, authorisation as an AIFM is now required uniformly throughout the EU and managers that are responsible for only a relatively small volume of fund assets are required to register with the competent supervisory authority. In addition to the provisions of the AIFMG, authorised AIFMs are directly subject to the provisions of Commission Delegated Regulation (EU) No 231/2013 and Regulations (EU) No 447/2013 and No 448/2013, while compliance with various guidelines issued by ESMA is also required. Similar to a licence pursuant to the 2011 Investment Fund Act (InvFG 2011; *Investmentfondsgesetz*), authorisation as an AIFM can be extended to include providing certain financial services transactions, such as individual portfolio management and ancillary activities (investment advice, custody and technical management of units in undertakings for collective investment in transferable securities, receipt and transmission of orders involving financial instruments).

Investment fund management companies continue to be subject to the InvFG 2011, and real estate investment fund management companies that hold a banking licence in accordance with Article 1 para. 1 no. 13a

BWG are subject to the provisions of the Real Estate Investment Fund Act (ImmoInvFG; *Immobilien-Investmentfondsgesetz*) including the provisions of the BWG. Those supervisory laws were adapted in various respects when the AIFMG entered into force with Federal Law Gazette I No. 135/2013.

As part of its supervisory duties, the FMA is required to execute regulations, some of which were also amended during the year under review (e.g. the Regulation on Risk Calculation and Reporting of Derivative Instruments – *Verordnung über die Risikoberechnung und Meldung von Derivaten*).

OFFICIAL TASKS

SUPERVISED COMPANIES / LICENSING

24 investment fund management companies held an appropriate licence granted by the FMA as at 31 December 2013. While no new licences were granted in the year under review, one licence was extended pursuant to Article 5 para. 2 no. 4 lit. a InvFG 2011 in conjunction with Article 3 para.2 no. 1 of the 2007 Securities Supervision Act (WAG 2007; *Wertpapieraufsichtsgesetz*) and Article 5 para. 2 no. 3 InvFG 2011 in conjunction with Article 3 para. 2 no. 2 WAG 2007. In total, 2,185 funds (2012: 2,230) of domestic investment fund management companies were licensed for public sale in Austria, alongside 5,699 funds of foreign companies (2012: 5,663). The figures for domestic and foreign funds over the past five years are shown in Table 29 on page 99.

As at 31 December 2013, five registered AIFMs managed a total of nine AIFs in Austria. At the same time, eight EU AIFs and three European Venture Capital Funds from other Member States were authorised for sale in Austria.

Five real estate investment fund management companies were licensed in Austria at the end of the year. Each of these companies manages a retail fund. Two companies also manage a second retail fund. A total of three special real estate funds exist, managed by two real estate investment fund management companies. No new licences for real estate investment fund management companies were granted in 2013.

FREEDOM TO PROVIDE SERVICES AND FREEDOM OF ESTABLISHMENT

Investment fund management companies based in the European Economic Area (EEA) that make use of the freedom to provide services or establish a branch in another Member State pursuant to the Directive relating to undertakings for collective investment in transferable securities (UCITS Directive) may, after notification, provide those services that they are licensed to provide in their home country anywhere in the EEA. Similarly, AIFMs authorised pursuant to the Directive on Alternative Investment Fund Managers (AIFMD) are entitled to manage AIFs on a cross-border basis and may also sell their AIFs throughout the EU on a cross-border basis.

A total of twelve Austrian investment fund management companies were operating within the EEA outside Austria at the end of the year under review. They were operating under the freedom to provide services in the Czech Republic, France, Germany, Hungary, Italy, Luxembourg, Malta, Poland, Slovakia, Slovenia, Spain, Sweden and the UK. Conversely, a total of 54 companies (2012: 50) from Belgium, Denmark, France, Germany, Liechtenstein, Luxembourg, Norway, Spain, Sweden and the UK were represented in Austria under the freedom to provide services in 2013. One investment fund management company from France, one from Liechtenstein and one from Luxembourg are currently doing business in Austria based on the freedom of establishment (2012: 2). Of the 54 companies operating in Austria under the freedom to provide services, two German and two French companies also hold a management company passport (MCP). Since the implementation of UCITS IV, the MCP has enabled investment fund management companies from other Member States to manage UCITS approved in Austria and sell units of these funds, without being subject to any additional internal restrictions. No other investment fund management company from another Member State has made use of this passport. Currently, no Austrian investment fund management company has applied for an MCP.

By the end of the year under review, no Austrian AIFM had obtained authorisation and could consequently pursue cross-border activities pursuant to the AIFMG.

However, there were two EU AIFMs, one each from France and the UK, which were active in Austria through the freedom to provide services in 2013, based on the passport regime defined in the AIFMD.

SUPERVISORY PROCEDURES

At 4,521, the number of official measures (amendments to fund regulations in particular) decreased in 2013 (2012: 6,148 measures). The main reason for this is that the adaptations (amendments to fund regulations in particular) required as a result of implementing the UCITS IV regime have been largely completed. Amendments to fund regulations were approved for one real estate investment fund management company. Compliance with the warnings in the simplified and complete prospectuses as well as in the KID and advertising materials was reviewed using spot checks. This is particularly important with regard to providing transparent, comprehensive information and consequently for protecting the interests of investors.

CONTINUED SUPERVISION

REPORTING AND INFORMATION SOURCES

Investment fund management companies are responsible for meeting the reporting obligations specified in the 4th Regulation on Risk Calculation and Reporting of Derivative Instruments (*4. Derivate-Risikoberechnungs- und Meldeverordnung*) by reporting the derivatives belonging to the fund assets using a standardised format; they are also required to comply with the notification and reporting provisions contained in the BWG and the InvFG 2011. Similarly, state commissioners who have been appointed are obliged to prepare regular reports to be submitted to the FMA.

Article 22 AIFMG sets forth the specific system of notification and reporting for AIFMs. Pursuant to that article, the AIFM must inform the FMA regularly of the main markets and instruments in or with which it is trading for account of the AIFs it manages. The AIFM must also submit information on matters such as the greatest exposures and concentrations of each of the AIFs it manages. AIFMs are subject to an obligation to provide reports or information as of registration or authorisation, and it should be noted that the first re-

port is to include the period beginning when the act entered into force.

DISCLOSURE OBLIGATIONS

The disclosure obligations applicable to investment fund management companies are defined in the InvFG 2011, where it is specified that the investment fund management company must publish a current prospectus, a half-yearly report and a report on activities for each investment fund in addition to the current annual financial statements of the company itself. The obligations also encompass the requirement that the company itself or its custodian bank, if one has been appointed, must publish the issue and repurchase price of units on every occasion on which units are issued or repurchased. This must happen at least twice every month. Every investment fund management company is additionally required to publish a prospectus as well as any major changes to prospectuses. The company is also required to make a Key Investor Information Document (KIID) available to its clients.

The disclosure obligations applicable to real estate investment fund management companies are defined in the ImmoInvFG using almost exactly the same wording as in the InvFG 2011. The only difference in the provisions concerns the KIID, which was not included in the ImmoInvFG. By way of a substitute, the real estate investment fund management company continues to be required to publish a complete prospectus and a simplified prospectus as well as any major changes to these documents.

An AIFM managing an AIF that falls under Directive 2004/109/EC is required to publish the audited annual reports for the AIF. The AIF may also be obliged pursuant to Directive 2003/71/EC to publish a prospectus. An AIFM selling an AIF to retail customers is required to publish the AIF's net asset value twice a month unless the AIF is admitted to trading on a regulated market.

ON-SITE INSPECTIONS

The revision of the BWG through Federal Law Gazette I No. 72/2010 of 18 August 2010 in relation to responsibility for implementing on-site inspections means that the FMA has been carrying out on-site inspections at investment fund management companies

and real estate investment fund management companies since 1 January 2011.

Seven on-site inspections were carried out at investment fund management companies and one at a custodian bank in 2013. Two of these inspections were scheduled to follow up previously held on-site examinations and two other inspections were done in verification of measures ordered as a result of an on-site inspection.

MANAGEMENT TALKS

Detailed management talks were held with 23 investment fund management companies and five real estate investment fund management companies in 2013.

INTERNATIONAL COOPERATION

At an international level, the FMA continues to be represented in the investment fund sector by participating in the Investment Management Standing Committee (IMSC) of the European Securities and Markets Authority (ESMA). This Committee deals with regulations and the interpretation of legislation applying to har-

monised and non-harmonised investment funds. With regard to the harmonised UCITS sector, the main task of the Committee is to prepare advice for the European Commission (referred to as binding technical standards or BTS), as well as guidelines and recommendations regarding UCITS. A permanent operational working group, in which the FMA also participates, has been established for this purpose within the IMSC. This operational working group of the IMSC is particularly involved in technical issues relating to the interpretation of UCITS IV and in problems raised by its implementation in practice.

Along with cooperation in the IMSC, the FMA participated in the Council Working Party for preparing the UCITS V Directive, which is currently scheduled to be adopted in 2014. FMA staff members were also involved in preliminary work on the UCITS VI Directive, which has already been planned.

Other activities in the interests of international cooperation are described in detail under the special topic "AIFMG – Supervision of Alternative Investment Fund Managers", under the section entitled „European Harmonisation Process" (on page 37).

SUPERVISION OF INVESTMENT FIRMS AND INVESTMENT SERVICE PROVIDERS

MARKET DEVELOPMENT

In 2013, and following a year of recovery, the market for investment firms and investment service providers licensed pursuant to the 2007 Securities Supervision Act (WAG 2007; *Wertpapieraufsichtsgesetz*) experienced a clear decline in the number of customers and the volumes of assets under management, particularly in the area of brokered investment products.

The trend towards restructuring and realignment of business activities continued during the 2013 financial year. The number of undertakings licensed pursuant to the WAG 2007 fell even more strongly than in the previous years, with the result that the number of licensed investment service providers has now decreased by more than 50% since the onset of the financial crisis. In addition, the number of Austrian branches of investment firms from the European Economic Area (EEA) but not situated in Austria declined again after a year of growth, and is now back to the level of 2011.

In 2013, investment firms and investment service providers continued to pursue business policies geared towards business areas that do not require a licence, even though the share of companies operating solely in the area of investment services that do require a licence accounted for nearly 40% of all licensed investment firms and investment service providers for the first time. On average, less than two thirds of the sales generated by these companies result from business that requires a licence.

Compared with 2012, there was a strong decrease of almost 12%, to 406,874, in the total number of customers being served by investment firms and investment service providers in the area of investment services. The market appears to be continuing to focus on business dealings with affluent retail customers and professional clients. The year under review is the third period in a row during which around 90% of li-

censed companies dealt with fewer than 1,000 customers. At €20.75 billion, the customer assets under management in the area of individual portfolio management made up almost 47% of all customer assets in the investment services sector. This is supplemented by €12.75 billion of assets which are being collectively managed through so-called external management for investment fund companies. A striking detail is that, at €5.36 billion (or roughly 12% of assets), the figure for customer assets managed by providing investment advice is clearly higher than the €4.12 billion of assets managed by brokering financial instruments.

The number of people working for investment firms and investment service providers has continued to fall, dropping by another 6.7%, and is now down to only 926 employees. The entry into force of the regulated trade of "securities broker" has had a major impact on the number and distribution of independent brokers operating under the liability umbrella of licensed companies. Following the end of the transition period on 31 August 2014, the securities broker will definitively replace the "financial services assistant", which has previously been a free profession. Whilst the number of financial services assistants working for investment firms and investment service providers (without a special certificate of qualification) dropped by more than 67% compared with 2012, the number of securities brokers remained more or less constant, and the number of tied agents working exclusively for a licensed investment firm and requiring registration as commercial investment advisers again rose considerably, up by another 7% in 2013.

The increase in the number of tied agents operating under the liability umbrella of a company licensed by the FMA is also due to the decline in the number of investment firms and investment service providers licensed in accordance with the WAG 2007. These companies as a rule do not drop out of the market

Table 30a: MARKET DATA FOR INVESTMENT FIRMS AND INVESTMENT SERVICE PROVIDERS 2009–2013 (source: FMA licence database as specified in Article 92 para. 12 WAG 2007, FMA register as specified in Article 28 para. 6 WAG 2007, 2013 analysis survey)

	2009	2010	2011	2012	2013
All companies	211	193	175	167	152
LICENCES					
Investment firms	108	99	92	88	82
Investment service providers	103	94	83	79	70
Investment advice	211	193	175	167	152
Portfolio management	66	62	58	54	51
Receipt and transmission of orders	208	191	169	161	146
Multilateral trading system	0	0	0	0	0
Cooperation with financial services assistants/securities brokers	127	118	105	98	91
LEGAL FORM					
Joint stock company (AG)	25	23	19	18	16
Limited liability company (GmbH)	140	129	121	117	108
Partnerships	7	7	5	5	5
Sole proprietorships	39	34	30	27	23
CORPORATE STRUCTURE					
Group companies	61	52	46	42	41
Companies with supervisory board	42	35	32	27	27
Companies with branches in EEA	17	12	10	9	9
STAFF					
Number of employees	1,524	1,366	1,283	992	926
Number of tied agents	2,418	2,038	1,263	1,620	1,732
Number of financial services assistants	5,035	4,313	3,426	1,316	426
Number of securities brokers	–	–	–	730	725

completely; they often continue their investment service activities as tied agents for another licensed company.

The fact that, out of a total of 2,883 agents operating under the liability umbrella of licensed investment firms and investment service providers, only 15% now lack a special certificate of qualification shows the efficient manner in which the market has been cleaned up in a segment that was previously frequently criticised. In terms of the figures, this means that, out of the approximately 12,500 “freelancers” registered with the FMA prior to the entry into force of the WAG 2007, only 3% remained at the end of 2013. The number of people working in regulated professions (investment advisers and securities brokers), totalling 2,457 in 2013, is almost 20% up on 2007’s figures.

LEGAL BASIS

LICENCE PURSUANT TO THE WAG 2007

Pursuant to Article 3 para. 2 WAG 2007, the following investment services may only be provided commercially with a licence:

- investment advice relating to financial instruments;
- portfolio management by managing portfolios for individual customers who authorise a certain degree of management discretion, provided that the customer portfolio contains one or several financial instruments;
- receipt and transmission of orders, provided that such activity involves one or more financial instruments;
- operation of a multilateral trading facility.

Table 30b: MARKET DATA FOR INVESTMENT FIRMS AND INVESTMENT SERVICE PROVIDERS 2009–2013 (source: FMA licence database as specified in Article 92 para. 12 WAG 2007, FMA register as specified in Article 28 para. 6 WAG 2007, 2013 analysis survey)

	2009	2010	2011	2012	2013
BUSINESS ACTIVITY					
Provision of investment advice	132	115	112	99	94
Provision of portfolio management	51	47	48	42	42
Receipt and transmission of orders	133	123	111	106	95
Advisory of investment funds	29	31	27	23	22
External management of investment funds	33	32	32	29	29
Appointment of tied agents	32	30	28	27	25
Cooperation with financial services assistants	73	63	54	48	37
Cooperation with securities brokers	–	–	–	23	31
Sale of own products	46	58	62	59	55
Services to key account customers	48	50	49	43	34
SHARE OF INVESTMENT SERVICES IN TOTAL BUSINESS					
Up to 50%	64	66	54	61	57
Up to 75%	24	23	21	18	13
Up to 99%	49	32	37	31	23
100%	74	72	63	57	59
NUMBER OF INVESTMENT SERVICE CUSTOMERS					
Total number of customers	459,887	515,546	459,376	461,723	406,874
Number of customers per company: up to 100 customers	107	100	91	98	88
Up to 1,000 customers	79	71	66	53	48
Up to 10,000 customers	19	15	12	10	10
Up to 100,000 customers	5	5	4	5	5
More than 100,000 customers	1	2	2	2	1
CUSTOMER ASSETS					
Customer asset services: investment advice	–	–	–	–	5,360
Customer asset services: portfolio management	–	–	–	–	20,754
Customer asset services: receipt and transmission	–	–	–	–	4,121
Customer asset services: fund advisory (InvFG, AIFMG)	–	–	–	–	910
Customer asset services: external management (InvFG, AIFMG)	–	–	–	–	12,750

According to Article 1 no. 6 WAG 2007, financial instruments take the form of transferable securities, money market instruments, units in investment funds, in real estate funds or in similar institutions, derivative contracts (particularly options, futures, forwards, swaps) relating to securities, currencies, interest rates, interest income or financial indices, derivative contracts relating to goods, derivatives designed to transfer credit risk, financial margin trading and derivative contracts relating to climate variables, freight rates, emission allowances, inflation rates and official economic statistics. For the commercial provision of investment services the WAG 2007 stipulates two kinds

of licences, each with a separate scope of authorisation in terms of type of investment service and the financial instruments related to these services: the licence for an investment firm as specified in Article 3 WAG 2007 and the licence for an investment service provider as specified in Article 4 WAG 2007.

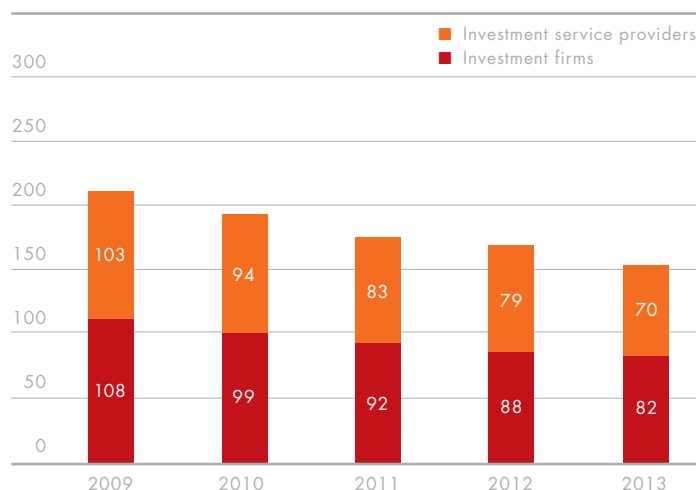
The authorisation of an investment firm to provide one or more investment services can be without limitation, thus including all financial instruments stipulated in Article 1 no. 6 WAG 2007, and can be extended to the entire EEA through the issuing of a “European Passport”. Unlike investment firms, investment service providers are subject to various limitations relating to

the provision of investment services and may only operate in Austria. Pursuant to Article 4 para. 2 WAG 2007, various relaxed licensing requirements apply to investment service providers. For instance, the appointment of a single managing director, who may also have another full-time occupation outside the banking, insurance or pension company sector, is sufficient. Also permitted are a free choice in the legal form of the company (in addition to corporations, partnerships and sole proprietorships may also offer investment services that require a licence), substitution of the capital requirements with a professional liability insurance policy and relaxations concerning accounting and auditing. The recent amendment of the WAG 2007, which entered into force on 1 January 2014, changed the legal framework for investment service providers such that companies may be licensed as investment service providers up to a threshold of €2 million of sales revenues generated by providing investment services; companies with sales revenues exceeding that figure may be exclusively licensed as investment firms. The previous threshold was €730,000 of total sales revenues.

EEA NOTIFICATIONS

The European Markets in Financial Instruments Directive, or MiFID (Directive 2004/39/EC), provides the basis on which investment firms from the EEA may operate throughout the entire EEA both through branches and under the freedom to provide services. To make use of this freedom of establishment and freedom to provide services, investment firms, having obtained the corresponding licence, must provide notification of their operations in the respective country through their home supervisory authority. Having this “European Passport” means that investment firms are entitled, pursuant to MiFID, to provide any investment services that they are licensed to provide in their home Member State also in those Member States that are included in the notification process, without the need for any further licensing proceedings.

Chart 29: NUMBER OF VALID LICENCES 2009–2013



OFFICIAL TASKS

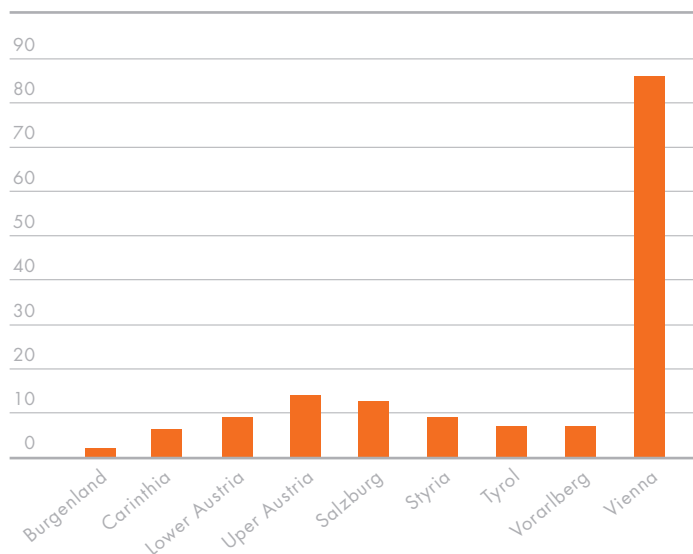
SUPERVISED COMPANIES

As at the reporting date of 31 December 2013, 152 companies were in possession of a valid licence from the FMA entitling them to provide investment services pursuant to WAG 2007. Of these 152 companies, 82 held a licence as an investment firm pursuant to Article 3 WAG 2007 and 70 companies a licence as an investment service provider pursuant to Article 4 WAG 2007. In comparison, there were 167 licensed companies in 2012, comprising 88 investment firms and 79 investment service providers. The comparison with the previous year's data shows that the number of licences pursuant to WAG 2007 fell by 15. This means that the decline in licensed undertakings amounted to about 9% in 2013, compared with around 5% in 2012 (see Chart 29).

Fourteen licences expired in total in 2013, seven relating to investment firms and seven to investment service providers. As at the end of the reporting year, four further licences had been given up.

All of these 152 companies with a valid licence were entitled to provide investment advice relating to financial instruments, with 51 investment firms entitled to manage client portfolios. In all, 146 investment firms and investment service providers were entitled to receive and transmit orders, to the extent that such activity involved one or more financial instruments. As at the end of the reporting year, 54 Austrian investment

Chart 30: NUMBER OF INVESTMENT FIRMS/INVESTMENT SERVICE PROVIDERS BY FEDERAL PROVINCE 2013



firms held a European Passport for the provision of investment services in the EEA, with six of these undertakings maintaining a total of ten branches in the EEA. In terms of the geographical distribution of the licensed investment firms and investment service providers within Austria, a total of 86 undertakings or nearly 57% of all licensed undertakings had their registered office in Vienna as at the reporting date of 31 December 2013. Upper Austria was the next federal province in the list, with 14 companies, followed by Salzburg with 12 licensed companies (see Chart 30).

NEW LICENCES GRANTED TO INVESTMENT FIRMS AND INVESTMENT SERVICE PROVIDERS

In 2013, three new licence applications were submitted to the FMA, two fewer than in 2012. Whilst five applications for a licence were withdrawn and one application rejected in the previous year, none were withdrawn or rejected in the year under review. Four new licences were granted in the year under review, one of which had not become legally effective by the end of 2013. Only one licence was granted to a sole proprietorship. Thus, the trend towards corporations continued, as seen in previous years, with this form of company now accounting for more than 82% of all the firms licensed pursuant to WAG 2007.

Using the FMA website at www.fma.gv.at investors and interested members of the public can access the

corporate database at any time to check whether a provider holds a valid FMA licence. The information available online also includes the scope of the licences held by the respective investment firms and investment service providers, and contact addresses for the licensed undertakings.

AGENTS OF INVESTMENT FIRMS AND INVESTMENT SERVICE PROVIDERS

Investment firms and investment service providers are allowed to use vicarious agents for the provision of investment services. These agents may, without themselves having to hold a licence pursuant to WAG 2007, perform investment services on behalf and for the account of the licensed firm. There are two legal forms for these agents, the tied agent and the securities broker, with the latter replacing the financial services assistant in 2014.

TIED AGENTS

Tied agents may be natural or legal persons. They are bound by the principle of exclusivity, which means that a tied agent may only work for one single investment firm, credit institution, insurance undertaking or branch of an investment firm or credit institution. Tied agents may be appointed for the purposes of promoting the services of the investment firm, soliciting business or receiving orders from clients and transmitting them, and for providing investment advice with regard to financial instruments and services offered by the legal entity.

An investment firm that appoints a tied agent is liable pursuant to Article 1313a of the General Civil Code (ABGB; *Allgemeines Bürgerliches Gesetzbuch*) for each and every act or failure to act of the agent, if that agent is acting in the name of the legal entity. Therefore, the investment firm is obliged to monitor the agent's activities accordingly. If tied agents reside in Austria, they must hold a trade licence for the commercial provision of investment advice pursuant to Article 136a of the Trade Act (GewO; *Gewerbeordnung*) and must be entered in the public register kept by the FMA. As at the reporting date of 31 December 2013, 25 Austrian investment firms were using 1,732 tied agents for the provision of investment services.

This represents a rise of 6.9% compared with 31 December 2012, when 1,620 tied agents were registered with the FMA.

SECURITIES BROKERS

Unlike the remit of tied agents, the scope of activities to be performed by a securities broker is limited. Only a natural person may serve as a securities broker. The securities broker may only operate on the domestic market and requires a trade licence pursuant to Article 136a or 136b GewO. The profession of securities broker is a regulated trade, which means that a certificate of qualification is required to obtain the authorisation to exercise the profession. Unlike the activity of tied agents, that of the securities broker is limited to investment advice and the receipt and transmission of orders in relation to financial instruments pursuant to Article 1 no. 6 lit. a and c WAG 2007. This relates to transferable securities and units in investment funds and open-ended alternative investment funds. The securities broker may act on behalf and for the account of a maximum of three investment firms/investment service providers, but not for credit institutions or insurance undertakings.

Securities brokers provide their services for investment firms and investment service providers in the capacity of vicarious agents, and their actions are attributed to the respective legal entity. This is why the investment firm or investment service provider is liable for the vicarious agent pursuant to Article 1313a ABGB regardless of whether the securities broker discloses the respective principal or not. The provisions of Article 136d GewO on the joint and several responsibility of all investment firms and investment service providers that have registered the same securities broker in the FMA register apply accordingly. This joint and several solidarity applies if the securities broker has not clearly disclosed the identity of the principal under the terms of the contract.

Like tied agents, securities brokers must also be entered in the public register kept by the FMA. Appointing securities brokers for the provision of investment services presupposes that this has been approved in the administrative decision granting the licence issued to the investment firm or the investment service provider.

As at 31 December 2013, 91 Austrian investment

firms and investment service providers were entitled to operate by appointing securities brokers. Of these, only 31 actually exercised the right granted to them. This represents a change compared with the previous year when only 23 out of 98 licensed investment firms and investment service providers actually used securities brokers for the provision of investment services. As at 31 December 2013, 725 individuals acting as securities brokers for investment firms or investment service providers had been registered with the FMA. Also taking into account the total of 426 individuals who were still registered as financial services assistants on the basis of the statutory transitional rules on the reporting date, there were 1,151 people working in the capacity of vicarious agents pursuant to Article 2 para. 1 no. 15 WAG 2007 for licensed investment firms and investment service providers. By way of comparison, at the 2012 year-end 2,046 individuals were still registered as securities brokers or financial services assistants for investment firms or investment service providers, which represents a year-on-year decrease of 44%.

Up-to-date information on the tied agents, securities brokers and financial services assistants registered with the FMA, can be found on the FMA website at www.fma.gv.at. This gives investors a means of checking whether or not a particular individual is actually registered with the FMA as a tied agent, securities broker or financial services assistant of an investment firm or an investment service provider and is entitled to provide investment services.

CONTINUED SUPERVISION OF INVESTMENT FIRMS AND INVESTMENT SERVICE PROVIDERS

The FMA supervises all licensed investment firms and investment service providers in terms of their compliance with the obligations set forth in the WAG 2007. These obligations include, in particular, adherence to the extensive organisational requirements of the WAG 2007, such as for example the obligation to establish an independent compliance function, a risk management function and an internal audit function, as well as observance of recording duties. A central aspect is the supervision of compliance with the statutory codes of conduct based on classification of the

Table 31: ON-SITE ACTIVITIES 2009–2013

	2009	2010	2011	2012	2013
On-site inspections	32	32	38	36	30
Scheduled	14	21	29	29	22
Current issue-related	18	11	9	7	8
Management talks	81	84	143	135	118

- tied agents
- securities brokers
- financial services assistants
- corporate organisation
- insurance cover / investments / own funds
- business activities
- customer structure.

respective investment firm’s or investment service provider’s clients as retail customers, professional clients or eligible counterparties. Further obligations of the WAG 2007 covered by securities supervision include the licensing requirements, adherence to the scope of the licence granted, the notification and reporting obligations and the duties of presentation, as well as the provisions on accounting and the annual audit.

Once a year, investment firms and investment service providers must appoint a statutory auditor to prepare an audit report pursuant to Articles 73 and 74 WAG 2007. This report serves to document verification of compliance with the statutory provisions and must be submitted to the FMA no later than six months after the audited company’s financial year-end, which in the case of most investment firms and investment service providers means by 30 June.

Pursuant to Article 15 of the FMA Cost Regulation (FMA-KVO; *FMA-Kostenverordnung*), investment firms and investment service providers also have to report the sales revenues from their investment services business to the FMA by that date. The preparation, verification and analysis of the financial statements, audit reports and reporting data provide decisive indicators with regard to implementation of and compliance with statutory standards governing the provision of investment services by investment firms and investment service providers; they also provide a starting point for supervisory measures.

