

Key figures of the Austrian financial sector 2012–2016

	2012	2013	2014	2015	2016 (prov.)
INSURANCE SECTOR					
<i>Earned premiums (in € millions)</i>	16 340	16 608	17 077	17 342	16 920
<i>Life insurance (increase in %)</i>	-6.7	-0.2	3.8	0.5	-9.8
<i>Non-life/accident insurance (increase in %)</i>	2.7	2.6	2.0	1.8	1.6
<i>Health insurance (increase in %)</i>	3.4	3.8	3.3	4.2	4.7
<i>Technical account balance (in € millions)</i>	457	623	469	495	560
<i>Financial result (in € millions)</i>	3 406	3 350	3 149	2 992	3 051
<i>Result from ordinary activities (in € millions)</i>	1 394	1 522	1 351	1 126	1 414
<i>Combined ratio (non-life/accident insurance, in %)</i>	97.8	97.0	94.3	93.2	92.7
PENSIONSKASSEN					
<i>Assets managed (in € millions, year-end)</i>	16 278	17 385	19 011	19 646	20 839
<i>Performance (in %)</i>	8.4	5.1	7.8	2.3	4.2
<i>Beneficiaries (entitled) (in thousands, year-end)</i>	744	755	773	791	809
<i>Beneficiaries (recipients) (in thousands, year-end)</i>	77	81	86	89	94
CORPORATE PROVISION FUNDS					
<i>Assets managed (in € millions)</i>	5 275	6 229	7 327	8 306	9 418
<i>Performance (in %)</i>	4.3	2.8	4.0	1.2	2.2
INVESTMENT FUNDS					
<i>Assets managed (in € millions, year-end)¹</i>	144 410	145 295	157 778	162 681	167 099
<i>Bond funds (in %)</i>	47.6	45.2	44.6	43.5	42.1
<i>Equity funds (in %)</i>	13.0	14.7	14.2	14.6	15.2
<i>Mixed funds (in %)</i>	38.2	39.4	40.7	41.7	42.6
<i>Other funds (in %)</i>	1.2	0.7	0.5	0.3	0.2
<i>Net inflow of funds (in € millions)</i>	-391	-843	4.170	5.060	-643
CAPITAL MARKET					
<i>ATX at year-end</i>	2 401	2 547	2 160	2 396	2 618
<i>ATX performance (in %)</i>	26.9	6.1	-15.2	11.0	9.2
<i>Market capitalisation (in € millions, year-end)</i>	78 124	82 990	76 120	86 162	93 341
<i>Market capitalisation/GDP (in %)</i>	24.6	25.7	23.0	25.3	26.8
<i>Sales in equity segment (in € millions, double counting)</i>	36 089	38 722	48 415	58 384	55 930
<i>Number of issuers (equity segment, year-end)</i>	79	75	79	72	67
<i>Circulation weighted average yields of government bonds (in %, year-end)²</i>	0.97	1.24	0.95	0.37	0.08
<i>Spreads of ten-year govt bonds compared w. German Bunds (in basis points)</i>	42	33	16	27	21
<i>CDS spreads (5 years, in basis points)</i>	45	37	23	22	28
<i>Sales in bond segment (in € millions)</i>	216	222	198	184	319

¹ Without funds that were issued exclusively in accordance with the AIFMG or ImmoInvFG.

² Up to 2014: secondary market yield.

Key figures FMA 2012–2016*

	2012 Actual	2013 Actual	2014 Actual	2015 Actual	2016 prov. Actual
INCOME (in € millions)					
Federal contribution					
(Article 19 para. 4 FMABG)	3.5	3.5	3.5	3.5	4.0
Income from entities liable to pay costs	40.7	43.5	46.2	53.8	56.5
Income from fees, other income	3.7	4.0	6.7	4.0	6.2
Total	48.0	51.0	56.4	61.3	66.7
EXPENSES (in € millions)					
Personnel expenses	28.9	31.5	34.9	37.8	40.0
Material expenses	17.9	18.3	20.0	21.7	24.8
Depreciation and amortisation, other expenses	1.2	1.2	1.4	1.7	1.9
Total	47.9	51.0	56.4	61.3	66.7
Employees at year-end in FTEs	313.98	334.675	354.713	373.313	379.79

Due to the figures summed up in € millions, there might be some rounding differences.
*Data not including the special effects of the 2015 asset quality review
or reimbursement of costs pursuant to Article 74 para. 5 no. 2 BaSAG.

Supervised companies 2012–2016

	2012	2013	2014	2015	2016
CREDIT INSTITUTIONS					
Joint stock and special-purpose banks	87	84	77	76	75
Savings banks	51	49	49	49	49
Raiffeisen cooperatives	520	509	498	488	448
Volksbank cooperatives	64	61	53	42	20
Mortgage banks	11	11	11	10	10
Building societies	4	4	4	4	4
Investment fund management companies	29	29	29	29	26
Corporate provision funds	10	10	10	9	8
Exchange offices/remittance services	3	3	3	3	4
EU branches	29	30	30	30	28
Total	808	790	764	740	672
Representative offices of foreign credit institutions	11	10	8	8	7
INSURANCE UNDERTAKINGS					
Mutual associations (excluding small mutuels)	6	6	6	6	7
Joint stock companies	42	40	37	35	31
Small mutual associations	53	53	52	52	50
Total	101	99	95	93	88
Mutual associations dealing in asset management/private foundations	6	6	6	6	6
Life assurance	30	30	28	27	23
Non-life and accident insurance	41	38	38	35	33
Health insurance	8	8	9	9	9
Reinsurance only	3	3	3	2	3
PENSIONS KASSEN					
Single-employer	9	8	7	6	6
Multi-employer	8	8	7	7	6
Total	17	16	14	13	12
IRG	140	124	118	113	112
INVESTMENT FIRMS, INVESTMENT SERVICE PROVIDERS					
Licence pursuant to Article 3 WAG 2007	88	82	74	66	60
Licence pursuant to Article 4 WAG 2007	79	70	65	57	51
Total	167	152	139	123	111

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The FMA is Austria's independent, autonomous and integrated supervisory and resolution authority. As an integrated authority our overall perspective of the Austrian financial market enables us to conduct consistent and efficient supervision. We are part of the European System of Financial Supervisors (ESFS) and actively contribute with expertise and practical experience.

With competence, control and consequence, we pursue the aims of contributing towards the stability of Austria as a financial market and reinforcing confidence in the ability of the Austrian financial market to function, while acting in a preventive manner with respect to compliance with supervisory standards, and also protecting investors, creditors and consumers alike.

COMPETENCE

We use a risk-based and solution-oriented approach to address complex issues and apply our knowledge in a target-oriented manner in the interest of integrated supervision. Furthermore, we create a positive and constructive working environment and constantly invest in training and further education. We base our actions on the principles of objectivity and independence, and excel as a result of our commitment to act both quickly and appropriately in a constantly changing environment.

CONTROL

We monitor the Austrian financial market and ensure compliance with regulatory requirements. We fulfil our mandate responsibly, safe in the knowledge of the significance of our work for financial market stability. At the same time we act in a preventive manner and conduct constructive dialogue with market participants.

CONSEQUENCE

We demand that all market participants conduct their business in a law-abiding manner, and work towards necessary and sustainable behavioural change. In the event that breaches of legal provisions nevertheless occur, we deploy the supervisory tools and resolution actions that are at our disposal. Violations are punished consistently.

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Preface by the Federal Minister of Finance



2016 was a busy year at a European level. The European Commission presented a comprehensive package of reform measures aimed at the EU banking sector in November. The reforms that were adopted in the immediate aftermath of the financial crisis are now being supplemented and tailored more specifically to the size and business profile of the banks concerned, through the revision of the EU banking rules. Through these measures, the Basel Committee's international standards are being implemented in EU law while taking account of specific European characteristics and ensuring that there is no unintentional impact on the financing of the real economy.

Generally, the issue of the proportionality of these banking rules has been and continues to be a key area of discussion. The central question is whether the type of measure used to stabilise and regulate the banking sector during the financial and economic crisis is still in fact necessary. For small banks in particular, and those with less complex operations, the volume of regulation and controls can often be a burden. For this reason, the rules need to be simplified. We also need improvements in relation to loans for SMEs and facilitating the financing of infrastructure projects.

At an Austrian level, we were able to draw a line under the Hypo Alpe Adria case in May, following intensive negotiations with the creditors. The out-of-court settlement on the repayment of the liabilities of Heta Resolution AG backed by the federal state of Carinthia represented an acceptable outcome for everyone involved. During the subsequent and very successful purchase programme, the Kärntner Ausgleichszahlungs-Fonds (KAF) was able, with federal government support, to buy up more than 98% of the debt instruments that had been backed by the federal state from the market. This not only had a positive impact on how the Austrian capital market is perceived internationally but also normalised market access for Austrian banks again. Consequently, legal security increased, as numerous objections to administration decisions were withdrawn and many pending court cases were brought to an end.

As well as being able to conclude the Hypo chapter last year, Austria also performed well in its money laundering and terrorist financing evaluation by the Financial Action Task Force (FATF). Overall, the results of this evaluation showed that Austria has a comprehensive and well-functioning system in place to tackle money laundering and the financing of terrorism. Some shortcomings were identified, however, including in relation to the national cooperation mechanism, the system for reporting suspicious cases, the criminal prosecution of money laundering and limited auditing capacity within the supervisory system. These shortcomings must be remedied quickly in order to protect Austria's reputation as a reliable economic and financial centre and to ensure that high security standards continue to be guaranteed. The necessary steps can be put in place before the end of this year.

The international financial markets are subject to a constant stream of dynamic changes. What is clear is that we must respond to these changes and that we need a forward-looking approach for Austria. Throughout all of these processes and in all of these considerations, the FMA is an important partner with its comprehensive knowledge

and expertise. I would therefore like to express my particular thanks for our constructive and professional working relationship, which I look forward to continuing in future.

HANS JÖRG SCHELLING

Preface by the Executive Board



In looking back over 2016, this year's report deals with an exceptionally eventful and turbulent twelve months. Leaving aside the policies pursued by the central banks, Brexit, Trump and the referendum on constitutional reform in Italy have all combined to create highly volatile global markets.

Meanwhile, further progress has been made towards an increasingly European approach to financial market supervision. Solvency II, a new risk-based supervisory regime for insurance undertakings, entered into force at the start of 2016 and has been applied in its entirety since then. The Solvency II approach revolves around a dynamic calculation of own funds requirements, based on a

solvency balance sheet that uses market values. This enables the supervisory authorities to spot any negative developments more quickly than previously, and to act accordingly. Austrian insurance undertakings embarked on the new supervisory regime with relatively high and consistent solvency ratios.

With the full launch of the European Single Resolution Mechanism (SRM), banking supervision was extended to include another essential area in 2016. The aim of the SRM is to enable any ailing banks within the European Monetary Union to be wound down in an orderly fashion, where possible without having to rely on taxpayers to foot the bill. In its capacity as the national resolution authority for Austria, the FMA is an integral part of the SRM. It assumed a pioneering role in relation to Heta Resolution AG, winding up a former bank in accordance with the new Bank Recovery and Resolution Directive (BRRD) regime for the first time.

As far as securities supervision was concerned, the European Commission's new, directly applicable Market Abuse Regulation entered into force. In response to the international LIBOR scandal, the core aspects of capital market law – insider law/ban on market manipulation, ad hoc disclosure and directors' dealings reporting obligations – were extended to include unregulated markets, while the stricter sanctions imposed by the Market Abuse Directive were transposed into national law. This final stage has harmonised the very divergent sanctions applicable in the different countries, helping to avoid a situation in which providers seek out the markets with the most lenient sanctions.

With regard to monitoring its rules, the European Union relies heavily on the national competent authorities, since the European supervisory architecture has a decentralised structure based around the principle of subsidiarity. We, in our capacity as the Austrian financial market supervisor, are therefore an integral part of the European supervisory system and have always embraced this role proactively. As an integrated supervisory authority monitoring almost all of the Austrian financial market, we ensure that these rules do not distort competition while also feeding our expertise gained across all sectors and products into the European lawmaking process. In this regard, together with experts from Oesterreichische Nationalbank, we are also involved in the ongoing debate on the proportionality of the European rules and of day-to-day supervisory practice.

Generally speaking, this integrated approach to supervision is in keeping with the Austrian financial market of today, which is small yet internationally connected. It is also an approach with a proven track record.

As Executive Directors of the FMA we would like to conclude by thanking our Austrian partners in supervision, at the Federal Ministry of Finance and at Oesterreichische Nationalbank, for their professional support over the past year. Our particular thanks also go to the FMA staff, who strive to make integrated supervision an everyday reality and who are always willing to go the extra mile.

HELMUT Ettl, KLAUS Kumpfmüller

The economic environment

The global economy and international financial markets were very turbulent in 2016. The year got off to a difficult start with fears of an economic slowdown and concern about high levels of corporate borrowing in China, triggering widespread falls on the world's equity markets. Elsewhere, in the developed economies of the USA, Japan and the UK, growth forecasts were being revised downwards, creating a much gloomier mood among investors. The collapse in oil prices in 2015 had a double impact on the global economy, increasing the purchasing power of oil-importing countries while at the same time placing a tangible burden on oil exporters.

The surprise result of the UK's referendum on EU membership in June sparked short-term turbulence on the financial markets and further downward revisions of growth forecasts. There is still uncertainty about what will happen during the Brexit negotiations over the next two years, which means that it is difficult to predict the impact on the EU economy.

No sooner had it taken office than the newly elected US administration announced its expansionist yet protectionist economic policy, making it difficult to estimate whether US fiscal policy will help boost global economic growth or not. With plans to finance the fiscal stimulus through additional government borrowing, there is now a greater risk that growth in the USA will be short-lived and unsustainable.

Given this atmosphere of heightened uncertainty, the rate of growth in the global economy was slightly down on the previous year, with the International Monetary Fund (IMF) expecting growth in real gross domestic product (GDP) of 3.1% for 2016 compared with 3.2% during the previous year. In the USA, growth was down by one percentage point on 2015, at 1.6%. China recorded growth of 6.7%, primarily as a result of fiscal measures and advantageous developments in producer prices. Growing levels of borrowing and the development of domestic consumption could, however, hamper future growth in China. Japan was able to record moderate growth of 0.9% in 2016, driven primarily by net exports and public consumption. The global outlook was also helped by the stabilising of the economies in Russia and Brazil. The prospects for the other emerging markets and developing countries improved only marginally, however, due to weak demand from the industrialised nations, low commodity prices and the geopolitical situation.

Chart 1: Real GDP growth rates 2012–2016 (in %; source: Eurostat)

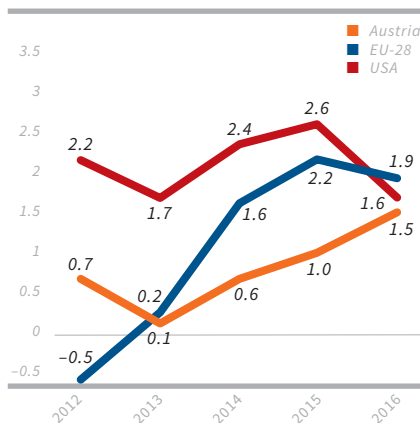
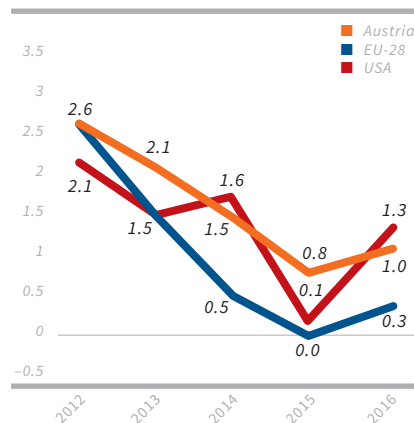


Chart 2: Changes in consumer prices 2012–2016 (in %; source: Eurostat)



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EUROPE

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weak domestic demand. Stagnating levels of gross fixed capital formation and slow growth in private consumer spending had a negative impact on GDP. Net exports, meanwhile, helped to raise economic output during this period.

While the UK referendum in June was responsible for short-term fluctuations on the financial markets, the outcome of the vote had only a marginal effect on the EU economy in 2016. Nevertheless, the generally uncertain geopolitical context and the rising price of oil stifled growth rates in the EU, which recorded an increase in real GDP of 1.9% compared with 2.2% in 2015. Germany, the EU's largest economy, also posted growth of 1.9%, attributable in the first instance to consumption and the construction boom. Although the German export sector recorded its third record year in a row in 2016, the significant increase in imports meant that foreign trade actually impeded growth.

Consumer prices in the euro area rose to their highest level since summer 2014, up by 1.1% as at the year-end and signalling a clear upwards trend. Unemployment in the eurozone dipped to 9.6% by the year-end compared with 10.5% in December 2015.

AUSTRIA

The Austrian economy was able to pick up speed in 2016 despite the subdued nature of the global economy. Tax reform and deficit-financed spending on the integration of refugees helped push up growth to 1.5%, a clear improvement on the average figure for the past four years. The increase in the number of dependently employed persons and a slight drop in the jobless figures (from 6.0% in December 2015 to 5.7% in December 2016) point to a more dynamic economy, with similarly high rates of growth expected in 2017 and 2018. Despite the improved confidence indicators, the manufacturing sector stagnated during the period under review, while exports only picked up slightly. Inflation reached 1.5% by the year-end, significantly higher than the average for 2016.

The international financial markets

The year 2016 was a momentous year for the international financial markets. Alongside the monetary policies being pursued by the central banks, particularly the European Central Bank (ECB) and the US Federal Reserve (Fed), political events in the USA, the UK and Italy combined to create high levels of volatility that extended beyond national markets.

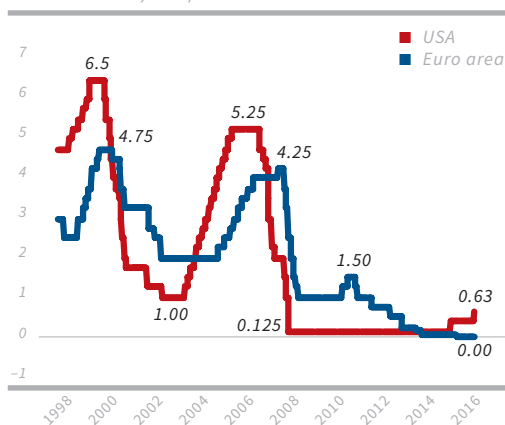
MONETARY POLICY

Quantitative easing remains one of the main focuses of the ECB's monetary policy strategy. In terms of its expanded asset purchase programme (APP), the purchase of government bonds under the public sector purchase programme (PSPP) generated the highest buying volume with a cumulative total of € 1 255 billion by the 2016 year-end and average monthly purchases of € 65 billion. The third covered bond purchase programme (CBPP3) led to purchases of € 5 billion per month and a portfolio of just under € 204 billion by the year-end. The asset-backed securities purchase programme (ABSPP) amounted to a portfolio of € 23 billion by the end of 2016, with average purchases of close to € 440 million per month.

In addition, in March 2016 the APP was extended to include the corporate sector purchase programme (CSPP), under which the ECB has made average monthly purchases of € 7 billion since June 2016, bringing the portfolio at the year-end to € 51 billion (less than 5% of the total outstanding volume of corporate bonds eligible for inclusion in the CSPP).

In December 2016 the ECB extended the APP by nine months until at least December 2017, although the PSPP will be cut by € 20 billion to € 60 billion as of April 2017. By extending the programme, the ECB is continuing to aim to correct low inflation upwards and to bolster the economy as a whole.

Chart 3: **Key interest rates in the USA and in the euro area 1998–2016** (in %; source: Federal Reserve Bank St. Louis, ECB)



The Fed continued its more restrictive approach in 2016, raising the federal funds rate by a further 25 basis points in December from 0.50% to 0.75%. Further gradual interest rate hikes are planned for 2017 in order to guarantee price stability combined with a high level of employment. However, given the uncertainties surrounding the future course taken by the new US administration, it is difficult to assess how US monetary policy will actually develop in practice. The US central bank's total assets during the past year remained more or less stable, with only a small dip to \$ 4 451 billion. In contrast, the ECB's assets grew by € 900 million to € 3 685 billion.