A further important supervision tool is the electronic analysis questionnaire for investment firms and investment service providers, which can be completed online on the FMA website. The questionnaire consists of six modules and contains 78 questions. These are grouped into the following topics:

- general company information
- employees

The evaluation of the analysis questionnaires gives the FMA valuable insights into the activity of the supervised companies as well as into the market of investment service providers, and also provides every evaluated company with information and tips that can be used to review and optimise existing internal processes.

EEA INVESTMENT FIRMS

In 2013, there were 2,419 investment firms with their head offices situated in another EEA Member State that were authorised to provide investment services in Austria under the freedom to provide services. Such authorisation is provided in the form of the European Passport. It may, however, also apply if there is a branch in Austria with regard to which the responsible sister authority abroad has provided appropriate notification to Austria.

As at the end of 2013, 18 branches of EEA investment firms were operating in Austria on the basis of such notification. Compared with the 2,282 firms that had provided notification of their operations in Austria in the previous year, the number of EEA investment firms entitled to provide investment services in Austria therefore increased by 6.8%. The number of branches of EEA investment firms dropped from 22 to 18 in 2013, an 18.2% decrease. During the reporting year, 1,835 firms or around 75% of the firms that had provided notification of their operations in Austria came from the UK. This was followed by Germany with 141 notified companies, Cyprus with 104 and the Netherlands with 51.

ON-SITE INSPECTIONS AND MANAGEMENT TALKS

During the year under review, on-site inspections were carried out with regard to 30 investment firms and investment service providers, eight of which were conducted in response to current issues. By way of

comparison, 36 inspections were carried out in 2012, seven of which tackled a current issue (see Table 31).


Within the scope of an on-site inspection, the FMA is entitled to request information from the companies and their bodies concerning any business matter, and examine all books, documents and data media of the companies. In addition, statutory auditors can obtain audit reports and information. Basically, on-site inspections focus on verifying compliance with the provisions of the entire WAG 2007, particularly compliance with organisational obligations and the rules

of conduct. Compliance with the scope of the licence and with any stipulations or limitations prescribed by administrative decision is also monitored.

A total of 118 talks were held with the management of investment firms and investment service providers during the year under review, providing a regular opportunity for a direct and prompt exchange of information. Such talks are also used within the context of official processes as a means of observing the obligation to hear the parties involved, as well as within the framework of "fit and proper" tests of candidates for the management of supervised companies.

SUPERVISION OF FINANCIAL CONGLOMERATES

DEVELOPMENT

 In the basis of the 2012 financial statements, there are currently 51 financial conglomerates in the EU that are subject to supplementary supervision pursuant to the Financial Conglomerates Directive 2002/87/EC. A further 15 financial conglomerates are exempt from supplementary supervision by the respective national supervisory authority given their low level of cross-sectoral activities.

In the European Economic Area, which in addition to the EU Member States encompasses Iceland, Liechtenstein and Norway, the number of financial conglomerates is 57. Six further financial conglomerates based outside the EEA are also active in the EEA: two from Switzerland, three from the US and one from Australia. There are therefore 78 financial groups in total operating on a cross-sectoral basis in the EEA that have business activities of significant magnitude in both financial sectors (banking and insurance). The developments indicate that groups with cross-sectoral activities are continuing to pursue their business models. Yet the previous tendency towards capital links has been replaced by a trend towards minority interests and, increasingly, towards cooperation.

In addition to financial conglomerates, which are subject to supplementary supervision as defined by law due to their structure, cooperation among companies from different financial sectors (banking and insurance) is also becoming increasingly common in the form of cooperation models and the provision of equity and liquidity support. Consequently, risk elements associated with the Financial Conglomerates Act (FKG; *Finanzkonglomeratengesetz*) are arising that are not, however, automatically subject to supplementary supervision. In particular, the reciprocal acquisition of equity issues across different sectors is creating potential contagion risks, similar to those associated to date with the acquisition of equity holdings in other companies. However, such acquisitions are not sub-

ject to supervision under the terms of the FKG. The fact that no deduction from equity is required, unlike in the case of an equity holding, could encourage a situation where a supervised company (whilst adhering to the rules governing its sector) holds an excessive amount of another supervised company's equity without being able to adequately manage the implicit risk of contagion due to a lack of knowledge of the inherent risks.

However, this is not a problem limited to Austria. It is also a problem being observed in other Member States. The FMA has therefore begun analysing in greater detail the risk situation that arises with large and complex clusters of companies extending across different sectors, specifically in terms of the equity situation, in order to detect any interconnection and potential risks and to raise the awareness of the companies concerned where appropriate.

In Austria the following groups continue to be subject to supplementary supervision pursuant to the FKG:

- Bausparkasse Wüstenrot AG und Wüstenrot Versicherung AG;
- Grazer Wechselseitige Versicherung AG with the Hypo-Bank Burgenland AG banking group (whose member companies include Hypo-Bank Burgenland AG, Sopron Bank Burgenland Rt., Capital Bank – GRAWE Gruppe AG, Brüll Kallmus Bank AG); and
- Raiffeisenzentralbank Österreich AG and its major holdings in UNIQA Versicherungen AG.

Given that risk managers in the insurance sector use risk concepts other than those used by their colleagues in banking and investment services, it can be difficult to interpret and understand an overall view of the relevant risk. Additionally, different workflows and processes in the back offices or in the accounting departments of the various types of company operating in the financial sector may generate operational risks within the group. It is therefore vital that rules and processes be defined in writing. Ensuring that everyone is speaking the same language and sharing the

same definitions of risk concepts, as well as group-wide perspectives are basic prerequisites for internal communications and group management. These definitions should include a clearly defined risk strategy, risk principles and responsibilities, and set out reporting channels. Furthermore, a group-wide internal risk assessment system and a clear equity strategy should be established at conglomerate level. At senior management level, reporting should cover all of the essential aspects such as own funds, risks and risk-bearing capacity at conglomerate level, as well as possibly also stress tests and worst-case scenarios.

OWN FUNDS

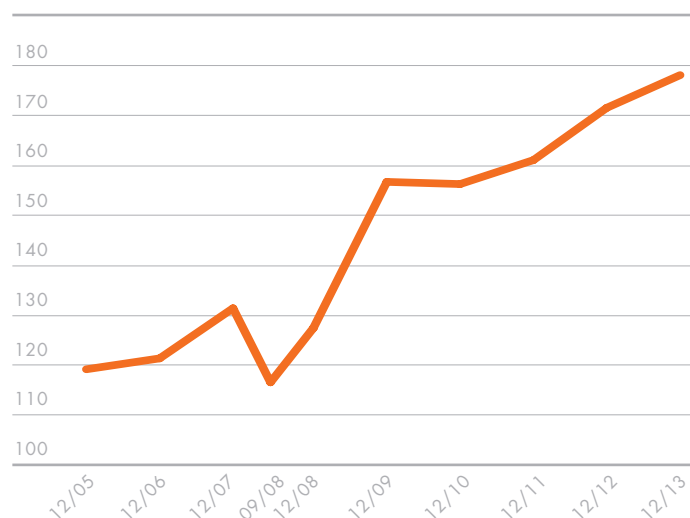
The position of Austrian financial conglomerates with regard to own funds is as follows: in a year-on-year comparison, the solvency ratio rose slightly in 2013 to reach 177% (2012: 171%; see Chart 31). This can be explained by the Austrian financial conglomerates' ownership structure (no listings) as well as the owners' appropriation of profits (retention of profits to strengthen the capital position).

LEGAL BASIS

The year under review was characterised by the transposition of amendments to the Financial Conglomerates Directive (Directive 2010/78/EU) into the FKG. In addition, in the context of the European supervisory architecture, the Sub-Committee on Financial Conglomerates (JCFC), one of four sub-committees of the Joint Committee serving the three supervisory authorities, namely the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA), was mandated to develop draft regulatory technical standards (RTS) to be implemented mandatorily.

The following drafts were prepared by the Joint Committee in 2013: First, RTS concerning the appropriate application of calculation methods for the determination of required capital at the financial conglomerate level ("RTS on the consistent application of the calculation methods under Article 6(2) of the Financial Conglomerates Directive"). These became necessary

Chart 31: CHANGES IN AVERAGE SOLVENCY RATIO AMONG AUSTRIAN FINANCIAL CONGLOMERATES 2005–2012 (unweighted, in %)



since the new prudential requirements for banks (CRR/CRD IV) extensively changed the definition and eligibility of own funds as well as the own funds requirements. The main issue in this regard was whether and how those capital requirements and capital buffers imposed on banks by the CRD should or could also be applied at the level of the financial conglomerate.

The second draft, which was launched for public consultation in early 2014, deals with holding and coordinating cross-border supervisory meetings ("Guidelines on the convergence of supervisory practices relating to the consistency of supervisory coordination arrangements for financial conglomerates"). It stipulates how such colleges should be coordinated as well as a basic agenda for holding such meetings as part of the respective sectoral college.

At present a third draft is also being prepared: "Regulatory technical standards to establish a more precise formulation of the definitions set out in Article 2 and to coordinate the provisions adopted pursuant to Articles 7 and 8 and Annex II in order to ensure consistent application of Articles 2, 7 and 8 and Annex II of Directive 2002/87/EC". The aim of these provisions is to provide a uniform definition of risk concentrations at the conglomerate level and of transactions within the group. Furthermore, there are plans for a more precise definition of the threshold values with effect from which the companies under supplementary

supervision are required to report. However, national supervisors should be given the opportunity to set lower threshold values.

In addition, mention should be made of the fact that since 1 January 2014 mixed financial holding companies have been subject to supervision not only pursuant to the FKG but also pursuant to the BWG and the CRR. Subsequently, these types of companies will also be covered in the VAG.

INTERNATIONAL COOPERATION AND OUTLOOK

In 2013, Germany followed the Austrian model of transposing the Financial Conglomerates Directive by introducing its Supervision of Financial Conglomerates Act (FKAG; *Finanzkonglomerate-Aufsichtsgesetz*). In Austria a separate law was established which should make it possible to supervise financial conglomerates in a uniform manner and, with respect to

group supervision, regardless of the type of company that is subject to supplementary supervision. This avoids any unequal treatment. The relevant sectoral laws, which previously regulated the supervision of financial conglomerates and which have now been transferred to the FKAG, obviously continue to apply.

OFFICIAL TASKS

The supervisory activities of the FMA continued to be concentrated on the quality deficiencies that were identified during analyses, some on the basis of the quarterly reports submitted pursuant to the FMA Financial Conglomerates Quarterly Reporting Regulation (FK-QUAB-V; *Finanzkonglomeratsquartalsberichts-Verordnung*), and on-site inspections. The focus of supervision in 2014 will be on the existence of resolution plans for the entire group, risk management quality, IT security and the current status of preparations for stress testing across the entire conglomerate.

COMPLIANCE SUPERVISION

LEGAL BASIS

Compliance contributes significantly towards strengthening the confidence of market participants in the Austrian capital market. The concept generally denotes adherence to laws, guidelines, rules of conduct, regulations or established practices. Appropriate compliance has the purpose of avoiding administrative sanctions and penalties defined by criminal or civil law. As a management responsibility, compliance is specifically a means of controlling business risks and risks to the company's reputation. Compliance, in the sense of establishing an efficient company organisation for the purpose of fulfilling and meeting supervisory requirements that are aimed at strengthening financial market stability, has become increasingly important in recent years. Supervisory legislation now includes highly concrete, detailed requirements for a company's compliance plan and for establishing a compliance function.

In the context of its compliance supervision duties, the FMA monitors adherence to the compliance-related provisions of the Stock Exchange Act (BörseG; *Börsegesetz*) and the 2007 Compliance Decree for Issuers (ECV 2007; *Emittenten-Compliance-Verordnung*), as well as to the compliance-related provisions and rules of conduct set out in the 2007 Securities Supervision Act (WAG 2007; *Wertpapieraufsichtsgesetz*) and in the 2011 Investment Fund Act (InvFG 2011; *Investmentfondsgesetz*). The types of companies described in the following are subject to compliance supervision.

CREDIT INSTITUTIONS

All credit institutions as defined in the Banking Act (BWG; *Bankwesengesetz*) must take the compliance-related measures referred to in Article 82 para. 5 nos. 1 to 3 BörseG with a view to preventing insider dealing (Article 48s in conjunction with Article 82 para. 5 BörseG). Furthermore, credit institutions that are also

licensed pursuant to Article 1 para. 3 BWG to provide investment services in accordance with Article 3 para. 2 nos. 1 to 3 WAG 2007 (investment advice, portfolio management on an individual customer basis and/or receipt and transmission of securities orders) must also adhere to the relevant provisions of the WAG 2007 (Chapter 2 – Organisational requirements).

MANAGEMENT COMPANIES (INVESTMENT FUND MANAGEMENT COMPANIES)

The InvFG 2011 contains comprehensive regulations for investment fund management companies with regard to rules of conduct and compliance, which have been based on the WAG 2007. Additionally, investment fund management companies acting as credit institutions pursuant to the BWG are also subject to the compliance rules set out in the BörseG (Article 48s in conjunction with Article 82 para. 5 BörseG). Where investment fund management companies also hold an additional licence to provide the investment services of investment advice and portfolio management on an individual customer basis (Article 5 para. 2 nos. 3 and 4 in conjunction with Article 6 para. 2 no. 12 InvFG 2001), certain provisions of the WAG 2007 (Article 2 para. 3 WAG 2007) also apply to these activities. Furthermore, alternative investment fund managers that are authorised pursuant to the Alternative Investment Fund Managers Act (AIFMG; *Alternative Investmentfonds Manager-Gesetz*)¹ are required to adhere to compliance provisions² similar to those of the WAG 2007.

ISSUERS

In the case of issuers, the FMA monitors compliance with the provisions relating to the record of insiders pursuant to Article 48d para. 3 BörseG and adher-

¹ Federal Law Gazette I No. 135/2013.

² Cf. Article 61 of Commission Delegated Regulation (EU) No 231/2013, which supplements the AIFM Directive and is directly applicable under national law.

Table 32: SUPERVISORY MEASURES 2009–2013

ACTIVITIES	2009	2010	2011	2012	2013
On-site inspections					
Acc. to inspection plan	9	12	11	9	11
Non-scheduled	3	0	1	2	0
Management talks					
Acc. to inspection plan	25	26	26	30	34
Non-scheduled	1	6	6	2	0
Company visits					
Acc. to inspection plan	11	9	17	17	24
Non-scheduled	1	4	3	1	3
Total	50	57	64	61	72

Note: In two cases, company visits were substituted for the originally planned management talks.

ence to the compliance-related provisions set out in Article 82 para. 5 nos. 1 to 3 BörseG in conjunction with the terms of the ECV 2007.

INSURANCE UNDERTAKINGS AND PENSIONS KASSEN
Insurance undertakings and *Pensionskassen* are also required to adhere to the compliance measures specified in the BörseG (Article 48s in conjunction with Article 82 para. 5 BörseG). Where insurance undertakings place units in investment funds as specified in Article 3 para. 3 of the Insurance Supervision Act (VAG; *Versicherungsaufsichtsgesetz*), they are additionally subject to certain provisions of the WAG 2007 governing such activities (Article 2 para. 2 WAG 2007).

OFFICIAL TASKS

SUPERVISED COMPANIES

As at the reporting date of 31 December 2013, the following entities were subject to compliance supervision by the FMA (comparable figures for 2012 given in brackets):

- 790 credit institutions licensed in Austria (809), including:
 - 41 special-purpose credit institutions (42) and
 - 29 investment fund management companies (29);
- 47 insurance undertakings established and licensed in Austria (48);
- 16 Austrian *Pensionskassen*, including eight single-employer and eight multi-employer (17);

- 152 issuers (157)³, including 76 subject to the provisions of the ECV 2007⁴.

SUPERVISORY MEASURES

On-site inspections serve in particular the purpose of verifying adherence to compliance-related provisions of law, as specified in Article 91 para. 3 no. 3 WAG 2007, Article 48q para. 1 no. 3 in conjunction with Article 86 para. 6 no. 8 BörseG and Article 3 para. 8 BWG in conjunction with Article 147 paras. 1 and 2 InvFG 2011.

As part of these comprehensive supervisory measures, the FMA inspects, on site at the company, the extent to which the compliance mechanisms in place meet the statutory requirements and compliance is given with the rules of conduct specified in the WAG 2007 and the InvFG 2011.

Additional supervisory measures include company visits and management talks. These are used above all as a means of maintaining ongoing contact with the supervised companies in order to raise the market standard in the area of compliance and to enable discussions of specific problems in response to current issues. Targeted use is also made of management talks as a follow-up measure.

Within the context of compliance supervision, supervisory measures take place both on a scheduled basis and as cases arise. Such measures can have the purpose of reviewing the complete range of supervisory issues relating to compliance supervision or may be limited to very specific topics or cases subject to supervision.

A total of 72 supervisory measures were conducted in 2013. The measures performed included 11 instances of on-site inspections, 34 sets of management talks and 27 company visits.

OTHER SUPERVISORY ACTIVITIES

Activities include:

- “fit and proper” tests in order to review the suit-

³ Source: Wiener Börse AG.

⁴ Issuers whose shares or securities equivalent to shares are admitted to trading on a regulated market in Austria are governed by the terms of the ECV 2007.

ability of managers of investment fund management companies that hold an additional licence to provide investment advice and portfolio management on an individual customer basis;

- the analysis and evaluation of the annex to the audit report pursuant to Article 63 paras. 5 and 7 BWG, which is prepared by the auditors;
- reviewing compliance with the terms of Article 48f BörseG, which relates to the required content of financial analyses.

SPECIAL TOPICS

SEPARATION OF TRADING: FOR ACCOUNT OF CUSTOMERS AND FOR OWN ACCOUNT

Articles 34 et seq. WAG 2007 in conjunction with Article 2 of the FMA Regulation on Conflicts of Interest and Information for Customers (IKV; *Interessenkonflikte- und Informationen für Kunden-Verordnung*) require legal entities providing investment services to identify and take appropriate measures to manage any conflicts of interest that might be to the disadvantage of customers. Specifically, suitable guidelines for addressing conflicts of interest are to be prepared, in which procedures and measures for managing the identified conflicts of interest are to be defined (Article 35 WAG 2007). The guidelines must be put in writing, and companies are to apply them internally and actually practise them.

The FMA views trading for account of customers and for own account as belonging to the business activities which are especially prone to conflicts of interest due to the competing interests involved. The separation was consequently investigated on a regular basis within the framework of supervisory measures, with deficiencies being identified in numerous cases. The administrative penal proceedings held before the Independent Administrative Tribunal (UVS; *Unabhängiger Verwaltungssenat*) on this matter have confirmed the FMA's legal opinion regarding the need to separate trading for account of customers from trading for own account both with regard to personnel as well as location, in order to avoid any potential conflicts of interest to the disadvantage of customers.

CUSTOMER INFORMATION AND MARKETING COMMUNICATIONS

In 2013 as in previous years, an "Internet surf day" was held for the purpose of verifying that the information and marketing communications that credit institutions publish in the context of investment services for customers via the web are appropriate, fair and clear, and do not contain any misleading information (cf. Articles 40 et seq. WAG 2007 and Articles 3 et seq. IKV). It was seen that the credit institutions have put into practice the requirements spelled out in detail by the FMA in a circular⁵, so that in this way the market standards relating to the information supplied to customers and to marketing communications have improved appreciably.

INTERNATIONAL COOPERATION

With regard to compliance supervision as defined in the WAG 2007, the FMA represents Austrian interests at international level specifically as a member of the European Securities and Markets Authority (ESMA). Through its involvement in ESMA expert groups, the FMA participates in activities that include preparing guidelines and recommendations on rules of conduct and compliance. A main aim in this regard is to ensure that the provisions of the Markets in Financial Instruments Directive (MiFiD) concerning compliance are interpreted uniformly throughout all EU Member States.

As part of these efforts, the Guidelines on remuneration policies and practices (MiFiD) were published in 2013 and entered into force on 29 January 2014. The FMA has officially elevated compliance with these guidelines to one of its supervisory standards and has been applying them as a basis for its supervisory activities since they became effective.

The FMA also participates in several working groups that are involved in revising fundamental EU legislation governing compliance supervision (MiFiD II).

⁵ Cf. FMA Circular of 2 May 2011 on Information including Marketing Communications pursuant to the WAG 2007 (may be viewed in German at www.fma.gv.at).

LEGAL SUPERVISION OF EXCHANGE OPERATING COMPANIES

The FMA's supervisory competence for the stock exchange is based on a large number of regulations contained in the Stock Exchange Act (*BörseG; Börsegesetz*), which in turn are derived from provisions found in various EU directives. Article 45 of the *BörseG* plays a key role in this regard: the provision authorises the FMA to take measures affecting the exchange operating company responsible for the particular marketplace and serves as a general guideline, specifying the conditions for exercising other powers as an authority.

During the period under review, the only exchange operating company established in Austria was the Vienna Stock Exchange, which is operated by Wiener Börse AG. While the Vienna Stock Exchange is run by this private legal entity, it acts independently to some extent in executing official functions (e.g. in the admission of financial instruments to trading) and may accordingly be viewed as an "enterprise charged with the fulfilment of sovereign functions" (i.e. a "beliehenes Unternehmen" as defined in the *BörseG*). Wiener Börse AG also operates the so-called third market, which, however, is subject to supervision or the *BörseG* only to a limited extent since it is operated as a multilateral trading facility (MTF).

Wiener Börse AG is part of the CEE Stock Exchange Group (CEESEG), which is owned by Austrian credit institutions and issuers. Other exchange operating companies belonging to the group include the stock exchanges in Budapest, Ljubljana and Prague. The general economic conditions during the period under review had varying impact on the stock exchanges belonging to the group.

In the energy sector, Wiener Börse AG continued to maintain cooperative partnerships in 2013 with Energy Exchange Austria Abwicklungsstelle für Energieprodukte AG (EXXA) and the Central European Gas Hub AG (CEGH), the latter for the purpose of commodity trading in electricity and natural gas products. Wiener Börse AG has commissioned Central Counterparty Austria GmbH (CCP.A), which is a joint subsidiary of the Vienna Stock Exchange and Österreichische Kontrollbank AG, as the clearing agency for securities trading.

One of the FMA's main tasks in legal supervision in the past year continued to be the approval, by administrative decision, of any change to the General Terms and Conditions of Wiener Börse AG pursuant to Article 13 *BörseG*. The General Terms and Conditions consist of a large number of modules, some of which are linked to others while some work in their own right. They range from specific membership conditions and rules for participation, trading rules and technical installation standards to contract specifications. The changes mentioned concerned, for example, the "Trading Rules for the Automated Trading System, XETRA® (Exchange Electronic Trading)", as a consequence of the latest version of XETRA® (version 14.0) being introduced. Other changes requiring approval were made in view of the upcoming discontinuation of the derivatives market, and affected a large number of modules. Wiener Börse AG has announced, in agreement with market participants, the discontinuation of this market segment in March 2014. Contracts with a later maturity will be cleared at that time on the basis of an extraordinary procedure.

SUPERVISION OF THE STOCK EXCHANGE AND SECURITIES TRADING

LEGAL BASIS

The FMA's remit with regard to supervising the stock exchange and securities trading includes monitoring compliance with the terms of the Stock Exchange Act (BörseG; *Börsegesetz*) and the 2007 Securities Supervision Act (WAG 2007; *Wertpapieraufsichtsgesetz*). The overriding objective in this regard, as specified for the FMA by legislation, is to ensure that the trading in listed securities is carried out in an orderly and fair manner.

The core responsibilities in supervising the stock exchange and securities trading include:

- To expose the misuse of inside information and, in accordance with statutory responsibilities, to introduce measures to prosecute these offences. Insider dealing is a criminal offence which is reported by the FMA and subsequently subject to prosecution by the public prosecutor's office and to punishment by the courts of law. The FMA is responsible for monitoring trading to ensure that it proceeds in an orderly manner, and in the event of reasonable suspicion that the prohibition of insider dealing has been violated, for reporting the case to the public prosecutor's office. As a rule, the FMA is subsequently commissioned with further investigations.
- To expose market manipulation and the violation of trading rules of the Vienna Stock Exchange and to prosecute these offences.
- To monitor compliance with statutory disclosure, reporting and information obligations and to prosecute any violations within the framework of administrative penal proceedings.

In order to accomplish the core tasks described above, the FMA has a number of monitoring powers at its disposal. These include far-reaching powers to require information, for instance to examine documents of all kinds and to request information from the individuals involved. During investigations, individ-

uals can be summoned and questioned as well. Legislation also provides for on-site inspections.

MARKET DEVELOPMENT

2013 was a year for stocks – equity markets throughout the globe recorded substantial share price increases. The US Federal Reserve's loose monetary policy of buying up fixed-income securities served to bolster this trend by supplying the markets with the necessary liquidity. Gradual signs of a resolution of Europe's sovereign debt crisis also contributed to the upswing in the equity markets. However, the fact that the Fed has been tapering off economic stimulus since June 2013 has worried investors and put increasing pressure on the markets.

International blue-chip stock indices saw respectable rises, among them the US Dow Jones Industrial Average (DJIA: +26.49%) and the leading UK index Financial Times Stock Exchange 100 (FTSE 100: +14.43%), both of which reached a five-year high, as well as Germany's Deutscher Aktienindex (DAX: +25.48%). Yet the strongest performance in relative terms was recorded in emerging countries in Eastern Europe, with Romania's and Bulgaria's blue-chip indices each posting over 30% increases. The EURO STOXX 50 was up 17.94% in 2013.

In contrast to the highly successful previous year at +26.94%, the Austrian blue-chip index ATX advanced only moderately by 6.05% in 2013. In the Austrian capital market, modest price increases were recorded for major banking sector shares (Erste Group Bank AG: +5.97%) while some even dropped in value (RBI AG: -18.55%). The obvious winners at the Vienna Stock Exchange in 2013 included shares listed by Warimpex Finanz- und Bet. AG (+93.81%) and Century Casinos Inc. (+90.70%). Steady consistent growth was recorded from the beginning of the year onwards for Palfinger AG (+75.49%) and Wienerberger AG (+66.33%).

Table 33: SUPERVISED MARKETS, ISSUERS AND SECURITIES 2009–2013 (source: Wiener Börse AG)

NUMBER OF ISSUERS	2009	2010	2011	2012	2013
OFFICIAL MARKET AND SECOND REGULATED MARKET					
Foreign shares	8	7	6	6	7
Domestic shares	83	72	70	67	65
Profitsharing certificates	3	3	1	1	1
Warrants	3	3	3	3	2
Participation certificates	2	2	2	2	2
Bonds	94	94	91	97	95
Certificates	16	14	12	12	10
Exchange traded funds	4	4	4	3	3
Total issuers	184	166	158	157	152
THIRD MARKET					
Foreign shares	10	14	11	9	13
Domestic shares	14	17	18	17	17
Profitsharing certificates	7	4	4	3	4
Warrants	4	5	4	2	1
Participation certificates	1	1	1	1	1
Bonds	184	180	172	182	175
Certificates	12	14	12	11	11
Investment funds	48	17	0	1	1
Total issuers	272	239	210	216	213
NUMBER OF LISTED SECURITIES					
OFFICIAL MARKET AND SECOND REGULATED MARKET					
Foreign shares	8	7	6	6	7
Domestic shares	89	78	76	73	71
Profitsharing certificates	7	6	2	2	2
Warrants	1,341	2,268	2,286	1,857	1,684
Participation certificates	2	2	2	2	2
Bonds	2,658	2,748	2,802	2,808	2,616
Certificates	2,178	3,609	3,389	3,336	4,084
Exchange traded funds	22	22	22	21	20
Total securities	6,305	8,740	8,585	8,105	8,486
THIRD MARKET					
Foreign shares	10	14	11	9	13
Domestic shares	14	17	18	18	17
Profitsharing certificates	7	4	4	3	4
Warrants	20	14	7	4	2
Participation certificates	1	1	1	1	1
Bonds	980	909	836	818	802
Certificates	35	50	108	82	151
Investment funds	237	34	0	1	1
Total securities	1,304	1,043	985	936	991
TRADE STATISTICS OF EQUITY MARKET.AT SEGMENT					
Capitalisation of domestic shares as at last trading day (in € billions)	77	91	63.7	78.1	83
Annual sales on equity market.at (in € billions)	72.6	73.5	60.2	36.1	38.7
Daily average sales (in € millions)	292.7	295.3	242.6	146.1	156.1
ATX at year-end	2,495.56	2,904.47	1,891.68	2,401.21	2,546.54
ATX performance (in %)	42.54	16.39	-34.87	26.94	6.05

Annual trading volumes in the prime market segment at the Vienna Stock Exchange were up from the levels seen in the previous year. Here the level rose from €35.73 billion to €38.32 billion (+7.25%). The average volume traded daily in the prime market segment was roughly €155 million in 2013 (+6.82%). In terms of individual listings, Uniqa Insurance Group AG and Century Casinos Inc. recorded the largest trading volume increases by far. An analysis has revealed the current level of prime market trading conducted by algorithm to be roughly 18% on average.

The successfully completed capital increases also had a positive impact on the mood at the exchange. Specific examples worth mentioning in this regard include the increases by Erste Group Bank AG at a volume of €660 million and by Uniqa Insurance Group AG at €758 million.

OFFICIAL TASKS

SUPERVISED COMPANIES

ISSUERS

As at 31 December 2013, a total of 8,486 securities by 152 issuers were listed on the official market and the second regulated market of the Vienna Stock Exchange. An additional 991 securities were listed by a total of 213 issuers on the third market, which has been operated as a multilateral trading facility (MTF) since 2007. The number of issuers both in the second regulated market and in the third market has thus dropped slightly from the previous year's level, while the total quantity of listed securities has grown by more than a negligible amount (2012: 8,105 listings in the official market and second regulated market and 936 listings in the third market).

INSTITUTIONS SUBJECT TO REPORTING OBLIGATIONS

Companies – including Austrian credit institutions and Austrian branches of foreign credit institutions – which conclude transactions in listed financial instruments are required pursuant to Article 64 WAG 2007 to report each transaction to the FMA. In 2013, 756 companies were subject to this reporting obligation.

OTHER STOCK EXCHANGE MEMBERS

Stock exchange members not subject to reporting obli-

gations are also supervised by the FMA. Since the implementation of the Markets in Financial Instruments Directive (MiFID) in 2007, market participants that are based within the EU have been required to report the securities transactions carried out at the Vienna Stock Exchange to the authority of their home country, which subsequently forwards the reported data to the FMA.

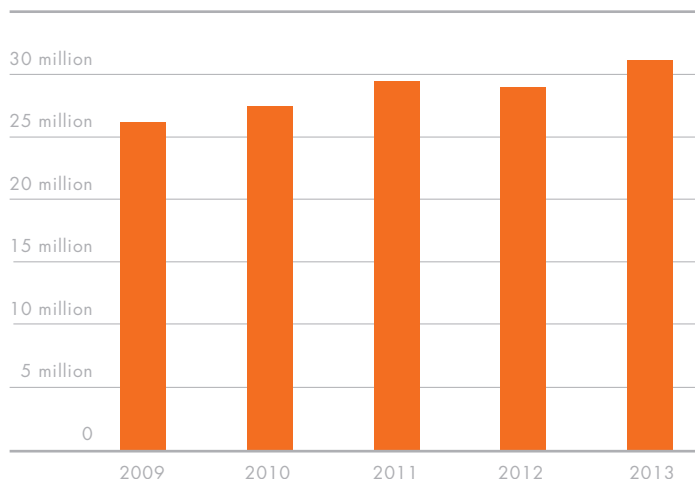
TRANSACTION REPORTING

In addition to ongoing activities such as monitoring compliance with the reporting obligation as defined in Article 64 WAG 2007, special attention was given in 2013, as in 2012, to ensuring that reporting deadlines were met.

In the area of transaction reporting, the FMA additionally participates in working groups within the framework of the European Securities and Markets Authority (ESMA), specifically the Transaction Reporting System Joint Subgroup and its successor, the Market Data Reporting Working Group (MDRWG). The focus of group activities included: revision of the Markets in Financial Instruments Directive (MiFID) in conjunction with the Markets in Financial Instruments Regulation (MiFIR) with regard to transaction reporting, data quality within the international Transaction Reporting Exchange Mechanism (TREM) as well as related data consistency tests, and compatibility with future reporting in accordance with the European Market Infrastructure Regulation (EMIR). Beyond this, the FMA is a member of two of four subgroups under the MDRWG, in this way contributing at an early stage to developing the requirements for reports as specified in Article 9 EMIR as well as future requirements under MiFID II/MiFIR.

In 2013, 12,603,444 securities transaction reports (including changes and cancellations) were submitted to the FMA by the institutions subject to reporting obligations pursuant to Article 64 WAG 2007. Of these roughly 12.6 million reports, 4,042,748 were forwarded to the competent authority within the EU in the particular case. In addition, in its role as competent authority, the FMA received 18,577,403 transaction reports from other European supervisory authorities. This meant that the FMA received 31,180,847 transaction reports in total, which represents a slight

Chart 32: TRANSACTION REPORTS RECEIVED 2009–2013 (acc. to WAG 2007)



increase (+6.75%) compared with the previous year (29,207,465 reports; see chart 32).

MARKET SUPERVISION

One of the FMA's core responsibilities is to ensure orderly and fair trading in listed securities, with specific obligations to expose any misuse of inside information (Article 48b BörseG), any market manipulation (Article 48c BörseG) and any violations of the trading rules of the Vienna Stock Exchange (Article 18 no. 1 BörseG in conjunction with Article 48 para. 1 no. 7 BörseG).

Irregularities in trading become known to the FMA through its own monitoring of the market or as a result of third-party observations. Such irregularities are first subjected to routine analysis. The routine analysis is for the purpose of verifying whether there are plausible grounds for the irregularity. If that is not the case, the case undergoes comprehensive analysis in the course of a preliminary investigation. The investigative measures required to establish concrete grounds for the suspicion are selected depending on the type of irregularity identified. Specific examples would be to examine trading days before and after the suspicious transaction, to investigate the trading behaviour of specific market participants or traders, or to assess the investment behaviour of a client on the basis of previously reported transactions and identify recurrent trading patterns. More in-depth information such as professional securities analyses are included in the

detailed analysis of the order and/or transaction data. The preliminary investigation is exclusively limited to information and data that are internally available to the FMA. This ensures that the case is dealt with in a very timely and efficient manner.

The preliminary investigation is continued as a formal investigation if grounds are revealed for suspecting that the investigated irregularity may have been caused by a violation of a legal provision subject to supervision by the FMA. The FMA subsequently makes use of all its rights to demand information and conduct inspections pursuant to the WAG 2007 and the BörseG, examining various documents, conducting on-site inspections and summoning the individuals involved for questioning.

Market supervision carried out 1,376 routine analyses during the period under review. A preliminary investigation was launched in 67 cases, of which 27 were continued as a formal investigation; eleven of these latter investigations involved misuse of inside information and 16 were on account of market manipulation or violation of the trading rules. A total of 50 investigations were completed in the past year, including 20 investigations involving misuse of inside information and 30 investigations of market manipulation or violation of the trading rules. Thus, the number of initiated investigations increased over the previous year, from 23 to 27 (see Table 34).

During the period under review, 22 requests for official assistance were addressed to various authorities in other countries, which was almost the same number as in 2012 (21). The number of enquiries received from foreign authorities more than doubled, in contrast, rising from 24 in 2012 to 55 in 2013. Most of these enquiries, namely 34, again came from the FMA's sister authority in Germany, the Federal Financial Supervisory Authority (BaFin) (see Table 35).

As part of its investigative activities, the FMA again conducted several special audits on different subject areas in 2013. Rather than examining specific irregularities, such focus activities investigate and analyse relevant subject areas in their entirety. Special audits can be launched in response to either insights gathered from ongoing market observation or information or reports submitted by external parties. Examples of activities during special audits include

Table 34: MARKET SUPERVISION 2009–2013

	ROUTINE ANALYSES	INVESTIGATIONS INTO MISUSE OF INSIDE INFORMATION, MARKET MANIPULATION AND VIOLATION OF TRADING RULES				
	Warnings computed	Preliminary investigations initiated	Investigations initiated	Investigations forwarded for internal legal processing	Investigations dropped/completed	Reports forwarded to public prosecutor's office
2009	1.256	43	26	13	24	4
2010	1.496	31	9	3	22	1
2011	1.436	52	18	6	38	2
2012	1.209	61	23	7	25	1
2013	1.376	67	27	9	50	2

examining selected market areas, investigating securities trading in certain sectors and analysing the trading behaviour of a market participant over an extended period of time.

MISUSE OF INSIDE INFORMATION

The law defines inside information as a precise piece of information which has not been made public, is directly related to one or more issuers or one or more financial instruments, is likely to have a significant effect on the price of a security were it to be disclosed, and which an informed investor would be likely to use as the basis of their investment decision. Austrian law pursuant to Article 48b BörseG prohibits the misuse of inside information.

Anyone taking advantage of inside information to secure a pecuniary benefit, either by transactions in securities or by disclosing the information to third parties, commits the offence described above. A pecuniary benefit in this case refers not just to achieving a profit but also to avoiding a loss. Misuse of inside information is punishable by imprisonment for up to five years or by a fine.

In 2013, a total of eleven investigations involving inside information were initiated, and 20 were closed. In two cases, the FMA submitted a report pursuant to Article 48i para. 3 BörseG to the public prosecutor's office in Vienna concerning the suspected misuse of inside information.

MARKET MANIPULATION

Austrian law defines market manipulation as transactions or buy/sell orders that:

Table 35: OFFICIAL ASSISTANCE MARKET SUPERVISION 2009–2013

	Enquiries addressed to foreign supervisory authorities			Enquiries received from foreign supervisory authorities		
	BaFin	FCA*	Other	BaFin	FCA*	Other
2009	5	6	16	21	1	10
2010	4	1	9	18	0	29
2011	2	2	9	25	0	27
2012	7	7	7	13	0	11
2013	6	5	11	34	0	21

* In 2013, the FSA was replaced by two new regulatory bodies, the Financial Conduct Authority (FCA) and the Prudential Regulation Authority (PRA).

- give, or are likely to give, false or misleading signals as to the supply of, demand for or price of financial instruments; or
- influence the price of one or more financial instruments in such a way that an abnormal or artificial price level is reached.

Media dissemination of information, rumours or news that sends out or may send out false or misleading signals related to a financial instrument also falls under the offence of market manipulation. Cases where transactions or buy/sell orders are completed or commissioned under false pretences or any other form of deception may also indicate market manipulation.

Market manipulation is a criminal offence under administrative law, for which the FMA may impose a fine of up to € 150,000.

In the year under review, 16 investigations of suspected market manipulation were initiated and 30 were completed. Seven cases were forwarded to the Enforcement Division in order to have corresponding administrative penal proceedings initiated.

INTERNATIONAL TASKS

Secondary Markets Standing Committee

The Secondary Markets Standing Committee (SMSC) undertakes ESMA's work relating to the structure, transparency and efficiency of secondary markets for financial instruments, including regulated and unregulated markets. The SMSC focused on preparations for MiFID II/MiFIR in 2013. It is anticipated that the European Commission will call upon ESMA to prepare extensive Level 2 texts on MiFID II/MiFIR, which ESMA will in turn delegate to the SMSC.

Post Trading Standing Committee

The priority topic for ESMA's Post Trading Standing Committee (PTSC) in 2013 was also the European Market Infrastructure Regulation (EMIR). ESMA's main task was to supply the industry with solutions for issues arising in practice through the implementation of EMIR (i.e. related to reporting as well as OTC derivatives). Potential solutions were discussed at meetings with other supervisory authorities and ultimately published in ESMA Q&As. Work also continued on the planned technical standards under EMIR and preliminary work was done in preparation for the Central Securities Depositories Regulation (CSDR), the next major topic awaiting the PTSC in 2014.

SUPERVISION OF ISSUERS

Responsibilities in issuer supervision include in particular overseeing compliance with the reporting and disclosure obligations specified in the BörseG, and investigating cases of suspected violation of stock exchange rules. The following provisions fall under the disclosure obligations:

- ad hoc disclosure requirement pursuant to Article 48d para. 1 BörseG;
- changes to major holdings pursuant to Articles 91 et seq. BörseG (changes in the total number of voting rights and in capital, changes resulting when the volume of the issuer's own shares crosses a significant threshold, disclosure of derivative instruments);
- annual and half-year financial statements and interim reports pursuant to Article 82 para. 4 and Article 87 BörseG;
- requirement to report directors' dealings pursuant to Article 48d para. 4 BörseG;
- new bond issues pursuant to Article 93 para. 6 BörseG;
- changes to the rights attached to different categories of shares and securities other than shares pursuant to Article 93 paras. 4 and 5 BörseG;
- choice of the home Member State;
- amendments to articles of association pursuant to Article 86 para. 1 BörseG;
- information requirements related to exercising rights pursuant to Articles 83 and 84 BörseG.

In addition, investigations in cases of suspected market manipulation caused by misleading signals to the market fall within the competence of issuer supervision (Article 48a para. 1 no. 2 lit. b BörseG).

GUIDELINES FOR ISSUERS

During the period under review, issuer supervision revised the Circular Letter of the Financial Market Authority (FMA) of 6 March 2006 as amended on 5 April 2007 on Ad Hoc Disclosure and Directors' Dealings, adapting it in line with the experience and administrative practice collected by the FMA. The Circular is intended by the FMA for Austrian and international investors whose securities are traded on a regulated market as well as for other persons subject to reporting obligations, informing them of the Authority's legal view in relation to reporting and disclosure requirements (transparency requirements) that derive from the relevant provisions laid down in the BörseG.¹ The new statutory provisions pertaining to the disclosure of major holdings, which have been applicable since 1 January 2013, have also been included. Published as the Circular Letter of the Financial Market Authority of 19 June 2013 on Reporting and Disclosure Requirements for Issuers, the issuers' guidelines are now applicable.

The following topics in particular are discussed in the Circular:

- ad hoc disclosure;
- disclosure of major holdings;
- periodic disclosure;
- directors' dealings;
- home Member State principle (limiting the scope of competence in cross-border cases);

¹ BörseG 1989, Federal Law Gazette No. 1989/555 last amended by Federal Law Gazette No. 2013/70.

EMIR – THE EUROPEAN MARKET INFRASTRUCTURE REGULATION

The European Market Infrastructure Regulation (EMIR) in the form of Regulation (EU) No. 648/2012 on OTC derivatives, central counterparties and trade repositories formally entered into force on 16 August 2012. The requirements defined in EMIR were implemented in the form of technical standards devised by the European Securities and Markets Authority and applicable since 15 March 2013. Some of these technical standards have been developed in cooperation with the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Central Bank (ECB).

CORE ASPECTS OF THE REGULATION

One of the central aspects of EMIR is the clearing obligation with regard to over-the-counter (OTC) derivatives, which must be cleared using an authorised central counterparty. This clearing obligation always applies to financial counterparties. In the case of non-financial counterparties, it only applies if their volume of derivatives exceeds the clearing thresholds defined by ESMA (a gross nominal value of between €1 billion and €3 billion). ESMA will set technical standards over the coming year defining which derivative categories are subject to compulsory clearing. For all other OTC derivatives that are not subject to a clearing obligation, all of the counterparties are obliged to apply risk-mitigation techniques in order to reduce counterparty risk.

Central counterparties (CCPs) represent a further core element of the Regulation. EMIR is harmonising the authorisation requirements and the ongoing supervision of central counterparties. Cooperation (interoperability) between CCPs requires an interoperability arrangement that is subject to approval. CCPs are subject to direct supervision by the respective national competent authorities. To increase transparency on the derivatives market, EMIR requires the reporting of

contracts on all derivatives, including any changes, to a registered trade repository.

The third central element covered by the Regulation is the obligation to report all financial and non-financial counterparties to trade repositories. These are directly supervised by ESMA. The national supervisory authorities and central banks have direct access to the information contained in the trade repositories.

EMIR REPORTING SYSTEM

The EMIR reporting system entered into force with effect from 12 February 2014. EMIR requires all counterparties and CCPs to report the conclusion, modification and early termination of any derivative contract to trade repositories authorised by ESMA.

RISK-MITIGATION TECHNIQUES

In the form of risk-mitigation techniques, EMIR also imposes more stringent requirements in terms of risk management. These apply to OTC derivative contracts that are not cleared through a CCP. The provisions of the Regulation essentially relate to the timely confirmation by electronic means of contracts, the valuation of positions, portfolio reconciliation, methods to reduce outstanding positions and mechanisms to resolve any disputes between counterparties.

NON-FINANCIAL COUNTERPARTIES

Some aspects of EMIR have been transposed into Austrian law in the form of the Central Counterparties Implementation Act (ZGVG; *Zentrale Gegenparteien-Vollzugsgesetz*), which entered into force on 14 November 2012. Under the terms of this Act, the FMA is the competent authority responsible for the tasks arising from EMIR and is required to monitor compliance with the requirements set forth in the Regulation. Consequently, the FMA must also monitor non-

financial counterparties, such as groups and enterprises in the real economy, to the extent that they are involved in derivative trading, to determine if and how they are complying with the requirements of EMIR. It must also take action in the event of any breaches.

AUTHORISATION OF CCPs

Pursuant to Article 2 ZGvG, the FMA is the authority with responsibility for central counterparties in Austria, working in close cooperation with the Oesterreichische Nationalbank. In accordance with EMIR, every CCP must be authorised by the national supervisory authority in the Member State in which it is established. This means that the FMA is responsible for authorising the Austrian CCP, Central Counterparty Austria GmbH (CCP.A), which is a joint subsidiary of Wiener Börse AG and Österreichische Kontrollbank AG.

CCPs are subject to strict authorisation requirements. Every CCP must, for example, have access to central bank funding, credit lines with commercial banks or a combination of the two. CCPs must also have permanent, available and separate own funds of at least € 7.5 million. The members of a CCP must deposit highly liquid assets (margins) with the CCP. The amount and type of these margins are determined in

models approved by the national supervisory authority, taking account of the risks of the cleared product and market liquidity. In addition to the margins, every CCP must also set up a default fund based on additional compulsory contributions from its members. This fund must be sufficiently large to finance the default of the CCP's two biggest members. CCPs must also have sufficient financial resources of their own to withstand a stress scenario in which the two largest members of the CCP fail. CCPs must treat their members and customers fairly and professionally, acting in their best interests. Decisions on the acceptance of members should be based on non-discriminatory, transparent and objective criteria. CCPs must publish their prices, fees and conditions for discounts and rebates.

To date, CCP.A has been supervised by both the FMA and the OeNB, with the former monitoring compliance with the terms of the Stock Exchange Act (BörseG; *Börsegesetz*) and the latter carrying out supervision of the payment system. During the process to authorise CCP.A, the FMA is required to carry out a risk assessment of CCP.A together with the OeNB, to set up and chair an international supervisory college, and to review compliance with all of the requirements of EMIR. CCPs may only continue to offer clearing services in the EU if they have been duly authorised.

- discussion of relevant terms used in the BörseG;
- matters relevant to practice.

In the course of an extensive consultation process, the FMA collected statements from Wiener Börse AG, the Takeover Commission, the Austrian Equity Issuers Association, and the Bank and Insurance Division of the Austrian Federal Economic Chamber; the opinions received due consideration in the Circular.

AD HOC DISCLOSURE

One of the most important obligations for issuers is the requirement to immediately make inside information available to the public, which is referred to as “ad hoc disclosure”. This entails the requirement for issuers to disclose inside information to the public without delay. This disclosure requirement is intended to ensure that certain pieces of information which are important for investment decisions by the public are disclosed to the market in such a manner as to provide all market participants with an equal opportunity to respond to the information. Inside information is any information of a precise nature which has not been made public and relates directly or indirectly to an issuer of financial instruments, the disclosure of which would be likely to have a significant effect on the price of those financial instruments or on the price of related derivative financial instruments, because an informed investor would be likely to use that information as a basis on which to reach investment decisions. In general, whether ad hoc disclosure is required depends largely on the circumstances in the specific case; even small nuances may lead to differing judgements as to whether the individual elements constitute misuse of inside information.

Apart from investor protection, ad hoc disclosure also serves to ensure functioning capital markets and to prevent misuse of inside information. The legal basis for ad hoc disclosure is found in Article 48d paras. 1 and 2 BörseG and Article 48a para. 1 no. 1 BörseG. In contrast to periodic disclosure of information, ad hoc disclosure is a disclosure requirement applicable

Table 36: AD-HOC REPORTS BY CASE 2011–2013 (source: FMA)

	2011	2012	2013
Share buyback/resale	29	18	14
Peculiarities/other items of ongoing business operations	71	110	116
Participations (acquisition, sale), partnerships	49	29	24
Financial reports/business figures	214	197	187
Large-scale order	10	5	2
Capital measures	68	28	29
Staff details	38	45	45
Forecasts, profit warning	8	1	5
Restructuring, reorganisation, insolvency	11	7	17
Strategic corporate decisions, investments	22	10	10
Management board meetings, resolutions	8	0	3
Total	539	450	462

in certain cases only, meaning that neither time limits nor fixed deadlines exist. Where inside information pursuant to Article 48a para. 1 no. 1 BörseG relates directly to the issuer, such information must be immediately disclosed to the public; issuers are not allowed to wait for a later time more convenient to them. The only exception to this rule is a postponement of disclosure as defined in Article 48d para. 2 BörseG, which, however, depends on strict conditions.

An issuer of financial instruments may postpone the release of inside information pursuant to Article 48d para. 2 BörseG if the release could cumulatively be damaging to that issuer’s legitimate interests, there is no danger of misleading the public and the issuer can guarantee the confidentiality of the information. The postponement of disclosure is limited in time and only admissible as long as the aforementioned conditions are being met. As soon as this is no longer the case, disclosure must take place immediately.²

PERIODIC DISCLOSURE

The term “periodic disclosure” refers to the financial reporting obligations pursuant to the BörseG that apply to listed companies. This includes the annual financial statements, the half-year financial statements and interim reports as well as quarterly reports in accordance with IFRS. Regular reporting of business figures by issuers ensures transparency and allows

² Circular Letter of the Financial Market Authority of 19 June 2013 on Reporting and Disclosure Requirements for Issuers.

Table 37: SUPERVISION OF ISSUERS 2009–2013

	Ad hoc disclosure	Periodic disclosure	Reports pursuant to Article 48d para. 4 BörseG	Reports of major holdings	INVESTIGATIONS		
	Ad hoc reports received	Annual and quarterly reports received	Directors' dealings	Reports of voting rights received	Investigations initiated	Investigations forwarded for internal legal processing	Investigations dropped/completed
2009	635	568	436	139	33	20	24
2010	569	545	442	124	45	29	26
2011	539	558	516	107	30	17	43
2012	459	511	287	118	41	27	40
2013	462	526	283	293	17	14	30

market participants to clearly assess the company. In the case of periodic disclosure, the disclosure obligation is deemed to have been met where a notice of the corresponding financial report is conveyed to the media, with the notice containing a reference to the website from which the corresponding documents can be downloaded.

DISCLOSURE OF MAJOR HOLDINGS

The term “disclosure of major holdings” refers to the reporting requirements pursuant to Articles 91, 91a and 92 BörseG applying to shareholders, to other persons to whom shares are attributed, as well as to holders of financial instruments and other similar instruments, and to the subsequent disclosure obligations that apply to issuers. The reporting obligation applies on acquisition or sale of shares or other instruments that carry voting rights, of an issuer whose shares are admitted to trading on a regulated market, and as a result of which voting rights are or could be acquired or sold. Reporting thresholds have been set at 4%, 5%, 10%, 15%, 20%, 25%, 30%, 35%, 40%, 45%, 50%, 75% and 90%. Issuers have the option of stipulating an additional threshold of 3% in their articles of association.

Issuers are also subject to reporting requirements when holdings are acquired. As soon as the issuer receives notification from the shareholder, the issuer must disclose all of the information contained in the notification within two trading days. Disclosure is also required in cases where the percentage of voting rights changes as a result of shares being diluted, in other words, when the shareholder is not actively in-

involved; examples include a capital increase or capital reduction.

DIRECTORS' DEALINGS

The management and supervisory boards of listed companies and individuals closely associated with them are required to report purchases and sales of shares in their own company, referred to as “directors' dealings”, in order to ensure disclosure in keeping with legal requirements. There is no doubt that knowledge of such transactions can constitute significant market information, at least providing an initial indication on which the management can base assessments of business prospects. The market usually interprets sales of company shares by members of company bodies as a negative indication, while the reaction is significantly more pronounced and more positive when this group of individuals purchases such stock. The FMA publishes the reports of insider trades submitted to it on its website.

The management and supervisory boards of listed companies and individuals closely associated with them reported a total of 283 securities transactions in 2013 (see Table 37). This represents little change in the number of reports compared with 2012 (287).

REVISION OF THE TRANSPARENCY DIRECTIVE

The amendment to the Transparency Directive was published in the Official Journal of the European Union (OJ) on 6 November 2013. The changes were introduced primarily in order to more fully harmonise the transparency requirements applying to issuers whose securities are admitted to trading on a regulated market, and also to provide SMEs with better

access to capital by reducing the administrative effort required. Another goal pursued by the revised Transparency Directive is to ensure effective sanctions that discourage potential breaches. The sanctioning powers held by supervisory authorities in the Member States are specifically to include the option of making a public statement indicating the person responsible and the nature of the breach. Sanctions and measures are to be made public in order to have a deterrent effect. Information in this form is furthermore intended to communicate to market participants the types of conduct that are regarded as breaches. However, publication of the decision may be delayed or take place anonymously (but not be omitted entirely) where it would seriously jeopardise the stability of the financial system or an ongoing official investigation, or

cause disproportionate damage to the institutions or natural persons involved.

Another main feature is the new regime of reporting requirements applying to major holdings, which eliminates transparency loopholes. The aim is to achieve harmonisation of disclosure obligations by requiring a totalling of all financial instruments and shares held (including those not falling under the previous, currently applicable Transparency Directive) and by harmonising the method for calculating the threshold values that are used to determine when a reporting requirement applies.

The Member States are required to transpose the Directive into national law within 24 months of the date when it entered into force, i.e. by November 2015.

ENFORCEMENT OFFICE FOR ACCOUNTING STANDARDS

BASIC PRINCIPLES

The introduction of Austria's Accounting Control Act (RL-KG; *Rechnungslegungs-Kontrollgesetz*) involved the creation of two-tier enforcement proceedings for the financial reports produced by capital market-based companies. The RL-KG entered into force on 1 July 2013 and is applicable for the first time to financial statements for financial years ending after 30 December 2013. Consequently, auditing activity, the organisational structures for which were put in place in 2013, will begin in practice in the spring of 2014. The review benchmark will be compliance with national and international accounting standards, in the form of the International Financial Reporting Standards (IFRS). The companies affected are those whose securities are admitted to trading on a regulated market of the Vienna Stock Exchange.

The FMA is the authority responsible for enforcing accounting standards. However, since the Federal Ministry of Finance (BMF) has recognised the Austrian Review Panel for Financial Reporting (OePR) as review body, the latter usually carries out the actual audits. Responsibility for the administrative enforcement of proper accounting – and in particular the right to impose sanctions in the event of any breaches – lies with the FMA in the capacity of supervisory authority.

The aim of the RL-KG is to have a preventive effect, through transparent accounting. With this in mind, the FMA will engage in dialogue with issuers and use the provision of preventive information to make companies more aware of errors and help to resolve critical areas in advance. The capital market in Austria should thus be strengthened and investor confidence boosted.

THE AUDIT PROCESS

Pursuant to Article 1 para. 2 RL-KG, the FMA is

responsible for setting and publishing the annual audit priorities, with the involvement of the OePR. This is aimed at prevention in particular. All companies, and not just those that are subsequently actually subject to an audit, should introduce measures to improve their reporting in critical areas.

The main focuses of audit activity will be defined in line with the instructions of the European Securities and Markets Authority (ESMA). With regard to the financial year ending on 31 December 2013 or later, the following audit priorities pursuant to Article 16 of the ESMA Regulation were defined:

1. Impairment of non-financial assets (IAS 36)
2. Post-employment benefits (IAS 19)
3. Fair value measurement and disclosure (IFRS 13)
4. Disclosures on accounting methods, judgements and estimates (IAS 1)
5. Measurement and disclosure of financial instruments (IAS 39 and IFRS 7)
6. Consolidated management report (Article 243 paras. 1, 2 and 5 of the Corporate Code – UGB; *Unternehmensgesetzbuch*)

Based on these priorities, the FMA expects financial statements for 2013 and future years to include improved disclosures on credit risk, such as the limiting of risk through security, guarantees or credit default swaps, and on measurement methods. This will improve transparency in relation to liquidity, credit risk, the encumbrance of assets and the measurement of financial instruments at fair value.

The audit priorities concern the regular audits carried out by the OePR according to the annual audit plan. If, however, a special audit is held in the public interest in response to a particular incident, it is possible for all areas to be examined for which there are specific grounds for doing so.

Additionally, the FMA and the OePR are required to prepare an annual, risk-based audit plan. Companies from correspondingly defined risk classes will be selected at random (see Figure 3).

Figure 3: AUDIT PROCESS



With this type of “spot check”, the OePR is however reliant on the company concerned cooperating voluntarily. The company’s legal representatives and other individuals affected by the audit must be prepared to provide the review panel with full and accurate information and to submit all of the relevant documentation. They must also agree to the content of the OePR’s audit findings.

Should a company refuse to cooperate in an audit by the OePR or if a company does not agree with the content of the review panel’s findings, the FMA, in the capacity of responsible authority with sovereign power of instruction, must carry out the audit with its own staff (official experts). The FMA may also for “reasons of public interest” escalate the audit to official status (second level). This would apply, for example, if a company is only cooperating on a superficial basis but not actually engaging in a sufficient level of cooperation.

If the proceedings reveal an inaccuracy in the financial reporting, as a result of cooperation between the company and OePR or through the work of the FMA, the FMA must at any rate officially examine whether details of the inaccuracy should be published. In such cases the public interest in the inaccuracy being made public must be weighed up against the company’s justified interests. Generally, publication of the inaccuracy is ordered by means of an FMA administrative decision (*Bescheid*), with the company itself having to announce the inaccuracy.

Announcement by the company must take place with-

out delay. The inaccuracy is published in accordance with the Capital Market Act (KMG; *Kapitalmarktgesetz*) in electronic form on the company’s website or, where applicable, on the website of the financial intermediaries responsible for placing or selling the securities, including the paying agents, on the website of the regulated market or on the website of an entity authorised for this purpose by the FMA, if the FMA has decided to offer this service. There are plans for publication in the Issuer Information Centre of the Oesterreichische Kontrollbank. Additionally, the company concerned is required to publish a notice in the official gazette “*Amtsblatt zur Wiener Zeitung*” or in a newspaper with nationwide coverage explaining the form in which the inaccuracy was published.