In response to Brexit, the Bank of England unveiled a huge stimulus package in August. This included measures to cut key interest rates from 0.50% to 0.25%, extend the asset purchase programme from £ 375 billion to £ 435 billion, and relaunch the purchase programme for corporate bonds and a liquidity programme. The predominantly

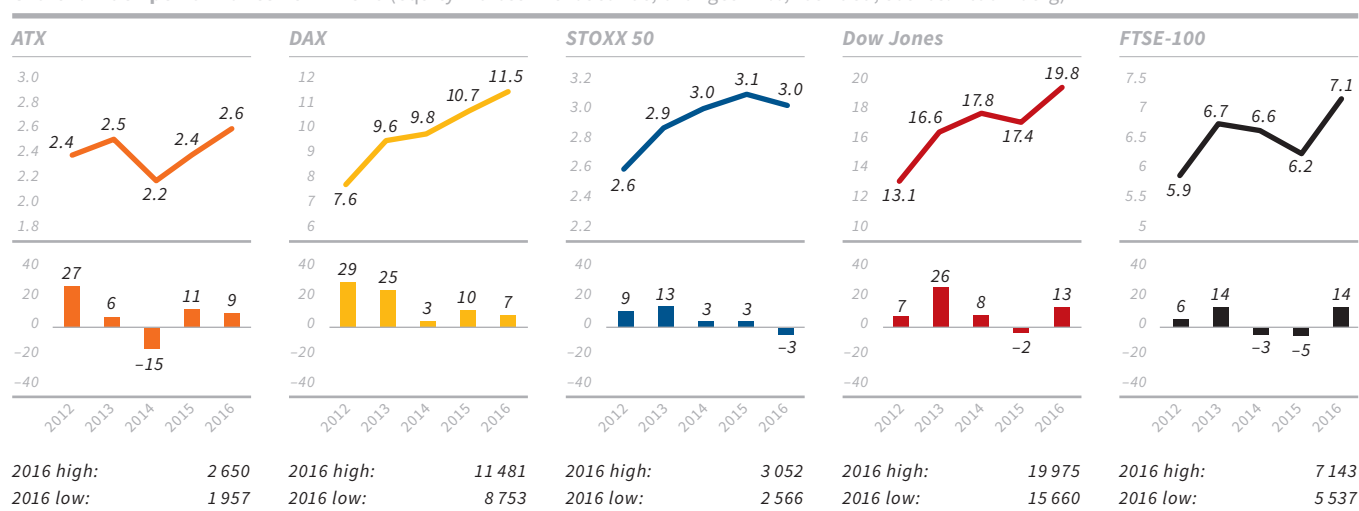
Table 1: **International financial market figures 2012–2016** (source: OECD, Eurostat, European Commission, ECB, OeNB)

	2012	2013	2014	2015	2016 (prel.)
INTEREST AND CREDIT					
Domestic credit to non-banks (changes in %)	0.0	-1.3	0.1	1.8	1.8
Credit to non-financial enterprises	0.8	-0.5	-3.5	0.1	1.4
Credit to households	0.7	0.2	2.1	4.3	3.1
Three-month interbank rate (EURIBOR, average)	0.6	0.2	0.2	0.0	-0.3
Ten-year reference government bond (average)	2.3	2.0	1.5	0.7	0.4
EXCHANGE RATES					
Nominal effective exchange rate (period average)	93.1	98.1	98.4	88.8	90.5
Real effective exchange rate (period average)	94.0	99.0	98.4	88.9	90.5
EUR/USD (average)	1.29	1.33	1.33	1.11	1.11
EUR/JPY (average)	102.6	129.6	140.4	134.3	120.3
EUR/CHF (average)	1.21	1.23	1.21	1.07	1.09

pessimistic view that formed the initial motivation for this package of measures turned out to be short-term, however, and by the end of the year the Bank of England had revised its three-year forecasts for inflation and growth upwards again.

THE EQUITY MARKETS

The stock markets experienced a rollercoaster ride in 2016. The VSTOXX index, which is a benchmark of implied volatilities among options in the EURO STOXX 50 and thus an indicator of uncertainty on the European stock markets, fluctuated between 15 and 40 during the year under review, soaring to peak levels at the start of the year and again in June before plunging back down towards the end of the year. Banking and insurance stocks reacted particularly sensitively to global events. They were, however, able to make up a lot of ground again during the second half of the year, with the STOXX Banks and STOXX Insurance indices ending the year down 6.8% and 5.6% respectively on the previous year, and the STOXX 600 shedding a mere 1.2% on a year-on-year basis. The banking and insurance equities indices, at 67% and 42% respectively, are therefore still a long way off their all-time highs. The equity markets began the year with a steep climb. In the space of six months, the EURO STOXX 50 had shed around 17%, triggered by uncertainty about economic growth in emerging markets (particularly China) and the profitability of EU banks. By late February, prices had recovered again, and managed to gradually work their way back to pre-slide levels.

Chart 4: **Index performance 2012–2016** (equity indices in thousands, changes in %, rounded; source: Bloomberg)

The EU referendum in the UK in June 2016 sparked off a new wave of selling on the stock markets, with financial stocks coming under particular pressure again. On 24 June several European share indices temporarily fell by more than 10%. Share indices in Italy and Spain fared particularly badly, both falling by 12%, while the equivalent figure in Ireland was -16%. Some banking shares in the UK were affected even more seriously by the referendum, recording losses of up to 30%. A widening of CDS spreads was a natural response to these events.

Share prices bounced back during the second half of the year, although concerns began to grow again from July 2016 onwards due to the ailing loans that some European banks were holding in their portfolios. This concern marred expectations regarding future profits as worries grew about potential negative implications for the solvency of the banks concerned. The negative sentiment was reflected in the performance of bank shares, which remained below their level from two years ago, despite the strong recovery.

Fears about the Italian banking sector were particularly marked during the second six months of the year, especially after Banca Monte dei Paschi di Siena, one of Italy's largest banks, applied to the Italian government for a precautionary recapitalisation package to save it from collapse. The volatility of Italian banking shares subsequently increased to such an extent in December that trading in banking stocks was suspended as of 21 December. After Italian voters rejected the government's proposed constitutional reform, the new government announced it was setting up a fund to stabilise the banking sector. For the purposes of recapitalising Banca Monte dei Paschi di Siena and other Italian credit institutions, the Italian government provided € 20 billion in the form of a rescue package, financed out of the government budget and thus increasing Italian borrowing. At 130%, Italy already has the second-highest national debt in the EU, after Greece.

In November, the US presidential elections were responsible for smaller, short-lived ups and downs on the stock markets. Donald Trump's surprise victory caused the equity indices to fall for a short period before quickly recovering again. US equities recorded above-average growth in the expectation of higher infrastructure spending and far-reaching deregulation.

There was a strong corollary between the ATX and international indices, with the former ending the year up 9.2% on 2 631 points. 2016 was also a turbulent year for the DAX with global events triggering a series of highs and lows. Nevertheless, the German index ended the year with a gain of 6.9% nudging the 11 500 points mark. This was the fifth profitable year for the DAX in a row. In the UK, the FTSE 100 ended the year on a record 7 142 points, an increase of 14.4% compared with the 2015 year-end. A very similar development was also in evidence on the other side of the Atlantic, with the Dow Jones and S&P 500 recording gains of 13.4% and 9.5% respectively, and with the NASDAQ Composite up by 7.5%. For their part, the EURO STOXX 50 and Nikkei 225 Index were not able to match this growth, recording small increases of 0.7% and 0.4% respectively.

THE BOND MARKETS

On the bond markets, the ECB's expansionist monetary policy kept yields low, albeit with some slight increases again towards the end of the year, coupled with falling bond prices. European government bonds were in high demand during the first half of the year, pushing the yield even on medium and long-term bonds into negative territory in many EU countries. Despite a contrary movement from the summer onwards, most yields were still down on 2015 levels by the year-end. The yields on ten-year German government bonds was 20 basis points at the end of December, compared with 44 points for Austrian bonds, 68 basis points for French and 180 basis points for Italian. Contrary to the trend in the other eurozone countries, the yield on Greek government bonds increased over the course of the year, ending 2016 at just over 7%.

With the ECB also buying up investment grade corporate bonds denominated in euro since June 2016, a disconnect between the spreads for CSPP-eligible bonds and the CDS spreads of the corresponding issuers has emerged. The spreads for CSPP bonds dropped by more than 20 basis points during the second half of the year, while CDS spreads were only down around 10 basis points. This discrepancy may increase the risk of valuation errors in this market segment.

THE COMMODITY MARKETS

Commodity prices recovered in early 2016 with the improvement continuing for the rest of the year. Key factors included the weaker US dollar, the political events referred to above and macroeconomic uncertainties, which reinforced the safe haven status enjoyed by some raw materials. Increased demand also helped to push up the share prices of companies that extract raw materials. The second half of the year saw significant increases in the prices of industrial metals and energy sources, with average rises of 10% and 6% respectively. Oil prices grew by 15% during this period. The price of a barrel of Brent was in excess of € 50 by the end of the year, buoyed by an agreement reached between the OPEC countries in December to cut daily oil production by 1.2 million barrels to 32.5 million barrels with effect from 2017 in an effort to stabilise prices. Some countries outside of OPEC, such as Russia, also displayed their willingness to cut production. The structural changes that oil companies have already implemented helped oil shares to perform well, as the costs of oil production fell and profitability increased. There was a strong corollary between gold and silver prices during 2016, with year-on-year rises of 8.0% and 14.9% respectively.

THE CURRENCY MARKETS

As far as the euro was concerned, the year 2016 was a slightly negative year overall on the currency markets. Political and macroeconomic uncertainties eroded investor confidence in the European currency. Against a background of low inflation and the resulting continuation of the ECB's low interest rate policy, the euro became less attractive as an investment currency. These two factors resulted in it losing value against most of the world's major currencies. During the first half of the year the euro/US dollar exchange rate was still benefiting from the euro's safe haven status and from the slower than expected normalisation of interest rates in the USA, with the exchange rate reaching 1.15 at times. By the year-end, the exchange rate had however dropped below the previous year's level (1.05 compared with 1.08 at the 2015 year-end) in response to the increasing interest rate differential between the US dollar and the euro, with the Fed's interest rate hike in December 2016 being a key factor. Against sterling, however, the euro recorded a positive performance ending the year worth £ 0.85 (compared with £ 0.73 at the 2015 year-end). The crucial factor here was clearly Brexit and the related uncertainty regarding the future state of the UK economy. The changing EUR/GBP exchange rate reflected the prevailing opinion on the markets that leaving the EU would be disadvantageous to the UK but less so for the remaining EU Member States. Volatility on the currency markets was at its highest around the time of the referendum. The situation soon eased but the negative trend lasted into the second half of the year.

A "flash crash" on 7 October 2016 hit the headlines, albeit briefly, as the pound collapsed by more than 6% against the US dollar in the space of a few minutes only to recover again almost as quickly. The reasons for this movement are still unclear. The suspicion is that an algorithm-based trading strategy triggered the crash in the early hours of the morning when the market was less liquid.

The euro was more or less stable against a basket of currencies from emerging markets including China, Mexico, Russia and Turkey.

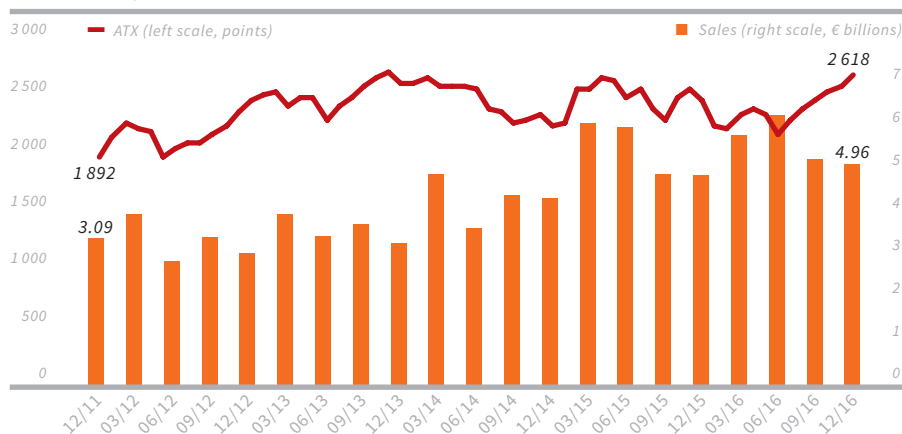
The Austrian financial market

The Vienna Stock Exchange can look back on a clearly successful 2016. The ATX recorded moderate growth compared with other blue-chip indices, up by 9.24%. Performance over the second half of the year can be judged to be very positive, in terms of both results and trading volumes. The top performing stocks in 2016 were Lenzing AG (+65.35%), Schoeller-Bleckmann Oilfield Equipment AG (+51.82%) and Strabag SE (+42.74%). Meanwhile, negative performances were recorded by Do&Co AG (-37.58%), AT&S Austria Tech. & Systemtech. (-36.06%) and FACC AG (-28.73%) in 2016.

Capital market activities in the corporate bond sector reached record levels in terms of both the number and volume of new corporate bonds. In total, 48 new corporate bonds were issued in 2016 with an issue volume of € 7.5 billion (+41.5%). Domestic issuers accounted for 21 new bonds, with a volume of € 1.43 billion (-37.28%), while 27 corporate bonds with a volume of € 6.12 billion (+100%) were issued by foreign issuers.

Trading volumes in the equity market fell in 2016, down from € 58.38 billion to € 55.93 billion, a decrease of € 2.45 billion on the previous year (-4.20%). Average daily trading was also down, falling by 4.59% to € 224.6 million. At € 93.34 billion, capitalisation of the Austrian market (in the equitymarket.at segment) was € 7.18 billion above the previous year's level.

Chart 5: Development of the equitymarket.at segment of the Vienna Stock Exchange 2012–2016 (quarter-end results; source: Wiener Börse AG)



BANKING

The business volume of Austrian credit institutions totalled € 806 billion by the end of 2016 and had thus decreased by 2.2% compared with the previous year (see Table 3). Positive growth rates were recorded by special-purpose banks (+2.2%) and by building societies (+4.8%). The biggest decrease by far was

Table 2: Trade statistics of equitymarket.at segment 2012–2016 (source: Wiener Börse AG)

	2012	2013	2014	2015	2016
Capitalisation of domestic shares as at last trading day (in € billions)	78.1	83	77.8	86.2	93.3
Annual sales on equitymarket.at (in € billions)	36.1	38.7	47.7	58.4	55.9
Daily average sales (in € millions)	146.1	156.1	193.3	235.4	224.6
ATX at year-end	2 401.21	2 546.54	2 160.08	2 396.94	2 618.43
ATX performance (in %)	26.94	6.05	-15.18	10.97	2.22

recorded by joint stock banks (–6.7%), followed by the Volksbank cooperative sector (–3.7%) and mortgage banks (–3.5%). In terms of business volume, Raiffeisen cooperatives were able to maintain their leading position on the market, with a share of 32.1%. Joint stock banks continue to hold the second largest market share (28.3%), followed by savings banks (18.3%). The total market shares, including branches from EEA countries in Austria (Article 9 of the Austrian Banking Act – BWG; *Bankwesengesetz*) and corporate provision funds, are shown for the purposes of comparison in Chart 6.

Table 3: Key figures of the Austrian banking sector 2012–2016

(Source: OeNB; 2011–2014 financial statement figures; from 2015 asset, trading and risk statements)

	2012	2013	2014	2015	2016 (prel.)
TOTAL ASSETS IN TERMS OF SECTORS (non-consolidated, in € millions)					
Total assets non-consolidated (sum total) ¹	952 804	888 697	847 619	824 399	805 953
Joint stock banks	258 681	236 630	245 952	244 483	228 189
Savings banks	171 821	159 778	150 908	146 150	147 736
Mortgage banks	84 141	78 145	59 775	58 270	56 215
Raiffeisen cooperatives	292 316	281 222	268 462	261 344	258 475
Volksbank cooperatives	57 307	50 554	42 426	33 291	32 075
Building societies	22 382	22 730	23 242	22 757	23 854
Special-purpose banks ²	66 157	59 639	56 854	58 103	59 408
DEVELOPMENT OF ASSETS AND LIABILITIES (non-consolidated, in € millions)					
Total assets non-consolidated (sum total) ¹	952 804	888 697	847 619	824 399	805 953
Claims on credit institutions	258 320	227 909	198 291	179 202	167 145
Claims on non-banks	437 079	429 096	421 707	425 228	424 821
Debt securities and other fixed-income securities	78 696	69 583	65 382	54 154	44 670
Shares and other variable-yield securities	12 341	10 960	10 021	9 948	11 047
Other asset items	166 368	151 149	152 217	155 867	158 270
Liabilities to credit institutions	255 924	211 216	188 351	179 391	154 313
Liabilities to non-banks	344 826	352 032	361 926	371 869	389 072
Securitised liabilities	203 959	189 728	164 675	142 971	133 256
Other liability items	148 096	135 721	132 667	130 168	129 313
NET INCOME IN TERMS OF SECTORS (non-consolidated, in € millions)					
Net income non-consolidated (sum total) ¹	2 078	–1 761	–8 014	3 257	4 298
Joint stock banks	246	–1 047	–1 763	713	1 055
Savings banks	616	373	–5 462	1 321	1 486
Mortgage banks	5	–2 567	–38	178	313
Raiffeisen cooperatives	1 433	1 532	–225	681	1 048
Volksbank cooperatives	–104	–210	–884	41	56
Building societies	79	66	112	69	22
Special-purpose banks ²	–198	93	246	254	319
EARNINGS SITUATION (non-consolidated ³ , in € millions)					
Net interest income	8 696	8 657	9 119	8 818	8 363
Operating income	18 525	18 468	19 449	20 352	18 501
Operating expenses	11 973	12 515	14 027	13 478	13 223
Operating result	6 552	5 953	5 422	6 874	5 278
Cost-income ratio (in %)	64.63	67.77	72.12	66.23	71.47
EXPOSURE TO CESEE (end of period in € millions) ³					
Total assets of CESEE subsidiary banks	280 735	264 998	257 728	265 736	184 966
NMS-2004 ⁴	136 631	130 478	130 538	141 626	114 565
NMS-2007 ⁵	40 886	39 764	40 135	39 894	25 684
SEE ⁶	50 976	50 209	49 493	50 568	29 199
CIS ⁷	52 242	44 547	37 562	33 649	15 519

¹ Excluding branches from EEA countries in Austria (Article 9 BWG), credit guarantee banks and corporate provision funds.

² Excluding credit guarantee banks as specified in Article 5 no. 3 KStG.

³ Excluding the joint venture of Bank Austria in Turkey, not yet fully consolidated, up to and including 2015.

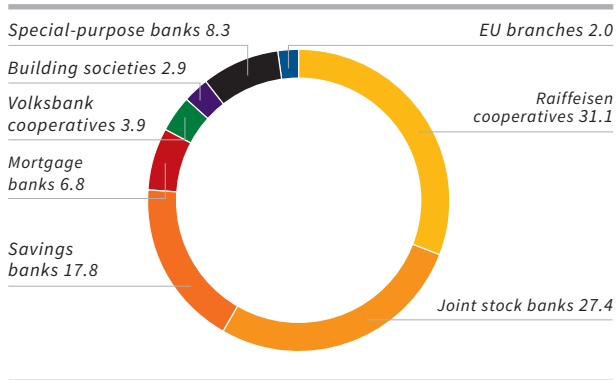
⁴ NMS-2004: Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, Slovenia.

⁵ NMS-2007: Bulgaria, Romania.

⁶ SEE: Albania, Bosnia and Herzegovina, Croatia, Kosovo, Macedonia, Montenegro and Serbia.

⁷ CIS: Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Republic of Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan.

Chart 6: Market shares of banks including branches from EEA countries in Austria (Article 9 BWG) and corporate provision funds 2016 (included under special-purpose banks) (in %)



In 2016 claims on non-banks rose slightly, accounting for the largest share on the asset side of the Austrian banking sector, at 52.7%. Since total assets decreased, the share of the balance sheet item attributed to claims on non-banks actually increased by 1.1 percentage points compared with 2015. Liabilities to non-banks increased both in terms of volume (+4.6%) and of share (+3.2%), and at 48.73% accounted for the largest share on the liability side.

At 20.7%, claims on credit institutions accounted for the second-largest entry on the asset side of the balance sheet, while liabilities to credit institutions represented the second-largest item on the liability side, at 19.1%. Both of these balance sheet items decreased in a year-on-year comparison, claims by 6.7% and liabilities by 14.0%.

A non-consolidated operating result of € 5.3 billion is expected for Austrian banks as at the end of 2016 (see Chart 9). This represents a 23% decrease compared with the previous year. Underlying this downward trend is a drop in operating income (-9.1%), combined with only a small reduction in operating expenses (-1.9%).

Following a 3.2% decrease in 2015, net interest income fell again, down by 5.2% in 2016. At 45%, net interest

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

At the end of the fourth quarter of 2016, the 52 fully consolidated subsidiary banks in Central, Eastern and South-Eastern Europe (CESEE) reported aggregate total assets of € 185.0 billion (see Chart 7 and Table 3). Over half of this figure (61.9%) was accounted for by the Member States that acceded to the EU in 2004 (NMS-2004)¹, followed by the South-Eastern European countries (SEE)² at 15.8%, the Member States that joined the EU in 2007 (NMS-2007)³ at 13.9%, and the countries in the Commonwealth of Independent States (CIS)⁴ at 8.4% (see Chart 8).

The total assets of Austrian CESEE subsidiary banks fell again in 2016, down by 30.4%, after previously enjoying growth. This can be attributed to the divestment of the CESEE operations of UniCredit Bank Austria AG.

Around two thirds of Austrian banks' exposure to the markets of CESEE relate to EU Member States.

Chart 7: Total assets of CESEE subsidiaries 2012-2016 (in € billions)

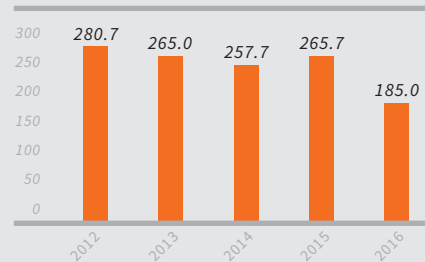
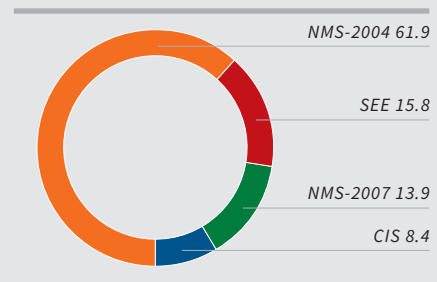


Chart 8: Share of 2016 total assets by regions (in %)



¹ NMS-2004: Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, Slovenia.