SYMPOSIUM ON ACCOUNTING CONTROL

The FMA, with the involvement of the OePR, held the first Symposium on Accounting Control on 29 October 2013, an event that was keenly attended by the companies concerned. The plan is for the symposium, which provides a joint discussion platform with the issuers, to be held annually as a means of sharing information on accounting control in Austria, new audit priorities and international developments.

COOPERATION AT EUROPEAN LEVEL

As the authority responsible for the enforcement of

accounting standards, the FMA is also charged with representing Austrian interests in relation to international cooperation efforts. The FMA is also represent-

ed on the committees and working groups set up by ESMA and is involved in the reviews and analysis being conducted at a European level.

PROSPECTUS SUPERVISION

LEGAL BASIS

With the transposition of the European Prospectus Directive (Directive 2003/71/EC as amended) into Austrian law, the policymaker has appointed the FMA as the competent authority and mandated it with the supervision of capital market prospectuses. The legal basis for publicly offering securities and investments is found in the Capital Market Act (KMG; *Kapitalmarktgesetz*) and in Regulation (EC) No 809/2004 as amended (the legal basis for the preparation of securities prospectuses). In cases where the prospectus also includes securities for admission to the stock exchange, the Stock Exchange Act (*BörseG*; *Börsegesetz*) also applies accordingly. In essence, the FMA is responsible for the following tasks:

- Auditing and approval of prospectuses and supplements when securities are offered to the public (securities prospectuses) or admitted to trading on a regulated market. The audit benchmark applied in this case includes, in accordance with Article 8a para. 1 KMG, completeness, coherence and comprehensibility.
- Conducting investigations of any alleged infringements of the KMG or of any provisions of the *BörseG* that apply to prospectuses.
- Cooperation with other European supervisory authorities, which includes notifications, official assistance and the exchange of information, as well as the further development of relevant European legislation as part of expert groups of the European Securities and Markets Authority (ESMA).
- Tasks related to organisation, coordination and information, such as publishing lists of eligible prospectus auditors, of approved securities prospectuses and of incoming notifications on the FMA website.

In addition to the FMA, in Austria Oesterreichische Kontrollbank (OeKB) is also responsible for certain

tasks defined in the laws governing prospectuses. The OeKB acts as reporting office as specified in the KMG. The prospectuses that have been approved by the FMA are required to be filed with the OeKB and kept on file for at least 15 years. Besides the OeKB, the legal framework in Austria also provides Wiener Börse AG with individual powers related to the auditing of prospectuses.

APPROVAL PROCEDURES

A prospectus is required to be issued whenever securities or investments are publicly offered and when securities are admitted to trading on a regulated market of the stock exchange. The prospectus must include all details which are required based on the nature of the issuer and the publicly offered securities or investments, or the securities admitted to trading on the regulated market. The purpose is to allow investors to make a sound judgement on the issuer's, and any guarantor's, assets and liabilities, financial situation, profits and losses, and future prospects, as well as on any rights associated with these securities or investments.

The prospectus must not be published until it has been approved by the FMA. On approval, however, the prospectus must be published at the earliest possible date, and no later than one banking day before the public offering commences or one banking day before the particular security is admitted to trading.

Any supplement pursuant to Article 6 KMG to a previously approved securities prospectus must be published and filed according to the same procedure as for the prospectus. A supplement must be issued for any important new fact or material error or inaccuracy with respect to the information contained in the prospectus that could affect the valuation of the securities or investments and that occurs or is identified between approval of the prospectus and final closure of the public offering or, if occurring later, opening of trad-

ing on a regulated market. The issuer has a legal claim to approval where a prospectus submitted for approval meets all of the requirements in full.

Unlike the procedures for approving securities prospectuses, which are harmonised by EU law, prospectuses for the public offering of investments are subject to the national law of the country concerned. The notification process within the framework of the European Passport is therefore not applicable to such prospectuses. The audit of the investment prospectus with regard to correctness and completeness must be performed by a prospectus auditor as specified in Article 8 KMG. The FMA is required to publish a list of eligible prospectus auditors on its website.

AUDIT BENCHMARK APPLIED BY THE FMA IN APPROVAL PROCEDURES

In accordance with the legal basis stipulated in the KMG, the FMA audits securities prospectuses in terms of completeness, coherence and comprehensibility. The audit benchmark expressly precludes any evaluation of the contents. The particular issuer is liable for the correctness of the information contained in the prospectus.

COMPLETENESS

Within the approval procedures, completeness is verified on the basis of the minimum requirements as contained in the relevant provisions under European law. These provisions have been set forth in standardised form in Regulation (EC) No 809/2004 as amended. They stipulate a broad range of compulsory information applicable to various different securities and issuer categories.

COHERENCE

The key to verifying coherence is to ensure that the information contained in the prospectus does not include any contradictory statements. Any specific items that are inconsistent will require closer examination and possibly adaptation by the provider or issuer.

COMPREHENSIBILITY

When verifying comprehensibility, the average informed investor is to be used as the benchmark. The

prospectus must convey the information in such a way that the details are easy to analyse and follow. While technical terms may be used, such language should not predominate in the prospectus. An explanation of any such terms should be included in the prospectus.

OFFICIAL TASKS

Chart 33 displays the trends in prospectus approval procedures, approved supplements and procedures discontinued during 2009 to 2013. With 100 prospectuses having been approved in 2013, the high level of approved prospectuses as seen between 2009 and 2011 was reached again. The clear increase in the number of approved prospectuses, up by 32% from 76 in 2012, is due to the Austrian housing bank sector showing an intensified issuing activity, but also to the larger number of prospectuses relating to dividend-bearing securities (prospectuses for capital increases) and prospectuses issued as the basis for admitting securities to trading on a regulated market of Wiener Börse AG.

The number of approved supplements fell from 80 in 2012 to 62 in 2013, back to the level recorded in 2011. The decline of around 22% is primarily due to the absence of supplements that were drawn up in response to modifications introduced in connection with the revised version of the KMG that entered into force on 1 July 2012.

EEA NOTIFICATIONS

The objective of the Prospectus Directive was to create a European Passport for securities prospectuses. Accordingly, once a prospectus or a compulsory supplement is approved in one EEA Member State, it is also valid, for the duration of its validity, for a public offering or admission to trading on a regulated market in any other EEA Member State. In order to use a prospectus or a supplement in another EEA Member State, the competent authority in the respective host country must first be notified. It should also be noted that the prospectus must be drawn up in an admissible prospectus language. In Austria, prospectuses must be drawn up in either German or English. It may

be necessary to translate a summary into the particular language of the EEA Member State.

From Chart 34 it can be seen that the number of prospectuses from Austria notified in other EEA Member States decreased between 2009 and 2012. In 2013, at 31 notified prospectuses, the number of outgoing notifications was up again by around 19%. With regard to notifications for supplements to foreign sister authorities, the downward trend continued in 2013. The majority of the outgoing notifications related to Germany. Some prospectuses or supplements were also submitted to countries in Eastern Europe.

The number of prospectuses notified in Austria by other EEA Member States continued to rise between 2009 and 2013. In 2013, 394 prospectuses were notified to the FMA, representing a slight increase of 3% (2012: 383 notified prospectuses). The increase with regard to supplements was much more pronounced, at around 13%: 2,541 supplements were notified in 2013 compared with 2,250 in 2012. Most incoming notifications to the FMA were submitted by the competent authority in Luxembourg as well as by the German authority.

INTERNATIONAL COOPERATION

The FMA is a member of the Corporate Finance Standing Committee (CFSC), a body established with the European Securities and Markets Authority (ESMA), which also covers regulatory responsibilities as defined in the Prospectus Directive.

Activities in 2013 continued to focus on implementation of Directive 2010/73/EU of the European Parliament and of the Council of 24 November 2010. This resulted in the adoption of Commission Delegated Regulation (EU) No 759/2013 of 30 April 2013 amending Regulation (EC) No 809/2004 as regards the disclosure requirements for convertible and exchangeable debt securities.

In addition, there were meetings with sister authorities to exchange information on issues related to prospectus supervision. The main aim of these meetings was to establish a common interpretation, particularly with

Chart 33: APPROVAL PROCEDURES 2009–2013

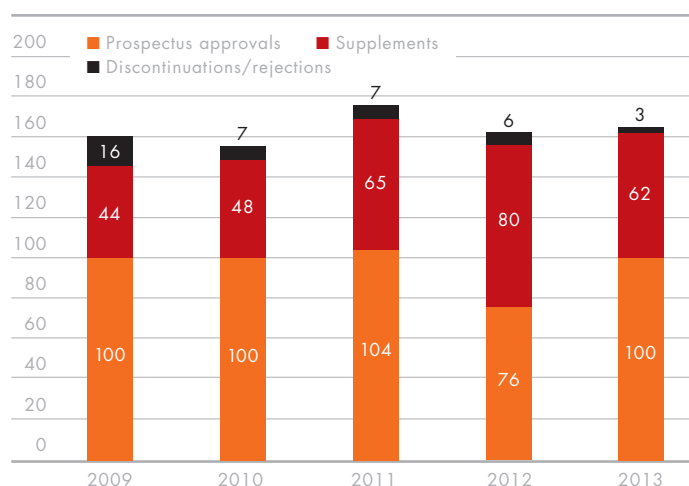
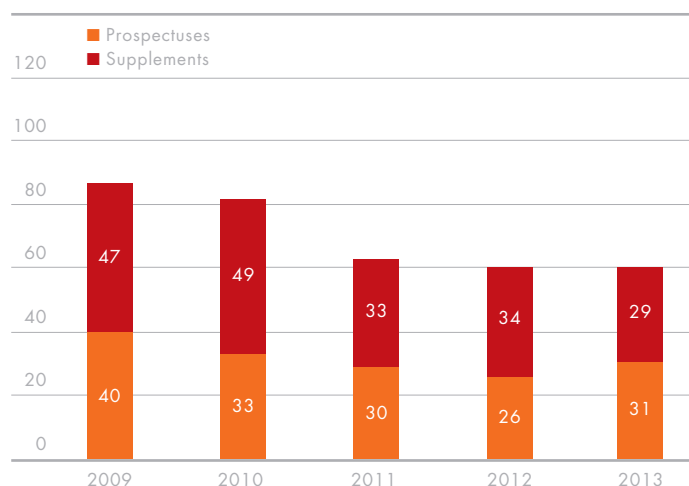


Chart 34: OUTGOING NOTIFICATIONS 2009–2013



those sister authorities from which the FMA receives the majority of notifications or to which the FMA submits most of its own notifications.

INVESTIGATION OF BREACHES OF THE RULES ON PROSPECTUSES AND ADVERTISING

The FMA is additionally responsible for monitoring the Austrian financial market in order to identify any breach of statutory provisions that may occur in connection with the issuing and advertising of securities and investments. Investigations were completed in 16 such cases in 2013.

COMBATING UNAUTHORISED BUSINESS

UNAUTHORISED BUSINESS

The FMA is responsible for the supervision of credit institutions, insurance undertakings, *Pensionskassen* (pension companies), staff provision funds, investment funds, investment service providers, listed companies and stock exchanges. In this context, it monitors compliance with the strict statutory provisions, to ensure the stability of the Austrian financial market in particular.

However, there are also providers on the market who avoid this continued supervision, and who offer and perform services that require a licence without being authorised to do so. Such providers pose a serious threat to the integrity of the Austrian financial market and could damage investor confidence, causing investors to doubt that the market is functioning as it should. The performance of services that require a licence without having the necessary authorisation is referred to as unauthorised business.

FINANCIAL CRIME

As well as identifying cases where business operations are being carried out without authorisation, the FMA also frequently encounters cases involving genuine financial crime during its investigations. The diverse range of cases shows that there are no limits to the imagination of the fraudsters behind these crimes.

Typical advance-fee scams involve the victims being presented with a fictitious set of circumstances and promises of absurdly high returns (up to 100% or even higher), and encouraged on this basis to make an advance payment to the providers. This is frequently done through a mass e-mail in which the sender claims to have knowledge of accounts held by former rulers or large corporations in developing countries and to require the recipient's help in transferring the six-figure sums abroad. The promised commissions entice the victims to make upfront payments, allegedly

to cover fees, bribes, etc. The victims then wait in vain for the promised consideration.

Boiler rooms are call centres from which sellers attempt to persuade customers to enter into dubious investment transactions over the telephone. The sellers use high-pressure sales techniques as they attempt to coerce customers into buying shares in certain companies. Having transferred the money, the customer ends up with worthless shares, while the providers can no longer be reached.

Phishing is a type of online fraud whereby the fraudsters attempt to obtain access details to online bank accounts (user names, passwords, PINs and TANs) by means of phishing e-mails or trojans. These details are subsequently used to withdraw money from the accounts, with the funds being transferred abroad.

LEGAL BASIS

The 2005 Financial Market Authority Modification Act (FMA-ÄG 2005; *Finanzmarktaufsichtsänderungsgesetz* – Federal Law Gazette I No. 48/2006) added Articles 22b to 22e to the Financial Market Authority Act (FMABG; *Finanzmarktaufsichtsbehördengesetz*) under the heading of "Unauthorised business". These provisions entered into force on 31 March 2006 and have since been amended several times. Pursuant to Articles 22b to 22e FMABG, the FMA can take action founded on the suspicion of an administrative offence pursuant to the relevant supervisory laws: Article 98 para. 1 of the Banking Act (BWG; *Bankwesengesetz*), Article 66 para. 1 of the Payment Services Act (ZaDiG; *Zahlungsdienstegesetz*), Article 94 para. 1 of the 2007 Securities Supervision Act (WAG 2007; *Wertpapieraufsichtsgesetz*), Article 48 para. 1 no. 1 of the Stock Exchange Act (BörseG; *Börsegesetz*), Article 47 of the *Pensionskassen* Act (PKG; *Pensionskassengesetz*) and Article 110 of the Insurance Supervision Act (VAG; *Versicherungsaufsichtsgesetz*).

Article 22b FMABG stipulates the specific powers

held by the FMA in relation to conducting investigations as a means of prosecuting the violations referred to above. Under these powers, the FMA is entitled to obtain information from natural and legal persons and other entities with legal personality, and to process the required data. This right also encompasses the FMA's power to carry out on-site examinations of documents and electronic data media, e.g. on the business premises of the suspected party and also on those of third parties.

On the basis of the provisions contained in the relevant laws (particularly Article 4 para. 7 BWG and Article 92 para. 11 WAG 2007), the FMA may inform the public by means of an announcement that a person is not authorised to carry out certain transactions that require a licence. In addition to these provisions on publication, Article 22c FMABG also authorises the FMA – taking into account above all the stability of the financial markets and the interests of those concerned – to publish details of any penal decisions and administrative decisions prohibiting the business, and to disclose the details of these.

One of the FMA's key tools and one which is effective in combating unauthorised business is stipulated in Article 22d FMABG. As soon as an administrative offence is suspected pursuant to the relevant supervisory laws, the FMA must, irrespective of the initiation of criminal proceedings, instruct the company suspected of engaging in unauthorised business to remedy the situation such that the statutory provisions are met; such instruction is issued in the form of a procedural order. Should the party concerned fail to meet this requirement by the stipulated deadline, it is the responsibility of the FMA to order by means of an administrative decision that the necessary measures be taken (extending as far as closure of the business operation) to ensure that a lawful situation is created. The issuing of a decision in this regard regularly involves the threat of a coercive penalty, up to the amount of €30,000 (Article 26a FMABG).

In addition to the powers stipulated in the FMABG with regard to investigation, publication and prohibition, in its efforts to combat unauthorised business the FMA also regularly conducts administrative penal proceedings in the event of infringements pursuant to Article 98 para. 1 BWG, Article 66 para. 1 ZaDiG,

Article 94 para. 1 WAG 2007, Article 48 para. 1 no. 1 BörseG, Article 47 PKG and Article 110 VAG.

OFFICIAL TASKS

INVESTIGATIONS

The suspicion that business operations are being carried out without authorisation is founded on:

- information, enquiries or complaints from market participants;
- information acquired by the FMA as part of its continued supervision of licensed companies;
- active observation of the market; or
- notifications from other authorities.

The FMA begins its investigations by carrying out research on the internet, in the company register, trade register and register of residents, as well as in internal databases and enquiry tools. Subsequently, individuals may be called upon to submit a written statement or be summoned to appear at the FMA's premises for questioning.

In 2013, the FMA initiated a total of 234 investigations, 272 of which could be completed. Furthermore, 20 cases were examined on site.

PROCEDURES TO PROHIBIT BUSINESS OPERATIONS

Based on the results of its investigations, the FMA will introduce a procedure to prohibit business operations pursuant to Article 22d FMABG in the event of a current case of unauthorised business. The first stage of this process involves the suspected party being called upon by means of a procedural order to remedy the situation such that it complies with the statutory provisions.

In 2013, a total of 26 parties were called upon by means of a procedural order pursuant to Article 22d FMABG to remedy the situation such that it complies with the statutory provisions. In one case an administrative decision prohibiting business operations, simultaneously threatening a coercive penalty, had to be issued due to non-compliance with the procedural order: the association was prohibited from carrying out the contractual insurance business.

PUBLICATIONS

The provisions in the relevant supervisory laws (Article 4 para. 7 BWG, Article 64 para. 9 ZaDiG, Article 92 para. 11 WAG 2007 and Article 4 para. 11 VAG) enable the FMA to inform the public, by making an announcement on the internet, in the official gazette "Amtsblatt zur Wiener Zeitung", or in any newspaper with nationwide circulation, to the effect that a person is not authorised to carry out particular transactions that require a licence.

In total, 26 such announcements were made in 2013. Experience has shown that this is a very efficient way of tackling unauthorised business conducted via the internet, as dubious providers can be countered with publicity.

ADMINISTRATIVE PENAL PROCEEDINGS

A key pillar in the fight against unauthorised business is also the rapid implementation of administrative penal proceedings based on the terms of the relevant supervisory laws, which provide for penalties of up to €100,000. Furthermore, there is the option of publishing penal decisions pursuant to Article 22c FMABG.

There were six cases of administrative penal proceedings being initiated in 2013. Twenty-one penal decisions and two penal orders were issued. Ten penal decisions were passed in relation to the acceptance of third-party funds for management purposes through the issuance of profit-sharing certificates. Three penal decisions were handed down on account of the brokering of deposit-taking business. Four penal decisions were handed down for conducting unlawful credit business. One penal decision was passed for carrying out unlawful money remittance transactions. Eight penal decisions were not opposed by the parties concerned and thus became final, whilst appeals were lodged against thirteen of the decisions.

ENFORCEMENT

In accordance with Article 22 para. 1 FMABG, the FMA is responsible for enforcing its own administrative decisions, with the exception of administrative penal decisions. For this purpose – particularly in the case of coercive penalties – an application is made with the relevant court to initiate enforcement proceedings. The penal decisions are then enforced by the district administration authority responsible.

REPORTED OFFENCES AND REPORTS FORWARDED TO THE ADMINISTRATIVE AUTHORITIES

If an authority or public office becomes aware of a suspected criminal act that falls within its statutory remit, it is obliged under Article 78 para. 1 of the Code of Criminal Procedure (StPO; *Strafprozessordnung*) to report the case in question to the criminal investigation department or public prosecutor's office. In cases involving cold calling (marketing calls without the participant's prior permission) or involving the sending of unsolicited electronic messages, including text messages, the FMA also forwards the relevant details of the case to the responsible telecommunication authorities, in addition to reporting the offence in question.

In 2013, the FMA submitted a total of 57 statements of the facts to the public prosecutors or police authorities and made 21 reports to the administrative authorities.

INTERNATIONAL COOPERATION

Since many companies that engage in unauthorised business offer their services on a cross-border basis, particularly by means of the internet, cooperation at an international level with sister authorities is of vital importance. Consequently, there is a regular exchange of information on cross-border cases with the respective competent authorities.

COMBATING MONEY LAUNDERING AND TERRORIST FINANCING

LEGAL BASIS

The FMA monitors the companies under its supervision to ensure compliance with the due diligence and disclosure obligations aimed at combating money laundering and terrorist financing. These due diligence and disclosure obligations are based on internationally accepted standards, known as the Recommendations of the Financial Action Task Force (FATF Recommendations).

The FATF is an independent international organisation established with the OECD, of which almost every developed country is a member. The FATF develops standards to protect the global financial system against money laundering, financing of terrorism and proliferation of weapons of mass destruction, and it regularly conducts country evaluations to assess member states' implementation of these standards.

The FATF's country evaluation of Austria led to the identification of serious deficiencies, to which Austrian legislators responded by passing a comprehensive package of measures in 2010. One of the measures stipulated was to significantly expand the FMA's responsibilities and powers in combating money laundering and terrorist financing. One example is the power, conferred on the FMA by law as of 29 December 2011, to carry out on-site inspections at credit institutions with the aim of preventing money laundering and terrorist financing. While previously existing for insurance and securities supervision, the FMA's powers to conduct on-site inspections for combating money laundering and terrorist financing were extended by the new provision to include credit institutions as well.

Thus, in an area of supervision that requires a high level of specialisation, the FMA has been granted comprehensive and sole responsibility for ensuring that preventive systems and measures are in place. This generates synergy effects resulting in a deeper level of supervisory activity and optimised efforts.

Transferring responsibility for on-site inspections to the FMA is also in keeping with a specific FATF Recommendation, namely that powers in this area should be concentrated with one authority.

OFFICIAL TASKS

ON-SITE INSPECTIONS AND COMPANY VISITS

The FMA conducts on-site inspections to verify that the supervised companies have implemented suitable systems for the prevention of money laundering and terrorist financing. In these inspections, the FMA evaluates the extent to which the implemented systems and control mechanisms are suited to ensuring effective prevention. This involves in particular inspecting in detail the IT systems that are deployed as a means of monitoring business relationships on an ongoing basis, verifying the effectiveness of the scenarios and related thresholds that have been defined as part of the monitoring systems. The system review also entails an in-depth inspection of the workflows and measures that the supervised companies have defined in order to safeguard compliance with due diligence requirements. Besides the system review, individual test cases are evaluated as a means of checking the performance of the implemented systems and measures.

For the purpose of preventing money laundering and terrorist financing, 35 on-site measures were carried out in total during 2013. Specifically, 15 on-site inspections were carried out within the framework of combating money laundering and terrorist financing during the year under review. These included ten inspections of credit institutions, one at an insurance undertaking and four at investment firms. Additionally, in relation to preventing money laundering and terrorist financing, the FMA carried out a total of 20 company visits during the year under review. Of those visits, 18 were held at credit institutions and two at insurance undertakings.

SUPERVISORY PROCEDURES

If during the FMA's supervisory activities facts emerge in a specific case indicating that a supervised company has possibly violated due diligence or disclosure obligations aimed at combating money laundering and terrorist financing, an investigation is launched to examine and clarify the case. Where in the course of supervisory activities an existing situation of non-compliance with statutory provisions is identified, the FMA's primary interest is to take action to have legal compliance restored and the associated defects remedied. In so doing, the FMA conducts a procedure to restore legal compliance, in the framework of which the company concerned is confronted with the existing defects and called upon to define and implement measures towards remedying them. In this context, the FMA subsequently also examines the suitability of the measures. If any suspicion of systematic or serious violation of the due diligence requirements aimed at combating money laundering and terrorist financing arises, it is unconditionally necessary to initiate administrative penal proceedings; a total of nine related penal decisions were issued during the year under review. In addition, the FMA filed suspicious transaction reports with the Financial Intelligence Unit in ten cases.

In 2013, there were 172 cases in total of supervisory procedures being initiated to prevent money laundering and terrorist financing. The procedures included 138 investigations, 16 procedural orders requesting compliance with statutory provisions to be restored and 18 cases of administrative penal proceedings.

CIRCULARS AND REGULATIONS

By issuing the Regulation on Money Laundering and Terrorist Financing Risk (GTV; *Geldwäscherei- und Terrorismusfinanzierungsrisiko-Verordnung*), the FMA has made use of its corresponding authority pursuant to Article 40b para. 1 of the Banking Act (BWG; *Bankwesengesetz*) and Article 98d para. 1 of the Insurance Supervision Act (VAG; *Versicherungsaufsichtsgesetz*) to define further cases associated with an increased risk of money laundering or terrorist financing. An increased risk of money laundering or terrorist financing as defined in the GTV is deemed to

exist where the customer, the customer's authorised representative, a person with whom the customer maintains an important business relationship, the trustor or the beneficial owner has their place of residence or place of incorporation in one of the high-risk countries listed in the Regulation. The same applies where the transaction is processed through an account held at a credit institution in one of the listed countries. The Regulation, which entered into force on 31 December 2011, was last amended on 20 December 2013.

INTERNATIONAL COOPERATION

The fact that the FMA plays an active role in the prevention of money laundering and terrorist financing at international level is evidenced in the authority's membership in several international working groups. It is a member of the Austrian delegation to the FATF, to the Expert Group on Money Laundering and Terrorist Financing (EGMLTF) and to the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL). The FMA is also a member of the Anti-Money Laundering Sub-Committee (AMLC), which is an expert group of the Joint Committee of the three European financial market supervisory authorities, namely the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA). Once the new International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation – the FATF Recommendations¹ had been adopted, the main activity of the FATF in the past year was the discussion of the practical planning for the fourth round of mutual evaluations. The methodology for evaluating effectiveness in implementing the standards is aligned with a catalogue of objectives that encompasses three levels. The overriding objective is as follows: to protect the financial systems and the economy from the threats posed by money laundering, terrorist financing and proliferation financing, thereby ensuring that the integrity of the financial sector is

¹ FATF, International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation – The FATF Recommendations, www.fatf-gafi.org

strengthened and a contribution towards security is made. The new methodology for assessing compliance was adopted in February 2013. Procedures have already begun for the first country evaluations to be conducted under the new methodology. The fourth country evaluation of Austria has been set for spring 2015. The main priority in the past year at European level was the draft of the Fourth Money Laundering Directive². The draft, which proposes a comprehensive risk-based approach founded on risk assessment, inte-

² Proposal for a Directive of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, COM(2013) 045 final, 5.2.2013.

grates many of the recent international standards. The European Commission has already published its proposal for a Regulation of the European Parliament and of the Council on information accompanying transfers of funds³, although it has not yet been discussed in Council working groups.

As part of Austria's membership in MONEYVAL, an FMA staff member represented the authority in a country evaluation, serving as a financial assessor in the team.

³ Proposal for a Regulation of the European Parliament and of the Council on information accompanying transfers of funds, COM(2013) 044 final, 5.2.2013.

LEGAL AND ENFORCEMENT AFFAIRS

Chart 35: ADMINISTRATIVE PENAL PROCEEDINGS 2009–2013

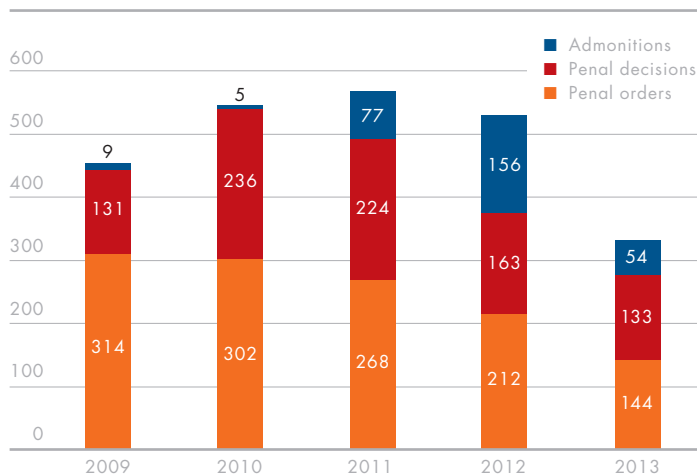


Chart 36: FACTS REPORTED TO PUBLIC PROSECUTORS 2009–2013

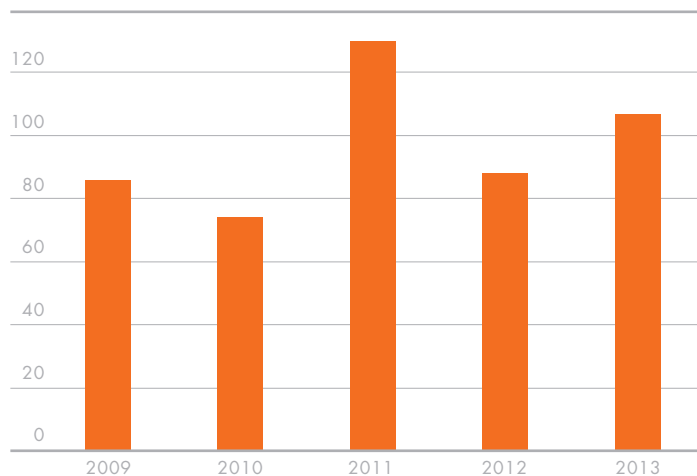
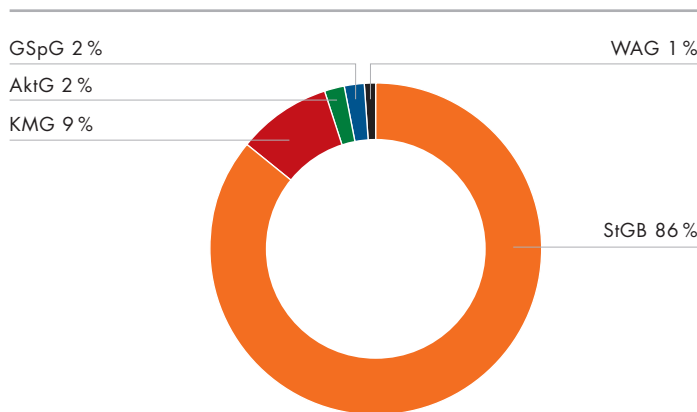


Chart 37: FACTS REPORTED TO PUBLIC PROSECUTORS BY SUBJECT



With regard to the enforcement of supervisory laws, the FMA has administrative penal jurisdiction in the first instance and is therefore authorised to conduct administrative penal proceedings should provisions of the supervisory laws be breached.