² SEE: Albania, Bosnia and Herzegovina, Croatia, Kosovo, Macedonia, Montenegro, Serbia, Turkey.

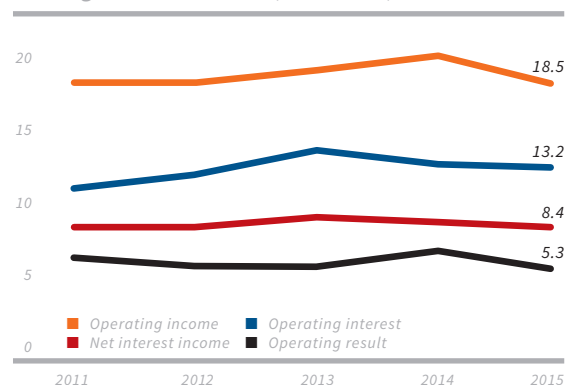
³ NMS-2007: Bulgaria, Romania.

⁴ CIS: Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Republic of Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan.

income nonetheless continues to account for a significant share of operating income.

For the 2015 financial year as a whole, Austrian credit institutions posted net income of € 3.3 billion, which is likely to be followed by another positive figure for 2016. Although the final figures are not yet available, the credit institutions are forecasting net income of approximately € 4.3 billion for the 2016 financial year, with the individual sectors performing consistently positively. After recording net income of € 1.3 billion in 2015, the savings banks are expected to achieve the largest share of total net income, at € 1.5 billion, followed by the joint stock banks and the Raiffeisen cooperatives. For 2016 Austrian credit institutions are anticipating a substantial decrease in provisions for risk (value adjustments) to € 1.4 billion. Risks provisions had amounted to € 2.5 billion back in 2015.

Chart 9: Development of earnings in the Austrian banking sector 2012–2016 (in € billions)



CORPORATE PROVISION FUNDS

The market for corporate provision funds continued to grow in 2016. By the reporting date of 31 December 2016, the number of membership contracts, measured on the basis of employer account numbers, had increased by 5.55% from 1 224 952 to 1 292 940 (see Table 4). Provision for employees grew by 5.51% during the year under review (from 604 393 to 637 715 contracts), while provision for the self-employed rose by 5.59% (from 620 559 to 655 225 contracts). It should be noted, however, that several employer account numbers may be assigned to one and the same employer.

Measured in terms of current contributions, the corporate provision funds received a total of € 1.37 billion last year, of which € 1.27 billion was paid into the fund for employees and € 104.96 million into self-employed provision. This compares with a total of € 1.29 billion for the previous year (of which € 1.18 billion represented contributions for employees and € 105 million contributions for the self-employed). Overall, this equates to an increase of 6.57%, with employee provision growing by 7.16% and provision for the self-employed down only minimally.

The total assets managed during the year under review by all of the corporate provision funds rose from

Table 4: Market development of corporate provision funds 2012–2016 (source: Association of Occupational Provision Funds)

	2012	2013	2014	2015	2016
GENERAL DATA					
Number of membership contracts	997 691	1 078 551	1 152 870	1 224 952	1 292 940
Provision for employees pursuant to Part 1 BMSVG	511 054	542 014	573 631	604 393	637 715
Provision for the self-employed pursuant to Part 4 BMSVG	474 029	523 553	566 068	607 289	642 216
Provision for the self-employed pursuant to Part 5 BMSVG	12 608	12 984	13 171	13 270	13 009
Assets of corporate provision funds (in € millions)	5 274	6 220	7 324	8 306	9 423
Assets of corporate provision funds (in € millions)	1 043	1 123	1 200	1 289	1 374
Current contributions (in € millions)	296	314	351	388	445
Performance of corporate provision funds (in %)	4.28	2.82	3.94	1.22	2.23
DISPOSAL OPTIONS					
Payouts (in € millions)	295.99	314.11	351.27	387.88	444.7
Transfer to another corporate provision fund (in € millions)	11.00	15.42	14.59	20.00	21.55
Remittance to a Pensionskasse, supplementary pension or occupational group insurance scheme (in € millions)	0.37	0.47	1.11	1.22	1.78
Total	307.36	330.00	366.97	409.10	468.03

Chart 10: Total assets of corporate provision funds 2012–2016 (in € billions)

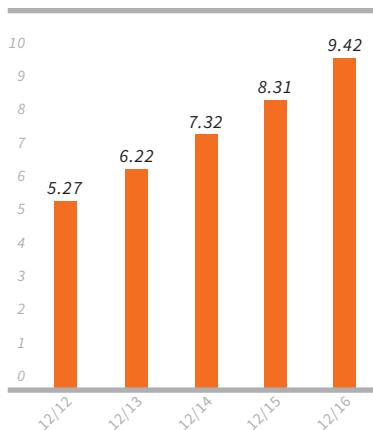
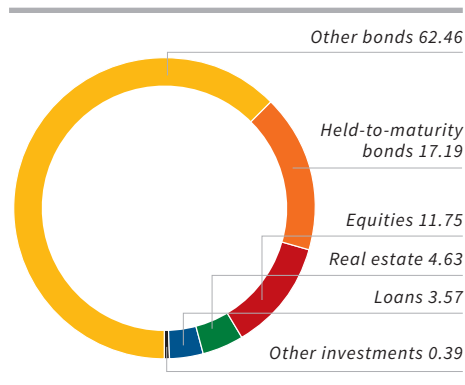


Chart 11: Investment instruments of corporate provision funds 2016 (in %)



€ 8.31 billion to € 9.42 billion, an increase of € 1.12 billion or 13.45% (see Chart 10).

During the period from the system's introduction on 1 January 2004 until the end of 2016, a total of € 2.64 billion has been paid out to 3 110 072 beneficiaries (entitled). Over the same period, 141 726 beneficiaries (entitled) transferred their pension expectancies to another corporate provision fund, moving a total of € 117.21 million. Additionally, 1 473 individuals have remitted a total of € 5.75 million to a *Pen-*

sionskasse or supplementary pension insurance scheme, or to an occupational group 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 Table 4).

Corporate provision funds are required to guarantee their beneficiaries (entitled) a minimum claim. This encompasses the total accrued severance pay funds and any transferred existing severance pay expectancy, as well as any severance pay expectancies transferred from another corporate provision fund. It is also referred to as a capital guarantee. Corporate provision funds are also free to offer a further interest guarantee over and above this capital guarantee. Such an interest guarantee was offered by one fund in 2016.

As a result of this statutory capital guarantee and the prescribed investment rules, the corporate provision funds pursue a very conservative investment policy. In particular, the funds are required to carry out their business in the interests of the beneficiaries (entitled), focusing on security, profitability and an appropriate mix and diversification of assets. In compliance with statutory provisions, the majority of corporate provision funds invest in bonds either directly or indirectly via investment funds (see Chart 11). During the reporting year the corporate provision funds recorded an investment result of 2.23% (2012: +4.28%; 2013: +2.82%; 2014: +3.94%; 2015: +1.22%).

PENSIONS KASSEN

As at 31 December 2016, approximately € 20.8 billion was being managed within the Austrian pension company market (see Table 5). This figure represents an increase of about 6.1% 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 the investment result.

The three largest providers, namely VBV Pensionskasse AG, Valida Pension AG and APK Pensionskasse AG, combine to account for a 76.6% share of the market, measured in terms of assets under management. This share is more or less unchanged on the previous year. Measured within the market overall, single-employer *Pensionskassen* account for around 9.7% of the assets under management.

The share of assets managed under the company old-age provision scheme thus amounted to around 5.8% of Austria's gross domestic product.⁵

There were about 903 000 beneficiaries at the end of the year, representing a year-on-year increase of approximately 2.6%, 10% of whom are already drawing pension benefits. The vast majority of the beneficiaries are therefore still in the savings period for a pension benefit. In 2016 around 22% of all dependently employed

⁵ Austrian GDP 2015: € 337 billion (source: Statistics Austria).

Table 5: Market development of *Pensionskassen* 2012–2016 (source: FMA, unless indicated otherwise)

	2012	2013	2014	2015	2016
ASSETS MANAGED IN THE PENSION COMPANY MARKET					
Assets managed by <i>Pensionskassen</i> (total, in € millions)	16 278	17 385	19 011	19 646	20 839
Single-employer	2 077	1 953	1 921	1 850	2 020
Multi-employer	14 201	15 431	17 090	17 796	18 819
Market share of the three largest <i>Pensionskassen</i> (as a % of total)	71.32	73.03	76.81	76.68	76.61
NUMBER OF BENEFICIARIES IN THE PENSION COMPANY SYSTEM					
Number of beneficiaries (total)	820 109	835 128	858 433	880 141	902 972
Single-employer	250 158	252 474	256 087	254 122	258 914
Multi-employer	569 951	582 654	602 346	626 019	644 058
Beneficiaries (entitled)	743 612	754 571	772 835	791 124	809 279
Recipients	76 497	80 557	85 598	89 017	93 693
Beneficiaries (recipients) (as a % of total)	9.33	9.65	9.97	10.11	10.38
Beneficiaries (entitled) (as a % of dependently employed persons in Austria ¹)	19.57	20.52	20.96	21.67	21.92
NUMBER OF PENSIONS KASSEN AND IRGs					
Number of <i>Pensionskassen</i>	17	16	14	13	12
Number of investment and risk sharing groups	140	124	118	113	112
Number of security-oriented IRGs	–	5	5	5	4
Number of sub-IGs	–	16	23	28	32
INVESTMENT PERFORMANCE (in %)²					
Investment performance (total)	8.40	5.10	7.82	2.32	4.18
Single-employer	9.23	3.90	8.27	2.53	5.13
Multi-employer	8.28	5.30	7.77	2.30	4.08

¹ Number of dependently employed persons: Statistics Austria. The annual average was used for the years from 2012 to 2015.

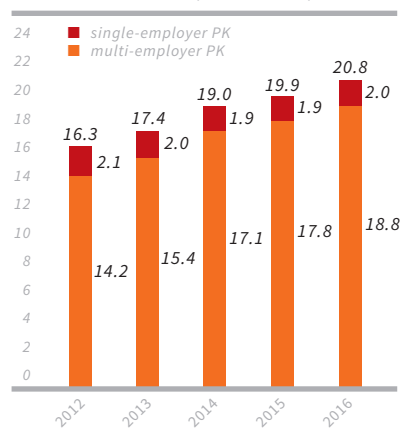
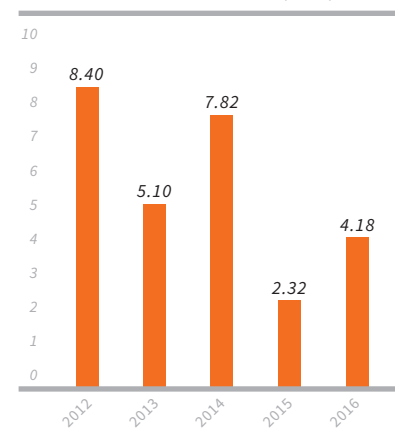
² Source: OeKB.

persons⁶ in Austria held an entitlement to a pension from a *Pensionskasse*.

The number of *Pensionskassen* has decreased over the past five years from 16 to 12 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*. At the end of 2016 there were 112 IRGs, four security-oriented IRGs and 34 sub-IGs.

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. It should be noted, however, 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 4.2% in 2016. The results for the individual investment and risk sharing groups range from 0.3% to 7.0%. The average performance recorded by the *Pensionskassen* is 4.8% per year for the past three years, 5.5% over the past five years and 2.7% for the last ten years.

Chart 12: Total assets of all *Pensionskassen* 2012–2016 (in € billions)Chart 13: Investment performance of *Pensionskassen* 2012–2016 (in %)

⁶ Number of dependently employed persons: Statistics Austria. The annual average was used for the years from 2010 to 2015.

INSURANCE UNDERTAKINGS

The volume of domestic premiums written (direct gross amount) fell by 2.43% in 2016 compared with the previous year (2015: +1.6%) and totalled € 16.92 billion.

With regard to the life insurance balance sheet group, premiums were down by 9.81% from € 6.70 billion in 2015 to € 6.04 billion in 2016. The proportion of premiums from unit-linked and index-linked life insurance grew slightly and amounted to 22.29% as at the 2016 year-end (2015: 21.91%). Totalling € 7.75 billion, payments for claims were down by 8.43% in 2016. The equivalent figure for 2015 was € 8.46 billion.

The balance sheet group of non-life and accident insurance showed an increase over the previous year, with premiums written rising by 1.64% to total € 8.83 billion. Claims payments rose to € 5.45 billion, representing an increase of 1.27%.

With premiums written totalling close to € 2.05 billion in 2016, the health insurance balance sheet group achieved an increase of 4.70% on the previous year. Premiums have continuously increased over the long term. Totalling € 1.34 billion, payments for claims were up by some 3.32% in this group.

The technical account balance totalled € 560 million in 2016 (2015: € 475 million). The financial result was down on the previous year, falling from € 3.2 billion to € 3.1 billion. Overall, the result from ordinary activities was € 1.41 billion in 2016, a rise of 4.48% on the previous year (2015: € 1.35 billion).

Solvency II dramatically changes the way in which assets are viewed. While the balance sheet prepared in accordance with the Corporate Code (UGB; *Unternehmensgesetzbuch*) was based on the historical cost principle, with assets being recorded at their carrying amounts, the Solvency II balance sheet is based on the market value principle, reflecting the economic value of companies' assets. This means that any market fluctuations have a direct impact on the balance sheet. All insurance undertakings are now required to apply the market-based approach prescribed under Solvency II when measuring their assets during the preparation of a Solvency II balance sheet. While investments were regulated by means of upper limits and a list of eligible assets under Solvency I, the prudent person principle applies under Solvency II. This means that each undertaking is free to set its own investment limits.

Total investments at market values (excluding investments for unit-linked and index-linked life insurance) amount to € 110.68 billion.

The core share ratio (i. e. listed shares, equity funds, equity risk in mixed funds) increased compared with the previous quarter, rising from 3.69% to 3.99% during the reporting period. The extended share ratio (i.e. with the

Table 6: Market development of Austrian insurance undertakings 2012–2016

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

	2012	2013	2014	2015	2016
PREMIUMS WRITTEN IN AUSTRIA (direct gross amount, in € millions)					
Life insurance	6 434	6 420	6 663	6 695	6 038
Unit-linked life insurance	1 537	1 638	1 400	1 401	1 250
Index-linked life insurance	309	184	129	66	96
Health insurance	1 754	1 821	1 880	1 959	2 051
Non-life and accident insurance	8 152	8 367	8 534	8 688	8 831
Total premiums written in Austria	16 340	16 608	17 077	17 342	16 920
PAYMENTS FOR CLAIMS (in € millions)					
Life insurance	6 328	6 315	7 081	8 463	7 749
Health insurance	1 129	1 217	1 254	1 297	1 340
Non-life and accident insurance	4 975	5 258	5 131	5 382	5 451
EARNINGS AND PROFITABILITY					
Technical account balance (in € millions)	455	592	477	475	560
Financial result (in € millions)	3 403	3 339	3 211	3 216	3 051
Result from ordinary activities (in € millions)	1 395	1 574	1 421	1 354	1 414

AUSTRIA'S INSURANCE INDUSTRY BY INTERNATIONAL STANDARDS

The level of development of a country's insurance sector can be rated using the indicators of insurance density and insurance penetration.

Insurance density specifically refers to the ratio of premium revenues to total population. In the life insurance sector, insurance density dropped compared with 2015, from € 784 to € 700. Meanwhile, in the non-life sector, there was an increase of 1.19% to € 1 261. In 2015 premium revenues per person within the EU averaged € 1 223 for life insurance and € 574 for non-life, with health insurance premium revenues averaging € 207.

Insurance penetration is defined as the ratio of premiums to gross domestic product. Insurance penetration in Austria in 2016, at 5.02%, was almost identical to the previous year (5.27%). The European average for insurance penetration was 7.4% in 2015.⁷

addition of unlisted shares, including holdings, structured debt securities without capital guarantee, and loans without capital guarantee) fell from 16.23% at the previous year-end to 16.11% by the end of 2016.

INVESTMENT FUNDS

The 21 Austrian investment fund management companies managed fund assets totalling € 167.10 billion as at 31 December 2016, with this figure not including the fund assets managed by real estate investment fund management companies. This represents growth in assets of about € 4.40 billion or a percentage increase of 2.70% on 31 December 2015. Total fund assets as at 31 December 2012, by way of comparison, amounted to € 144.41 billion (see Chart 15).

The net outflow of funds during 2016 totalled € 642.53 million. In contrast, 2015 still featured a considerable net inflow of funds, in the amount of € 5.06 billion. Net inflows were recorded in April, June, July, September and October, with net outflows during the other months of the year. Broken down by fund category, it is not only mixed funds that recorded growth (€ 1.06 billion), but also equity funds (€ 458.87 million) and hedge funds of funds (€ 10.40 million). The strongest outflows affected bond funds (–€ 2.08 billion), followed by derivative funds (€ 89.34 million) and money market funds (–€ 8.83 million; see Chart 16).

The dominant position of mixed funds is reflected, as in the previous two years, not just in net inflows but also in the overall distribution of fund assets. As at 31 December 2016, € 71.14 billion or 42.57% of the total assets was invested in this category, with bond funds occupying second place with € 62.90 billion or 37.64%. The fund assets held in equity funds (€ 25.33 billion or 15.16%) and in short-term bond funds (€ 7.40 billion or 4.43%) had fallen by the 2016 year-end.

Chart 14: Breakdown of investments at market values (excluding unit and index-linked life insurance, in %)

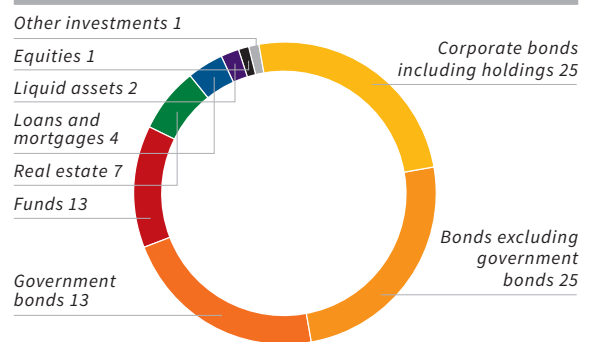
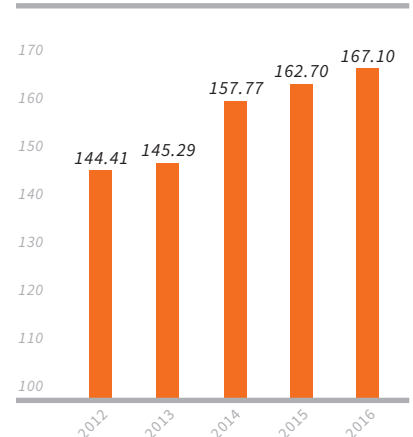


Chart 15: Fund assets of investment funds 2012–2016 (in € millions)



⁷ Source: Insurance Europe: European Insurance – Key Facts; August 2016, p. 10 et seq. Figures for 2016 were not yet available when this report went to press.

Chart 16: Net growth/outflows by investment category (in € millions)

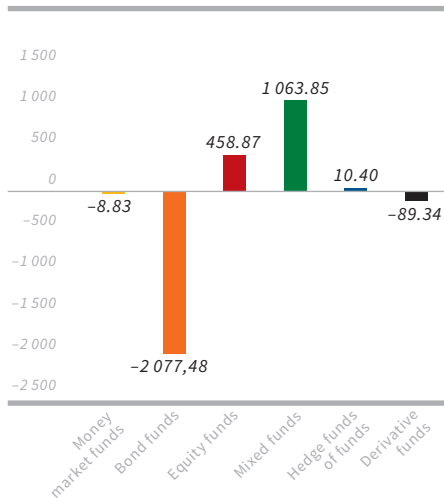


Chart 17: Net assets by fund category (as at 31 Dec. 2016, in %)

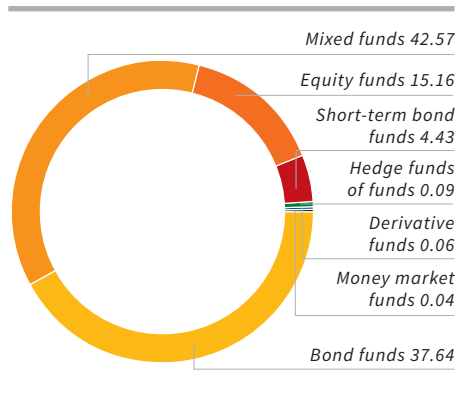
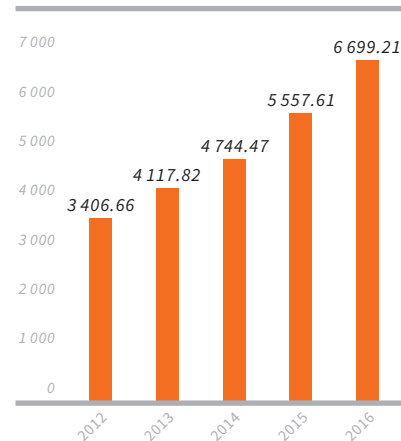


Chart 18: Fund assets of real estate funds 2012–2016 (in € millions)



Bringing up the rear were hedge funds of funds (0.09%), derivative funds (0.06%) and money market funds (0.04%; see Chart 17).

Similar to the previous year, when broken down by target group, 47.43% of investors held special funds, 46.74% retail funds and 5.83% retail funds for large-scale investors as at the end of 2016. These figures also include alternative investment funds (AIFs) as defined in the 2011 Investment Fund Act (InvFG 2011; *Investmentfondsgesetz*). Alternative investment fund managers (AIFMs), who are only licensed or registered according to the Alternative Investment Fund Managers Act (AIFMG; *Alternatives Investmentfonds Manager-Gesetz*), managed total assets amounting to € 1.16 billion as at 31 December 2016, with € 0.60 billion accounted for by private equity funds, € 0.22 billion by real estate funds, € 0.19 billion by hedge funds and € 0.16 billion by funds of funds and other funds. It should be noted that the figures quoted were provisional figures available at the time of the Annual Report being prepared.

As at the reporting date of 31 December 2016, the five Austrian real estate investment fund management companies administered total fund assets of € 6.70 billion, which equates to a year-on-year increase of 20.54% in the assets under management. Fund assets had totalled € 5.56 billion at the 2015 year-end. Fund assets in real estate funds have increased by an average of 18.44% per year over the past five years (see Chart 18).

INVESTMENT FIRMS AND INVESTMENT SERVICE PROVIDERS

The market for investment firms and investment service providers licensed pursuant to the 2007 Securities Supervision Act (WAG 2007; *Wertpapieraufsichtsgesetz*) experienced various corrections over the course of the reporting year while also holding on to some longer-term trends. Practically unchanged on earlier periods were the scale of the decrease in the number of licences and the tendency among licence holders for whom investment services are not the main focus to discontinue such operations on the basis of an own licence during economically weaker phases. Instead, they become a tied agent for another licence holder (generally an investment firm or credit institution).

This is particularly evident from the development of the total number of companies providing investment services in the form of a legal entity with and without their own licence since the entry into force of WAG 2007. While there were 348 companies (of which 308 with a licence) in 2007, this figure was hit by the financial crisis and dropped to 275 companies (of which 175 with a licence) by 2011. The numbers then picked up again to reach 364 (of which 123 with a licence) by 2015. The current figure is 351 companies, just above the original total, but with only 111 licensed investment firms and investment service providers in contrast to 240 tied agents in the form of a legal entity.

Table 7: **Key figures for Austrian investment firms, investment service providers and alternative investment fund managers with additional licence 2012–2016** (source: FMA licence database as specified in Article 92 para. 12 WAG 2007, FMA register as specified in Article 28 para. 6 WAG 2007, 2016 analysis survey)

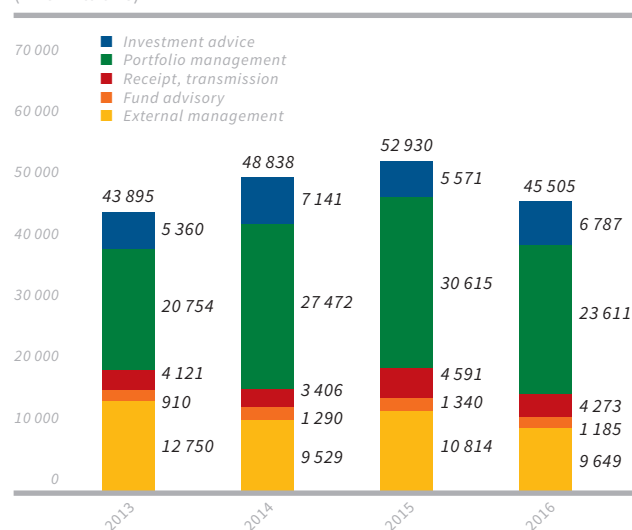
	2012	2013	2014	2015	2016
All companies	167	152	141	126	114
LICENCES					
Investment firms	88	82	74	66	60
Investment service providers	79	70	65	57	51
AIFMs with additional licence	0	0	2	3	3
Investment advice	167	152	141	126	111
Portfolio management	54	51	50	45	41
Receipt and transmission of orders	161	146	136	123	107
Multilateral trading facility	0	0	0	0	0
European passport for services	54	54	46	45	43
European passport for branches	7	6	4	5	6
Cooperation with financial services assistants/securities brokers	98	91	82	73	64
LEGAL FORM					
Joint stock company (AG)	18	16	14	11	9
Limited liability company (GmbH)	117	108	103	93	88
Partnerships	5	5	3	3	2
Sole proprietorships	27	23	21	19	15
BUSINESS ACTIVITY					
Investment advice	99	94	79	63	57
Portfolio management	42	42	37	32	31
Receipt and transmission of orders	106	95	89	83	76
Investment funds advisory	23	22	–	–	–
– UCITS advisory	–	–	20	23	23
– AIF advisory	–	–	6	6	6
External management of investment funds	29	29	–	–	–
– UCITS management	–	–	24	23	21
– AIF management	–	–	14	11	11
Appointment of tied agents	27	25	27	26	37
Cooperation with securities brokers	23	31	38	37	30
Sale of own products	59	55	58	50	50
Key account customer services	43	34	33	41	33

The fall in customer numbers in absolute terms is also continuing, with a reduction of around 19% compared with the previous year. While the total customer assets managed by licensed investment firms and investment service providers had risen to in excess of € 50 billion during the recovery phase of the past few years, the total dipped again to € 45.5 billion in 2016, slightly up on the 2013 figure.

What was particularly striking was the decline for the first time in customer assets managed in individual portfolios, which were down by almost 23%. In contrast, the volume of customer assets with regard to investment advisory services developed positively, rising by close to 22%.

Comparing the development of customer figures on the one hand and customer assets managed by investment firms and investment service providers on the other clearly shows the changing strategy of the supervised

Chart 19: **Customer assets under management 2013–2016** (in € millions)



companies, namely a shift in focus away from mass market business towards high net-worth customers. In 2013, 152 licensed investment firms and investment service providers were looking after nearly 407 000 customers with total assets of approximately € 44 billion. By 2016, 111 licensed investment firms and investment service providers were looking after 180 000 customers with assets of € 45.5 billion. This means that while each licensed company was looking after an average of 2 676 customers in 2013, with average assets of some € 108 000, this had changed to an average of 1 617 customers by 2016, with average assets in the region of € 254 000.

MACROPRUDENTIAL SUPERVISION – FINANCIAL CONGLOMERATES

In addition to microprudential supervision, which is carried out at institution level, macroprudential supervision of the financial markets is becoming ever more important. Macroprudential supervision involves the forward-looking analysis and identification of risks to secure the stability of the financial system in its entirety. Specifically, macroprudential supervision examines the risks that could result from the interlinking of different institutions in the financial sector or from interactions between the financial sector and real economy. It also deals with fundamental issues in conjunction with incentive problems in the financial system and with potential risks arising from the procyclicality inherent in the financial system.

Macroprudential supervision, the aim of which is to secure financial market stability, therefore complements microprudential supervision, the aim of which is to monitor the security and solvency of individual institutions. The 2015 financial statements identified a total of 79 financial conglomerates as referred to in EU Directives with an ultimate parent undertaking established in the European Economic Area (EEA).

The following three financial conglomerates have their head offices in Austria:

- Bausparkasse Wüstenrot and Wüstenrot Versicherung AG;
- Grazer Wechselseitige Versicherung AG with the Hypo-Bank Burgenland AG banking group;
- Raiffeisenzentralbank Österreich AG and UNIQA Insurance Group AG.

The first two are supervised directly by the FMA. Raiffeisenzentralbank Österreich AG and UNIQA Insurance Group AG are supervised directly by the European Central Bank with FMA involvement in the context of the supervisory system in place for financial conglomerates.

Another four financial conglomerates were identified within the European Union with an ultimate parent company outside the EEA.

Steps towards consolidation were observable across all of Europe in 2016, as in earlier years. However, the developments also demonstrate 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 due to their structure are subject to supplementary supervision as defined by law, 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. This is also creating potential sources of risk, such as contagion effects across different sectors.

The solvency margin of all three financial conglomerates with their head office in Austria meets the statutory requirements.

The integrated supervisory model

The FMA is the independent, autonomous and integrated supervisory authority covering nearly the entire Austrian financial market. In accordance with its statutory remit, it supervises credit institutions, payment institutions, insurance undertakings, *Pensionskassen* (pension companies), corporate provision funds, investment funds, licensed investment service providers, stock exchanges and capital market prospectuses. Since 1 January 2015 the FMA has also been the national resolution authority for banks. In addition, the FMA is responsible for monitoring trading in listed securities to ensure that it is carried out properly and for monitoring the issuers' compliance with information and organisation obligations. Further tasks include combating the unauthorised provision of financial services and taking preventive action to fight money laundering and terrorist financing. Finally, in line with the European Transparency Directive, the FMA is also the authority responsible for financial reporting enforcement in Austria.

In figures, the FMA supervised 892 undertakings with assets totalling around € 1 306.72 billion¹ during the year under review. These included in particular:

- 672 credit institutions (including 28 foreign branches) with total assets of € 832.3 billion;
- 8 corporate provision funds with assets under management of € 9.42 billion;
- 88 insurance undertakings with assets under management of € 130.4 billion;
- 12 *Pensionskassen* encompassing 116 investment and risk sharing groups and assets under management of € 20.8 billion;
- 60 investment firms and 51 investment service providers with customer assets under management of € 45.50 billion;
- 7 305 foreign funds sold in Austria;
- 2 094 domestic investment funds managed by affiliated companies: 21 investment fund management companies (17 of which as licensed AIFMs) with a managed fund volume of € 167.10 billion, five real estate investment fund management companies (that are also AIFMs, generating a volume of € 6.70 billion), a further four companies licensed solely under the terms of the Alternative Investment Fund Managers Act (AIFMG; *Alternatives Investmentfonds Manager-Gesetz*), as well as 20 registered AIFMs (with a fund volume of € 1.16 billion);
- 471 issuers with 10 223 listed securities and 33.20 million reported transactions.

In its capacity as a cross-sectoral integrated supervisory body, the FMA tackles the major challenges created by the exceptionally high degree of interweaving within the Austrian financial market due to ownership structures, sales cooperation agreements, financial transactions and the assumption of guarantees. By way of example:

- three financial conglomerates together account for a market share of just under 18% in the banking sector and of approximately 30% in the insurance sector (measured against total assets);
- investment funds² hold € 5.6 billion in securities issued by Austrian banks;
- Austrian credit institutions hold a stake of more than 25% in 15 out of 21 investment fund management companies;

¹ Non-consolidated gross assets.

² Not including AIFs that are solely authorised pursuant to the AIFMG.

- Austrian insurance undertakings hold a stake of more than 25% in four out of twelve *Pensionskassen*;
- Austrian credit institutions, insurance undertakings and *Pensionkassen* have an interest of more than 25% in five out of eight corporate provision funds;
- insurance undertakings hold securities of Austrian banks worth € 8.7 billion (at carrying amounts; this equates to 8% of insurers' total assets);
- 26 out of the 63 members of the Vienna Stock Exchange are Austrian banks³.

The FMA's integrated supervisory regime, which spans all sectors of the financial market and brings together prudential supervision and conduct supervision, and integrates both a micro and a macro approach to supervision, enables the Authority to recognise cross-sector risk transfer early on, to incorporate the findings of conduct supervision into prudential supervision, and to apply observations of sector developments at the level of individual institutions. Moreover, this integrated approach helps to achieve:

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

AIMS OF THE FMA

In line with its statutory remit, the FMA must comply with the following overriding goals as it carries out its supervisory activities:

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

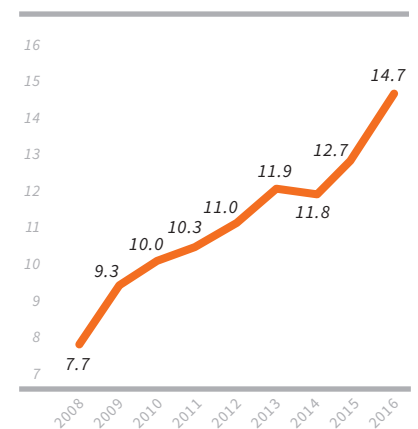
Some examples of specific measures taken by the FMA to realise these aims are presented in the following section.

FINANCIAL MARKET STABILITY

BANKS' CAPITAL POSITION

The global financial crisis demonstrated the extent to which the quality and quantity of banks' capital resources impact on their risk-bearing capacity and stability. Consequently, the FMA has introduced comprehensive measures designed to improve the quality and increase the quantity of Austrian banks' capital bases. Strict benchmarks have been set in relation to the risk-bearing capacity of certain capital components, and published in the form of circular letters, minimum standards and regulations. Through brief inspections and on-site inspections, compliance with these rules has been monitored, while the FMA has also used management talks as an opportunity to reiterate the importance of improving equity ratios and capital structures. Indeed, these measures have generated success: the Tier 1 capital ratio of Austrian banks has increased from 7.7% to 14.7% during the period from 2008 to 2016 (see Chart 20), with equity ratios up from 11% to 17.7%.

Chart 20: **Changes in Tier 1 capital ratio 2008–2016** (unweighted, in %, provisional calculations for 2016)



³ Figures collated in early April 2017.

SREP FOR LESS SIGNIFICANT INSTITUTIONS

Within the framework of the Single Supervisory Mechanism (SSM), the system of banking supervision which officially entered into operation in the euro area in November 2014, the FMA has a key role in supporting the ECB in monitoring significant institutions (SIs) in Austria. At the same time, the FMA also directly supervises about 500 Austrian credit institutions that have been classed as less significant institutions (LSIs). In the reporting year the Supervisory Review and Evaluation Process (SREP) was carried out for the first time for those LSIs, meaning that they were subjected to a comprehensive quantitative and qualitative review. In total, 33 institutions were reviewed by the FMA and OeNB during the first cycle in 2016, with the first resulting administrative decisions being announced in late December. The process was carried out for LSIs keeping the principle of proportionality in mind.

The supervisory measures that may potentially be derived from the SREP are broad in nature and, besides affecting rules on risk control and management, may also include the prescription of higher capital requirements. Higher liquidity requirements, adjustments to the business model or early intervention measures pursuant to the Bank Recovery and Resolution Directive (BRRD)/Bank Recovery and Resolution Act (BaSAG; *Bankensanierungs- und Abwicklungsgesetz*) may additionally result from the SREP.

SOLVENCY II

With the introduction of the Solvency II regime on 1 January 2016, a fundamental reform of the supervisory regime for insurance undertakings entered into effect. Specifically, changes were introduced in relation to the

own funds requirements (solvency regime) for insurance and reinsurance undertakings. The static system previously used to calculate own funds requirements was replaced with a risk-based system of calculation. Qualitative elements, for example internal risk management, must now be considered to a greater extent. The new supervisory regime is a decisive step in the harmonisation of supervision across Europe.

Austrian insurance undertakings' new solvency ratio⁴ amounts to an unweighted average of 261% (see also Chart 21). All of the Austrian insurance undertakings complied with the regulatory solvency requirements as at the end of 2016.

Chart 21: Solvency ratio of Austrian insurance undertakings according to Solvency II (in %)

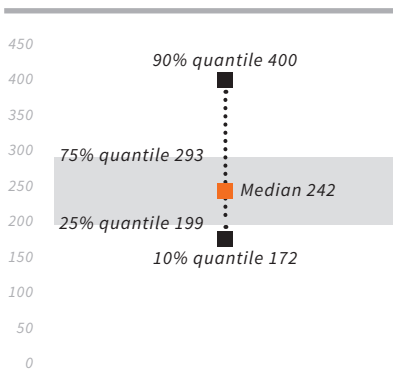
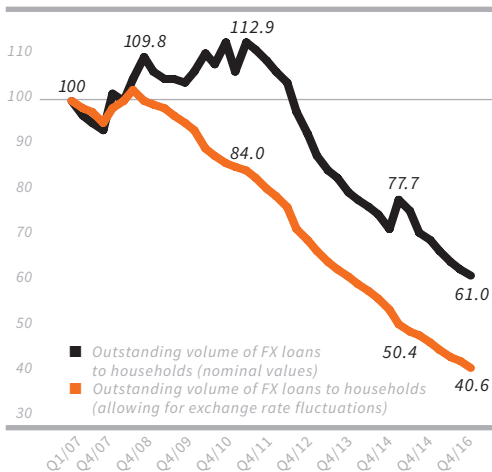


Chart 22: Limiting the risk from FX loans 2008–2016 (in %)



FOREIGN CURRENCY LOANS

The FMA has been issuing warnings about the cumulative risks associated with foreign currency loans ever since they were first introduced. Back in 2003 it drew up minimum standards for the lending industry governing the granting and management of foreign currency loans and of bullet loans with repayment vehicles. These standards have since been tightened up and extended several times. However, despite all these measures and the consistent provision of information, the boom in foreign currency lending had not been sufficiently halted. Consequently, in autumn 2008, the FMA issued a de-facto ban on the issuing of any new foreign currency loans to Austrian households with a view to securing financial market stability. At the same time, the FMA obliged credit institutions to monitor and evaluate the risk associated with any outstanding foreign currency loan on an ongoing basis so that appropriate measures to limit the risk could be discussed with customers. This has been successful: between autumn 2008 and the end of 2016, the volume of outstanding foreign currency loans fell by 60.2% from € 36.1 billion to € 21.0 billion (allowing for exchange rate fluctuations).

⁴ Ratio of eligible own funds to regulatory Solvency Capital Requirement (SCR).

Specifically, more than 150 000 Austrian households fully removed their exchange rate risk, either by converting their foreign currency loans to the euro or by using hedging methods.

According to recent data, three quarters of all remaining foreign currency loans have longer than seven years to run, with the majority of that outstanding volume due to reach maturity in ten to fifteen years' time. Given these figures and the financing gaps in the repayment vehicles that are already beginning to emerge, the FMA compiled another "FX Policy Package", which includes extensive information requirements for credit institutions. The package was sent to sector representatives for consultation in December. The FMA wishes to enable lenders to decide on their various exit scenarios well ahead of their contracts reaching maturity. The new Minimum Standards are scheduled to enter into force in mid-2017.

INVESTOR, SAVER AND CONSUMER PROTECTION

NEW MARKET ABUSE REGIME

Regulation (EU) No 596/2014, the directly applicable Market Abuse Regulation (MAR), entered into effect on 3 July 2016. Responding to the LIBOR scandal, the Regulation aims at:

- closing gaps related to the regulation of new markets, trading platforms and derivative financial instruments;
- creating a Single Rulebook;
- increasing the powers of supervisory authorities (search of premises, obtaining information on communications data, freezing and seizing of assets, temporary prohibition of exercising a profession or function, public announcement of breaches/sanctions, etc.); and
- improving cooperation among the supervisory authorities.

The core aspects of capital market law – insider law/ban on market manipulation, ad hoc disclosure and directors' dealings reporting obligations – were extended accordingly to also include unregulated markets, while the sanctions imposed by Directive 2014/57/EU, the Market Abuse Directive (CD-MAD), were transposed into national law. This final stage has harmonised the very divergent sanctions applicable in the different countries, helping to end a situation in which providers seek out the markets with the most lenient sanctions. For instance, the minimum thresholds of penalties are now harmonised across the entire EEA (see also the current FMA publication "Facts and figures, trends and strategies").

In its efforts to fight market abuse, the FMA put a customised tool into operation in the fourth quarter of 2016, which automatically reconstructs order books based on order data submitted by Wiener Börse AG. This way the FMA is taking not only the increasing use of algorithms in securities trading into account but also the fact that both transactions executed and orders placed may potentially be used to manipulate the market. An order book is an electronic list of valid (active) buy and sell orders saved at a specific point in time, which are checked as to their viability and which finally, if possible, are executed.

In 2016 the Vienna Stock Exchange generated some two to three million of such order data sets every day, which means that order books for time periods of mere nano seconds have to be processed and analysed to be able to gain an overall picture of this highly complex data. The FMA's new order book tool thus ensures that breaches of the provisions contained in the MAR or the Stock Exchange Act (*BörseG; Börsegesetz*) are effectively prosecuted and that the Vienna trading venue remains its integrity.

SECURITIES BROKERS AND TIED AGENTS

Natural and legal persons may, under certain circumstances, engage in the commercial provision of investment services without themselves holding a licence. Such companies must be registered with the FMA and operate on behalf and for the account of licensed legal entities (credit institutions, investment firms or investment service providers).

The decline in the number of these companies, which mainly operate in sales, clearly shows the extent of market consolidation among non-licensed providers of investment services since the introduction of the registered trade qualification of "securities broker" in 2012. While the number of natural persons without their own licence pursu-

Table 8: Securities brokers and tied agents 2012–2016

REGISTERED SALES STAFF AT LEGAL ENTITIES (INVESTMENT FIRMS AND SERVICE PROVIDERS, BANKS) IN AUSTRIA	2012	2013	2014	2015	2016
<i>Financial services assistants/securities brokers – natural persons</i>	2 171	1 343	692	695	672
<i>Tied agents – natural persons</i>	2 384	2 487	2 440	2 424	2 194
<i>Total number of securities brokers, tied agents – natural persons</i>	4 555	3 830	3 132	3 119	2 866
<i>Tied agents – legal persons</i>	122	203	222	241	240

Financial services assistant: Article 2 para. 1 no. 15 WAG 2007 old version (up to 31 August 2014); securities broker: Article 2 para. 1 no. 15 WAG 2007 new version (from 1 September 2014); tied agent: Article 1 no. 20 WAG 2007; investment firm: Article 3 WAG 2007; investment service provider: Article 4 WAG 2007.

ant to the Securities Supervision Act (WAG; *Wertpapieraufsichtsgesetz*) has declined by 37% over the past five years, the number of legal persons operating under the liability umbrella of a licensed institution has nearly doubled (see Table 8).