As at the beginning of 2013, 150 proceedings were pending at the FMA. A further 328 administrative penal proceedings were initiated, and 331 cases were concluded during the year under review with the issuing of an administrative decision (*Bescheid*). Of all the administrative penal proceedings concluded in 2013, 133 resulted in penal decisions, 144 in penal orders and 54 in admonitions (see Chart 35). In all, 86 cases were dropped, and in 125 cases no administrative penal proceedings were initiated. As at the year-end, 125 proceedings were still pending.

In the case of a penal decision, an administrative decision imposing a fine is issued following investigation procedures. A penal order can be issued without any additional investigation procedures if the evidence for the offence is sufficiently unequivocal. In this case, the fine may not exceed €600 per violation, the limit introduced on 1 July 2013, but fines incurred for several breaches may be imposed on a cumulative basis. If the right protected under criminal law and the intensity of the impairment caused by the actions and fault of the accused are of minor significance, the FMA may refrain from imposing a penalty and admonish the accused while indicating the illegality of the behaviour concerned.

In 2013, the FMA imposed 277 fines totalling €964,250, of which €901,550 related to penal decisions and €62,700 to penal orders. The average fine in 2013 for penal decisions was therefore €6,779, with penal orders averaging €435. The overall average was €3,481, with the highest fine imposed amounting to €82,500.

Some of the laws included in the FMA's supervisory remit also cover criminal offences. If the FMA has reasonable grounds to suspect that such a law has been

breached, it must submit a report to the public prosecutor's office or criminal investigation department. The courts of law are then responsible for imposing any sanctions. Such offences include, for example, insider dealing as prohibited by the Stock Exchange Act (BörseG; *Börsegesetz*) and the public offering of investments without submitting a prospectus as required by the Capital Market Act (KMG; *Kapitalmarktgesetz*). Additionally, as part of its supervisory activity, the FMA is confronted time and time again with circumstances that lead it to suspect that a statutory provision of penal law has been breached. In such cases the FMA is legally bound to report such circumstances to the relevant responsible authority. The most frequent circumstances in this regard are suspected breaches of trust and/or fraud, as well as prohibited pyramid schemes pursuant to the Criminal Code (StGB; *Strafgesetzbuch*) and the falsification of accounts.

In 2013, the FMA forwarded 107 such reports to the public prosecutor's office, two of which related to suspected insider dealing as defined in the BörseG (see Chart 36). Some 86% of the circumstances reported related to suspected breaches of provisions contained in the StGB (see Chart 37).

SELECTED PENAL DECISIONS ACCORDING TO AREA OF THE LAW CONCERNED¹

MONEY LAUNDERING PROVISIONS

During the year under review the FMA issued nine penal decisions against the parties responsible at credit institutions due to failure to comply with money laundering rules. The focus lay on the prosecution and punishment of systematic shortcomings and major breaches of obligations in relation to high-risk customers. The highest fine imposed was €82,500. Two directors were fined in this amount. Specifically, it was found that there had been fundamental breaches of the obligation to have appropriate and suitable strategies and procedures in place for the proper risk assessment of remote business relationships and business relationships with politically exposed persons (PEPs), foreign payments and geographical risk. This

case also related to failure to adhere to the statutory provisions on the obligation to subject remote business relationships to greater ongoing monitoring, the obligation to subject business relationships with PEPs to greater ongoing monitoring, the obligation to have appropriate and suitable strategies and procedures in place to check business relationships for any PEP characteristic, and the obligation to have greater ongoing monitoring of transactions in place with regard to payable-through accounts involved in correspondence bank relationships.

SECURITIES SUPERVISION ACT

Of the 47 penal decisions issued in response to violations of the 2007 Securities Supervision Act (WAG 2007; *Wertpapieraufsichtsgesetz*), 26 concerned credit institutions and 21 other investment service providers. The decisions affecting credit institutions related in particular to a lack of appropriate measures to prevent personal transactions, shortcomings with regard to implementation policy, the provision of dishonest, unclear or misleading information, or the improper granting or acceptance of benefits. In the case of investment firms and investment service providers, the decisions were issued in response to breaches of organisational rules in particular. There were two cases of penal decisions being issued due to non-compliance with minimum capital requirements.

STOCK EXCHANGE ACT

Of the 18 penal decisions relating to breaches of the Stock Exchange Act (BörseG; *Börsegesetz*), nine related to the violation of the requirements governing disclosure of major holdings and three to failure to adhere to the rules on periodic disclosure. Two penal decisions due to market manipulation were issued against the directors of a credit institution that had assumed responsibility for the liquidity of securities and placed quotes that were subsequently deleted again shortly before the end of the auction. This meant that the quotes could not be taken into account in the pricing. One penal decision related to a retail investor, due to market manipulation of a stock on the second regulated market. Two penal decisions were issued in response to a violation of directors' dealings requirements. There were also two cases of penal decisions being

¹ Some of the penal decisions relate to breaches of different material laws.

Table 38: ADMINISTRATIVE PENAL PROCEEDINGS BY LAW, 2009–2013

	2009	2010	2011	2012	2013
BWG					
Violations of notification obligations	78	103	113	93	64
Violations of reporting requirements	69	43	37	81	51
Unauthorised business	25	38	63	55	22
Money laundering	5	17	21	37	29
Owner control	3	8	25	22	18
Cover reserves	5	6	6	22	8
Presentation obligations	3	4	2	–	–
Consumer protection provisions	–	1	–	2	–
Bank auditor provisions	1	–	–	–	–
Protection of designations	–	–	2	1	–
Accounting	–	–	–	16	11
Deposit guarantees and investor compensation	–	–	–	4	2
ZaDiG					
Consumer protection	–	7	4	4	1
Unauthorised business	–	–	5	3	1
PKG					
Unauthorised pension company business	2	3	–	–	–
Violations of investment provisions	4	–	–	5	–
Violations of notification obligations	–	–	3	–	–
Violations of information requirements	–	–	3	–	–
Approval requirements	–	–	–	3	–
VAG					
Violations of notification obligations	4	–	32	12	10
InvFG					
Violations of advertising provisions	116	112	51	10	3
Violations of notification obligations	25	39	17	17	9
Protection of designations	–	5	13	7	1
Protection of investors' interests/investment provisions	–	5	17	6	57
Accounting	–	–	–	14	5
Organisational requirements	–	–	–	–	5
ImmInvFG					
Violations of advertising provisions	13	34	5	4	–
Protection of designations	–	–	2	–	–
BeteilFG					
Violations of protection of designations	5	21	10	–	–
WAG					
Organisational requirements	12	20	53	40	26
Conduct of business	6	19	33	55	23
Owner control	4	24	11	4	8
Violations of notification obligations	4	4	6	5	10
Capital requirements	–	–	6	3	2
Unauthorised business	5	1	7	2	1
BörseG					
Violations of obligation to report holdings	40	29	28	33	22
Market manipulation	16	25	18	7	9
Violations of periodic disclosure obligation	12	37	15	7	3
Directors' dealings	4	4	9	3	5
Non-disclosure of inside information	3	10	29	15	4
Violations of trading rules of the Vienna Stock Exchange	2	8	17	6	–
Other violations	9	17	6	7	1
KMG					
Violations of advertising provisions	24	33	6	–	1
Other violations of prospectus rules	17	5	33	25	5
Total	516	682	708	630	417

In the event of several violations, proceedings categorised according to predominant violation.

issued due to failure to submit an ad hoc report for timely publication of inside information. One of these cases involved the delayed communication of the depreciation of goodwill and/or revaluations, whilst the other case essentially related to non-communication of the fact that a positive forecast for the continued existence of the entity could not currently be expected.

INVESTMENT FUND ACT

In 2012, there were 22 penal decisions issued in response to breaches of the terms of the Investment Fund Act (InvFG; *Investmentfondsgesetz*). Seventeen of these related to a diverse range of breaches of the investment rules. There were eight cases of supervised companies infringing the organisational rules. By way of example, no independent stress testing of market liquidity and repurchase behaviour was carried out to assess the liquidity risk of the UCITS in the event of exceptional circumstances. Nine violations of notification obligations also led to penal decisions. Two directors of an investment firm were sanctioned due to having used the term UCITS to refer to a fund that was not subject to the terms of the UCITS Directive. This incorrectly gave the impression that the specialist products being advertised were subject to strict European rules applied on a uniform basis across the EU. Further penal decisions were also issued due to the delayed provision of reports on activities.

CAPITAL MARKET ACT

In 2013, there were three penal decisions issued in response to

breaches of the terms of the Capital Market Act (KMG; *Kapitalmarktgesetz*). Two related to failure to notify the reporting office at the Oesterreichische Kontrollbank (OeKB) of the details of a securities issue, to allow inclusion in the new-issue calendar. One decision was issued due to an investment being offered despite the fact that the brochures serving as the prospectuses did not qualify as prospectuses as defined in the KMG.

INFRINGEMENT OF NOTIFICATION AND REPORTING OBLIGATIONS

The entry into force on 1 January 2014 of Article 98 para. 6 of the Banking Act (BWG; *Bankwesengesetz*), Article 190 para. 7 InvFG 2011, Article 95 para. 12 WAG 2007 and Article 67 para. 12 of the Payment Services Act (ZaDiG; *Zahlungsdienstegesetz*) means that failure to comply with certain notification obligations is no longer a criminal offence provided that institutions subsequently comply with the obligations and do so before the FMA was aware of the breach. In keeping with the principle of equality, this provision was already applied by the FMA from the announcement of the changes in the Federal Law Gazette on 7 August 2013. This resulted in a fall in the total number of penalties imposed. During the reporting period, for example, there were only 65 cases of breaches of notification obligations under the BWG being sanctioned, compared with as many as 93 during the previous year. With regard to minor breaches of reporting obligations, the FMA made use of the option of admonitions under the shortened procedure.

SELECTED PROCEEDINGS BEFORE THE UVS VIENNA

The Independent Administrative Tribunal (UVS) confirmed the FMA's view with regard to the occurrence of two cases of market manipulation through the spreading of misleading information. Two ad hoc reports made by an issuer only contained details of the positive development in the company's expected order situation without, however, referring to its exceptionally problematic and uncertain finance situation. Both reports were misleading and thus associated with market manipulation.

Another case related to failure to price a corporate bond due to a lack of demand from investors. The UVS confirmed the FMA's legal opinion, according to which, in this case, both the postponement of the likely subscription period and the lack of pricing during a bookbuilding process represented insider information that required ad hoc reporting. The ad hoc reporting obligation had not been observed in either of these cases.

The UVS decided that, pursuant to the BörseG, the financial year referred to in consolidated financial statements may not exceed a period of twelve months given that, also under the terms of the BörseG, the individual and the consolidated financial statements of a company are to be printed together. In the specific case, consolidated financial statements had been prepared for a period of 15 months, which is not permitted.

With regard to the due diligence obligations facing credit and financial institutions as they combat money laundering and terrorist financing, the UVS was of the legal opinion that the official certification of identification documents was not necessary when identifying high-risk customers (from Belize in this specific case) and that it was permissible for the documents to be dated seven months prior to the opening of the account. The FMA lodged a high-court appeal with the Administrative Court (VwGH) against this ruling.

In a further case with regard to the due diligence obligations of credit and financial institutions concerning combating money laundering and terrorist financing, the UVS confirmed the FMA's view that the obligation to monitor the business relationship of a customer on an ongoing basis had not been fulfilled. Striking and atypical payments were made by companies into the private account of an employed individual, who subsequently withdrew the deposited amount in cash. These transactions did not attract the credit institution's attention. However, the fact that an amount in the region of €216,000 was being deposited in the account over an eight-month period was not consistent with the data and assessments noted at the time of the account being opened.

The UVS clarified the fact that in the event of suspicious transaction reports relating to money laundering, terrorist financing and the disclosure require-

ments for trusteeships, the obligation to refrain from entering into further transactions takes effect as soon as the suspicion arises or as soon as there are justified grounds to assume a reportable case and not just when the report is made to the money laundering unit. In the specific case, the credit institution concerned processed two transactions (worth a total of €150,000) prior to reporting its suspicions, despite the fact that failure to disclose a trusteeship was already suspected at that time. In addition, the suspicious transaction report was not submitted to the money laundering unit immediately.

SELECTED PROCEEDINGS BEFORE THE COURTS OF PUBLIC LAW

The VwGH confirmed in administrative penal proceedings that breaches of the obligation to provide monthly reporting on large exposures constituted a long-term offence and that only the submission of a correction report brought the punishable offence to an end. The limitation period does not begin until the date on which the correction report is submitted.

The VwGH nullified an administrative decision issued by the FMA relating to a deconsolidation request and imposing large exposure penalty interest due to illegality. The decision was essentially based on the FMA's legal assessment, according to which a particular Ltd. company at no time formed part of the group of credit institutions. The main focus lay on assessing the provider of ancillary services as defined in Article 2 no. 27 BWG. The FMA found that there was not a "direct extension of banking". However, the VwGH reached the conclusion that the activity should be viewed as "outsourced finance business", qualifying the Ltd. company as a provider of ancillary services. With regard to the future legal situation, Article 3(18) of the Capital Requirements Regulation (CRR) is binding. This provides a much narrower definition of the activities that are classed as an ancillary services undertaking: "an undertaking the principal activity of which consists of owing or managing property, managing data-processing services, or a similar activity..." The rules no longer contain an open formulation ("direct extension of banking").

Another case related to a request from the FMA pur-

suant to Article 104 of the Insurance Supervision Act (VAG; *Versicherungsaufsichtsgesetz*) to a licensed insurance undertaking calling on that undertaking to refrain from agreeing certain premiums in the life assurance sector. It was the FMA's view that the minimum risk capital provided for in the business plans was insufficient, with the result that these premiums were not taking into account the risk characteristic of an insurance product. Again, in this case, the VwGH confirmed the FMA's authority to conduct subsequent product control. However, the basis for calculating minimum risk capital as described in the FMA's Circular was considered by the VwGH to be too restrictive, and the administrative decision was reversed.

The FMA, in the form of an administrative decision, prohibited an undertaking from taking receipt on a commercial basis of third-party funds as deposits (deposit business). The undertaking, which was not in possession of a banking licence, lodged a complaint against the decision with the Constitutional Court (VfGH). The Constitutional Court declined to handle the complaint, forwarding it instead to the Administrative Court. Its reasons for referring the case included the fact that assessing whether the numerous legal transactions conducted by the company, through which it took up interest-bearing loans with various different individuals, constituted deposit business as defined in Article 1 para. 1 no. 1 BWG was not related to any constitutional issues. For its part, the VwGH rejected the complaint as unfounded and ruled that the taking-up of loans by the company represented deposit business that required a licence, given that the purpose for which the funds are received is not relevant to the definition of deposit business.

The VfGH declined to consider around 40 complaints submitted by investment firms and investment service providers against payment notices issued by the FMA in accordance with the FMA Cost Regulation (FMA-KVO; *FMA-Kostenverordnung*). There are no objections under constitutional law to using the sales of the companies subject to securities supervision as reference value for the purposes of allocating the costs to be borne by these companies, thereby distributing the cost burden across all of the undertakings and not simply across individual supervised companies. Similarly, any capping of the costs for investment service ►

THE NEW FEDERAL ADMINISTRATIVE COURT

The 2012 amendment to legislation governing administrative jurisdiction (Federal Law Gazette I No. 51/2012) had, already back in June 2012, established the main constitutional pillars for a reform of proceedings to appeal official decisions handed down in the first instance. Administrative courts of first instance (nine administrative courts at the provincial level, two administrative courts at the federal level: the Federal Administrative Court and the Federal Fiscal Court) were created, so that in essence a two-level system of administrative jurisdiction was introduced that replaced all previous levels of administrative judicial appeal. All provisions of law governing the reform of administrative jurisdiction entered into force as of 1 January 2014. A specific Act of transitional provisions (Federal Law Gazette I No. 33/2013 as amended by Federal Law Gazette I No. 122/ 2013) was also passed to ensure a smooth transition from the old to the new system of legal protection.

For the Financial Market Authority (FMA) this means that as of 1 January 2014 parties may file a complaint (*Beschwerde*) pursuant to Article 130 para. 1 no. 1 of the Federal Constitutional Act (B-VG; *Bundes-Verfassungsgesetz*) to the Federal Administrative Court (BVwG) on grounds that the FMA has completed proceedings unlawfully. Such complaints may concern cases in which the FMA issues an administrative decision (*Bescheid*) pursuant to the Code of Administrative Procedure (AVG; *Allgemeines Verwaltungsverfahrensgesetz*) or a penal decision or admonition pursuant to the Administrative Penal Act (VStG; *Verwaltungsstrafgesetz*). The period for filing a complaint to the Federal Administrative Court is four weeks from when the FMA's decision is served. Complaints are to be submitted directly to the FMA, which is required to first conduct preliminary proceedings. In the course of such proceedings, the FMA can issue a preliminary complaint decision within two months, through which the contested decision is either lifted or revised or the complaint is dismissed or rejected.

A NEW CHAIN OF APPEALS

Compared with the legal situation existing until 31 December 2013, major changes have consequently been introduced, particularly in regard to supervisory proceedings that are conducted based on the AVG and usually terminate in an administrative decision. Whereas no appeal (*Berufung*) against such decisions had previously been permitted, and they had been able to be disputed only by resorting to an extraordinary remedy (a complaint with the Constitutional Court and/or the Administrative Court), legal recourse can now be taken by filing a complaint with the Federal Administrative Court as the administrative court of first instance. The Administrative Court (VwGH) now serves as the administrative court of second instance; in future it can be appealed to within the framework of an ordinary or extraordinary high-court appeal (*Revision*) (Article 133 para. 1 no. 1 B-VG). In this way, a model based on admissibility has been put into practice: a high-court appeal is only admissible if it concerns a legal matter of fundamental importance.

The period for lodging a high-court appeal is still six months. The FMA is a party to the proceedings before the VwGH; as such it files replies to high-court appeals and is entitled to lodge high-court appeals *ex officio*. Thus, a two-level chain of (administrative) judicial instances has in essence been installed in supervisory proceedings.

Apart from a high-court appeal to the VwGH, parties which feel that one of their rights guaranteed by the constitution has been compromised by a ruling of the BVwG and/or that their legal sphere has been infringed upon in particular by an unconstitutional law or an unlawful regulation can also, pursuant to Article 144 B-VG, lodge a complaint with the Constitutional Court.

The general provisions of procedural law governing proceedings before the BVwG are specified in the Administrative Court Procedure Act (VwGVG; *Verwaltungsgerichtsverfahrensgesetz*), Federal Law Gazette I

No. 33/2013 as amended by Federal Law Gazette I No. 122/2013. The AVG and the VStG will continue to be applied subsidiarily in cases where the VwGVG does not specify separate regulations. In addition, constitutional law includes provisions that allow differing regulations governing administrative court procedures to be specified in other laws as well, if such regulations are required to make arrangements in the matter (Article 136 para. 2 B-VG). This allows the option of taking into account particularities that are specific to individual matters, among other things by issuing special provisions governing procedures. Such special arrangements have been made for financial market supervision in the FMABG as published in Federal Law Gazette I No. 70/2013, in this way responding to the particularities of supervision of the financial market, an area that is determined to a large degree by EU law (cf. government bill 2196, 24th legislative period).

ACCELERATED PROCEDURE

In comparison with the overall economy, the financial market is particularly volatile, even under the best possible regulatory conditions. The measures taken by authorities in this market consequently need to be highly effective and enforceable. Examples of such measures include the appointment of a government commissioner, prohibiting the exercising of management duties, revocation of the licence, prohibiting the withdrawals of capital and profits, as well as official decisions to request information in preparation for such measures. It must be possible to take such measures quickly and to enforce them without delay. Furthermore, to achieve the main regulatory goals defined in recent EU financial market legislation, measures have to be taken in a harmonised manner EU-wide. If a measure on which agreement has been reached in supervisory colleges EU-wide were only to be implemented at varying levels of effectiveness, the system of joint supervision and the fully harmonised supervisory legislation underlying it would become ineffective.

For this reason, the suspensive effect of complaints against those administrative decisions by the FMA which it issued in supervisory matters based on the AVG had to be ruled out in Article 22 para. 2

FMABG. This is related to the judgement underlying the legislation that a preponderant interest in enforcing the disputed decision normally exists. Preclusion of suspensive effect expressly does not apply in administrative penal cases. To safeguard the rule of law, the BVwG is at the same time empowered to recognise on petition the suspensive effect of a complaint in single cases. This may be done if no compelling public interests prevent such recognition and if, after weighing all interests concerned, executing the complaint would entail a disproportionate disadvantage for the complainant. Article 22 para. 2 FMABG additionally specifies the option for the BVwG to decide a second time on the suspensive effect of the appeal in cases where the preconditions have changed significantly. Another specific regulation for the FMA concerns the body taking the decision and the period of time allowed that body for the decision. Specifically, Article 22 para. 2a FMABG provides for the decision to be taken by the BVwG through a senate within the same period allotted to the FMA. An exception to this are cases where a fine of not more than €600 has been imposed. In view of the high volatility of the financial market, the FMA has to be able to take decisions quickly when acting to avert risks in procedures conducted according to the AVG. Where for this reason short periods have been allotted to the FMA for taking decisions to execute the supervisory laws within its scope, it is necessary and appropriate for the same periods to apply to the BVwG. If no differing periods apply, the BVwG is to hand down its decision no later than six months after the complaint is filed.

A SENATE DECIDES

It is particularly important that decisions be taken by a senate since matters relating to the FMA as a rule entail special issues of a factual and/or legal nature, justifying a decision by an expert body.

In future, a complaint on grounds of delay can be lodged with the BVwG if the FMA does not comply with the requirement to take a decision within the prescribed period. If the decision by the BVwG is delayed, a petition requesting that a time limit be set can be filed with the VwGH.

providers is not advisable in terms of constitutional law.

The VfGH ruled that Article 35 WAG 2007 was not unconstitutional. The provisions are aimed at a group of persons that, it can be assumed, is not only familiar with what is meant by the term conflict of interest and the circumstances that could lead to such a conflict arising between the legal entity and its customers or between individual customers, but is also aware of the procedures and measures that can typically be used to successfully avert any such conflicts.

On this basis, it can also be assumed that the group of persons concerned is capable of assessing, when stipulating and applying on an ongoing basis the policy required by Article 35 para. 1 WAG 2007, which (appropriate) procedures and measures are commensurate with the “size and organisation” of the legal entity and the “nature, scale and complexity of its business”. The policymaker has deliberately assigned responsibility for assessing this appropriateness to the legal entities concerned, in line with the policy.

BODIES

The executive bodies of the FMA comprise the Executive Board and the Supervisory Board. The Executive Board is responsible for managing the entire operation as well as the FMA's business transactions in accordance with the law and the Rules of Procedure. The Supervisory Board is responsible for monitoring the management and business operations of the FMA.

EXECUTIVE BOARD

In accordance with the Financial Market Authority Act (FMABG; *Finanzmarktaufsichtsbehördengesetz*), the Executive Board consists of two members with equal rights, one of whom is nominated by the Federal Minister of Finance and the other by the Oesterreichische Nationalbank. Both are to be appointed by the Federal President upon the proposal of the Federal Government for a five-year term of office, and may be reappointed for a second term. During the year under review, Helmut Ettl and Klaus Kumpfmüller made up the Executive Board of the FMA.

SUPERVISORY BOARD

The Supervisory Board of the FMA is composed of eight members. Of these, the Federal Minister of Finance (BMF) as well as the Oesterreichische Nationalbank (OeNB) appoint three members each, who

are eligible to vote, while the Austrian Federal Economic Chamber (WKO) nominates two co-opted members without voting rights to represent the supervised companies. The latter members have clearly delineated rights to obtain information. The ordinary members of the Supervisory Board are to be appointed by the BMF, whilst the members nominated by the WKO are co-opted by the Supervisory Board itself.

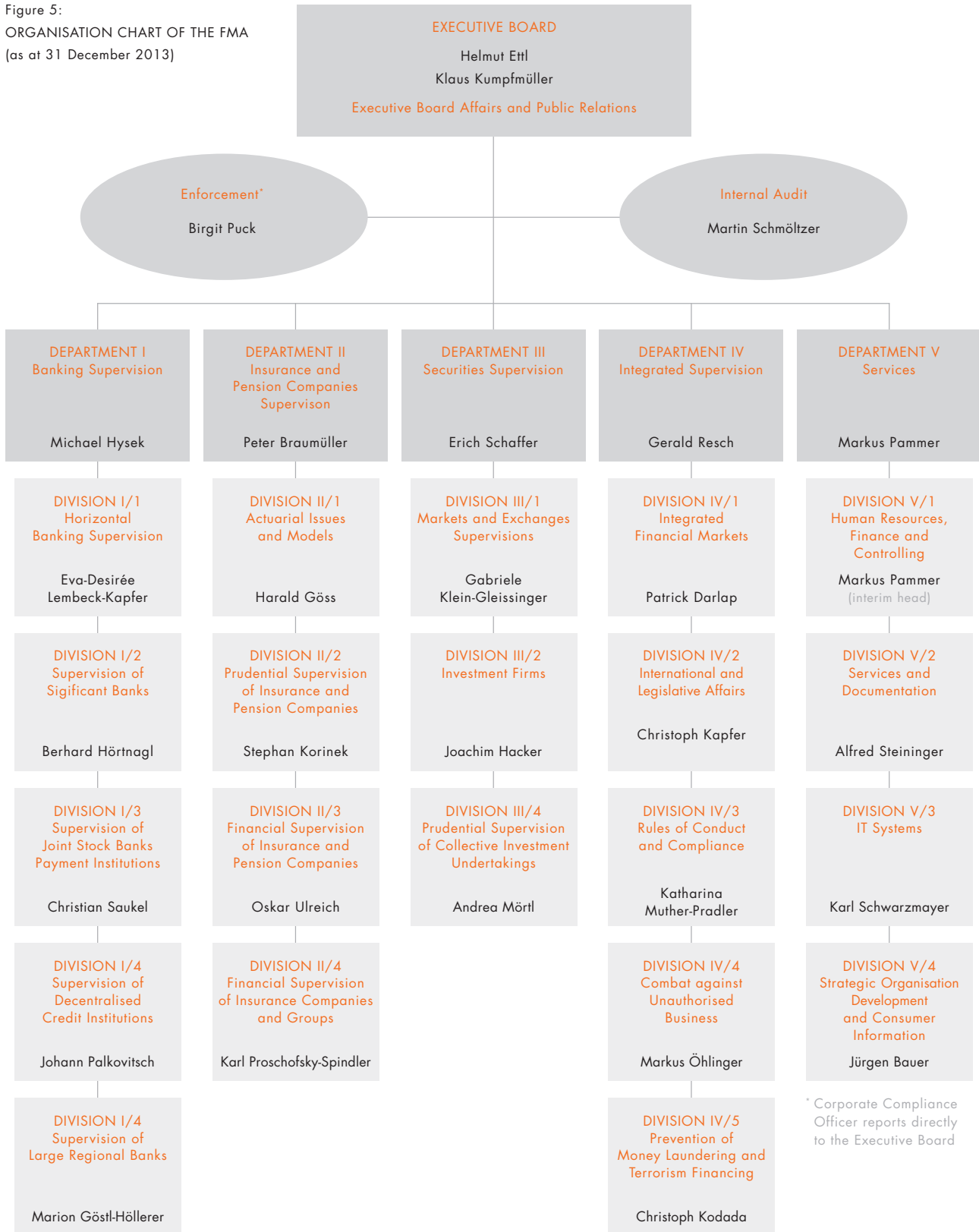
Pursuant to Article 10 para. 2 FMABG, the following measures require the approval of the Supervisory Board:

- the financial plan to be drawn up by the Executive Board including the investment and staff plan;
- investments, to the extent that they are not authorised in the investment plan, and the taking out of loans that exceed €75,000 each;
- the acquisition, disposal and encumbrance of real estate;
- the financial statements to be drawn up by the Executive Board;
- the Rules of Procedure pursuant to Article 6 para. 2 and changes thereto;
- the Compliance Code pursuant to Article 6 para. 4 and changes thereto;
- the appointment of employees of the FMA to leading functions directly subordinate to the Executive Board (second management level), as well as their dismissal and termination of employment;
- the annual report to be drawn up pursuant to Article 16 para. 3;

Figure 4: SUPERVISORY BOARD OF THE FMA



Figure 5:
ORGANISATION CHART OF THE FMA
(as at 31 December 2013)



- the conclusion of collective agreements and works agreements.

In accordance with Article 9 para. 1 FMABG, the Supervisory Board is obliged to hold meetings at least once every calendar quarter. In 2013, the Supervisory

Board convened on 12 March, 14 June, 16 September and 22 November. At its meeting on 14 June 2013, the Supervisory Board unanimously discharged the Executive Board for the 2012 financial year pursuant to Article 18 para. 4 FMABG.