This development is clearly due to the consistent decline in the number of licence holders subject to direct supervision by the FMA. As these “tied agents” that are simply regis-

tered with the FMA largely look after their customers independently from the liability umbrella of the actually licensed institution, monitoring of tied agents represents a specific supervisory challenge, both for the licensee and for the FMA. This needs to be addressed further now and in future.

ADDITIONAL INTEREST PROVISION

In the current environment of low interest rates, there is a risk that providers of classic life insurance products will no longer be able to generate the minimum rates of return for an old-age provision product that they guaranteed during periods of high interest rates. Consequently, the FMA took action back in 2013, requiring insurance undertakings to create provisions from their own profits as a means of ensuring that they can pay the guaranteed returns when the promised payments fall due, even in a low-interest rate environment.

Amending the Maximum Interest Rate Regulation in 2015, the FMA tightened up and increased the requirements with regard to the provisions that need to be formed for interest obligations. For example, the period during which these are to be created was cut to seven years (up to 2021). A formula based around the indicator “circulation-weighted average yields of government bonds” is now used to determine the required allocation to the provisions depending on future interest rate levels. Based on the current situation, Austrian insurance undertakings will be required to allocate at least € 1.7 billion to the additional interest provision between now and 2021, primarily to the detriment of their own profits. Approximately € 540 million of the additional interest provision had been established as at 31 December 2016, and the maximum guaranteed rate for new life insurance policies has been cut to 0.5% with effect from 1 January 2017.

UNAUTHORISED CONDUCT OF BUSINESS/INVESTMENT FRAUD

To protect investors and consumers from shady and fraudulent providers of financial services, the FMA publishes warning notices as soon as it learns of anyone offering financial services that require a licence on the Austrian market without complying with the statutory requirements. These warning notices can be consulted on the FMA website at any time, sorted both alphabetically and chronologically. The database has proven its worth and should always be consulted before investing with a new provider that was previously unknown to the investor. In addition, the FMA’s database of providers that it has licensed and therefore supervises can also be accessed via the FMA website.

PREVENTION

LOSS-ABSORBING CAPITAL INSTRUMENTS

The new resolution regime for banks, established with the Banking Recovery and Resolution Directive (BRRD), aims at ensuring timely implementation of recovery actions at credit institutions experiencing financial difficulties or to wind such institutions up without falling back on taxpayers’ money, with any losses being borne first and foremost by the owners and creditors. To this end, claims against a failing bank could be converted to equity,

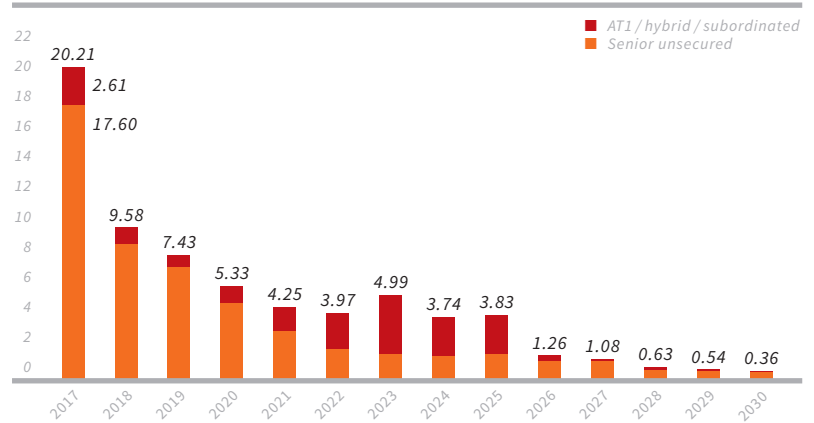
partially written down or written off against losses. Credit institutions, in turn, are obliged to hold sufficient capital instruments so that they would have enough capital for loss absorption and recapitalisation in the event of a crisis situation.

This minimum requirement for own funds and eligible liabilities (MREL) has not been finally defined. However, in the continued low-interest rate environment banks are particularly inclined to cover their additional capital needs on the capital market. Since these loss-absorbing capital instruments can be hard to understand for retail investors, banks must take heed to appropriately explain the risks to their customers and to deal with conflicts of interest in a transparent manner when selling such products. Banks must also ensure that there is no mis-selling and that they do not sell equity instruments to their own customers making them out as a worthwhile replacement for savings accounts.

According to the FMA’s calculations, the volume of such loss-absorbing capital instruments totalled € 88 billion in the reporting year, some € 20 billion of which were held by households and retail investors. The maturities of these securities are such that Austrian banks will have to repay a volume of € 20 billion in 2017 alone, with the figure reaching approximately € 67 billion by 2030. This does not yet include the additional MREL requirements (see Chart 23).

In its capacity as conduct supervisor, the FMA will make sure that there is no mis-selling of loss-absorbing capital instruments and monitor strict compliance with the investor protection provisions laid down in the Markets in Financial Instruments Directive (MiFID).

Chart 23: Maturity of outstanding issue volume for senior and subordinated issues 2017-2030 (in € billions)



COMBATING MONEY LAUNDERING

In the fight against money laundering and terrorist financing, it has been the FMA’s role since 2011 to monitor whether the supervised companies have appropriate preventive systems in place and are applying these to avoid any such abuse of the Austrian financial system. In 2016 the FMA has again stepped up its inspection activities in this regard. The number of on-site inspections has been raised from 28 to 31, and the number of company visits has risen from 30 to 31.

To further intensify the exchange of information and cooperation with the supervised companies, the FMA not only participated in a substantial number of talks and discussions in the reporting year on how to prevent money laundering and terrorist financing but also organised its own events dedicated to the issue. For instance, the FMA organised its second practice conference dedicated to “Compliance and Prevention of Money Laundering” on 21 November 2016. Experts from the FMA’s Rules of Conduct and Compliance and Prevention of Money Laundering and Terrorist Financing Divisions were able to discuss related matters with representatives of the supervised companies at the conference. The focus was on talks about the implementation of the Fourth Anti-Money Laundering Directive through the Financial Markets Anti-Money Laundering Act (FM-GwG; *Finanzmarkt-Geldwäschegesetz*) and the Beneficial Owners Register Act (WiEReG; *Wirtschaftliche Eigentümer Registergesetz*).

FINTECH – POINT OF CONTACT

In October 2016 the FMA started a new service providing a FinTech point of contact for technology companies developing innovative solutions in the field of financial services. This new service received a very positive response from the market. The FinTech point of contact received and processed up to three enquiries per week from companies or start-ups in its first few months.

During the same period, the contact team held information meetings with 25 market participants, drawing on the expertise of FMA employees from various Departments, in line with the FMA's integrated approach to supervision. Questions centred around licence requirements for certain business models, video identification and prevention of money laundering, the Payment Services Directive (PSD II), as well as crowdfunding and outsourcing.

The FinTech point of contact is a single point of contact, meaning that one FMA employee helps with clarifying all questions related to licensing and supervision. The FinTech point of contact is also available to licensed financial companies that wish to adapt their business models to keep up with increasing digitalisation.

PANAMA PAPERS

In April 2016 the International Consortium of Investigative Journalists published the so-called Panama Papers, causing a sensation around the world. The confidential documents and account information on offshore companies had been leaked from a Panama-based law firm and revealed the massive extent to which offshore structures are used to avoid paying taxes on assets or to conceal the origin of those assets. The 2.6 terabytes of information make the Panama Papers the biggest leak ever.

Among the numerous names and addresses contained in the Papers, there were also those of two Austrian credit institutions whose business relationships with, among others, politically exposed persons subsequently found themselves under the media spotlight. The FMA launched on-site inspections at the credit institutions concerned only a few days after the first reports appeared. The inspection results were forwarded to the two banks in December, in line with current laws.

COMPETENCE – CONTROL – CONSISTENCY

In order to achieve its supervisory goals, the FMA bases its supervisory concept on three pillars, which are summed up by the three principles of competence, control and consistency as enshrined in its corporate claim.

COMPETENCE

In its capacity as an expert organisation, the FMA prioritises training and continuing professional development for its employees. Around 81.75% of all FMA employees have a degree, with around 40.63% holding an additional qualification such as a second degree, MBA or professional qualification in law or auditing. FMA employees speak a total of 37 different languages. 54 employees have already graduated from the two-year postgraduate, vocational university programme in Financial Market Supervision, developed jointly by the FMA, OeNB and Vienna University of Economics and Business. Additionally, FMA staff attended more than 499 specialist CPD events in 2016. During the year under review the FMA invested an average of € 3 000 per employee in CPD.

In addition, the FMA is an integral component of the European system of financial supervision, contributing its expertise from all areas of supervision in its capacity as an integrated authority. It is also able to input the knowledge gained throughout Europe into its work on the Austrian market as a whole. The FMA is therefore one of the authorities with an overview of the entire financial market, enabling it to observe and analyse developments across all areas before devising strategies and measures.

CONTROL

The mandatory reporting of relevant key figures is at the heart of any efficient and effective supervision, providing the foundation for the FMA experts to devise high-quality off-site analyses. However, in order to monitor the quality of the reporting data and of the underlying processes, an appropriate on-site presence at the supervised companies is of particular importance.

The FMA follows a comprehensive inspection plan every year, with the companies to be inspected selected according to the Authority's risk-based approach. Specifically, the FMA carried out 262 on-site inspections at 892 licensed and directly supervised companies and conducted 258 management talks in 2016, following 313 and 259 respectively in 2015.

CONSISTENCY

The FMA's objective is to take preventive action with regard to compliance with the statutory rules included in its supervisory remit. To this end, it engages in proactive dialogue with the supervised companies, publishes circular letters and minimum standards, and issues regulations as a means of presenting and communicating the interpretation of the law and supervisory practice in a transparent manner. Should this strategy not work, however, the FMA punishes any breaches of the supervisory rules with the requisite level of severity.

While the consistent punishment of breaches of supervisory rules during the period from 2009 to 2011 generated a huge increase in the number of administrative penal proceedings being launched by the FMA, namely from 196 in 2008 to a high of 569 in 2011, this number has consistently fallen since then, down to 160 cases by 2016. This is firstly due to the preventive effect the penalties had, improving compliance with the statutory reporting and information obligations towards the supervisor. Secondly, the legal option of voluntary self-disclosure to avoid penalty, introduced on the FMA's initiative, also created a positive incentive for the supervised companies to submit their late notifications and reports without further delay. Furthermore, the consistent penalisation of breaches has generated a significant improvement in compliance with the information rules set out in the Capital Market Act (KMG; *Kapitalmarktgesetz*) regarding risk information and reference to the capital market prospectus.

Supervision of banks

BANKING SUPERVISION AT EUROPEAN AND NATIONAL LEVEL

Since November 2014 the Single Supervisory Mechanism (SSM) has been in place in the euro area countries, ensuring that multinational banking groups with highly complex corporate structures straddling national boundaries can be supervised uniformly and on a supranational basis. Since then, responsibility for supervising banks in the euro area has been shared between the European Central Bank (ECB) and the national competent authorities (NCAs). The NCA for Austria is the Financial Market Authority (FMA).

Now that the SSM is in place, banks in the participating Member States¹ are supervised by means of a decentralised system involving close cooperation between the ECB and the NCAs. Since the SSM was launched, eight Austrian banking groups² in total have been classified as “significant institutions” (SIs), resulting in around 150 individual credit institutions being placed under the direct supervision of the ECB. The remaining credit institutions based in Austria, classed as “less significant institutions” (LSIs) in accordance with predefined criteria, continue to be supervised directly by the FMA. This means that the FMA, in addition to its role as supervisor of the SIs, also remains directly responsible for around 530 Austrian LSIs. For its part, the ECB only supervises these LSIs indirectly. It goes without saying that, when supervising the LSIs, the FMA also bases its approach on the rules applicable throughout the SSM.

Facts and figures on the FMA’s supervisory activities are presented in the following chapter. As well as covering activities in relation to LSIs, the information provided also relates to the direct supervision of SIs given that the ECB, despite being ultimately responsible for supervision of these institutions, makes considerable use of the FMA’s resources and/or services. Overall, within the SSM, by far the main share of the work entailed in banking supervision remains with the NCAs. As far as the national supervisory authorities are concerned, this means that there has been a huge increase in their workload, over and above the coordination required with the European Central Bank and compliance with the procedural rules stipulated by the ECB.

This is reflected in the Joint Supervisory Teams (JSTs), which carry out the supervisory work for the banks placed under the direct supervision of the ECB and which are staffed by employees from the national competent authorities, who account for between 75% and 90% of the team members. In addition, compared with other European states, Austria has a high number of LSIs, and these remain under the direct supervision of the FMA. The “common procedures” also generate additional work following the launch of the SSM. These relate to cases where the ECB, regardless of whether a credit institution is classed as significant or less significant, still has the final decision on licensing, the withdrawal of a licence or assessing banks’ acquisition of qualifying holdings. The common procedures are, however, predominantly prepared at NCA level.

¹ The SSM basically covers the Member States of the euro area. There are 19 such Member States, although EU countries with a currency other than the euro may participate in the new European banking supervision system on a voluntary basis. To date, no state has opted in to the system on this basis.

² These are Raiffeisen Zentralbank Österreich AG, Erste Group Bank AG, BAWAG P.S.K. Bank für Arbeit und Wirtschaft und Österreichische Postsparkasse AG, Österreichische Volksbanken AG, Raiffeisen-Holding Niederösterreich-Wien reg. Gen.m.b.H., Raiffeisenlandesbank Oberösterreich AG, Sberbank Europe AG and VTB Bank (Austria) AG.

Decisions that fall within the ECB's remit are prepared by the Supervisory Board of the SSM. This is composed of its chair Danièle Nouy and vice-chair Sabine Lautenschläger, six representatives appointed by the ECB, and one representative of each of the NCAs, currently numbering 19. The ECB Governing Council may accept or reject decisions proposed by the SSM Supervisory Board but is not entitled to change their content. If the ECB Governing Council does not object to a decision of the SSM Supervisory Board within ten days, the decision is deemed to have been accepted (non-objection procedure). Any change to a proposal may only be adopted by the SSM Supervisory Board, before being re-submitted to the ECB Governing Council.

It is not just in the area of supervision that cross-border cooperation between authorities has become more complex. Regulation is another area to which both the NCAs and the ECB contribute, with the European Banking Authority (EBA) in London acting in the capacity of pan-European regulator. This requires coordination, liaison and harmonisation at all levels and, consequently, a considerable increase in the workload of the NCAs.

FMA employees are represented on numerous committees, working groups and horizontal networks of the ECB and EBA, contributing to the debate on supervisory, legal and institution-specific issues and participating in the subsequent decision-making processes. This means that matters of concern to the Austrian supervisory authority can be raised efficiently, also thanks to the parallel staffing, where possible, of the working groups dedicated to comparable topics at the ECB and EBA. This synergy, ensuring the same experts are involved, is highly beneficial to Austrian interests, for example in the areas of governance/fit and proper tests, own funds or the Supervisory Review and Evaluation Process (SREP). The FMA is represented, for example, on the Authorisations, the Supervisory Policies, the Supervisory Quality Assurance and the Methods and Standards SSM networks. The work carried out in these networks during the reporting year included developing general definitions for the implementation of common procedures, harmonising the methodological basis for implementing the SREP for the euro area, and comprehensive measures in relation to SSM-wide processes and positioning on relevant issues. With regard to the indirect supervision of less significant institutions, the FMA is also involved in several committees working on the development of Joint Supervisory Standards (JSS) on key supervisory issues. The aim here is to enshrine supervisory standards in the euro area that are as strict and as harmonised as possible, while at the same time adhering to the principle of proportionality.

The implementation of the SREP for less significant institutions was a particularly important aspect during the reporting year.

As part of the SREP, a comprehensive quantitative and qualitative review of the first less significant institutions (LSIs) was carried out. In total, 33 institutions were reviewed by the FMA and OeNB during the first cycle in 2016, with the first resulting administrative decisions being announced in late December. This was the first time that LSIs had been the subject of the SREP, which the ECB had already applied to significant institutions (SIs). The process was carried out in accordance with the principle of proportionality.

The EBA Guidelines on common procedures and methodologies for the supervisory review and evaluation process (EBA SREP-GL) provide the starting point and framework for the SREP in the context of the Pillar II components of the Basel framework. The ECB, FMA and all other European NCAs have issued a declaration of compliance with these Guidelines. Since 2016, the Austrian LSIs have also been reviewed and evaluated by the FMA and OeNB on the basis of the new methodology.

Together with the OeNB, the FMA has subjected higher-priority LSIs to a full SREP, which was carried out on a consolidated basis for credit institution groups and on an individual basis for stand-alone credit institutions. A summary SREP was also carried out for certain subsidiaries. Credit institutions in the decentralised sector were analysed using an alternative approach. If the findings with regard to credit institutions indicate a need for official action, this is reviewed in a second cycle, again in the form of a full SREP. Overall, 17 full SREPs and 16 summary SREPs were carried out as part of the first cycle.

For its part, the FMA was responsible for the governance element of the analysis. This encompasses an in-depth review and evaluation by the responsible FMA single points of contact (SPOCs) of the credit institutions' governance and risk management structures. The findings from the governance module were integrated into the overall analysis during the calculation of overall scores. To guarantee consistent and comprehensible evaluation as part

of the SREP, the individual analysis results produced by the FMA SPOCs are subject to a quality check by the Horizontal Banking Supervision Division.

From the FMA's perspective, carrying out this systematic and structured analysis in the context of the SREP, which is harmonised across the EU, provides an important source of added value in the continued supervision of credit institutions. The detailed analysis of governance structures provides an in-depth understanding of the processes and workflows within the supervised institutions. The FMA SPOCs complement the predominantly quantitative SREP elements (e.g. capital or liquidity modules) by means of an all-encompassing, qualitative and legal view of the respective institution. Findings from other areas, such as e.g. combating money laundering and the financing of terrorism or compliance supervision, are incorporated into the SREP in the context of integrated supervision. Cross-cutting issues such as the function of the internal audit or risk management can be officially addressed in an effective manner.

The supervisory measures that may potentially be derived from the SREP are broad in nature and, as well as covering rules on risk control and management, also encompass the prescription of higher capital requirements. Higher liquidity requirements, adjustments to the business model or early intervention measures pursuant to the Bank Recovery and Resolution Directive (BRRD)/Bank Recovery and Resolution Act (BaSAG; *Bankensanierungs- und Abwicklungsgesetz*) may all result from the SREP.

The corresponding administrative decisions will be issued to the credit institutions concerned during the first quarter of 2017.

OFFICIAL TASKS

SUPERVISED COMPANIES

As at 31 December 2016 there were 678 credit institutions in Austria, as well as 28 branches of credit institutions that pursue activities in Austria as specified in Article 9 of the Austrian Banking Act (BWG; *Bankwesengesetz*) under the European Union's freedom of establishment (see Table 9). To be categorised as a "credit institution" within the meaning of the BWG, a legal entity must hold a licence to carry out at least one type of banking transaction pursuant to Article 1 para. 1 BWG. The total number of credit institutions compared with 2015 fell by 62, marking the continuation of a trend in evidence for some years now. As in previous years, further consolidation

affected the decentralised sectors (Raiffeisen and Volksbank cooperatives, savings banks) in particular, with a drop in the number of credit institutions from 579 to 520.

Table 9: Number of credit institutes 2012–2016

	2012	2013	2014	2015	2016
Joint stock and special-purpose banks	87	84	77	76	74
Savings banks	51	49	49	49	49
Raiffeisen cooperatives	520	509	498	488	450
Volksbank cooperatives	64	61	53	42	21
Mortgage banks	11	11	11	10	10
Building societies	4	4	4	4	4
Investment fund management companies	29	29	29	29	29
Corporate provision funds	10	10	10	9	9
Exchange offices/remittance services	3	3	3	3	4
EU branches	29	30	30	30	28
Total	808	790	764	740	678

Table 10: Number of payment institutions 2012–2016

	2012	2013	2014	2015	2016
Licensed payment institutions	4	3	3	3	4
Licensing processes pending as at 31 December	1	0	1	1	0
Passive notifications	34	66	100	255	247

PAYMENT INSTITUTIONS

Payment institutions are legal entities that are entitled to provide payment services on a commercial basis. Examples of such services include credit transfers and the issuing of payment instruments. Four payment service providers were licensed in Austria as at 31 December 2016 (see Table 10). One institution applied for a licence pursuant to the Payment Services Act (ZaDiG; *Zahlungsdienstegesetz*) during the year under review. In addition, there were four branches of payment institutions active in Austria under the EU's freedom of establishment.

LICENSING PROCESSES

The granting of licences to institutions subject to the Capital Requirements Regulation (CRR) now falls exclusively within the competence of the ECB. These CRR institutions are SIs or LSIs that are licensed to receive funds from the public and also to issue loans. Although it is the ECB that makes the final decision on whether to award a banking licence, applications for the process to be initiated must still be submitted to the FMA. The FMA is responsible for subsequently forwarding the application, along with a draft decision and the relevant documents, to the ECB for an official decision.

The FMA will continue in future to be the sole competent authority for the licensing of all credit institutions that are not subject to the CRR and of all payment institutions, i. e. institutions as referred to in Article 1a para. 2 BWG or institutions as defined in the ZaDiG.

Four new licences pursuant to the BWG were granted in 2016 (see Table 11). There were no licence extensions.

Overall, six licences awarded in accordance with Articles 6 and 7 BWG were declared lapsed, were revoked or relinquished during the reporting year. As at the reporting date of 31 December 2016, there were no licence (extension) processes pursuant to the BWG pending.