ORGANISATIONAL RESTRUCTURING AT THE FMA

The FMA is required to continuously improve its operational and organisational structure in response to new responsibilities, the optimisation of operational supervision, and the increasing internationalisation of regulation and supervision, which helps the FMA to have the “right” structure to meet the growing challenges.

Following the changes which were introduced in recent years, particularly in order to accommodate the new responsibilities that the FMA has taken on and been addressing in greater detail (examples include the establishment of new divisions for the “Prevention of Money Laundering and Terrorism Financing” and for “Combat against Unauthorised Business”), the FMA dedicated 2013 to optimising its operational and organisational structure.

GOALS

Reorganisation was aligned with the following goals:

1. functionally separating into different organisational units those supervisory activities related to fact-finding (on-site and off-site analysis) and those related to decision-taking (taking officials measures);
2. concentrating related activities in one organisational unit;
3. optimised processes and enhanced efficiency;
4. reducing the span of control.

Staff Division “Executive Board Affairs and Public Relations” was dissolved in order to make the organisation leaner at the Executive Board level. Public relations and Executive Board assistance have been put directly under the Executive Board. In addition, following the example of several other European supervisory authorities, the “Enforcement” Division has been directly integrated into the Executive Board area.

The organisational structure of “Banking Supervision” has been adapted to meet the challenges posed by the Single Supervisory Mechanism (SSM). A separate

division named “Supervision of Significant Banks” has been formed to take care of those large banks that will be under direct supervision by the ECB in future. The ECB will be responsible for banking supervision within the euro area from November 2014 onwards, and the FMA and its partner organisation, the Oesterreichische Nationalbank, will support the ECB as national competent authorities in operational supervision.

Reorganisation of the “Insurance and Pension Companies Supervision” Department is still in progress, following an intensive phase of process analysis and optimisation. Here too, reorganisation will be aligned with the goals listed above. Implementation will take place in the course of 2014.

The “Asset Management – On- and Off-Site Analysis” Division has been created within the “Securities Supervision” Department. This step followed as a logical consequence of the functional restructuring based on supervisory activities and of optimising the processes for synergy effects. Specifically, two divisions are responsible for monitoring all management companies for collective investment undertakings (e.g. securities funds, real estate funds, venture capital funds, etc.) as of 1 January 2014. The functional separation of on-site and off-site analysis from prudential supervision supports independent verification by two staff members.

Five divisions now belong to the “Integrated Supervision” Department, bringing together under one departmental umbrella the national and international developments in the areas of supervision and legislative affairs, as well as the integrated supervision of the financial market with regard to rules of conduct, compliance, unauthorised business, and prevention of money laundering and terrorist financing.

New structural developments within the “Services” Department, which provides internal services to the FMA, are marked by two significant changes. Firstly, the growing number of staff members has made it

necessary to establish a separate “Human Resources” Division. Recruiting and human resources administration as well as intensive professional development programmes (e.g. the Academy of Supervision) and cooperation with the ECB’s “Directorate General Human Resources” have been pooled to form a single division. In addition, the new “Strategic Organisation Development and Consumer Information” Division creates a new organisational unit responsible for strategy development, and for the planning and professional handling of internal projects for optimising processes and organisation. The point of contact for consumers, which also provides a communication hub

for the relevant competent bodies at the FMA, is based within this division.

CONCLUSION

Through a wide-scale restructuring project, the FMA has trimmed its structure, making it fit to meet the challenges raised by the Austrian and European financial market. Besides enhancing efficiency and effectiveness, the measures have resulted in more transparent implementation of the principle of independent verification by two staff members in financial market supervision.

STAFF

NUMBER OF STAFF

The Supervisory Board had approved a staffing target of 342.00 full-time equivalents (FTEs) for 2013. The actual number of staff employed by the FMA as at 31 December 2013 was 334.68 FTEs, which corresponds to 360 employees (excluding those on leave). The planned distribution of staff among the individual departments compared with the actual figures is shown in Table 39.

The staff turnover rate in 2013 was 5.68%, not counting those employees whose fixed-term contracts expired during the year, and could thus be clearly reduced compared with the previous year. This decline in the turnover rate is due to the countermeasures defined as a consequence of the implementation of the turnover analysis carried out in 2012, and in all likelihood also to the prevalent labour market conditions.

The number of civil servants assigned to work at the FMA by the Federal Ministry of Finance dropped from 20.00 to 18.20 FTEs, i.e. they accounted for 5.44% of all staff as at the year-end. The number of contractual employees fell from 6.50 to 5.50 FTEs; their share of the total staff thus dropped to 1.64%.

The average age of FMA employees remained constant at 38 in 2013. The share of part-time employees

was 18.33% in 2013; most of them were parents taking part-time leave. Women accounted for 51.67% of the total staff, a proportion that remained largely unchanged compared with 2012. The share of university graduates rose marginally to 73.33%. The number of employees with additional qualifications, such as a second degree, a postgraduate qualification, or professional qualifications in law or tax accountancy, also increased from 26.47% to 30.28%. When including those 33 employees who graduated from the university programme in Financial Market Supervision, the percentage rises to 39.44%.

TRAINING AND CAREER DEVELOPMENT

The range of training and career development options offered by the FMA is essentially based on the following five pillars:

- the university programme in Financial Market Supervision offered in conjunction with the OeNB (starting in 2010), which has been upgraded to an MBA course (starting in 2013);
- the executive development programme (implemented in 2011);
- the FMA Academy (since 2005);
- international seminars organised by the European Supervisory Authorities (ESAs); and
- third-party seminars offered individually.

UNIVERSITY PROGRAMME IN FINANCIAL MARKET SUPERVISION AND MBA UPGRADE

The university programme in Financial Market Supervision has been an important component of internal training and career development for FMA and OeNB staff since 2010. In 2013, another group of 15 participants from the FMA and 15 from the OeNB started their studies. In the programme, an interdisciplinary approach is taken in providing students with comprehensive basic knowledge of all areas related to super-

Table 39: FMA PLANNED AND ACTUAL STAFFING LEVELS IN FTES IN 2013*

Organisational unit	Planned staffing levels as at 31 Dec. 2013	Actual staffing levels as at 31 Dec. 2013	Difference in %
Executive Board including Enforcement and Internal Audit	26.00	25.50	-1.92
Banking Supervision Department	67.50	64.65	-4.22
Insurance and Pension Companies Supervision Department	60.00	60.00	0.00
Securities Supervision Department	79.15	78.63	-0.66
Integrated Supervision Department	62.25	58.96	-5.28
Services Department	47.10	46.94	-0.35
Total	342.00	334.68	-2.14

* Rounding differences are ignored.

vision. By involving lecturers from within the institutions organising the programme and also from external organisations, it is ensured that both theoretical and practical aspects of supervision are covered. In addition to attending courses and passing three block exams, participants are also required to complete a work placement and submit a final paper. The programme extends over 49 attendance days, and graduates are awarded the title of “Academic Financial Market Supervisor” after four semesters. By attending additional courses over a further two semesters at the Executive Academy of Vienna University of Economics and Business (WU), graduates may upgrade their qualification to an MBA.

EXECUTIVE DEVELOPMENT PROGRAMME

Career development for executives is given high priority at the FMA. In addition to the one-off seminars offered by the FMA Academy, the executive development programme “Basic and Advanced Leadership” was established in 2011 and also offered in 2013.

It consists of the following four modules:

- My role as a leader
- Leading employees/experts
- Leading teams
- Leading divisions

Since its inception, a large proportion of FMA executive staff have participated in the development programme and completed the relevant modules in full or part.

As successful completion of the executive development programme is a prerequisite for reappointment as an executive under the FMA salary scale (appointment period of five years), the programme will be offered in 2014 as well. This should allow those executives who have been newly appointed or who have only taken part in some of the modules to complete the whole programme.

FMA ACADEMY

The seminars offered by the FMA Academy are grouped around target groups and subject areas:

- New employees/basic seminars
- Assistants

- Trainees
- Heads of office
- Specialists
- Executives
- Specialist knowledge
- IT seminars
- Languages
- E-learning
- Decentralised measures
- International seminars
- Study visits and staff exchange

The FMA Academy has developed into a platform for integrated knowledge management at the FMA. The seminars offered in the education and training catalogue are chosen every year together with the departments.

Since 2009 the seminars offered at the FMA Academy have been integrated into the FMA salary scale, which defines completion of a specific range of training measures for each target group. In 2013, the FMA Academy organised a total of 116 seminars, workshops and lectures in which 1,474 individuals participated.

In addition to these centrally organised seminars, FMA staff attended more than 400 specialised training courses at third-party educational institutions targeted at individual career development in their specific fields.

INTERNATIONAL SEMINARS

The opportunity to attend specialised seminars or customised seminars imparting methodological skills within the scope of the European system of financial supervision was further expanded in 2013, and was made use of to an even larger extent than in previous years. FMA employees increasingly participated in these events. By attending more than 100 international training seminars, they familiarised themselves not only with the very latest international developments but also intensified their networks with international colleagues.

INTERNATIONAL COOPERATION

START OF COOPERATION WITH THE EUROPEAN CENTRAL BANK (ECB)

With regard to staff matters, international cooperation

focused in 2013 on recruiting relevant staff in connection with the establishment of the Single Supervisory Mechanism (SSM) at the ECB. The FMA is involved in the process by taking an active part in Human Resources Committee meetings (SSM subgroup) and motivates staff to work at the ECB within the scope of SSM by offering favourable secondment conditions and regular information on the matter. As a first step, two employees from the FMA's Banking Supervision Department were seconded to the ECB to help establish the SSM.

Cooperation with the ECB will continue to be intensive in the future in order to achieve the harmonisation of Austrian regulations with those of the ECB and to ensure smooth cross-border cooperation.

COOPERATION WITH EUROPEAN SISTER AUTHORITIES

OUTGOING STUDY VISITS

These cooperation efforts were also continued in 2013. Ten employees took the opportunity to expand their ties with international colleagues during so-called study visits, brief visits to exchange information. For example, one employee from Banking Supervision worked at the European Banking Authority (EBA) in London. One employee from Insurance Supervision was able to gain in-depth insights into the newly created Prudential Regulation Authority (PRA) in London. Another employee from Securities Supervision gathered valuable experience at the Financial Conduct Authority (FCA), which is also based in London. Three further employees from Securities Supervision and three employees from Integrated Supervision strengthened their ties during visits to the German Federal Financial Supervisory Authority (BaFin) in Frankfurt am Main. One employee from Integrated Supervision was seconded to the Dutch National Bank (DNB).

INCOMING STUDY VISITS

The FMA also offered colleagues from sister authorities the opportunity to make study visits to the Austrian authority. In 2013, four BaFin employees visited to exchange experiences in the Securities Supervision Department and one in the Enforcement Division.

GLOBAL COOPERATION

One colleague from Banking Supervision and another one from Integrated Supervision were provided with the opportunity to work at the International Monetary Fund (IMF) in Washington, USA, for one and two years respectively. One colleague from Banking Supervision was seconded to the Central Bank of Russia (CBR) in Moscow.

RECONCILIATION OF WORK AND FAMILY LIFE

Creating conditions that allow employees to reconcile their work and family life is an important priority for the FMA and was therefore entrenched in the FMA's objectives in 2013. By participating in the "Work and Family Audit", the FMA defined a comprehensive package of measures which consistently follows the path already set by the FMA's existing family-friendly human resources policy.

As part of the audit, a strategy workshop was held in which various fields for action as well as a time frame for the audit were determined, followed by an auditing workshop in which goals and their specific dates for implementation were set. All of this was done in close cooperation with a qualified consultant and a project group consisting of 13 FMA employees.

Following an external certification body's positive assessment of the goals defined, the FMA was awarded the audit certificate by the Federal Ministry of Economy, Family and Youth (BMWFJ).

On 4 November 2013, the FMA's workplace kindergarten was opened, another clear signal that the FMA wishes to consistently and efficiently implement its overall concept of reconciling work and family life.

FINANCING AND CONTROLLING

FINANCING

The FMA is financed through income from these sources:

- Article 19 para. 4 of the Financial Market Authority Act (FMABG; *Finanzmarktaufsichtsbehördengesetz*) stipulates the federal contribution as a fixed sum of €3.5 million for each financial year of the FMA.
- In its capacity as an authority, the FMA may levy fees for services as defined by law (other income).
- The supervised companies bear the share of the entities liable to pay costs.

For the apportionment of costs according to the share incurred by supervised entities, the FMABG specifies four accounting groups: banking supervision, insurance supervision, securities supervision and pension companies supervision.

Expenses are to be posted in basically two ways:

- The costs are assigned as directly as possible to the accounting groups.
- Those costs that cannot be allocated directly are calculated for the accounting groups using a ratio. (The ratio is based on the direct costs assigned to the accounting groups.)

After deducting the federal contribution and other income, the share of other costs accounted for by each accounting group can be calculated.

TIME AND PERFORMANCE TRACKING

The FMA uses a time and performance tracking system (ZLES) to allocate staff costs to the legally defined accounting groups on the basis of the share of the costs incurred. By means of a time tracking system using terminals, the working time of FMA employees is electronically recorded. This timeframe is used as the basis for the performance-based allocation of productive hours across all of the FMA activities specified in a product list.

The activity reports for each staff member are checked

on a quarterly basis to verify completeness, proper assignment to accounting groups and plausibility. In addition to being a prerequisite for apportioning costs to the party incurring them, the time and performance tracking system is also available for use by the FMA management as an instrument for controlling and management.

NOTICES OF PAYMENT DUE

Article 19 FMABG requires the supervised companies to reimburse the FMA for its costs and stipulates the form in which this is to be done. The specific conditions for the reimbursement of costs and for making advance payments, including deadlines for the notices of payments due and payment periods, are stipulated in the FMA Cost Regulation (FMA-KVO; *FMA-Kostenverordnung*). The FMA's financial statements along with the statement of costs form the basis for determining these costs. The individual amount to be paid is determined on the basis of the data reported by the supervised companies directly or by the Vienna Stock Exchange. The number of payment notices amounted to approximately 1,900 in 2013 (2012: about 2,000).

In December 2013, the FMA posted the administrative decisions (*Bescheide*) on the payment notices for the actual costs incurred by the FMA in the 2012 financial year, as well as the administrative decisions on the advance payments for the 2014 financial year. The costs in the 2012 financial statements of the FMA less the 2012 advance payments result in additional payments of approximately €8.4 million to be paid by the entities liable to pay costs to cover the actual costs in 2012.

FINANCIAL STATEMENTS

Pursuant to Article 18 FMABG the FMA is required to draw up financial statements for the previous financial year in the form of an annual balance sheet and an

income statement as well as notes, as stipulated in Chapter III of the Corporate Code (UGB; *Unternehmensgesetzbuch*). Article 18 para. 3 FMABG stipulates for this a period of five months from the end of the particular financial year (i. e. by 31 May), during which the FMA Executive Board must submit to the FMA Supervisory Board the financial statements including statement of costs as audited by an auditor or a certified auditing firm. The Supervisory Board, in turn, must approve the financial statements including the statement of costs so that the FMA Executive Board is able, within six months of the previous financial year-end, to submit the financial statements including statement of costs to the Federal Minister of Finance and to publish the statements on the FMA website (pursuant to Article 18 para. 6 FMABG) as well as to announce them in the "Wiener Zeitung" newspaper. The statutory audit of the annual financial statements and statement of costs for 2012 was carried out by IB Interbilanz Wirtschaftsprüfung GmbH. The auditor issued an unqualified opinion and confirmed the FMA's compliance with the statutory provisions upon completion of the audit of the 2012 financial statements including the statement of costs and management report.

At its meeting on 14 June 2013, the Supervisory Board approved the 2012 financial statements, thereby also discharging the Executive Board of the FMA for the 2012 financial year.

The financial statements were subsequently sent to the Federal Minister of Finance and the Court of Audit and were published on the FMA website and announced in the "Wiener Zeitung" by the required deadline.

FINANCIAL PLANNING

The FMABG requires the FMA to submit to the Supervisory Board by 31 October a financial plan including an investment and staff plan for the following financial year. This financial plan must be approved by the Supervisory Board by no later than 15 December.

The financial plan is based on the FMA's goals, which are defined and detailed at an annual strategy meeting. The impact of the future goals on financial planning is extensively discussed in meetings with the Ex-

ecutive Directors and the Directors of the Departments in order to accommodate the goals in financial planning.

Personnel expenses are planned for the whole organisation by the controlling division based on an in-depth analysis of personnel resources and allocated to the accounting groups using information provided by the time and performance tracking system. It is planned to additionally employ 20 full-time equivalents in 2014. Controlling plans income, material expenses and investments in consultation with the persons in charge of the accounting groups. At joint meetings with the Executive Board, controlling representatives report on current planning status and implement the instructions issued by the Executive Directors.

Pursuant to Article 33 of the SSM Regulation, the FMA is required to provide to the European Central Bank (ECB) "all relevant information for the ECB to carry out a comprehensive assessment, including a balance-sheet assessment, of the credit institutions of the participating Member States". In order to provide the ECB with this information, the FMA will commission external third parties (auditors) to carry out on-site analyses of the banks' balance sheets; all other euro area supervisors are expected to do the same. The 2014 financial plan specifies that the costs subsequently incurred can be collected directly from the affected institutions, i. e. neither the associated expenses nor the income received will be taken into account in the apportionment of costs pursuant to Article 19 FMABG.

Other expenses include write-downs and allocations to the reserve established in accordance with Article 20 FMABG.

Pursuant to the FMABG, the planned costs and income are apportioned to the accounting groups in such a way that it is possible to estimate the share of the entities liable to pay costs for each accounting group.

Cash flows are projected by the FMA by means of liquidity planning, which allows representation of the sources of funds and the use of incoming and outgoing payments. This calculation is particularly important given the system of advance payments and subsequent calculation of costs, ensuring that any future liquidity gaps can be detected at an early stage.

The 2014 financial plan including the investment and

staff plan was approved by the Supervisory Board in accordance with the FMABG.

TARGET AND PROJECT CONTROLLING

The strategic medium and long-term alignment of the FMA is based on a strategy meeting, held once a year and attended by the Executive Board and first-level management of the FMA. The meeting agenda includes the main goals for the following year. These goals serve as the foundation for defining and coordinating the FMA's corporate goals at the departmental and divisional levels. A survey of the current status is taken twice a year to determine the extent to which targets have been achieved. The FMA control-

ling division conducts target performance evaluations and, if required, an analysis of deviations in order to ensure that the specified goals are achieved. The FMA Executive Board is supplied with corresponding information on progress and goal achievement or any deviation.

Specific tasks for a limited period that meet certain specifications (e.g. in terms of novelty, complexity or the volume of resources required) are handled as projects within the FMA. In such cases, quarterly status reports are provided as part of project activities, giving details on content, goals, timing and resources. The Executive Board regularly receives information on the status and completion of FMA projects.

2013 PRELIMINARY FINANCIAL STATEMENTS

According to Article 18 FMABG, the Executive Board has to submit the audited financial statements including the statement of costs to the Supervisory Board for approval within five months of the previous financial year-end.

Since the 2013 financial statements have not yet been approved by the auditor, the balance sheet and income statement figures given below are provisional and may still change.

The most important items of the 2013 preliminary financial statements can be summarised as follows:

- The share contributed by entities liable to pay costs increased on the previous year by some €2.8 million to about €43.6 million. Other operating income increased by approximately €0.4 mil-

lion. However, this was offset by higher personnel expenses (around €2.6 million) and other operating expenses (around €0.6 million), with the result that the item "share of entities liable to pay costs" rose by around €2.8 million compared with the previous year.

- The fact that other operating income was approximately €0.4 million up on 2012 is primarily a result of increased releases of provisions in 2013.
- The rise of about €2.6 million in personnel expenses is due to the higher number of staff (approximately 15 FTEs on average) and to salary adjustments (increase in collective agreement salary levels, salary progressions).
- Other operating expenses rose by some €0.6 mil-

PRELIMINARY BALANCE SHEET AS AT 31 DECEMBER 2013 (preliminary figures, amounts in €)

ASSETS

Previous year
in € thousands

A. Fixed AssetsI. Intangible fixed assets

Industrial property rights and similar rights
as well as related licences

364,218.32 431

II. Tangible fixed assets

1. Buildings on third-party land

1,329,480.24 743

2. Other equipment, operating
and office equipment

1,323,297.63 1,372

2,652,777.87 2,115

3,016,996.19 2,546

B. Current assets

I. Services not yet invoiced to entities liable to pay costs

43,559,161.23 40,719

II. Receivables and other assets

1. Trade receivables

2,315,768.34 2,982

2. Other receivables and assets

1,776,475.88 1,172

4,092,244.22 4,154

III. Cash at bank and in hand

20,460,932.33 15,517

68,112,337.78 60,390

C. Prepaid expenses

1,046,454.71 785

72,175,788.68 63,721

lion (roughly 4%) compared with the previous year, to about €18.5 million. Increases were predominantly seen in the items rent, membership fees, other external services and IT expenses.

- The allocation of approximately €156,000 pursuant to Article 20 FMABG is lower than in the previous year due to the limit of 5% of the total costs for 2012.

The 2013 financial statements will be published on the FMA's website after they have been audited by the auditor and approved by the Supervisory Board. The audited 2012 financial statements can be found in the Annex to this Annual Report.

Table 40: PRELIMINARY BALANCE SHEET 2013

		EQUITY AND LIABILITIES	
		Previous year	
		in € thousands	
A. Reserve pursuant to Article 20 FMABG		2,395,980.09	2,240
B. Provisions			
1. Provisions for severance pay	1,094,072.70		1,027
2. Other provisions	<u>5,473,925.81</u>	6,567,998.51	<u>5,892</u> 6,919
C. Liabilities			
1. Advance payments received pursuant to Article 19 FMABG	40,253,930.20		32,368
2. Trade payables	17,777,716.13		18,082
3. Other liabilities			
a) Taxes	541,400.52		470
b) Social security and similar obligations	553,281.29		484
c) Actual cost accounting for previous years	1,344,252.72		990
d) Other	<u>2,175,036.13</u>		<u>1,425</u>
	<u>4,613,970.66</u>	62,645,616.99	<u>3,370</u> 53,819
D. Deferred income		<u>566,193.09</u>	<u>743</u>
		72,175,788.68	63,721

Table 41: PRELIMINARY INCOME STATEMENT FOR THE FINANCIAL YEAR 2013

PRELIMINARY INCOME STATEMENT FOR THE FINANCIAL YEAR FROM 1 JAN. TO 31 DEC. 2013 (preliminary result, amounts in €)

		Previous year in € thousands
1. Federal Government contribution pursuant to Article 19 FMABG	3,500,000.00	3,500
2. Other operating income		
a) Income from and write-ups of fixed assets except for long-term financial assets	2,741.00	2
b) Income from the release of provisions	866,295.87	216
c) Other	<u>3,167,352.96</u>	<u>3,396</u>
	4,036,389.83	3,613
3. Personnel expenses		
a) Salaries	-24,853,930.35	-22,852
b) Expenses for severance pay and contributions to corporate staff provision funds	-427,524.75	-431
c) Expenses for old-age pensions	-855,413.52	-759
d) Cost of statutory social security, payroll-related taxes and mandatory contributions	-5,012,960.77	-4,513
e) Other social costs	<u>-309,454.03</u>	<u>-288</u>
	-31,459,283.42	-28,844
4. Amortisation and write-downs of intangible fixed assets, depreciation and write-downs of tangible fixed assets	-1,081,640.78	-916
5. Other operating expenses		
Other	<u>-18,486,311.41</u>	<u>-17,840</u>
6. Subtotal of items 1 to 5	-43,490,845.78	-40,487
7. Other interest	87,998.12	88
8. Subtotal of item 7	87,998.12	88
9. Appropriation to reserve pursuant to Article 20 FMABG	-156,313.57	-319
10. Share of entities liable to pay costs	<u>43,559,161.23</u>	<u>40,719</u>
11. NET RESULT	0.00	0

IT SYSTEMS

The FMA's focus in IT management in 2013 was on ensuring the stability and availability of the IT services provided to users and on optimising the procedures involved in processes. This was done as part of the Business Continuity Management (BCM) project, in which a joint analysis of all business-critical processes was carried out together with the divisions and suitable measures were defined for continuing business operations in an emergency situation. The project was completed by successfully simulating an emergency response with selected divisions participating.

All vital IT systems at the FMA are operated redundantly from two data centres. Required data availability is ensured through ongoing monitoring and regular upgrading of products to new versions.

The Electronic File (ELAK) system is used to implement the authority's official processes. In 2013, the strategic core application "ELAK im Bund" was upgraded to the Fabasoft eGov-Suite 2012 version. The ELAK server systems were simultaneously refurbished and modifications made to the customised interfaces.

The "incoming platform" represents a key component for optimising business processes. This is an electronic reporting system that has been available via the FMA website since mid-2009. Successive additions have been made to the platform, so that currently a selection of some 200 forms relating to various statutory provisions are offered for use by banks, state commissioners, *Pensionskassen* and investment firms. As a result, the number of reports submitted by supervised companies increased from about 2,500 in 2010 to more than 6,000 in 2013.

EUROPEAN SOFTWARE PROJECTS

The three European Supervisory Authorities (ESAs), namely the European Securities and Markets Authority (ESMA), the European Banking Authority (EBA) and the European Insurance and Occupational Pensions

Authority (EIOPA), implemented or began implementing a variety of joint projects, occasioned by EU legislation, together with the individual national competent authorities (NCAs) during 2013.

The majority of these projects are based on data in a pre-specified format, which the ESAs requires the NCAs to provide at regular intervals. The NCAs in turn collect the data required to be forwarded from the companies under their supervision. The ESAs also specify this data format, which is largely standardised. In this way, companies under supervision within the EU can use the same format for reporting data, irrespective of the NCA that the specific company is required to report to. Each of the NCAs consequently has to make technical adaptations to its current reporting systems. New IT systems need to be implemented to allow new data that has previously not been reported to be collected via automated submission.

In response to EU legislation and specifications handed down by the ESAs, work was carried out at the FMA in 2013 on the projects listed below.

THE ESMA OMNIBUS PROJECT

The project has resulted from the Omnibus Directive. The Directive requires different registers with highly varying information to be published on the ESMA website. The data concern investment firms, approved prospectuses, and undertakings as specified in the Undertakings for Collective Investment in Transferable Securities (UCITS) Directive and in the Alternative Investment Fund Managers Directive (AIFMD). National supervisory authorities are required to make this data available to ESMA automatically at pre-defined intervals. Implementation was completed in 2013, and the FMA has been submitting the following information since February 2014:

- approved prospectuses;
- master data on undertakings as specified in the AIFMD;

- master data on undertakings as specified in the UCITS Directive;
- master data on investment firms as specified in the Markets in Financial Instruments Directive (MiFID).

EBA REGISTER OF CREDIT INSTITUTIONS

As part of this project, a list of all EU credit institutions including their branches is to be published on the EBA website, as specified by the Omnibus Directive.

After successfully completing implementation in 2013, the relevant data has already been made available to the EBA. Additional credit institution data, specifically on licences held, still needs to be submitted in the first half of 2014. In addition, manual maintenance of the data collected by the EBA is to be replaced by a fully automated system using a web-based application that has been made available.

ALTERNATIVE INVESTMENT FUND MANAGERS DIRECTIVE (AIFMD) – ESMA

Articles 24 and 25 of the AIFMD specify the implementation of an automated system that allows NCAs, ESMA and the European Systemic Risk Board (ESRB) to exchange data on alternative investment funds and alternative investment fund managers. As a prerequisite, the NCAs have to implement a new national reporting system for collecting the data. In line with the goal of harmonising data reporting within all of Europe to the greatest possible extent, ESMA has specified the format of the data to be reported by the industry.

As of the end of the first quarter of 2014, supervised companies can submit data reports for this purpose to the FMA via the incoming platform. It is planned to enable forwarding of the data to ESMA by June 2014.

PUBLIC RELATIONS

The FMA set itself the target of communicating three key messages in 2013: to convey the FMA's motto of "competence – control – consistency" by highlighting the expertise of its employees, the developments made with regard to on-site inspections and the developments related to sanctions and cases reported. In addition, the FMA's role in protecting savers, investors, creditors and consumers was put in the limelight.

The communications targets for 2013 were: the concept of the new European banking supervision, and the FMA's role in the Single Supervisory Mechanism (SSM) in particular; the European Market Infrastructure Regulation (EMIR) and the Alternative Investment Fund Managers Directive (AIFMD), which were transposed into Austrian law by the Alternative Investment Fund Managers Act (AIFMG; *Alternative Investmentfonds Manager-Gesetz*); implementation of Basel III in Austria; the Banking Intervention and Restructuring Act (BIRG; *Bankeninterventions- und -restrukturierungsgesetz*).

MEDIA RELATIONS

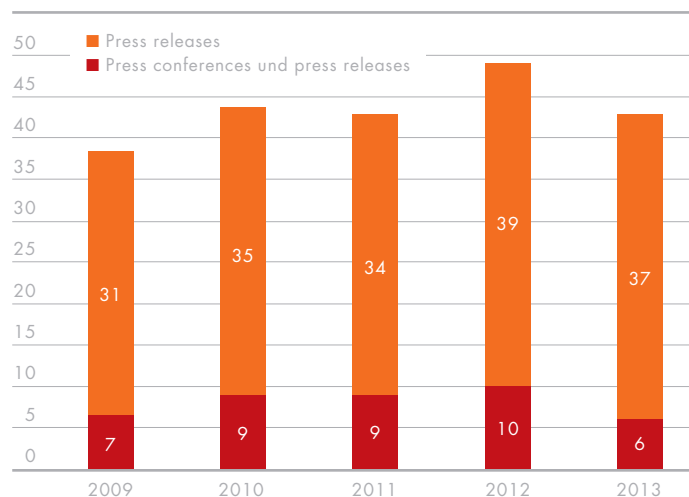
Given that the FMA, in its capacity as an authority that is self-financed by the supervised entities, has an obligation to be frugal, it has no financial resources at its disposal for use in advertising, information or PR campaigns. Its most important form of communication is therefore classical media work. The FMA has set itself the goal, within the scope of its statutory framework and whilst meeting its legal obligations to maintain official secrecy, of always pursuing a communications policy that is as open as possible in order to reinforce confidence in the Austrian financial marketplace. To this end, whilst implementing this communications strategy, the FMA utilises traditional PR tools such as press releases, press conferences, background discussions, presentations and the availability of Executive Directors for individual interviews by selected media.

The FMA published a total of 37 press releases during the reporting year (2012: 41; see Chart 38). These were sent out via the Austria Press Agency (APA) and the FMA's own media distribution list, to which any journalist can sign up via the FMA website. They are also promptly published on the FMA website.

The FMA also published 26 official announcements in the official gazette "Amtsblatt zur Wiener Zeitung" (2012: 39). These usually take the form of investor warnings, informing investors that a named provider is not authorised to offer particular financial services that require a licence in Austria. This information is also made available on the FMA website at the same time. In addition, the FMA is also opening up its website to make investor warnings issued by sister organisations available to interested parties. Over the years an easily accessible and very comprehensive database of dubious providers of financial services has been built up in this way.

The broadest media coverage was achieved by the press events with the FMA Executive Directors, which were held on six occasions in 2013 (2012: 10). The FMA held one of these events jointly with its partner

Chart 38: PRESS RELEASES AND PRESS CONFERENCES/PRESS MEETINGS 2009–2013



organisation in supervision, the Oesterreichische Nationalbank (OeNB).

- 23 January 2013, Press meeting at the Economic Writers' Club on the topic of "Remuneration policy"
- 17 April 2013, Press meeting on the subjects of the "European Market Infrastructure Regulation (EMIR)" and the "European banking union"
- 16 May 2013, Balance sheet press conference "Presentation of the FMA's Annual Report for 2012"
- 1 July 2013, Joint FMA-OeNB presentation of the results of Austria's country assessment as part of the "Financial Sector Assessment Program (FSAP)" by the International Monetary Fund (IMF)
- 15 July 2013, Press breakfast on the subjects of "Basel III – Implementation in Austria", the "Banking Intervention and Restructuring Act (BIRG)" and the "Alternative Investment Fund Managers Act (AIFMG)"
- 20 October 2013, Press meeting on the topics of "Single Supervisory Mechanism (SSM) & Comprehensive Assessment"

All of these events met with a high level of interest from journalists, who reported on them widely.

EVENTS

The FMA Executive Directors and staff members regularly participated in discussions or appeared as speakers at many events again in 2013 in order to communicate the Authority's duties and goals, as well as technical and specific issues, to selected target groups. At the same time, the FMA itself organised various events on specific topics. For example:

The annual "WPDLU-Forum" (investment service provider forum) was held in May 2013, providing investment service providers with the opportunity to discuss current topics and challenges.

The FMA's annual Supervision Conference was held on 17 September 2013 in Vienna's Reed Exhibitions Congress Center. The general theme of "Complexity

in financial markets – New supervisory approaches" generated a high level of interest among the more than 900 visitors (see opposite page).

In October, the FMA and the Austrian Review Panel for Financial Reporting (OePR) jointly organised an "Accounting symposium". The establishment of the new enforcement system for accounting standards was one of the topics discussed.

In November, the FMA staged an information event on the subject of the "Single Supervisory Mechanism (SSM) in Austria", during which the challenges of lifting banking supervision, under leadership of the European Central Bank (ECB), up to a European level were presented; these will be particularly relevant to less significant banks.

PUBLICATIONS

The FMA Annual Report 2012 was submitted to the Supervisory Board by the statutory deadline. It was approved by the Board and then submitted to the Finance Committee of the National Council. The Executive Directors of the FMA presented the major key figures at the annual balance sheet press conference. The Annual Report 2012 was only printed in German. The electronic version is available in German and English, and can be accessed from the FMA website (www.fma.gv.at). Both language versions of the report are also available on CD-ROM.

WEBSITE

The FMA is constantly striving to meet usability requirements. With this in mind, its website was subjected to a usability test during the year under review. The test focused on taking a closer look at the main navigation, sub-navigation, design (e.g. readability) and contents (e.g. comprehensibility) as well as the search function. The results of the test will be implemented as part of a relaunch of the website in 2014.

FOURTH FMA SUPERVISION CONFERENCE: "COMPLEXITY IN FINANCIAL MARKETS – NEW SUPERVISORY APPROACHES"

 On 17 September 2013 the Austrian Financial Market Authority (FMA) hosted its Supervision Conference for the fourth time. Austrian and international experts gathered to discuss current issues related to regulation and supervision with decision-makers and those concerned under the general theme of "Complexity in financial markets – New supervisory approaches". At more than 900 visitors, made up of executives from the supervised companies as well as representatives from academia, politics and interest groups, the conference's attendance figures reached a new record level and the event was a major success overall.

In his welcome address, FMA Executive Director Helmut Ettl asserted that – five years after US investment bank Lehman's collapse shattered the very basis of the global financial markets – there were now valid, credible and global rules for banks once again. Basel III, the new capital regime, was on track and would be implemented according to a strict timetable. This could be considered a milestone in the revitalisation efforts for the financial sector. The banks had managed to establish new capital buffers, despite all of the horror scenarios painted beforehand. Nevertheless, there was still uncertainty, reflected for example in European banks' market capitalisation, which is decidedly lower than that of US banks. "We must take the next steps in realising the European banking union consistently and promptly. We need banking supervision to be brought to a European level within the scope of the Single Supervisory Mechanism (SSM), we need the Single Resolution Mechanism (SRM) for banks, and ultimately we will also require a European answer to deposit guarantee schemes", said Helmut Ettl.

Elke König, President of the German Federal Financial Supervisory Authority (BaFin), held the keynote speech "Complexity in financial markets – New supervisory approaches". She supplied a great deal of input for the following, rather controversial panel discussion.

The second highlight of the conference was Thomas Wieser's speech dedicated to the "European Banking Union – An approach for reducing complexity?" The President of the Economic and Financial Committee (EFC) tackled the subject from a Brussels insider's point of view in a very direct manner. His key message was "As long as sovereign rights are not transferred to the European Union to some extent, we will have to make do with an incomplete banking union." The morning session came to a close with Maria Fekter, Austrian Federal Minister of Finance, holding her political speech.

The afternoon was started off, as usual, with three workshops held in parallel: Workshop 1: "The complexity of cooperation – Supervision between Brussels, Frankfurt, London and Vienna"; Workshop 2: "IFRS enforcement: Confidence – Transparency – Market liquidity"; Workshop 3: "AIFMD – Complex rules for simple products, or simple rules for complex products?"

Finally, the question of financial market regulation and supervision was linked to the question of financing the real economy in a political panel discussion entitled "Risk financing – A regulatory game of musical chairs?"

"What we need are simple, clear and generally comprehensible regulations", summarised FMA Executive Director Klaus Kumpfmüller the conference's key messages in his closing remarks. However, stopping at this would not be enough. Regulation must also be stable, ensuring that all market participants can be confident of this stability.

The speeches and discussions of the FMA's Fourth Supervision Conference "Complexity in financial markets – New supervisory approaches" have been compiled in conference proceedings. These can be obtained from the FMA upon request. The theme of the Fifth Supervision Conference, to be held on 30 September 2014, will be "National supervision within a European system – Getting the balance right?"

CENTRAL COMPLAINTS SYSTEM AND CONSUMER INFORMATION

GENERAL INFORMATION

The enquiries, complaints and information received by the FMA are an important source of information with regard to potential irregularities on the part of supervised companies. Such information provides a starting point for reviewing whether a supervised company is in breach of standards relevant to supervision and whether there is a resulting need for supervisory measures to be taken.

As a general rule, the FMA looks into all such information. It is not, however, a consumer protection organisation in the classic sense. Its role is not to assist complainants in enforcing any possible damage claims or claims against supervised companies. In its capacity as a supervisory authority, it must maintain an equal distance from all market participants, remaining impartial at all times. The consumers concerned must pursue claims for damages by taking legal action through the civil courts.

As complainants do not have the status of parties in administrative penal proceedings conducted by the FMA, and as all the FMA's bodies and staff are subject to the statutory obligation to maintain official secrecy, the FMA is not permitted to disclose any information on the progress or result of the proceedings. If, however, a damage claim is brought before a civil court, the court may inspect the files by way of official assistance. This accommodates injured parties' legitimate interest in asserting their rights by taking legal action.

ENQUIRIES AND COMPLAINTS

In 2013, the FMA received some 9,800 consumer enquiries and complaints, of which 25% related to credit institutions, 13% to insurance undertakings and *Pensionskassen*, 19% to markets and exchanges supervision, 21% to integrated supervision, and 22% to issues affecting more than one sector.

The enquiries and complaints received covered a wide range of issues:

- With regard to banking supervision, the issues included in particular foreign currency loans and the related repayment vehicles, fees for transfers and the time taken for transfers according to the Payment Services Act (*ZaDiG; Zahlungsdienstegesetz*), issues related to the fight against money laundering and the related obligations with regard to identification and proof of identity, and also the modalities of deposit-guarantee schemes.
- With regard to insurance supervision, the main issues were insurers paying out only partial benefits or none at all, doubts as to the accuracy of calculations, termination of the contract, and exemption from or discounts on premiums.
- With regard to securities supervision, the main issues were failure to observe rules of conduct, lack of proper advice, failure to protect investors' interests, and investment of funds at an inappropriate level of risk.
- With regard to unauthorised business operations, there was again a sharp increase in the number of enquiries and complaints received; these concerned particularly cases of illegal cold calling, i.e. cases of unsolicited phone calls, fax messages or e-mails offering financial products.

The issue of financing in the form of public participation models continued to be the subject of many queries, as was also the case in the previous year. The FMA was primarily faced with two legal questions in this regard. Firstly, there was the question of whether a banking transaction was involved that required a licence pursuant to the Banking Act (*BWG; Bankwesengesetz*). Secondly, the issue of whether the project constituted a public offer as defined by the Capital Market Act (*KMG; Kapitalmarktgesetz*) needed to be clarified. Under certain circumstances this would result in the obligation to issue a prospectus in accordance with the KMG. The third legal question

that arose during the reporting year in connection with public participation models was whether any alternative investment funds (AIFs) were involved. The FMA also published comprehensive information for consumers on this subject on its website.

In 2013, the FMA was again involved in the Consum-

er Protection Working Group of the European Supervisory Authorities. Among other things, the group adopted guidelines on handling consumer complaints received by the supervised companies and determined a first joint set of tasks on the subject of financial education.

LIST OF ABBREVIATIONS

ABGB	<i>Allgemeines Bürgerliches Gesetzbuch</i> (General Civil Code)
ABS	Asset Backed Securities
AHG	<i>Amtshaftungsgesetz</i> (Public Liability Act)
AIF	Alternative Investment Fund
AIFM	Alternative Investment Fund Manager
AIFMD	Alternative Investment Fund Managers Directive
AIFMG	<i>Alternative Investmentfonds Manager-Gesetz</i> (Alternative Investment Fund Managers Act)
AktG	<i>Aktiengesetz</i> (Stock Corporation Act)
AMA	Advanced Measurement Approach
AMLC	Anti-Money Laundering Sub-Committee
APA	Austria Press Agency
AQR	Asset Quality Reviews
ATX	Austrian Traded Index
AVG	<i>Allgemeines Verwaltungsverfahrensgesetz</i> (Code of Administrative Procedure)
BaFin	Federal Financial Supervisory Authority (Germany)
BCM	Business Continuity Management
BeteilFG	<i>Beteiligungsfondsgesetz</i> (Equity Fund Act)
BIRG	<i>Bankeninterventions- und -restrukturierungsgesetz</i> (Banking Intervention and Restructuring Act)
BMF	Federal Ministry of Finance
BMSVG	<i>Betriebliches Mitarbeiter- und Selbständigenvorsorgegesetz</i> (Company Employee and Self-Employment Provisions Act, as amended)
BMWFJ	Federal Ministry of Economy, Family and Youth
BörseG	<i>Börsegesetz</i> (Stock Exchange Act)
BoS	Board of Supervisors
BPG	<i>Betriebspensionsgesetz</i> (Company Pension Act)
BRRD	Bank Recovery and Resolution Directive
BTS	Binding Technical Standards
B-VG	<i>Bundes-Verfassungsgesetz</i> (Federal Constitutional Act)
BVQA-V	<i>Betriebliche Vorsorgekassen-Quartalsausweisverordnung</i> (Regulation on the Quarterly Financial Statements for Corporate Provision Funds)
BVwG	<i>Bundesverwaltungsgericht</i> (Federal Administrative Court)
BWG	<i>Bankwesengesetz</i> (Banking Act)
CA	Comprehensive Assessment
CAD	Capital Adequacy Directive
CCP.A	Central Counterparty Austria GmbH
CCPs	Central Counterparties
CDI	Compliance Decree for Issuers
CDOs	Collateralised Debt Obligations
CDS	Credit Default Swaps
CEA	<i>Comité Européen des Assurances</i> ; European insurance and reinsurance federation
CEE	Central and Eastern Europe
CEESEG	CEE Stock Exchange Group
CEGH	Central European Gas Hub AG
CEIOPS	Committee of European Insurance and Occupational Pensions Supervisors
CESEE EEA	Central, Eastern and South-Eastern Europe – European Economic Area
CESEE ISI	Central Eastern and South-Eastern European Insurance Supervision Initiative
CESEE NON-EEA	see CESEE EEA
CESEE	Central, Eastern and South-Eastern Europe
CESR	Committee of European Securities Regulators
CFD	Contracts for Difference
CFSC	Corporate Finance Standing Committee
CIS	Commonwealth of Independent States
ComFrame	Common Framework for the Supervision of Internationally Active Insurance Groups
CRD	Capital Requirements Directive

CRR	Capital Requirements Regulation
CSDR	Central Securities Depositories Regulation
DAX	German share index
DJIA	Dow Jones Industrial Average
DMV 2011	<i>Derivate-Meldesystemverordnung 2011</i> (Regulation on a Derivative Reporting System)
EBA	European Banking Authority
ECB	European Central Bank
EEA	European Economic Area
EEC	European Economic Community
EFSS	European Financial Stability Facility
EGMLTF	Expert Group on Money Laundering and Terrorist Financing
EIOPA	European Insurance and Occupational Pensions Authority
ELAK	Electronic file
ELTIF	EU Long Term Investment Fund
EMIR	European Market Infrastructure Regulation
ESA	European Supervisory Authority
ESFS	European System of Financial Supervision
ESM	European Stability Mechanism
ESMA	European Securities and Markets Authority
ESRB	European Systemic Risk Board
ETF	Exchange Traded Fund
EURIBOR	Euro Interbank Offered Rate; three-month interbank rate
EURO STOXX 50	Share index of the 50 largest listed companies in the euro area
EXAA	Energy Exchange Austria Abwicklungsstelle für Energieprodukte AG
FATF	Financial Action Task Force
FCA	Financial Conduct Authority (UK)
FKAG	<i>Finanzkonglomerate-Aufsichtsgesetz</i> (German Supervision of Financial Conglomerates Act)
FKG	<i>Finanzkonglomeratengesetz</i> (Financial Conglomerates Act)
FK-QUAB-V	<i>Finanzkonglomeratsquartalsberichts-Verordnung</i> (Financial Conglomerates Quarterly Reporting Regulation)
FMA	Financial Market Authority
FMABG	<i>Finanzmarktaufsichtsbehördengesetz</i> (Financial Market Authority Act)
FMA-GebV	<i>FMA-Gebührenverordnung</i> (FMA Fee Regulation)
FSAP	Financial Sector Assessment Program
FSB	Financial Stability Board
FSSA	Financial System Stability Assessment
FST	Financial Stability Table; EU Economic and Financial Committee
FTE	Full Time Equivalents
FTSE 100	Financial Times Stock Exchange Index (UK)
FX	Foreign Exchange/Foreign Currency Loans
G20	Group of the twenty most important industrialised nations and emerging markets
GDP	Gross Domestic Product
GewO	<i>Gewerbeordnung</i> (Trade Act)
GKE-AustauschV	<i>Großkreditevidenz austausch-Verordnung</i> (Regulation on the International Exchange of Data from the Major Loans Register)
GKM-V	<i>Großkreditmeldungs-Verordnung</i> (Regulation on Major Loan Reporting)
GmbH	<i>Gesellschaft mit beschränkter Haftung</i> (limited liability company)
GSpG	<i>Glücksspielgesetz</i> (Gambling Act)
GTV	<i>Geldwäscherei- und Terrorismusfinanzierungsrisiko-Verordnung</i> (Regulation on Money Laundering and Terrorist Financing Risk)
HICP	Harmonised Index of Consumer Prices
HTM	valuation To reach an investment income that is as stable as possible, a valuation deviating from the principle of current values can be used for certain securities with a high credit rating (e.g. debt securities issued by the Federal Government) held as direct investments (held to maturity or HTM).
IAIS	International Association of Insurance Supervisors
IAS	International Accounting Standard
IASB	International Accounting Standard Boards
ICP	Insurance Core Principles
IFRS	International Financial Reporting Standards
IFSC	Integrated Financial Supervisors Conference
IMD1	First Insurance Mediation Directive
IMDV2	Second Insurance Mediation Directive
IMF	International Monetary Fund
ImmoInvFG	<i>Immobilien-Investmentfondsgesetz</i> (Real Estate Investment Fund Act)

IMSC	Investment Management Standing Committee
InfoV-PK	<i>Informationspflichtenverordnung Pensionskassen</i> (Information Requirements Regulation for Pensionskassen)
InvFG	<i>Investmentfondsgesetz</i> (Investment Fund Act)
IOPS	International Organisation of Pension Supervisors
IOSCO	International Organization of Securities Commissions
IRB	Internal Ratings Based
IRB approach	Internal Ratings Based Approach; formula to calculate capital requirements for credit institutions – Basel II
IRG	Investment and risk sharing group
JCFC	Joint Committee on Financial Conglomerates
JRAD	Joint Risk Assessment and Decision Process
JSTs	Joint Supervisory Teams
KIID	Key Investor Information Document
KI-RMV	<i>Kreditinstitute-Risikomanagementverordnung</i> (Regulation on Credit Institution Risk Management)
KMG	<i>Kapitalmarktgesetz</i> (Capital Market Act)
LCR	Liquidity Coverage Ratio
LLFSR	Loan-to-Local Stable Funding Ratio
LRMV	Liquidity Risk Management Regulation
LTRO	Long Term Refinancing Operations
MAD	Market Abuse Directive
MAR	Market Abuse Regulation
MBA	Master of Business Administration
MBS	Mortgage Backed Securities
MCP	Management Company Passport
MDRWG	Market Data Reporting Working Group
MiFID	Markets in Financial Instruments Directive
MiFIR	Markets in Financial Instruments Regulation
MMoU	Multilateral Memorandum of Understanding
MoU	Memorandum of Understanding
MTF	Multi-Trading Facility
NCA _s	National Competent Authorities
OECD	Organisation for Economic Co-operation and Development
OeKB	Oesterreichische Kontrollbank AG
OeNB	Oesterreichische Nationalbank
OePR	Austrian Review Panel for Financial Reporting
ONA	<i>Ordnungsnormenausweis</i> (proof of compliance document)
ONA-V	<i>Ordnungsnormenausweis-Verordnung</i> (Regulation on Proof of Compliance with Regulatory Provisions)
ORSA	Own Risk and Solvency Assessment
OTC	Over the Counter
OTF	Organised Trading Facility
PEP	Politically Exposed Person
PIN	Personal Identification Number
PK	<i>Pensionskasse</i> (pension company)
PKG	<i>Pensionskassengesetz</i> (Pensionskassen Act)
PR	Public Relations
PRA	Prudential Regulation Authority (UK)
PRIPs	Packaged Retail Investment Products
PTSC	Post Trading Standing Committee
RIMAV-PK	<i>Risikomanagement-Verordnung Pensionskassen</i> (Risk Management Regulation for Pensionskassen)
RK	Accounting group
RL-KG	<i>Rechnungslegungs-Kontrollgesetz</i> (Accounting Control Act)
ROA	Return on Assets
ROE	Return on Equity
RTS	Regulatory Technical Standards
S&P	Standard & Poor's
Security-oriented IRG	Security-oriented investment and risk sharing group
SEE	South-Eastern Europe
SEPA	Single Euro Payments Area
SMEs	Small and Medium-sized Enterprises
SMP	Securities Markets Programme
SMSC	Secondary Markets Standing Committee
SREP	Supervisory Review and Evaluation Process
SRM	Single Resolution Mechanism

SSM	Single Supervisory Mechanism
SSM-VO	SSM Regulation
StGB	<i>Strafgesetzbuch</i> (Criminal Code)
StPO	<i>Strafprozessordnung</i> (Code of Criminal Procedure)
TREM	Transaction Reporting Exchange Mechanism
TRS JSG	Transaction Reporting System Joint Subgroup
TS	Technical Standards
UCITS	Undertakings for Collective Investment in Transferable Securities
UGB	<i>Unternehmensgesetzbuch</i> (Corporate Code)
US-Fed	Federal Reserve (USA)
UVS	<i>Unabhängiger Verwaltungssenat</i> (Independent Administrative Tribunal)
VAG	<i>Versicherungsaufsichtsgesetz</i> (Insurance Supervision Act)
VERA	Asset, income and risk statements
VfGH	<i>Verfassungsgerichtshof</i> (Constitutional Court)
VStG	<i>Verwaltungsstrafgesetz</i> (Administrative Penal Act)
VwGH	<i>Verwaltungsgerichtshof</i> (Administrative Court)
WAG 2007	<i>Wertpapieraufsichtsgesetz 2007</i> (Securities Supervision Act)
WIFO	Austrian Institute of Economic Research
WKO	Austrian Federal Economic Chamber
XETRA	Exchange Electronic Trading (automated trading system)
ZaDiG	<i>Zahlungsdienstegesetz</i> (Payment Services Act)
ZG-EKV	<i>Zentrale Gegenparteien-Eigentümerkontroll-Verordnung</i> (Regulation on Owner Control of Central Counterparties)
ZGVG	<i>Zentrale-Gegenparteien-Vollzugsgesetz</i> (Central Counterparties Implementation Act)
ZLES	Time and performance tracking system

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2012 FINANCIAL STATEMENTS

AUDITOR'S REPORT

We have audited the attached financial statements including the accounting of the Financial Market Authority, 1090 Vienna, Otto-Wagner-Platz 5, for the financial year from 1 January 2012 to 31 December 2012. These financial statements include the balance sheet as at 31 December 2012, the income statement for the financial year ending 31 December 2012, as well as the notes. The statement of costs pursuant to Article 19 FMABG was part of our audit.

Legal representatives' responsibility for the financial statements and for the accounting

The FMA's legal representatives are responsible for

the accounting and for the preparation of financial statements which present a picture that is as true and fair as possible with respect to net assets, financial position and the results of operations of the FMA in accordance with Austrian company law. This responsibility includes the design, implementation and maintenance of an internal control system, to the extent that this is important for the preparation of the financial statements and the presentation of as true and fair a picture as possible of the authority's net assets, financial position and the results of operations, so that these financial statements are free from material misrepresentations, whether due to intentional or unintentional mistakes; it also includes the selection and application of suitable accounting and valuation methods,

Table 42: 2012 BALANCE SHEET

BALANCE SHEET AS AT 31 DECEMBER 2013 (amounts in €)

ASSETS

Previous year
in € thousands**A. Fixed Assets**I. Intangible fixed assetsIndustrial property and similar rights
and licences in such rights

431,318.07

218

II. Tangible fixed assets

1. Buildings on third-party land

742,560.07

462

2. Other equipment, operating and
office equipment

1,372,120.18

2,114,680.25

1,198

1,660

2,545,998.32

1,879

B. Current assetsI. Services not yet invoiced to entities liable to pay costs

40,718,535.47

38,129

II. Receivables and other assets

1. Trade receivables

2,982,484.59

3,011

2. Other receivables and assets

1,171,855.41

942

4,154,340.00

3,953

III. Cash at bank and in hand

15,517,225.80

7,225

60,390,101.27

49,307

C. Prepaid expenses

785,208.00

863

63,721,307.59

52,049

as well as making estimates that appear appropriate under the existing circumstances.

Auditor's responsibility and description of type and scope of the statutory audit

It is our responsibility to issue an audit opinion on these financial statements based on our audit. We have carried out our audit with due regard for the legal provisions valid in Austria and the principles of proper auditing. These principles require us to comply with the rules of professional conduct and to plan and perform the audit in a way to issue a sufficiently confident opinion as to whether the financial statements are free from material misrepresentations.

An audit involves performing procedures to obtain audit evidence about the amounts and other information in the financial statements. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misrepresentations in the financial statements, whether due to intentional or unintentional mistakes. In making those risk assess-

ments, the auditor considers the internal control system relevant to the FMA's preparation of the financial statements and the presentation of as true and fair a picture as possible of the authority's net assets, financial position and the results of operations in order to determine audit procedures that are appropriate under the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the authority's internal control procedures. The audit also includes the assessment of the appropriateness of the accounting and valuation methods used and the essential estimates made by the legal representatives, as well as an evaluation of the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Audit opinion

Our audit did not lead to any objections. Based on the findings of the audit, we believe that the financial

EQUITY AND LIABILITIES
Previous year
in € thousands

A. Reserve pursuant to Article 20 FMABG		2,239,666.52	1,920
B. Provisions			
1. Provisions for severance pay	1,027,437.86		883
2. Other provisions	<u>5,891,936.08</u>		<u>5,253</u>
		6,919,373.94	<u>6,137</u>
C. Liabilities			
1. Advance payments received pursuant to Article 19 FMABG	32,367,854.37		27,088
2. Trade payables	18,081,715.97		13,065
3. Other liabilities			
a) Taxes	470,277.97		444
b) Social security and similar obligations	483,531.11		459
c) Actual cost accounting for previous years	990,487.18		1,212
d) Other	<u>1,425,240.53</u>		<u>1,148</u>
	<u>3,369,536.79</u>		<u>3,263</u>
		53,819,107.13	<u>43,416</u>
D. Deferred income		<u>743,160.00</u>	<u>575</u>
		63,721,307.59	52,049

statements comply with the legal provisions and present a picture of the company that is as true and fair as possible with respect to net assets and the financial position of the Financial Market Authority as at 31 December 2012 as well as the results of operations of the Financial Market Authority for the financial year from 1 January 2012 to 31 December 2012 in accordance with the generally accepted Austrian accounting principles. The statement of costs pursuant to Article 19 FMABG complies with the statutory provisions.

Comments on the management report

Legal provisions require us to perform audit procedures to determine whether the management report is consistent with the financial statements and whether the other information made in the management report does not give a false impression of the situation of the

Financial Market Authority. The auditor's report also has to contain a statement as to whether the management report is consistent with the financial statements. In our opinion, the management report is consistent with the financial statements.

Vienna, 19 April 2013

IB INTERBILANZ
WIRTSCHAFTSPRÜFUNG GmbH

ANDREAS RÖTHLIN
Auditor

per pro. MICHAEL SZÜCS
Auditor

Publication or dissemination of the financial statements with our auditor's report is only permitted in the version we have audited. This auditor's report refers exclusively to the complete German version of the financial statements including the management report. With regard to other versions, the provisions contained in Article 281 para. 2 UGB are to be observed.

Table 43: 2012 INCOME STATEMENT

INCOME STATEMENT FOR THE FINANCIAL YEAR FROM 1 JANUARY TO 31 DECEMBER 2012 (amounts in €)		Previous year in € thousands
1. Federal Government contribution pursuant to Article 19 FMABG		3,500
2. Other operating income		
a) Income from the disposal and write-ups of fixed assets with the exception of long-term financial assets	1,830.00	12
b) Income from the release of provisions	215,673.16	274
c) Other	<u>3,395,655.23</u>	<u>2,825</u>
	3,613,158.39	3,111
3. Personnel expenses		
a) Salaries	-22,852,404.39	-21,227
b) Expenses for severance pay and contributions to corporate staff provision funds	-430,669.59	-344
c) Expenses for old-age pensions	-759,163.14	-684
d) Cost of statutory social security, payroll-related taxes and mandatory contributions	-4,513,235.02	-4,151
e) Other social costs	<u>-288,457.57</u>	<u>-267</u>
	-28,843,929.71	-26,673
4. Amortisation and write-downs of intangible fixed assets, depreciation and write-downs of tangible fixed assets		-858
5. Other operating expenses		
Other	<u>-17,839,816.92</u>	<u>-16,998</u>
6. Subtotal of items 1 to 5	-40,487,082.65	-37,918
7. Other interest	87,907.91	53
8. Interest	0.00	-4
9. Subtotal of items 7 to 8	87,907.91	49
10. Appropriation to reserve pursuant to Article 20 FMABG	-319,360.73	-260
11. Share of entities liable to pay costs	<u>40,718,535.47</u>	<u>38,129</u>
12. NET RESULT	0.00	0

NOTES PURSUANT TO ARTICLE 236 UGB (amounts in €, previous year's amounts in € thousands)

A. GENERAL INFORMATION

- The FINANCIAL MARKET AUTHORITY (FMA) is an institution under public law and was established by the Financial Market Authority Act (FMABG; Finanzmarktaufsichtsbehördengesetz) (Federal Law Gazette 97/2001) on 22 October 2001. The official competence of the FMA commenced on 1 April 2002. The FMA is in charge of banking supervision, insurance supervision, securities supervision and pension companies supervision. As at 31 March 2002, the Austrian Securities Authority (ASA) was incorporated into the FMA by way of universal legal succession pursuant to Article 1 of the Securities Supervision Act (WAG; Wertpapieraufsichtsgesetz).
- The financial statements were prepared in conformity with the generally accepted accounting principles and the general principle of presenting a picture that is as true and fair as possible with respect to net assets, financial position and the results of operations. In accordance with Article 18 FMABG, the provisions of the Corporate Code (UGB; Unternehmensgesetzbuch) were applied correspondingly to the present financial statements.
- The accounting policies applied to the individual items of the financial statements were based on the general provisions of Articles 193 to 211 UGB, taking the special provisions for large corporations into account.
- The financial statements were prepared in accordance with the going concern principle.