No special licence is required by credit institutions and financial institutions that are licensed in another Member State of the European Economic Area (EEA). Such institutions may, on the basis of the fundamental freedoms applicable in the EEA, also offer their services in Austria. 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 service operations. In both cases, the institutions concerned simply need to complete a notification process.³

In the period under review, 111 credit institutions and 247 payment institutions from other Member States provided notification of taking up activities in Austria (passive notification). A total of 163 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 2016.

SOURCES OF INFORMATION FOR SUPERVISION

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

Banking supervision in Austria is based on a system of control bodies at different levels. The first level involves the credit institution itself, and its internal control system. Here, the managing directors, the internal audit unit and the supervisory board function as an internal control body. This control must be carried out as stipulated in the relevant law, namely the BWG. The second level of control is that performed by the external bank auditors. It is only beyond this level that state supervision applies, performed by the FMA in the capacity of competent authority and the Oesterreichische Nationalbank (OeNB) as its partner responsible for data collection, analysis

Table 11: Licensing processes 2012–2016

	2012	2013	2014	2015	2016
<i>Valid licences*</i>	779	760	734	710	650
<i>Licences granted (new licences incl. ZaDiG)</i>	3	0	2	1	4
<i>Licences extended</i>	3	9	0	2	0
<i>Licence refused pursuant to Article 5 para. 1 BWG</i>	1	0	0	0	0
<i>Licence revoked or lapsed pursuant to Articles 6 and 7 BWG</i>	5	18	28	15	6
<i>Freedom to provide services and freedom of establishment</i>					
<i>Passive notification pursuant to Article 9 BWG</i>	25	33	40	102	111
<i>Active notification pursuant to Article 10 BWG</i>	21	53	32	76	163

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

³ The SSM affected the passport regime in some cases since the official notification process is no longer necessary in several Member States where the ECB is the competent authority. Related matters are now discussed in the Joint Supervisory Teams.

Table 12: Sources of information 2012–2016

	2012	2013	2014	2015	2016
Notification of changes in the persons appointed as directors pursuant to Article 73 para. 1 no. 3 BWG	166	191	198	229	214
Notification of the election of a new chairperson of the supervisory board pursuant to Article 28a para. 4 BWG	24	33	168*	99	89
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	0	2	3	0	3
Information obtained from or inspection at credit institution pursuant to Article 70 para. 1 no. 1 BWG	402	433	401	445	279
Information obtained from bank auditor, protection scheme or government commissioner pursuant to Article 70 para. 1 no. 2 BWG	29	19	19	18	12
Notification of facts required to be reported by bank auditors pursuant to Article 63 para. 3 BWG	39	29	14	36	12
Bank auditor/early recognition meetings	43	40	46	41	23
Management talks	61	62	54	50	68

*The marked increase in the number compared with previous periods is a result of the transition to the Basel III regulations. As of 1 January 2014 the previous requirement to notify chairpersons was extended to include all members of the supervisory board. In addition, until August 2014 a reappointment had to be notified as well.

and on-site inspections. In keeping with the hierarchy of this supervisory structure, the primary and most important source of information for supervision purposes is the credit institutions themselves. They must comply with comprehensive reporting, notification and information obligations. The main reporting obligations in this regard are defined in Article 74 BWG and in Implementing Regulation (EU) No 680/2014 for credit institutions, and in Article 20 ZaDiG for payment institutions. According to these provisions, credit institutions and payment institutions are obliged to provide the supervisory authority with key economic figures at periodic intervals.

The annual asset, income and risk statement (VERA) contains the figures required to be submitted to the supervisory authority to enable an assessment of the institution's economic situation and of its compliance with risk-specific due diligence obligations. The reports from CRR institutions provide an overview on whether the credit institution is complying with essential provisions of supervisory law, particularly with regard to own funds requirements and the limits on large exposures. Further details such as information on any foreign currency risks, any real estate losses, etc. must also be reported.

In addition to the standardised and regular forms of reporting, certain events and developments must also be reported to the FMA. In 2016 the FMA received notification of a change in managing director in a total of 214 cases, with changes to the supervisory board chairperson being notified in 89 cases (see Table 12). In each of these cases, the competent authority (either the FMA or the ECB) is required to verify that the individual holding the new position is personally and professionally qualified (fit and proper) to meet the responsibilities.

Apart from the information received as a result of reporting and notification obligations, the FMA may also actively request information at any time from the supervised credit institutions and payment institutions and inspect their business documents pursuant to Article 70 para. 1 no. 1 BWG or Article 63 para. 2 no. 2 ZaDiG as applicable. There were 279 instances of information being obtained or of documentation being inspected in this context in 2016.

In accordance with Article 70 para. 1 no. 2 BWG, the FMA may also request additional information from the respective institutions' bank auditors, auditing associations, protection schemes and government commissioners. The FMA issued twelve such requests for information in 2016.

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, 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. This is specified in Article 59 para. 1 BWG. Among other things this involves verifying compliance with the regulatory provisions particularly own funds requirements, liquidity and large exposures, as well

as the allocation of items in the trading book and other provisions relevant to supervision.⁴ The result of this audit is included in an annex to the audit report and, pursuant to Article 63 para. 5 BWG, represents an assurance from the bank auditor. This annex to the audit report must be submitted to the directors and the supervisory body under company law, together with the audit report on the financial statements, and be submitted to the FMA via its Incoming Platform no later than six months after the balance sheet date.

If the auditors detect any relevant facts of particular significance during their audit such as, for example, a threat to the institution's continued existence, a material deterioration in the risk situation or serious breaches of statutory provisions, they must notify the FMA without delay (obligation to report deficiencies).

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 half-yearly meetings with the bank auditors and ad-hoc meetings. The FMA holds similar meetings, referred to as early recognition meetings, with representatives of the protection schemes for each of the sectors. Leaving aside ad-hoc meetings with the bank auditors, 23 bank auditor and early recognition meetings were held in total in 2016.

The Federal Minister of Finance must appoint state commissioners for all credit institutions with total assets of € 1 billion upwards. These commissioners are appointed for a term of no more than five years⁵, and act in the capacity of an FMA body. This means that they are subject to instructions issued by the FMA when exercising their duties. By virtue of their function, these officials are entitled to attend all AGMs or general meetings and supervisory board meetings, and sit on all supervisory board committees that adopt resolutions and have decision-making powers. During these meetings they must be allowed to speak at their request at any time. They should also be provided with copies of the minutes of the meetings. State commissioners must also report to the FMA on their activities.

State commissioners 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 any resolution by the above-mentioned bodies that they consider to violate banking supervision rules. In the event of such an objection, the resolution shall not take effect until a decision has been made by the supervisory authority. The credit institution, in contrast, may apply for an FMA decision within one week. If the FMA does not reach a decision within one week, the objection shall cease to apply. If, however, the objection is upheld, the resolution may not be enforced. Where resolutions are made outside of a meeting or abroad, the state commissioner and deputy commissioner must be informed accordingly without delay. In such a case, the state commissioner (or the deputy commissioner if representing the state commissioner) has the option of submitting a written objection within two bank working days. All other rights and obligations associated with the function of the state commissioner are defined in Article 76 BWG.

MANAGEMENT TALKS

Regular structured talks with the management of the credit institutions represent a valuable source of supplementary information. Management talks held at major banks according to a set schedule play a significant role 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 being focused on, a distinction is made in this context between management talks and risk talks. During the period under review, 68 such talks were held in total.

ON-SITE INSPECTIONS

The FMA is required to commission the Oesterreichische Nationalbank (OeNB) to carry out on-site inspections in normal circumstances. For this purpose, a risk-based inspection plan is drawn up jointly for the coming year, reserv-

⁴ As defined in the Securities Supervision Act (WAG; Wertpapieraufsichtsgesetz), Investment Fund Act (InvFG; Investmentfondsgesetz), etc.

⁵ They may however be reappointed when their term of office expires.

Table 13: Inspection mandates 2012–2016

	2012	2013	2014	2015	2016
<i>Inspection mandates issued to the OeNB pursuant to Article 70 para. 1 no. 3 BWG and Article 63 para. 1 no. 4 ZaDiG</i>	47	47	42	32	26

mandates compared with earlier years can be attributed to the fact that the ECB is now responsible for planning and carrying out on-site inspections of SIs. For the period from 2015 onwards, the Table referred to above therefore only includes audits of LSIs.

In view of the significance of the CESEE region for Austrian credit institutions, on-site inspections of credit institutions in that region have been conducted with greater frequency within the framework of consolidated supervision. Such inspections are held with the consent of the national competent authority in the particular case and of the ECB where required.

SUPERVISORY PROCEDURES

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

In accordance with its mandate, the FMA is responsible for monitoring compliance with statutory provisions pertaining to banking, for ascertaining facts in cases involving the endangering of creditors' interests and for introducing appropriate remedial measures where necessary. The relevant statutory provisions in this regard are Articles 70 et seq. BWG and Article 64 ZaDiG.

MEASURES IN THE EVENT OF A RISK TO CREDITORS

If there is a risk of a credit institution or payment institution being unable to fulfil its obligations to creditors and customers, pursuant to Article 70 para. 2 BWG the FMA may prohibit distributions of capital or profits, appoint a government commissioner, relieve directors of their duties or prohibit the further pursuit of business activities. The FMA did not order any such measures in 2016.

MEASURES TO RESTORE COMPLIANCE WITH THE STATUTORY PROVISIONS

One official power held by the FMA that is particularly relevant in practice is that 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 various measures. 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, the FMA is required to completely or partially prohibit the directors from managing the business, except where such would be an inappropriate measure given the type and severity of the breach and it is expected that renewed imposition of the first measure will result in compliance with the statutory provisions. In such a case, the FMA is required to enforce 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, its licence is to be revoked as a last resort. On 16 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. The orders were issued in the form of administrative decisions.

CAPITAL ADD-ON/RESTRICTION OF DISTRIBUTION OF CAPITAL OR PROFITS

Further supervisory measures are contained in Article 70 paras. 4a to 4c BWG. These serve as a means of effectively addressing any risk situations. For example, where the risks arising from banking transactions and banking

ing resources that might be needed for any ad-hoc inspections commissioned at short notice. The OeNB was commissioned to carry out a total of 26 inspections in 2016 (see Table 13), the main focuses of which were counterparty risk and overall risk management on the part of banks. The fall in the number of inspection

operations for a credit institution, affiliation of credit institutions or group of credit institutions are inadequately limited, and where such risks are not expected to become 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). Such a capital add-on was prescribed once during the year under review. Additionally, one measure pursuant to Article 70 para. 4a no. 6 BWG was imposed (obligation to reduce risk).

PENALTY INTEREST

A further official instrument is defined in Article 97 BWG. Specifically, the FMA is required to charge penalty 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, limits for large exposures are exceeded or the minimum capital requirement is not met. The intention here is to offset any competitive advantages that could be gained from failing to observe the law. Interest was charged in four such cases (pursuant to Article 97 BWG) in 2016 (see Table 14).

OWNERSHIP PROVISIONS AND APPROVALS

Qualifying holdings exist where a party acquires more than 10% of the capital or the voting rights in a credit institution or payment institution. Any person intending to acquire such holdings or to increase an 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. This obligation to notify the FMA also applies to persons acting jointly who, when considered together, would be acquiring a qualifying holding or reaching one of the thresholds. Conversely, the same procedure applies in the event of holdings being sold and the total falling below such a threshold.

A transaction of this type may be prohibited by the FMA within 60 working days. This applies for instance where

Table 14: Official measures pursuant to Articles 70 and 97 BWG 2012–2016

	2012	2013	2014	2015	2016
Measures against danger to creditors pursuant to Article 70 para. 2 BWG	0	2	2	2	0
Measures to restore legal compliance pursuant to Article 70 para. 4 nos. 1 to 3 BWG	9	7	16	9	16
Interest imposed pursuant to Article 97 BWG	24	16	15	23	4

Table 15: Notifications and approvals pursuant to Articles 20 et seq. BWG and Article 11 para. 2 ZaDiG 2012–2016

NOTIFICATIONS AND APPROVALS PURSUANT TO THE BWG	2012	2013	2014	2015	2016
Notification of qualifying holdings in an Austrian credit institution pursuant to Article 20 para. 1 BWG	14	68	27	11	27
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	412 <small>(excl. 1 current procedure from 2011)</small>	55	8	8	0
Procedure completed with prohibition of the acquisition pursuant to Article 20a para. 2 BWG	0	0	0	1	0
Procedure completed through withdrawal of the notification pursuant to Article 20a para. 2 BWG	1	2	1	0	0
Current procedures pursuant to Article 20 para. 1 BWG	0	11	18	2	0
Approval of mergers pursuant to Article 21 para. 1 no. 1 BWG	13	21	21	10	54
Approval of demergers pursuant to Article 21 para. 1 no. 6 BWG	4	1	1	3	2
NOTIFICATIONS AND APPROVALS PURSUANT TO THE ZADIG					
Notification of qualifying holdings in an Austrian payment institution pursuant to Article 11 para. 2 ZaDiG	4	0	1	0	1
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	2 <small>(excl. 1 current procedure from 2011)</small>	0	1	0	1
Procedure completed with prohibition of the acquisition pursuant to Article 11 para. 2 ZaDiG	0 <small>(excl. 1 current procedure from 2011)</small>	0	0	0	0
Procedure completed through withdrawal of the notification pursuant to Article 11 para. 2 ZaDiG	1	0	0	0	0
Current procedures pursuant to Article 11 para. 2 ZaDiG	1	0	0	0	0

the new owners do not meet the requirements set in the interests of sound and prudent management of a credit institution. This is specified in Article 20 para. 2 in conjunction with Article 20b BWG.

A total of 27 notifications of a planned acquisition of holdings in an Austrian credit institution or payment institution were submitted to the FMA in 2016. All of these resulted in the acquisition not being prohibited, with the ECB being the responsible authority for owner control procedures in the context of the common procedures and thus also the body that issues the decision not to prohibit the acquisition.

In addition, the FMA approved 54 mergers of credit institutions and two demergers during the reporting period.

MODEL APPROVALS

Since 2007 credit institutions have had the option of calculating their own funds requirements for credit risk on the basis of the Internal Ratings Based (IRB) Approach. Additionally, they have been able to apply the Advanced Measurement Approach (AMA) for operational risk. Models may also be used to calculate market risk. The vast majority of all Austrian banks with model approvals are now, in the capacity of SIs, subject to direct supervision by the SSM with the ECB being the authority responsible for supervising them. Supervision of the models in these cases is now enforced via the JSTs.

CONSOLIDATED SUPERVISION

COLLEGES AS AN INSTRUMENT OF CONSOLIDATED SUPERVISION

While collaborating in international organisations, in some cases in a leading capacity, the FMA is strongly concerned with maintaining bilateral and multilateral relations with other supervisory authorities. In line with the activities of Austrian credit institutions, the Central, Eastern and South-Eastern European (CESEE) region is a focus of such contacts.

Colleges of supervisors are a key instrument for the consolidated supervision of cross-border credit institutions. These colleges are where joint decisions are taken during model approval procedures, while also serving as a forum for discussing issues related to ongoing supervision in the context of overall risk management. The members of the college, specifically the home supervisor and all host supervisors, must arrive at a “joint risk assessment” for the particular group of credit institutions every year. Based on this assessment, a joint decision is made regarding capital adequacy. This is referred to as the Joint Risk Assessment and Decision Process (JRAD process). 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. Colleges within the SSM are carried out by the JSTs. Four such JRAD decisions were issued during the reporting year pursuant to Article 77c BWG.

Supervision of corporate provision funds

The activities of corporate provision funds are regulated by the Company Employee and Self-Employment Provisions Act (BMSVG; *Betriebliches Mitarbeiter- und Selbstständigenvorsorgegesetz*), and their supervision falls under the FMA's remit. Moreover, in accordance with the BMSVG, corporate provision fund activities (acceptance and investment of contributions for severance payments and for self-employment provision) are deemed to be banking transactions pursuant to Article 1 para. 1 no. 21 of the Austrian Banking Act (BWG; *Bankwesengesetz*) that require a licence. Consequently, as special-purpose credit institutions, corporate provision funds are obliged to adhere to the provisions of the BWG, unless exceptions apply.

SUPERVISED COMPANIES/LICENSING

As at 31 December 2016, eight corporate provision funds held licences in Austria. During the year under review, the FMA approved the merger of two corporate provision funds. In the course of this merger the collective investment undertaking of the corporate provision fund that ceased to exist was transferred to the receiving company. There are two corporate provision funds that manage two collective investment undertakings each. The remaining funds each manage one collective investment undertaking.

CONTINUED SUPERVISION

REPORTING AND INFORMATION SOURCES

Corporate provision funds are subject to far-reaching reporting obligations. Pursuant to the Regulation on the Quarterly Financial Statements for Corporate Provision Funds (BVQA-V; *Betriebliche Vorsorgekassen-Quartalsverordnung*), corporate provision funds must submit reports to the OeNB within four weeks of the end of each calendar quarter; these reports include details of own funds and a statement of net assets for the collective investment undertaking. In addition, corporate provision funds are obliged to 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. The state commissioners appointed for the corporate provision funds are also required to report regularly to the FMA.

The corporate provision funds were also required to submit additional data during 2016 for the purposes of special analyses, dedicated among other topics to the subjects of investment and possible HTM classification.

DISCLOSURE OBLIGATIONS

The corporate provision funds are required to inform the beneficiaries (entitled) 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 total severance pay expectancy. This information is to be provided in the form of an account statement. Minimum Standards published by the FMA detail how this account information is to be presented and ensure that the structure of these account statements is standardised and clear. Upon request, corporate provision funds are additionally required to send the reports on activities of the collective investment undertakings to the employers who have paid contributions and to the responsible works council members.

ON-SITE INSPECTIONS

The FMA takes a risk-based approach when carrying out on-site inspections of corporate provision funds. In 2016 the FMA conducted on-site inspections at five funds, with four of those being follow-up inspections.

MANAGEMENT TALKS

In 2016 management talks were held with each of the eight existing corporate provision funds. These talks focus on supervisory issues, the performance and results of the previous year, investments, organisational changes and deviations from the company's business plan. In addition, priority issues for the year are determined and then discussed. Any current concerns may also be raised during these management talks with the FMA.

SUPERVISORY PROCEDURES

From the time they receive a licence, corporate provision funds are subject to continued supervision by the FMA. The FMA's supervisory activities comprise, for example, the introduction and management of supervisory procedures, and the processing of notifications and reports submitted in accordance with the BWG. One of the core tasks of the FMA is to assess the suitability of the corporate provision funds' directors and supervisory board members, which includes conducting "fit and proper" tests where applicable. Any changes to the investment conditions must also be approved by the FMA. The FMA also needs to approve any appointment or change of custodian bank. Further areas for which the FMA is responsible include monitoring corporate provision funds' compliance with the own funds requirements as referred to in Article 20 BMSVG and with the investment provisions of Article 30 BMSVG.

In 2016 two owner control procedures were carried out in relation to corporate provision funds, in accordance with Article 3 para. 7 in conjunction with Article 20 para. 1 BWG. In addition, the FMA approved five changes to the investment conditions of corporate provision funds in the course of its supervisory activities.

No supervisory proceedings pursuant to Article 70 para. 4 BWG were required in 2016 for the purposes of restoring compliance with the statutory provisions of the BMSVG.

Supervision of pension companies

SUPERVISED COMPANIES/LICENSING

With regard to *Pensionskassen*, a distinction is made between two different types of pension company: single-employer and multi-employer *Pensionskassen*. Single-employer *Pensionskassen* are entitled to carry out pension company activities for the beneficiaries of only one employer or company group. They 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 and conditions for investment. In the 2016 financial year, six companies held a licence for the provision of single-employer pension company services. Multi-employer *Pensionskassen* can carry out pension company activities for the beneficiaries of more than one employer. In the 2016 financial year, seven companies held a licence for the provision of multi-employer pension company services.

Companies with head offices in Austria that hold the appropriate licence granted by the FMA are entitled to pursue pension company activities in this country. Such a licence is to be granted if the conditions laid down in the *Pensionskassen Act* (PKG; *Pensionskassengesetz*) are fulfilled. These are specifically: sufficient capital, submission of an approvable business plan which includes suitable actuarial bases, as well as management board members and shareholders that are fit and proper. To be eligible for a licence, the company must also have the legal form of a joint stock company (*Aktiengesellschaft*).

In 2016 no applications for the granting of a licence were filed. The licence of Victoria-Volksbanken Pensionskassen Aktiengesellschaft expired in the third quarter of 2016 due to the company being merged with BONUS Pensionskassen Aktiengesellschaft. By the end of 2016 there were therefore only twelve *Pensionskassen* with a licence.

CONTINUED SUPERVISION

Among the most important tasks making up the FMA’s remit are the ongoing analysis of the development of the pension company market and of individual *Pensionskassen* as well as investment and risk sharing groups (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 verification of compliance with the Risk Management Regulation for *Pensionskassen* (PK-RIMAV; *Risikomanagementverordnung Pensionskassen*).

SOURCES OF INFORMATION

Several standardised sources of information are available to Pension Supervision. These are:

- quarterly reports 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;
- each IRG’s declaration of investment policy principles.

Apart from the information that originates from these standardised reporting sources, the FMA 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 set out in Article 36 PKG.

ON-SITE INSPECTIONS AND MANAGEMENT TALKS

In 2016 on-site inspections were performed at four *Pensionskassen* (see Table 16). Inspections focused on compliance with the PK-RIMAV, the implementation of the risk management process, the implementation of syndicate

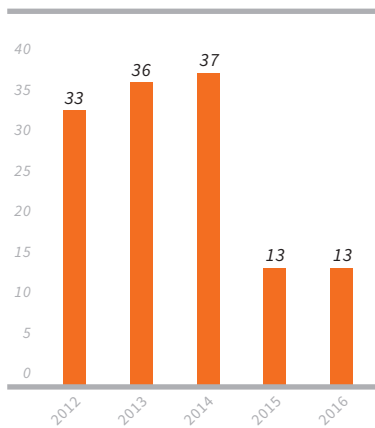
banking and the integration of Generali Pensionskasse AG and Victoria-Volksbanken Pensionskassen Aktiengesellschaft into BONUS Pensionskassen Aktiengesellschaft.

In addition to the on-site inspections, the FMA held 14 management talks during the reporting year. In these talks, the FMA discusses topical economic and supervisory issues, as well as any current issues with the management board members. One of the main subjects of these talks is the result of the analysis of the financial statements of the *Pensionskassen* and any consequent issues.

Table 16: On-site activities 2012–2016 (source: FMA)

	2012	2013	2014	2015	2016
<i>On-site inspections</i>					
According to inspection plan	6	6	5	5	4
<i>Management talks</i>					
According to inspection plan	15	11	22	9	14

Chart 24: Approval of business plans 2012–2016 (source: FMA)



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 pension company activities. The business plan, as well as any amendment to the business plan, requires the FMA’s approval, which may also stipulate related 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 2016 reporting year, 13 business plans were submitted for approval (see Chart 24).

Supervision of insurance undertakings

In the year under review a new risk-based supervisory system was put in place: Solvency II. Apart from protecting insurance undertakings and beneficiaries, the Financial Market Authority (FMA) in its capacity as insurance supervisor must also take the potential impact of its decisions on financial market stability (stability of the financial system in all of the Member States concerned and particularly in situations of crisis) into account. In times of exceptional movements in the financial markets, the FMA is required to take into account the potential pro-cyclical effects of its actions.

Insurance supervision involves performing the official tasks and exercising the powers which are assigned to the FMA and defined in the 2016 Insurance Supervision Act (VAG 2016; *Versicherungsaufsichtsgesetz*), the 1994 Motor Insurance Act (KHVG 1994; *Kraftfahrzeug-Haftpflichtversicherungsgesetz*), the Act on the Compensation of Road Accident Victims (VOEG; *Verkehrsofoper-Entschädigungsgesetz*), the 1999 Atomic Liability Act (AtomHG 1999; *Atomhaftungsgesetz*), the Financial Conglomerates Act (FKG; *Finanzkonglomeratengesetz*) and the Rating Agencies Enforcement Act (RAVG; *Ratingagenturenvollzugsgesetz*).

The FMA monitors all business activities of insurance and reinsurance undertakings in accordance with the scope of the licences granted pursuant to Article 6 para. 1 VAG 2016. This comprises monitoring compliance with the provisions applicable to contractual insurance activities, particularly the VAG 2016, the Delegated Regulation (EU) 2015/35 and the implementing technical standards. To this end, the FMA must ensure an appropriate combination of off-site activities and on-site inspections.

The supervisory activities of the FMA should be prospective and risk-based. In exercising its powers, the FMA should properly consider the nature, scale and complexity of the risks inherent in the business activities of insurance and reinsurance undertakings.

SUPERVISED COMPANIES

As at the end of 2016, 88 Austrian insurance undertakings had a licence granted by the FMA and were thus subject to continued supervision by the Authority. The number of insurance companies has therefore fallen by 33 since 2000.

JOINT STOCK COMPANIES AND LARGE MUTUAL ASSOCIATIONS

Excluding 50 small mutual associations, a total of 38 domestic insurance undertakings were pursuing activities in Austria. Seven of these were mutual associations, and 31 joint stock companies.

Table 17: **Legal forms of domestic insurance undertakings 2012–2016**
(source: FMA)

	2012	2013	2014	2015	2016
<i>Mutual associations (excluding small mutuals)</i>	6	6	6	6	7
<i>Joint stock companies</i>	42	40	37	35	31
<i>Small mutual associations</i>	53	53	52	52	50
Total	101	99	95	93	88
<i>Mutual associations dealing in asset management/private foundations</i>	6	6	6	6	6

Table 18: **Business areas of insurance undertakings 2012–2016**
(excluding small mutuals; source: FMA)

	2012	2013	2014	2015	2016
<i>Life insurance</i>	30	30	28	27	23
<i>Non-life and accident insurance</i>	41	38	38	35	33
<i>Health insurance</i>	8	8	9	9	9
<i>Reinsurance only</i>	3	3	3	2	3

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. All in all, the 39 insurance undertakings licensed in Austria, excluding small mutual associations, were engaged in 68 areas of business (see Table 18).

Austria is traditionally dominated by composite insurers. This refers to insurance undertakings that, besides life insurance, pursue activities in at least one other balance sheet group too (i.e. health insurance or 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 business activities without limitation.

Table 19: **Small mutual associations by field of activity 2012–2016**
(source: FMA)

	2012	2013	2014	2015	2016
<i>Fire insurance associations</i>	35	35	34	34	34
<i>Animal insurance associations</i>	17	17	17	17	16
<i>Death benefit funds</i>	0	0	0	0	0
<i>Reinsurance associations for small mutuals</i>	1	1	1	1	0
Total number of associations	53	53	52	52	50

Table 20: **EEA insurers in Austria 2012–2016**
(excluding small mutuals; source: FMA)

	2012	2013	2014	2015	2016
<i>Operating through branches</i>	28	29	30	30	29
<i>Providing services directly</i>	897	903	953	967	986

SMALL MUTUALS

As at the end of December 2016 the FMA was supervising a total of 50 small mutuals, of which around two thirds are active as fire insurers, with the remaining third involved in animal insurance (see Table 19).

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 covers all countries of the European Economic Area (EEA). Consequently, Austrian policyholders and policyholders from other EEA countries may also take out insurance with insurance undertakings that have their head 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 head office in another EEA Member State as well as a local 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 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 head office.

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

As at the end of December 2016, 29 insurance undertakings from within the EEA were operating in Austria through a branch. An additional 986 companies were registered to provide services here, which is 19 more than in 2015 (see Table 20).

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

ANALYSIS

The FMA examines the strategies, processes and reporting procedures that insurance and reinsurance undertakings have put in place to meet supervisory requirements. In this context, the FMA assesses in particular insurance and reinsurance undertakings' implementation of the qualitative requirements relating to the governance sys-

tem, the risks to which the undertaking concerned is or might be exposed, and the ability of individual undertakings to evaluate those risks in the context of their respective business activities. This supervisory review process concentrates on the following subject areas:

1. the system of governance, including the undertaking's own risk and solvency assessment and the investment rules as set out in Chapter 5 of the VAG, with the exception of Article 106 and Articles 114 to 116 VAG;
2. technical provisions pursuant to Section 1 of Chapter 8 VAG;
3. the Solvency Capital Requirement and the Minimum Capital Requirement;
4. the quality and quantity of own funds; and
5. where applicable, ongoing compliance with the requirements for an internal model.

The process also assesses the adequacy of the methods and practices of the insurance and reinsurance undertakings designed to identify possible events or future changes in economic conditions that could have adverse effects on the overall financial standing of the undertaking concerned. Moreover, the ability of the insurance and reinsurance undertakings to withstand those possible events or future changes in economic conditions is also analysed.

To reflect the risk-based approach in supervision, these regular review processes should help identify those insurance and reinsurance undertakings that have a higher risk profile due to financial, organisational or other characteristics. Depending on the results of these reviews, appropriate supervisory measures are then taken.

Once every three months, the FMA carries out a risk-oriented analysis of the net assets, financial position and results of operations of the supervised insurance undertakings. In the course of these routine analyses, the FMA has been publishing reports on the performance of the Austrian insurance sector once every quarter since 2010, which are available on the FMA website¹. The FMA may also make use of its right to information pursuant to Article 272 para. 1 VAG 2016.

DEVELOPMENT OF SUPERVISION AND STRESS TESTING

In accordance with Article 273 VAG, the FMA may develop quantitative tools to assess whether insurance and reinsurance undertakings are able to fulfil their obligations even in times of economic crisis. One of these tools is stress testing, to which undertakings are regularly subjected by the FMA. During a stress test insurance and reinsurance undertakings are required to simulate their business developments in particularly adverse scenarios, which could be sharp falls in the capital markets, (natural) disasters or surging costs. Based on these scenarios, which are defined by the FMA and the European Insurance and Occupational Pensions Authority (EIOPA), the FMA may assess the ability of insurance and reinsurance undertakings to consistently fulfil their obligations even under adverse market developments. Where necessary, the supervisory authority may request that individual undertakings take measures to increase their resilience to shocks.

An EU-wide insurance stress test was conducted in 2016. Nine Austrian insurance undertakings with a market share of 80% were among the insurers tested. This stress test examined the effects that a double-hit scenario and a low interest rate scenario would have on life insurers with a market coverage of 75% per country. In this double-hit scenario both sides of the balance sheet were stressed by losses in asset prices and low interest rates. The low interest rate scenario included an interest curve developing more flatly than currently expected. The aim of the stress test exercise was to determine insurers' sensitivities and vulnerabilities in the market in good time. It was not key in this regard whether an insurance undertaking would "pass" or "fail" the test.

Due to the prolonged challenging economic environment, the FMA expanded the exercise nationally to include all Austrian insurance and reinsurance undertakings and insurance groups. The Authority also requested that life insurance undertakings provide additional data on the simulated scenarios to enable possible future developments to be evaluated. This gives the FMA a better picture of potential business developments in adverse situations.

² <https://www.fma.gv.at/en/insurance/disclosure/quarterly-reports/>

When compared internationally, it becomes apparent that Austrian insurance undertakings have proceeded conservatively with regard to their capital calculation. The results of the EU-wide stress test also showed that particularly life insurance undertakings with contracts offering a high guaranteed rate would lose large portions of their own funds in the event of the stress scenarios occurring. As expected, an analysis of the impacts of prolonged low interest rates shows the inherent discrepancy between the guaranteed returns and returns that can realistically be achieved in the given scenarios. These results underline the necessity of taking action, as the FMA has already done (reduction of the maximum interest rate, stricter criteria for establishing an additional interest provision, etc.).

The FMA must meet extensive disclosure obligations from 2016 onwards.² This is to ensure that the information is comparable across the whole internal insurance market. In accordance with Article 256 VAG 2016, the FMA must disclose the following information on its website:

- laws, administrative regulations and general guidance;
- supervisory review process;
- aggregate statistical data;
- exercising the options provided for in Directive 2009/138/EC;
- the objectives, main functions and activities of supervision.

The FMA has published an annual report on the state of the Austrian insurance industry since 2015. In 2016 the report dealt with initial experience of the new supervisory regime and showed the implications of the other drivers, from the legal and economic environment, on insurance activities. Key issues included new trends and developments in the insurance market, such as InsurTechs and the effects of low interest rates on insurers' business models.³

OFFICIAL PROCESSES

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 pursue contractual insurance activities in Austria. According to the single licence principle, the licences granted to Austrian insurance undertakings are valid throughout the entire EEA, while a licence granted to a third-country insurer is only valid within Austria. An undertaking applying for a licence must fulfil a range of conditions before being granted a licence by the FMA. Having the legal form of a joint stock company or mutual association is one such condition. Funding with the required level of own funds must also be ensured. The members of the management board must be personally and professionally qualified for their functions (fit and proper), and shareholders must also meet certain requirements. A business plan must provide precise information on the field and scope of activities, as well as a plan regarding future business activities. A separate licence is granted for each individual insurance class.

The FMA's official tasks relating to insurance supervision are listed in Table 21.

In compliance with the legal requirements set forth in Article 92 VAG, 148 business plans disclosing the actuarial bases were submitted to the supervisory authority in 2016 (see Table 22).

Table 21: Official tasks 2012–2016 (source: FMA)

	2012	2013	2014	2015	2016
Licensing issues	5	0	3	3	3
Transfers of portfolio	5	1	4	3	5
Outsourcing	24	12	24	17	53
Amendments to articles of association (insurers and small mutuals)	19	20	12	15	21
Trustee appointments	24	25	11	15	32
Approval of ancillary own funds				1	3
Approval of company-specific parameters				0	1
Approval of (partial) internal models of individual companies				2	0
Approval of (partial) internal models of insurance groups				1	0

ON-SITE ACTIVITIES

With regard to on-site activities, the following terminology is used in insurance supervision:

- **On-site inspections:** Inspections as referred

² <https://www.fma.gv.at/en/insurance/disclosure/supervisory-disclosure/>

³ <https://www.fma.gv.at/en/insurance/disclosure/state-of-the-austrian-insurance-industry/>

to in Article 101 of the VAG or Article 33 of the *Pensionskassen Act* (PKG; *Pensionskassengesetz*) adhere to a predefined inspection plan. They may also be carried out on an ad hoc basis if necessary.

- **Brief inspections:** This on-site activity is applied during the pre-application phase and during the application phase for internal models in accordance with Solvency II.
- **Management talks:** Meetings with senior representatives of an insurance undertaking concerning topics specifically related to the undertaking are regarded as management talks.
- **Company visits:** This on-site presence is for the purpose of discussing current information.

On-site inspections were held during 2016 with regard to such subject areas as governance/structure and policies, best estimate calculations, reinsurance, formation of an appropriate level of provisions for outstanding insurance claims, the lending process and the process to assess credit risk in relation to loans, aggregation of group solvency calculations, as well as the entire business operations at small mutual associations.

Apart from on-site inspections, several brief inspections were also performed at insurance undertakings in 2016. The key focus of these inspections was on checking internal models in accordance with the new VAG 2016 within the scope of the pre-application phase for permission to use an internal solvency model. There were no on-site activities related to the approval of an internal model. However, inspection activities were carried out in relation to the first application for changing the model of an internal solvency model that had already been approved.

Company visits and management talks were primarily dedicated to discussing the implementation of the Solvency II regime, the annual financial statements for 2015, current developments in 2016, as well as corporate strategies and additional company-specific issues.

ACTIVITIES OF AUSTRIAN INSURANCE GROUPS ABROAD

In 2016 Austrian insurance groups pursued insurance activities in 28 countries through holdings. The Vienna Insurance Group (VIG) and the UNIQA Insurance Group (UNIQA Group) have the most foreign holdings. Additionally, Grazer Wechselseitige Versicherung AG (GRAWE Group) also engages in a substantial level of foreign activity. Whilst the VIG and the UNIQA Group have holdings in Western Europe as well, the other groups are exclusively active in the CESEE region.

The extent of foreign activities has not changed greatly compared with 2015. Some holdings in South-Eastern Europe (e.g. in Montenegro) were sold off. In addition, some small companies and/or portfolios were purchased in countries with existing activities (e.g. in Hungary and Romania). As at 31 December 2016 UNIQA Group had not yet completed the process of selling off its entire foreign holdings in Italy, as previously publicly announced.

In the course of the annual analysis of foreign insurance activities⁴, seven foreign markets were defined as key markets. Austrian insurance groups either own significant holdings in these markets, or these markets have a considerable significance for the results of Austrian groups. These key markets are Croatia, the Czech Republic, Hungary, Italy, Poland, Romania and Slovakia.

The foreign activities of Austrian insurance groups pose a particular challenge for the FMA as the authority responsible for group supervision. To ensure effective and risk-oriented supervision of those insurance groups, the FMA regularly analyses their foreign activities, monitors developments in foreign insurance markets and holds talks with the groups' management. One important pillar in insurance group supervision is the exchange

Table 22: **Business plans/actuarial bases 2012–2016** (source: FMA)

	2012	2013	2014	2015	2016
<i>Number of annually submitted premiums</i>	136	99	104	84	148

Table 23: **Official tasks 2012–2016** (source: FMA)

	2012	2013	2014	2015	2016
<i>Inspections</i>	14	15	19	11	23
<i>Brief inspections</i>	9	6	9	12	3
<i>Management talks and company visits</i>	34	37	61	109	47

⁴ <https://www.fma.gv.at/download.php?d=2597>

Table 24: **Activities of Austrian insurance groups in Western Europe and CESEE** (as at 15 Feb. 2016; source: FMA)

	VIG	Uniqia	GraWe	Merkur	Wüstenrot	Ergo
WESTERN EUROPE						
Germany	■					
Italy		■ ¹				
Liechtenstein	■	■				
Switzerland		■				
CESEE COUNTRIES						
Albania	■	■				
Belarus	■					
Bosnia and Herzegovina	■	■	■	■		
Bulgaria	■	■	■			
Croatia	■	■	■	■	■	■
Cyprus			■			
Czech Republic	■	■				■
Estonia	■					
Georgia	■					
Hungary	■	■	■			■
Kosovo		■	■			
Latvia	■					
Lithuania	■					
Macedonia	■	■	■			
Moldavia	■		■			
Montenegro	■	■	■			
Poland	■	■				
Romania	■	■	■			■
Russia		■				
Serbia	■	■	■	■		
Slovakia	■	■			■	■
Slovenia	■		■	■		■
Turkey	■					
Ukraine	■	■	■			

¹ The process of selling off all Italian holdings had not been completed by 31 December 2016.

of information among and cooperation with national supervisors. This is achieved either via the colleges of supervisors or at bilateral level.

Colleges of supervisors are set up for each internationally active insurance group that pursues insurance activities through holdings in more than one country, and is composed of the group supervisor and the relevant national supervisors. With the introduction of the Solvency II regime and the VAG 2016, the colleges were institutionalised to a greater extent and given numerous powers and tasks (e.g. joint decision on the approval of an intra-group model). One primary objective of the colleges of supervisors, by integrating the local supervisor’s knowledge of the market and companies it supervises, is to provide an overview of the business activities and risk profile of an insurance group, and to ensure a common level of knowledge among the national competent authorities. The FMA, as the group supervisor, must enter into coordination arrangements with the other supervisory authorities concerned, specifying the establishment and functioning of the college of supervisors, as well as rules on the exchange of information within the colleges. In 2016 the FMA organised supervisory college meetings for VIG, UNIQA Group, GRAWE Group, WÜSTENROT Group and MERKUR Group.

Supervision of investment funds, real estate funds and alternative investment funds

The management of investment funds pursuant to the 2011 Investment Fund Act (InvFG 2011; *Investmentfondsgesetz*) is deemed to be a banking transaction that requires a licence in accordance with Article 1 para. 1 no. 13 of the Austrian Banking Act (BWG; *Bankwesengesetz*). Investment fund management companies should therefore be viewed as special-purpose credit institutions and, as well as complying with the terms of the InvFG 2011, must also adhere to the provisions of the BWG. If such a company is also licensed to manage alternative investment funds (AIFs), the provisions of the Alternative Investment Fund Managers Act (AIFMG; *Alternatives Investmentfonds Manager-Gesetz*) need to be complied with additionally. Supplementary provisions for the depositaries of investment funds are contained in Commission Delegated Regulation (EU) 2016/438, which entered into force on 13 October 2016.

Pursuant to Article 5 para. 2 nos. 3 and 4 InvFG 2011, it is possible for the licence to be extended to cover the provision of certain financial service transactions, specifically (individual) portfolio management for individual customers (Article 5 para. 2 no. 3 InvFG 2011), investment advice relating to financial instruments (Article 5 para. 2 no. 4a InvFG 2011) and the holding in custody and technical management of units in undertakings for collective investment (Article 5 para. 2 no. 4b InvFG 2011). Such an extension of the licence presupposes adherence to selected provisions of the 2007 Securities Supervision Act (WAG 2007; *Wertpapieraufsichtsgesetz*) (refer in this context to Article 6 para. 2 no. 12 InvFG 2011).

Investment fund management companies must comply with the following regulations: Regulation on the Reporting of Own Funds by Special-Purpose Credit Institutions, the Fourth Regulation on Risk Calculation and Reporting of Derivative Instruments, the Key Investor Information Document Regulation, the Regulation on Information and Determination of Equivalence, the Transmission and Storage Regulation and, if such funds are managed or transactions carried out, the Investment Compartment Regulation, the Money Market Funds Regulation and the Securities Lending and Repurchase Agreements Regulation. All of the above regulations were issued by the FMA based on its statutory powers. The provisions of the AIFMG also apply to investment fund management companies if these manage AIFs.

Real estate investment fund management companies that hold a banking licence in accordance with Article 1 para. 1 no. 13a BWG are subject first and foremost to the provisions of the Real Estate Investment Fund Act (ImmoInvFG; *Immobilien-Investmentfondsgesetz*) including the provisions of the BWG. Additionally, real estate investment fund management companies also hold a licence pursuant to the AIFMG, as real estate funds and special real estate funds are classed as alternative investment funds (AIFs). The provisions of the AIFMG therefore also apply to real estate investment fund management companies. Furthermore, real estate investment fund management companies must also comply with the Real Estate Funds and OTC Derivative Counterparty Regulation, the Regulation on the Contents of Prospectuses of Real Estate Funds and the Risk Disclaimer Regulation.