B. INFORMATION ON THE BALANCE SHEET INCLUDING THE DESCRIPTION OF THE ACCOUNTING POLICIES

1. Fixed assets

The changes in fixed assets and the breakdown of the annual depreciation according to individual items can be seen in Table 44 on page 188 (changes in fixed assets).

1.1. Tangible fixed assets

Depreciation is calculated on a straight-line basis.

The useful life of the individual asset groups is as follows:

1. Industrial property and similar rights and licences in such rights: 3 years
2. Buildings on third-party land: 8 to 20 years
3. Other equipment, operating and office equipment: 3 to 10 years

There was no need for depreciation pursuant to Article 204 para. 2 UGB as there was no impairment loss.

The low-value assets pursuant to Article 13 of the Income Tax Law (EStG, *Einkommensteuergesetz*) with individual acquisition values of below € 400.00 each were reported as disposals in their year of acquisition.

2. Services not yet invoiced to entities liable to pay costs

This item comprises the expenses to be borne by the entities liable to pay costs pursuant to Article 19 FMABG in the amount of € 40,718,535.47 (previous year: € 38.129k). The statement of costs is prepared according to the procedures stipulated under Article 19 FMABG. In this connection, the FMA has set up four accounting groups to which the cost shares are apportioned as follows:

	2012 (€)	2011 (in € thousands)
1. Banking supervision costs	21,044,340.90	19,808
2. Insurance supervision costs	8,477,994.12	7,695
3. Securities supervision costs	9,978,278.02	9,534
4. Pension companies supervision costs	1,217,922.43	1,092
Total	40,718,535.47	38,129

The costs are apportioned to the individual entities liable to pay costs, and the advance payments made by the entities liable to pay costs in the 2012 financial year are offset based on the reference data, listed in the relevant supervisory laws and reported to the FMA, which is only available after the financial statements have been prepared.

3. Trade receivables

The receivables are carried at nominal values and show a residual maturity of less than a year. Individual valuation allowances were recognised for identifiable risks in the measurement of receivables.

Receivables of € 3,013,862.89 (previous year: € 3,115k) are still carried from the actual cost accounting of previous years. Itemised valuation allowances of € 31,378.30 (previous year: € 104k) were recognised for receivables from actual cost accounting.

4. Other receivables

Other receivables include mostly receivables from orders imposing fees, administrative penalties, penalty interest, trustee fees, interest pursuant to the Company Employee and Self-Employment Provisions Act (BMSVG; *Betriebliches Mitarbeiter- und Selbstständigenvorsorgegesetz*), as well as reimbursed salary cost and transitory items concerning the Electronic File (ELAK). The itemised valuation allowance amounts to € 0.00 (previous year: € 2k).

5. Prepaid expenses

The item prepaid expenses comprises in particular insurance expenses, royalties and maintenance fees, membership fees, as well as subscriptions.

6. Reserve pursuant to Article 20 FMABG

Article 20 FMABG specifies the option of establishing a reserve in the amount of 1% of the FMA's total costs based on the latest adopted financial statements as at 31 December 2011 (1% of the total costs of the FMA in 2011 in the amount of € 44,793,330.35 is € 447,933.30). The maximum amount of the reserve may not, however, exceed the amount of 5% of the FMA's total costs based on the latest adopted financial statements as at 31 December 2011 (5% of the total costs of the FMA in 2011 in the amount of € 44,793,330.35 is € 2,239,666.52). As at 31 December 2011, the total in the reserve was € 1,920,305.79. Following allocation of € 319,360.73 (the maximum amount possible), the reserve pursuant to Article 20 FMABG totalled the maximum amount of € 2,239,666.52 as at 31 December 2012.

7. Provisions

Provisions are established taking the prudent person rule pursuant to Article 211 para. 1 UGB into account.

7.1 Provisions for severance pay

<u>Change:</u>	2012 (€)	2011 (in € thousands)
As at 1 January 2012	883,497.09	800
Use	16,262.78	7
Appropriation/Release	160,203.55	90
As at 31 December 2012	1,027,437.86	883

The provisions for severance pay were calculated in accordance with financial principles. The basis for the computation was an interest rate of 3% and a retirement age of 65 for men and 60 for women. The interest rate used to compute the provision for severance pay was adjusted from 3.5% in the previous financial year to 3% in the current financial year.

7.2 Other provisions

Other provisions were determined by exercising sound business judgement in accordance with the prudent person rule pursuant to Article 211 para. 1 UGB and include all risks recognisable at the balance sheet date and all liabilities of the past financial year not yet fixed in terms of their amount.

	As at 1 Jan. 2012	Use	Release	Appropriation	As at 31 Dec. 2012
Anniversary bonuses	217,761.00	12,411.66	0.00	26,215.94	231,565.28
Provision for premiums	1,283,130.08	1,283,130.08	0.00	1,408,694.06	1,408,694.06
Unused holiday entitlement	2,065,486.04	0.00	0.00	226,745.69	2,292,231.73
Overtime to be paid	36,152.61	29,172.92	6,979.69	11,236.91	11,236.91
Additional hours	163,987.53	0.00	0.00	13,329.50	177,317.03
Other provisions	1,342,393.95	496,826.08	64,265.41	750,110.39	1,531,412.85
2010 prov. actual costs Banking Superv.	144,428.06	0.00	144,428.06	0.00	0.00
2011 prov. actual costs Banking Superv.	0.00	0.00	0.00	239,478.22	239,478.22
	5,253,339.27	1,821,540.74	215,673.16	2,675,810.71	5,891,936.08

The provision for anniversary bonuses was computed in accordance with financial principles. The computation was based on an interest rate of 3%, a retirement age of 65 for men and 60 for women, and a rate of non-wage labour costs of 4.5% for contractual employees.

The other provisions comprise the following items:

Payment of arrears labour court proceedings	737,287.31
Reimbursement to the OeNB for analysis of market risk models under Solvency II	600,000.00
Expenses FMA Annual Report	47,098.08
Exemption levy for non-employment of disabled persons	45,825.00
Objections to payment notices	30,390.00
Consulting costs and external services	30,137.46
Operating expenses	20,000.00
Miscellaneous	11,750.00
Usage fees, licences	8,925.00
	1,531,412.85

2010 provision for actual costs of Banking Supervision:

The provision established pursuant to Article 69a of the Banking Act (BWG; *Bankwesengesetz*) in one financial year must be released in the following financial statements of the FMA, i.e. the provision established in the 2011 financial statements for the actual costs incurred in 2010 was released in the 2012 financial statements of the FMA; contrary to Article 19 para. 4 FMABG, the resulting income is only to be deducted from the costs of accounting group 1.

2011 provision for actual costs of Banking Supervision:

Pursuant to Article 69a BWG the difference between the calculated cost shares and the minimum amounts to be paid by the credit institutions (€ 1,000 per credit institution) for 2011 is to be allocated to a provision in 2012. In addition, previous actual cost notices are also considered in this item.

8. Liabilities

The liabilities are computed with the amount repayable taking the prudent person rule into account. All liabilities have a residual maturity of up to one year.

8.1 Advance payments received pursuant to Article 19 FMABG

For the 2012 financial year, the entities liable to pay costs had to make advance payments in the amount of € 32,276,847.00 (previous year: € 27,013k) as prescribed by administrative decision. Of the prescribed advance payments, € 172,382.13 (previous year: € 181k) had not been paid by the balance sheet date. Itemised valuation allowances of € 15,486.00 (previous year: € 1k) were recognised for the amounts not yet paid.

The 2012 advance payments are compared with the cost share to be borne by the entities liable to pay costs within the scope of preparing the statement of costs. The resulting balance is either charged or repaid to the entities liable to pay costs.

As at 31 December 2012, € 247,903.50 (previous year: € 255k) had already been paid in advance for the 2013 financial year.

8.2 Trade payables

With the reform of financial market supervision in Austria having taken effect on 1 January 2008, a clear demarcation was drawn between the FMA and the Oesterreichische Nationalbank in the area of banking supervision, with the FMA remaining the sole authority and with responsibility for inspection and analysis (including reporting and approval of models) being concentrated at the OeNB. In this context, the FMA must reimburse the Oesterreichische Nationalbank for the direct costs of on-site inspections and the analysis of individual banks (Article 19 para. 5a FMABG). The amounts reimbursed are to be calculated on the basis of the direct costs of banking supervision notified for the respective preceding financial year pursuant to Article 79 para. 4b BWG. Amendments to the Nationalbank Act (NBG; *Nationalbankgesetz*) and to the FMABG, which entered into force on 1 August 2011 (Federal Law Gazette I No. 50/2011), specified the maximum amount at € 8 million (previously € 4 million), retroactively effective for 2011 as well. The reimbursement is to be effected no later than by the end of March of the following financial year.

The liabilities owed to the Oesterreichische Nationalbank, resulting from the direct costs of on-site inspections and the analysis of individual banks, have increased to a total of € 16 million, of which the € 8 million for 2011 is to be reimbursed by 31 March 2013 and the € 8 million for 2012 by 31 March 2014.

The fee for the audit of the 2012 financial statements and cost allocation, agreed with the auditing firm IB Interbilanz Wirtschaftsprüfung GmbH upon commissioning the audit, is included in the 2012 incoming invoices still expected; it amounts to €33,600.00 (previous year: €34k).

8.3 Other liabilities

A liability of €990,487.18 (previous year: €1,212k) is still carried from the actual cost of previous years.

9. Contingent liabilities

As at 31 December 2012, there were no contingent liabilities or guarantees.

10. The liabilities from the use of tangible fixed assets not shown in the balance sheet amount to approximately €3,091,700.00 (previous year: €3,0240k) for the following year and a total of approximately €15,393,300.00 (previous year: €15,012k) for the following five years.

C. INFORMATION ON THE INCOME STATEMENT

1. Income from federal grant

Pursuant to Article 19 para. 4 FMABG, the Federal Government paid a total of €3,500,000.00 (previous year: €3,500k) in advance for the 2012 financial year, which was used to cover part of the costs incurred during the 2012 financial year.

2. Share of entities liable to pay costs

Please refer to Point B. 2. "Services not yet invoiced to entities liable to pay costs" on page 186.

3. Personnel expenses

In the income statement, Item 3b shows "Contributions to corporate staff provision funds" in the amount of €267,724.82 (previous year: €242k). The remaining amount of €162,944.77 (previous year: €102k) is attributed to "Expenses for severance pay".

D. OTHER INFORMATION

1. The average number of staff pursuant to Article 239 UGB is as follows:

	2012	2011
Civil servants	22	22
Employees (incl. contractual employees)	328	314
Staff total	350	336

2. Management of the FMA pursuant to Article 6 FMABG

Mr Kurt Pribil and Mr Helmut Ettl were appointed to serve as members of the FMA's Executive Board for the 2012 financial year.

Mr Kurt Pribil was reappointed by the Federal President on 29 September 2009 to serve as a member of the FMA's Executive Board from 22 October 2009 to 21 October 2014. He withdrew from his position as Executive Director of the Financial Market Authority as of 13 February 2013.

As his successor, the Federal President appointed Mr Klaus Kumpfmüller on 14 February 2013 to serve as a member of the FMA's Executive Board from 14 February 2013 to 13 February 2018.

Mr Helmut Ettl was reappointed by the Federal President on 14 February 2013 to serve as a member of the FMA's Executive Board from 14 February 2013 to 13 February 2018.

With regard to Article 241 para. 4 UGB, the details pursuant to Article 239 para. 1 nos. 3 and 4 UGB are not disclosed.

3. Members of the Supervisory Board pursuant to Article 8 FMABG

The remuneration budgeted for the members of the Supervisory Board for the 2012 financial year amounted to €14,734.97 (previous year: €15k).

STATEMENT OF CHANGES IN FIXED ASSETS (ARTICLE 226 PARA. 1 UGB) (amounts in €)

	As at 1 Jan. 2012	Additions	<u>Cost</u> Disposals	As at 31 Dec. 2012
I. <u>Intangible fixed assets</u>				
Industrial property and similar rights and licences in such rights	2,034,489.40	410,905.98	69,999.60	2,375,395.78
II. <u>Tangible fixed assets</u>				
1. Buildings on third-party land	601,061.79	387,070.96	692.31	987,440.44
2. Other equipment, operating and office equipment	3,272,968.39	727,589.49	189,870.11	3,810,687.77
3. Low-value assets		59,341.94	59,341.94	
	3,874,030.18	1,174,002.39	249,904.36	4,798,128.21
	5,908,519.58	1,584,908.37	319,903.96	7,173,523.99

Members of the Supervisory Board reappointed by the Federal Ministry of Finance as at 1 September 2011:

- Alfred LEJSEK (Chairperson), Federal Ministry of Finance
 - Ewald NOWOTNY (Deputy Chairperson), Governor of the Oesterreichische Nationalbank (OeNB)
 - Andreas ITTNER, Executive Director of the OeNB Governing Board; Director of Financial Stability, Banking Supervision and Statistics at the OeNB
 - Friedrich KARRER, Head of the Accounting Department at the OeNB
 - Michael HÖLLERER (member until 29 May 2012), Federal Ministry of Finance
 - Gerhard ZOTTER (member from 1 September 2012), Federal Ministry of Finance
 - Gerhard BAUMGARTNER, Faculty of Law, University of Klagenfurt
- The co-opted members were nominated by the Austrian Federal Economic Chamber.
- Walter KNIRSCH (co-opted member), sworn auditor and tax adviser
 - In-house lawyer Herbert PICHLER (co-opted member, until 20 September 2012), Bank and Insurance Division, Austrian Federal Economic Chamber
 - Franz RUDORFER (co-opted member, from 5 October 2012), Bank and Insurance Division, Austrian Federal Economic Chamber

Vienna, 19 April 2013

HELMUT Ettl
signed in person

KLAUS KUMPFMÜLLER
signed in person

MANAGEMENT REPORTA. REPORT ON THE BUSINESS DEVELOPMENTS AND ECONOMIC SITUATION1. Business developments2012 financial yearChanges in expenses and income in 2012:

The share contributed by entities liable to pay costs, which results from the balance of expenses and income, increased year-on-year by approximately €2.6 million to about €40.7 million. This increase in costs (about 7%) to be borne by the entities liable to pay costs was mainly due to a rise in personnel expenses and other operating expenses, which were only offset in part by a higher amount of other income.

Other operating income rose from 2011 to 2012 by approximately €0.5 million to about €3.6 million, due in particular to higher fee income for investment funds and approvals.

The rise of about €2.2 million in personnel expenses to €28.8 million was due to the higher number of staff (approximately 11 full-time equivalents on average) on the one hand, and to salary adjustments (increase in collective agreement salary levels, salary progressions) on the other.

Other operating expenses rose by some 5% compared with the previous year, from about €17 million to about €17.8 million. Increases in expenses are to be attributed mainly to external supervisory services and to membership fees.

The allocation of approximately TEUR 319 pursuant to Article 20 FMABG means that the legal limit set for this item of 5% of total costs for the previous year was utilised to the full extent.

Table 44: 2012 STATEMENT
OF CHANGES IN FIXED ASSETS

Cumulative depreciation, amortisation and write-downs	Carrying amounts 31 Dec. 2012	Carrying amounts 31 Dec. 2011	Depreciation, amortisation and write-downs in the financial year
1,944,077.71	431,318.07	218,493.34	198,081.25
244,880.37	742,560.07	462,057.75	105,910.95
2,438,567.59	1,372,120.18	1,198,245.98	553,160.27
			59,341.94
2,683,447.96	2,114,680.25	1,660,303.73	718,413.16
4,627,525.67	2,545,998.32	1,878,797.07	916,494.41

Appointments

Mr Bernhard Hörtnagl was appointed interim Head of Division I/2 – Supervision of Large Banks for the duration of Ms Marion Göstl-Höllerer's leave with effect from 14 May 2012.

Appointment extensions

Mr Peter Braumüller was reappointed Director of Department II – Insurance and Pension Companies Supervision for a period of five years with effect from 1 April 2012.

Mr Erich Schaffer was reappointed Director of Department III – Securities Supervision for a period of five years with effect from 1 April 2012.

Ms Doris Radl was reappointed Head of Division I/1 – Consolidating Supervision and Standards for a period of five years with effect from 1 April 2012.

Mr Harald Gössl was reappointed Head of Division II/1 – Actuarial Issues and Models for a period of five years with effect from 1 April 2012.

Mr Oskar Ulreich was reappointed Head of Division II/3 – Financial Supervision of Insurance and Pension Companies for a period of five years with effect from 1 April 2012.

Ms Gabriele Klein-Gleissinger was reappointed Head of Division III/1 – Markets and Exchanges Supervision for a period of five years with effect from 1 April 2012.

Ms Birgit Puck was reappointed Head of Division IV/3 – Legal and Enforcement Affairs for a period of five years with effect from 1 April 2012.

Mr Alfred Steininger was reappointed Head of Division V/2 – Services and Documentation for a period of five years with effect from 1 April 2012.

Mr Karl Schwarzmayer was reappointed Head of Division V/3 – IT Systems for a period of five years with effect from 1 April 2012.

Mr Gerald Resch was reappointed Director of Department IV – Integrated Supervision for a period of five years with effect from 1 August 2012.

Mr Stephan Korinek was reappointed Head of Division II/2 – Prudential Supervision of Insurance and Pension Companies for a period of five years with effect from 1 October 2012.

Mr Joachim Hacker was reappointed Head of Division III/2 – Investment Firms for a period of five years with effect from 1 January 2013.

2. Audit report on branches

The FMA is an independent, autonomous and integrated supervisory authority for the Austrian financial market, established as an institution under public law. It is responsible for supervising credit institutions, payment institutions, insurance undertakings, *Pensionskassen* (pension companies), corporate provision funds, investment funds, licensed investment service providers, rating agencies and stock exchanges, as well as for prospectus supervision. The FMA is also responsible for monitoring trading in listed securities to ensure that it is carried out properly and for monitoring issuers' compliance with information and organisation obligations. Further tasks include combating the unauthorised provision of financial services and taking preventive action against money laundering and terrorist financing.

The FMA is an integral part of the European System of Financial Supervisors (ESFS) and represents Austria in the relevant European institutions, closely cooperating with the network of supervisors and actively contributing to its work.

The FMA has its head office in Vienna (9th district of Vienna) and has no branches.

Financial and non-financial performance indicators

Financial performance indicators

Liquidity development in 2012

Liquidity at the start of 2012 totalled approximately €7.2 million. During the year under review, income totalled approximately €39.0 million, expenses amounted to approximately €42.0 million, and additional payments by the entities liable to pay costs pursuant to Article 19 para. 5 of the FMABG totalled approximately €11.3 million, resulting in year end liquidity as at 31 December 2012 of around €15.5 million.

Income rose by some €5.7 million to about €39.0 million in a year-on-year comparison. This is mainly due to an increase in advance payments from entities liable to pay costs, totalling some €5.0 million, as well as an increase in other income, by some €0.7 million, the latter primarily owing to higher authorisation fees.

Expenses rose by some €2.2 million in 2012 to around €42.0 million, owing to increased personnel expenses.

– This development is primarily due to annual salary adjustments and the rise in the number of staff, up by an average of some 11 FTEs.

– Material costs and investments remained almost unchanged compared with the previous year.

The calculation pursuant to Article 19 para. 5 FMABG mainly comprises the calculation of actual costs for 2011 (approximately €9.6 million) and for 2010 (approximately €1.7 million).

As at the end of 2012, year-end liquidity amounted to around €15.5 million.

Details of 2012 cash flow statement pursuant to expert report KFS BW2:

	2012 (in € thousands)	2011 (in € thousands)
Net cash flow from ordinary activities	9,876	4,081
Net cash flow from investing activities	-1,583	-1,075
Net change in cash and cash equivalents	8,293	3,006
Cash and cash equivalents at beginning of period	7,223	4,215
Cash and cash equivalents at end of period	15,517	7,223

Rounding differences are not taken into account.

Deposits made to petty cash (€ 638.90 in 2012 and roughly € 1,600 in 2011) were entered as expenses on the dates of deposit.

Non-financial performance indicatorsStaffStaff turnover

The staff turnover rate for 2012 was 9.43% (2011: 9.24%), fixed-term contracts not considered. When deducting the number of staff leaving by common consent, the turnover rate amounted to 8.23%, i.e. was largely unchanged compared with 2011. The demand for highly qualified financial market experts remained high; however, the majority of staff leaving did so for personal reasons, such as a move or professional re-orientation. Divisions with a high turnover were subjected to analyses and, together with the staff, counter measures were defined and implemented.

Continuing professional development (CPD)

As a specialist organisation, the FMA places particular emphasis on the CPD of its workforce, which rests on five pillars:

- the university programme in Financial Market Supervision, with the option to continue with an MBA programme, offered in conjunction with the OeNB;
- the newly introduced Management Curriculum;
- the FMA Academy;
- international seminars organised by the European Supervisory Authorities (ESAs); and
- third-party seminars, funded by departmental budgets and offered on an individual basis.

Six classes have begun with the Financial Market Supervision university programme since it was launched in 2010. More than 120 individual courses have been held and nine block exams have taken place. In 2012, 27 students from the FMA successfully completed the programme. The topics of the final papers submitted by the graduates are made public within the FMA and the OeNB, with the aim of giving a larger number of staff of both institutions the opportunity to profit from the knowledge acquired by the graduates.

The wide range of training courses offered by the university programme is a valuable contribution to the work done by financial market supervisors. This is not least thanks to the numerous internal speakers from the FMA and the OeNB, who held the majority of the 49 seminar days per programme.

Additional students will complete the programme in 2013 and receive their diplomas in a graduation ceremony. A new class, comprising some 15 students from the FMA, will commence their studies in March 2013.

Further developing the curriculum in cooperation with the WU Executive Academy has also paved the way for recognition of the programme towards postgraduate studies at the Vienna University of Economics and Business (WU). From autumn 2013, the university programme in Financial Market Supervision will be recognised as a specialisation within the curriculum of the Professional MBA programme offered by the WU Executive Academy. On condition of meeting the admission requirements, every year about four graduates of the university programme from the FMA will in future have the option of entering the Professional MBA programme and graduating with an MBA after two additional semesters of coursework. In this way, a further goal in the area of postgraduate professional advancement has been achieved.

Recruitment process

At the outset of the FMA recruitment process is a requirements profile, prepared in joint consultation between the respective division and Human Resources. Vacant positions are then usually advertised on the FMA's website as well as on a leading job website and, in specific cases, in daily newspapers. Short-listed candidates undergo a three-tier selection process. A first round of interviews takes place with the heads of the division concerned. After the field of candidates is further narrowed down, a second interview is held with the responsible Director and Head of Division, as well as one representative from Human Resources. The third and final interview takes place with the Executive Directors. When recruiting staff members with a number of years of specialised professional experience (specialists), the third interview is staged as a hearing preceded by a potential assessment.

Recruiting fairs, some of which provide an opportunity to interview pre-selected candidates, have proved a highly effective method for recruiting and personnel marketing among university graduates, so that participation in additional events of this kind was further intensified in 2012. The FMA also continued to successfully take part in events aimed especially at the target group of high-potential graduates. The main focus of the FMA's recruiting efforts, however, is on professionals, i.e. individuals having at least five to ten years of specialised professional experience.

Health and safety

Widespread activities continue to be offered in the area of health and safety. Occupational physicians and safety experts are available to the staff on site, during the periods required by law and specifically during consultation hours. From 2013 onwards, an industrial psychologist will also be available in order to be able to preventively counteract illnesses in particularly stressful areas. Other offerings in the way of preventive health care are also available: extensive health checks, immunisation programmes, subsidised exercise courses and a fitness room.

Events of particular importance after the balance sheet dateQuarterly report pursuant to Article 6 para. 5 FMABG for Q4 2012

The FMA's quarterly report, pursuant to Article 6 para. 5 FMABG, for the fourth quarter of 2012 concerning the FMA's ongoing activities and the liquidity report, which describes the FMA's income and expenses as well as the asset additions for 2012, was presented to the Supervisory Board of the FMA at its meeting of 12 March 2012. The FMA Supervisory Board was also provided with an outlook of the 2012 financial statement figures.

Annual report pursuant to Article 16 para. 3 FMABG

After the Supervisory Board of the FMA approved the Annual Report, it is submitted to the Finance Committee of the National Council and to the Federal Minister of Finance.

B. REPORT ON THE EXPECTED DEVELOPMENT AND RISKS OF THE COMPANY1. Expected development of the companyOutlook for 2013

The financial planning for 2013 is based on the FMA's goals for 2013. In close cooperation with the Executive Directors and the management staff, the controlling unit draws up a financial plan including an investment and staff plan, which, according to Article 17 FMABG, must be presented together with explanatory comments to the Supervisory Board for approval by no later than 31 October of the current financial year.

The financial plan was approved at the Supervisory Board meeting of 9 November 2012:

- The Supervisory Board approved an increase in the number of FMA staff by 19 full-time equivalents, i.e. from 326.85 FTEs to 345.85 FTEs, by 30 June 2014. According to the meeting's minutes, this means that the staff number approved is 335 FTEs by 31 December 2013 and 345.85 FTEs by 30 June 2014.
- The focus of the budget item "Continuing professional development" continues in 2013 to be on further developing the university programme to promote individual contributor career paths at the FMA, and on establishing an MBA programme within the scope of the joint Academy of Supervision with the OeNB.
- As far as Securities Supervision is concerned, there are plans to install software to identify evidence of market abuse (market manipulation and misuse of inside information) in the course of regular market observation. This would enable the FMA to adjust, flesh out and combine existing warning systems and to create new conclusive warnings. In this context, licences will have to be acquired.
- To allow FMA staff to achieve a good work/life balance, funds are earmarked in the 2013 budget to set up a workplace kindergarten.

Work/life balance

Another project has been started at the FMA in January 2013: work/life balance. The FMA is planning to implement the "Work and Family Audit" and to receive the related certification granted by the Federal Ministry of Economy, Family and Youth.

2. Material risks and uncertaintiesLiability for the FMA's activities (Article 3 FMABG as amended by Federal Law Gazette I No. 136/2008)

The Federal Government is liable pursuant to the provisions of the Public Liability Act (AHG; *Amtshaftungsgesetz*), Federal Law Gazette No. 20/1949, for damage caused by the FMA's bodies and employees in the enforcement of the federal acts listed in Article 2. Damage as defined in this provision is such that was directly caused to the legal entities subject to supervision pursuant to this federal act. The FMA as well as its employees and bodies are not liable to the injured party (Article 3 para. 1 FMABG). If the Federal Government makes good the damage to the injured party pursuant to para. 1, it is entitled to demand reimbursement from the FMA's bodies or employees according to the provisions of the AHG (Article 3 para. 3 FMABG). The law does not, however, provide the Federal Government with a right of recourse against the FMA (819 annex to the shorthand verbatim records of the National Council, 22nd legislative period).

Staff

Any personnel risks at the FMA have been mitigated as far as possible through specific measures, including a system of deputies, clear documentation and management of limited contracts. Scenarios entailing the inability to replace staff due to demographic change continue to pose only little risk as well. Only a small number of staff are expected to retire in the coming years, and the average age of employees remained constant in 2012 at a relatively low level of 38.

The turnover rate was again moderate in 2012, and vacant positions were quickly filled with qualified candidates. When hiring new staff, it was frequently possible to recruit experts having several years of specialised professional experience. Any possible losses among key employees can be made up for quickly since every division has a deputy for the Head of Division. In the event of any indications of an increase in turnover rate, the FMA performs evaluations and takes steps for timely response.

Furthermore, many divisions are structured to include teams, whose team leaders would be able to compensate for management staff losses. The team structure was introduced to Insurance Supervision and Pension Companies Supervision during 2012. In February 2013, the prevalence of team structures became further entrenched when three teams were set up at the Human Resources, Finance and Controlling Division (formerly one "Financing" team) and team leaders appointed who had previously acted as deputy heads of division.

In 2012 as well, periods of leave, such as due to illness or excused absence, did not present the organisation as a whole with any appreciable challenges. The corresponding levels at the FMA continue to be clearly below the national average.

C. REPORT ON RESEARCH AND DEVELOPMENT

Unlike other organisations such as manufacturing companies, due to its position as a supervisory authority the FMA does not publish a report on research and development.

Vienna, 19 April 2013

HELMUT Ettl
signed in person

KLAUS Kumpfmüller
signed in person