The AIFMG regulates the activities of alternative investment fund managers (AIFMs) and also places them under the supervision of the FMA. Commission Delegated Regulation (EU) No 231/2013 includes rules relating to calculation of the threshold, leverage, operating conditions for AIFMs, including risk and liquidity management, valu-

Table 25: Key figures of the Austrian investment fund market 2012–2016 (source: FMA)

	2012	2013	2014	2015	2016
<i>Domestic UCITs of investment fund management companies</i>					
Article 2 paras. 1 and 2 InvFG	1 095	1 102	1 096	1 071	1 038
Article 75 InvFG	3	3	4	2	2
Total	1 098	1 105	1 100	1 073	1 040
<i>Foreign UCITs</i>					
Article 181 InvFG	34	27	15	1	1
Article 140 InvFG	5 626	5 669	6 094	6 544	6 661
Article 181 InvFG (foreign real-estate funds)	3	3	1	–	–
Total	5 663	5 699	6 110	6 545	6 662
<i>Domestic AIFs of (real-estate) investment fund management companies as well as of licensed and registered AIFMs</i>					
Article 166 InvFG	308	220	181	165	154
Article 168 ff. InvFG	22	22	20	16	12
Real estate funds and special real estate funds	7	8	8	9	11
Special funds	795	831	813	835	844
AIFs of registered AIFMs	–	–	30	29	24
EuVECA	–	–	–	3	3
Other managed AIFs	–	–	–	6	6
Total	1 132	1 081	1 052	1 063	1 054
<i>Foreign AIFs</i>					
Article 29 AIFMG	–	–	–	3	3
Article 31 AIFMG	–	–	–	437	565
Article 31 in conj. with Article 29 AIFMG	–	–	–	5	9
EuSEF	–	–	–	2	2
EuVECA	–	–	–	31	43
Other AIFs	–	–	–	3	21
Total	–	–	–	481	643
<i>Investment fund management companies</i>	26	26	26	26	29

ation and delegation, requirements detailing the functions and duties of depositaries of AIFs, rules on transparency and specific requirements relating to third countries.

The AIFMG also provides for the possibility of an additional licence being granted for the provision of individual portfolio management for individual customers (Article 4 para. 4 no. 1), the provision of investment advice as an ancillary service (Article 4 para. 4 no. 2a), the holding in custody and technical management of units in undertakings for collective investment (Article 4 para. 4 no. 2b) and also, in contrast to the scope of the InvFG 2011, for the receipt and transmission of orders relating to financial instruments (Article 4 para. 4 no. 2c). The additional licence granting entitlement to provide investment services and ancillary services requires adherence to selected provisions of the WAG 2007 (see Article 4 para. 6 AIFMG).

AIFMs also have to comply with the Alternative Investment Fund Managers Reporting Regulation and the AIF Warning Notice Regulation, where applicable.

Regulation (EU) No 345/2013 on European venture capital funds (EuVECA), Regulation (EU) No 346/2013 on European social entrepreneurship funds (EuSEF) and Regulation (EU) 2015/760 on European long-term investment funds (ELTIF) have created EU rules regulating specific AIF fund categories.

Regulation (EU) 2015/2365 on transparency of securities financing transactions and of reuse (SFT Regulation) has applied since 12 January 2016, with some Articles of the Regulation only entering into force at a later date due to transitional provisions. The Regulation will only apply in full with effect from 2019. The SFT Regulation stipulates transparency provisions for securities or commodities lending or borrowing, for buy-sell back transactions and sell-buy back transactions, repurchase transactions, margin lending transactions and total return swaps, as well as the reuse of financial instruments received under a collateral arrangement. The SFT Regulation applies to counterparties to an SFT, to management companies of UCITs, to AIFMs and to counterparties engaging in reuse.

The aim of the Regulation is to enhance the transparency of securities financing markets, placing particular focus on recognising early on and monitoring risks associated with such financial transactions. Counterparties are required to report the details of any SFT they have concluded, as well as any modification or termination of it, to a registered or recognised trade repository. The reuse of financial instruments received under a collateral arrangement is only allowed under certain conditions.

SUPERVISED COMPANIES/LICENSING

As at 31 December 2016, a total of 21 investment fund management companies held a licence pursuant to the InvFG 2011. No new licences were issued in accordance with the InvFG 2011, and no licences were extended pursuant to Article 5 para. 2 nos. 3 and 4 InvFG 2011. In fact, the number of companies fell during 2016 from 24 to 21 (17 of which were also licensed as AIFMs).

During the reporting year, two licensing processes and two licence extension processes pursuant to the AIFMG were being implemented. As at 31 December 2016, 26 AIFMs were licensed with the FMA.

If an AIFM manages assets of less than € 100 million (including leverage) or assets of less than € 500 million (without making use of leverage), and the investors are not permitted to exercise any redemption rights for a period of five years, no FMA licence is required but the AIFM must at least register with the FMA in accordance with Article 1 para. 5 AIFMG. The FMA concluded two such registration procedures in 2016. In total, the FMA has registered 24 AIFMs to date, with one AIFM being deregistered in 2015 and three more being deregistered in 2016. Consequently, as at 31 December 2016 there were 20 AIFMs registered with the FMA.

As at the same date, five real estate investment fund management companies were managing a total of seven retail real estate funds and four special real estate funds, all of which were AIFs. No new licences for real estate investment fund management companies were granted in 2016.

As at 31 December 2016, 2 094 funds of domestic investment fund management companies and/or AIFMs were registered for sale in Austria (2015 year-end: 2 136). This figure includes 27 AIFs (three of which are EuVECA) which are managed by registered AIFMs in Austria. The changing number of domestic funds over the past five years, including both UCITS (undertakings for collective investment in transferable securities) and AIFs, is shown in Table 25.

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 in accordance with the Undertakings for Collective Investment in Transferable Securities Directive (UCITS Directive) may offer the activities for which they hold a licence in their home state throughout the EEA following notification. This similarly applies to licensed AIFMs who, pursuant to the AIFM Directive, are authorised to manage and/or sell AIFs on a cross-border basis throughout the EU after having completed the notification process.

In total, 7 305 funds of foreign investment fund management companies and/or AIFMs were registered for sale in Austria (2015 year-end: 7 026). Also during the reporting year, 598 EU AIFs, 43 EuVECA funds and two EuSEFs from other Member States were licensed for sale in Austria. The changing number of foreign funds over the past five years, including both UCITS and AIFs, is shown in Table 25.

UCITS

There were four Austrian investment fund management companies operating in the EEA during 2016 and therefore making use of the freedom to provide services in Denmark, Finland, France, Germany, Italy, Liechtenstein, Luxembourg, Malta, the Netherlands, Spain, Sweden and the UK. Conversely, a total of 68 companies from Belgium, Denmark, France, Gibraltar, Germany, Italy, Liechtenstein, Luxembourg, the Netherlands, Norway, Spain and the UK were represented in Austria under the freedom to provide services as at 31 December 2016. With

regard to the freedom of establishment applicable to UCITS, two Austrian investment fund management companies have a branch office abroad. One company has a branch in both Germany and Italy, and another operates a branch in the Czech Republic. Conversely, five foreign companies (four from Luxembourg and one from France) are currently active in Austria under the freedom of establishment.

AIFS

Three Austrian AIFMs availed themselves of the freedom to provide services in the EEA in 2016. These AIFMs operate in Belgium, Cyprus, Finland, Germany, Ireland, Luxembourg, the Netherlands, Norway, Sweden and the UK. Meanwhile, there were 83 EU AIFMs, primarily from the UK but also from Denmark, France, Germany, Luxembourg, Malta and the Netherlands, active in Austria through the freedom to provide services, based on the passport regime defined in the AIFM Directive. With regard to the freedom of establishment concerning AIFs, one Austrian AIFM is represented with a branch in the Czech Republic. Two companies from Luxembourg took advantage of the freedom of establishment laid down in the AIFMG by setting up a branch in Austria.

SUPERVISORY PROCEDURES

The supervisory procedures encompass both notification and approval processes. The fund-specific notification procedures relate in particular to the submission of reports on activities, half-yearly reports and special fund reports, the submission of notifications regarding any closures of funds and material changes as defined in Article 29 para. 5 AIFMG, as well as the notification of delegations to third parties. Mention should also be made in this regard of the notification procedures (known as the “European passport”), during which the FMA passes documents to the responsible authority of the Member State in question. The approval procedures covered by the InvFG 2011 relate, for example, to the issuing of new funds and any changes to existing investment fund regulations, as well as the approval of mergers, management transfers and custodian bank changes. With regard to the AIFMG, the granting of marketing licences is a key area.

The number of official notification and approval processes in 2016, at 4 676, was down on the previous year (2015: 5 364 processes). As in previous years, there were numerous mergers of investment funds during 2016. One of these involved a cross-border transaction, with two Austrian UCITS being merged into two receiving UCITS based in Luxembourg.

Two changes to the fund regulations for a real estate fund were approved in one case. There were no instances of a decision imposing the appropriate measures on a company pursuant to Article 70 para. 4 BWG, Article 148 para. 5 InvFG 2011 or Articles 56 et seq. AIFMG.

Owner control procedures relating to investment fund management companies were implemented in 20 cases in 2016; the number of such procedures concluded in relation to real estate investment fund management companies totalled two during the same period.

All in all, the FMA approved two mergers related to investment fund management companies in 2016, while one company relinquished its licence. Consequently, the number of supervised institutions has dropped from 24 to 21 investment fund management companies.

CONTINUED SUPERVISION

REPORTING AND INFORMATION SOURCES

Investment fund management companies are required to comply with the notification and reporting provisions contained in the BWG and the InvFG 2011 and must also meet the reporting obligations specified in the Fourth Regulation on Risk Calculation and Reporting of Derivative Instruments (*4. Derivate-Risikoberechnungs- und Meldeverordnung*) by reporting the derivatives belonging to the fund assets and the related overall risk using a standardised reporting format. The state commissioners appointed at (real estate) investment fund management companies are obliged to prepare regular reports for submission to the FMA. Investment fund management com-

panies, real estate investment fund management companies and licensed AIFMs are also required to submit their annual audited financial statements to the FMA in good time, with the fund management companies also being required to submit the annex to the audit report.

The reporting process for licensed AIFMs is defined in Article 22 AIFMG, while the related provisions for registered AIFMs are laid down in Article 1 para. 5 no. 4 AIFMG. These are fleshed out in the AIFM Reporting Regulation (AIFM-MV; *Alternative Investmentfonds Manager-Meldeverordnung*) with regard to the reporting obligations of AIFMs and the reporting type, format and systems applicable to the data being reported. AIFMs must inform the FMA regularly of the main markets and instruments in or with which they are trading for the account of the AIFs that they manage. They must also submit information on matters such as the greatest risks and concentrations of each of the AIFs being managed. So that systemic risks can be effectively monitored, the FMA must forward the data that it collects to the OeNB for the purposes of macroprudential analysis. The OeNB, in turn, must communicate the results of its analysis to the FMA without delay if any systemic risks are detected. In this case, the FMA must, where necessary to perform the required tasks, make all of the above information available to the responsible authorities in other affected Member States, to ESMA and to the ESRB. To enable an improved assessment and monitoring of systemic risks facing Austrian AIFMs pursuant to Article 23 AIFMG, securities supervision has therefore been extended to include macroprudential supervision.

The supervised companies were also required to submit additional data during 2016 for the purposes of special analyses, dedicated among other topics to the subjects of liquidity and fees.

DISCLOSURE OBLIGATIONS

The disclosure obligations applicable to investment fund management companies are defined in the InvFG 2011, which specifies that the companies 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. Where other special funds, pension investment funds and special funds representing AIFs are concerned, information pursuant to Article 21 AIFMG must be provided instead of a prospectus.

The obligations also encompass the requirement that the investment fund management company itself or its custodian bank, where one has been appointed, must publish the issue and repurchase price of units on every occasion on which units are issued or repurchased, but no less frequently than twice per month. Any major changes to the prospectus must also be published by the companies. Their customers must also be provided with a Key Investor Information Document (KIID).

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, real estate investment fund management companies therefore continue 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 (Transparency Directive) is required to publish the audited annual reports for the AIF. The AIFM may also be obliged pursuant to Directive 2003/71/EC (Prospectus Directive) and/or pursuant to the Capital Market Act (KMG; *Kapitalmarktgesetz*) to publish a prospectus for that AIF. An AIFM selling an AIF to retail customers is required to publish the AIF's net asset value either once a month (in the case of AIFs in real estate, managed futures funds) or twice a month (for private equity funds of funds and AIFs in company holdings). In the case of AIFs that have been authorised for sale to retail clients, a half-yearly report and a KIID must also be prepared. An AIFM must at any rate always prepare an information document pursuant to Article 21 AIFMG for each AIF managed.

ON-SITE INSPECTIONS

In accordance with Federal Law Gazette I No. 72/2010 of 18 August 2010, the FMA is responsible for on-site inspections of (real estate) investment fund management companies. The FMA is also responsible for carrying out on-site inspections pursuant to the AIFMG, as well as being charged with the task of on-site inspections of custodian

banks pursuant to the InvFG 2011 and depositaries as defined in the AIFMG.

During the reporting year there were nine on-site inspections of investment fund management companies, three at real estate investment fund management companies and six at custodian banks/depositaries. Eight of these took the form of follow-up inspections.

MANAGEMENT TALKS

Management talks were conducted in 2016 with all 21 investment fund management companies that held a licence as at 31 December 2015 and all five real estate investment fund management companies. In addition, the FMA also invited representatives of seven AIFMs that are licensed or registered exclusively according to the AIFMG to management talks. Priority issues for the year's management talks are determined and then discussed. However, the talks always cover supervisory issues, the performance and results of the previous year, investments, organisational changes and deviations from the business plan. Any other relevant issues may also be raised and discussed.

Supervision of investment firms and investment service providers

In accordance with Article 3 para. 2 of the 2007 Securities Supervision Act (WAG 2007; *Wertpapieraufsichtsgesetz*), the following investment services may only be provided commercially with the relevant licence granted by the Financial Market Authority (FMA): 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 more financial instruments; receipt and transmission of orders, provided that such activity involves one or more financial instruments; operation of a multilateral trading facility.

According to Article 1 no. 6 WAG 2007, financial instruments take the form of transferable securities, money market instruments, units in undertakings for collective investment in securities (UCITS) and in open-ended alternative investment funds (AIF), derivative contracts (particularly options, futures, forwards, swaps) relating to securities, currencies, interest rates, interest income, 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.

OFFICIAL TASKS

SUPERVISED COMPANIES

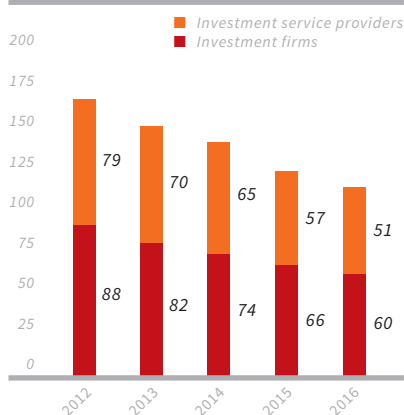
For the commercial provision of investment services the WAG 2007 stipulates two kinds of licences, each with a separate scope of authorisation in terms of type of investment service and the financial instruments related to these services: the licence for an investment firm as specified in Article 3 WAG 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 European Economic Area (EEA) through the issuing of a “European passport”.

With regard to the provision of investment services, investment service providers (unlike investment firms) are subject to the limitation that they may only provide investment advice and receive or transmit orders relating to financial instruments pursuant to Article 1 no. 6 lit. a and c WAG 2007, and they may only pursue these activities 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 as investment service providers that require a licence), substitution of the capital requirements with a professional liability insurance policy and relaxations concerning accounting and auditing.

The amendment of the WAG 2007, which entered into force in 2014, changed the legal framework for investment service providers such that companies may now be licensed as investment service providers up to a threshold of

Chart 25: Number of valid licences pursuant to the WAG 2012–2016 (source: FMA licence database)



€ 2 million of sales revenues generated by providing investment services; providers with sales revenues exceeding that figure may be exclusively licensed as investment firms. Previously, the threshold had been € 730 000 of total sales revenues.

Pursuant to Article 4 para. 4 of the Alternative Investment Fund Managers Act (AIFMG; *Alternatives Investmentfonds Manager-Gesetz*), the FMA may grant an external alternative investment fund manager (AFIM) an additional licence to provide investment services. This encompasses the individual management of individual portfolios and, as ancillary services, investment advice, the holding in custody and technical management of AIF units, as well as the receipt and transmission of orders relating to financial instruments.

As at the reporting date of 31 December 2016, there were 111 companies in possession of a valid licence from the FMA entitling them to provide investment services pursuant to the WAG 2007. Of these companies, 60 held a licence as an investment firm pursuant to Article 3 WAG 2007 and 51 a licence as an

investment service provider pursuant to Article 4 WAG 2007 (see Chart 25).

The comparison with data from previous years shows that the number of licences pursuant to WAG 2007 has dropped further in 2016. Formerly licensed investment firms and investment service providers generally continue to work in the field, as tied agents or securities brokers for another entity authorised to provide investment services, but without their own licence.

All of the 111 companies with a valid licence pursuant to the WAG 2007 were entitled to provide investment advice relating to financial instruments, with 41 investment firms authorised to manage client portfolios. In all, 107 investment firms and investment service providers were authorised 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, 43 Austrian investment firms held a European passport for the provision of investment services in the EEA, with six of these companies maintaining branches in the EEA.

In terms of the geographical distribution of the licensed investment firms and investment service providers within Austria, a total of 60 companies or nearly 54.05% of all licensed companies had their registered office in Vienna as at the reporting date of 31 December 2016. Upper Austria was the next federal province in the list, with twelve companies, followed by Salzburg with ten licensed companies.

NEW LICENCES GRANTED TO INVESTMENT FIRMS AND INVESTMENT SERVICE PROVIDERS

In 2016 three new licence applications were submitted to the FMA pursuant to the WAG 2007, one being filed by a management company to be continued as an investment firm, another by an investment firm to be continued as an investment service provider and the third one being a new application by an investment firm. One new licence was awarded to an investment service provider in accordance with the 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 an 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 companies.

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 the WAG 2007, perform investment services on behalf and for the account of the licensed firm. There are two legal forms for such agents, the tied agent and the securities broker.

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 new 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 where 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 2016, 28 Austrian investment firms were using 1 478 tied agents for the provision of investment services. There were 13 tied agents registered with investment firms from the EEA based in Austria and 717 such agents working with Austrian credit institutions. All in all, 240 companies in the form of a legal entity were registered with the FMA as tied agents.

SECURITIES BROKERS

Unlike the remit of tied agents, the scope of activities to be performed by a securities broker is limited. Only natural persons may serve as securities brokers. The securities broker may only provide services in Austria 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 their 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 liability of all investment firms and investment service providers that have entered the same securities broker in the FMA register apply accordingly. This joint and several liability applies where 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 2016, 64 Austrian investment firms and investment service providers were entitled to provide services through securities brokers. Of these, only 30 actually exercised the right granted to them. As at 31 December 2016, 672 individuals acting as securities brokers for investment firms or investment service providers had been registered with the FMA. Up-to-date information on the tied agents and securities brokers 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 or securities broker and entitled to provide investment services.

CONTINUED SUPERVISION OF INVESTMENT FIRMS, INVESTMENT SERVICE PROVIDERS AND ALTERNATIVE INVESTMENT FUND MANAGERS WITH AN ADDITIONAL LICENCE

The FMA supervises all licensed investment firms and investment service providers, as well as AIFMs with an

additional licence, 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 respective institution's clients as retail customers, professional clients or eligible counterparties. Further obligations of the WAG 2007 covered by securities supervision include adherence to the licensing requirements, 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 an 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 the FMA Cost Regulation (FMA-KVO; *FMA-Kostenverordnung*), the companies liable to pay costs also have to report the sales revenues from their investment services activities to the FMA by this 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 the supervised companies; 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 must be completed online on the FMA website. The questionnaire consists of six modules and contains 42 questions. These are grouped into the following topics: company information, own funds and insurance cover, corporate structure – branches and staff, organisational structure pursuant to the WAG 2007, business activities and customer structure. The evaluation of the analysis questionnaires gives the FMA valuable insights into the activities 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 their internal processes.

EEA INVESTMENT FIRMS

The Markets in Financial Instruments Directive (MiFID) 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 processes.

In 2016 there were 2 662 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 competent partner authority abroad has provided appropriate notification to Austria. As at the end of 2016, 20 branches of EEA investment firms were operating in Austria on the basis of such notification. Compared with the 2 510 firms that had provided notification of their operations in Austria in 2015, the number of EEA investment firms entitled to provide investment services in Austria has therefore increased. During the reporting year, 1 929 firms or around 76.85% of the firms that had provided notification of their operations in Austria came from the UK. This was followed by Germany with 191 notified companies and Cyprus with 167.

ON-SITE INSPECTIONS AND MANAGEMENT TALKS

During the year under review, on-site inspections were carried out with regard to 32 investment firms and investment service providers, six of which were conducted in response to current issues. By way of comparison, 34 on-

site inspections were carried out in 2015, two of which tackling a current issue.

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 under inspection. In addition, statutory auditors can obtain audit reports and information. On-site inspections focus on verifying compliance with the provisions of the WAG 2007 according to the specific inspection mandate, 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.

In 2016 the FMA made 15 company visits to investment firms and investment service providers, six of which in response to a current issue. By way of comparison, 13 company visits were carried out in 2015, two of which tackling a current issue. Company visits are usually conducted on site of the licensed companies and primarily focus on obtaining site-related information from the supervised companies. Where critical operational functions of a licensed company are outsourced to third parties (service providers), the FMA is also entitled to make use of its right to obtain access and to demand information from the service provider.

A total of 71 management talks were held with investment firms and investment service providers in the reporting year. These talks with the management of supervised companies usually take place at the offices of the FMA and are particularly used to discuss mutual issues and to exchange information between the supervisor and management in a direct and swift manner. 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 prospective directors of supervised companies.

Table 26: **On-site activities 2012–2016** (source: FMA)

	2012	2013	2014	2015	2016
<i>On-site inspections</i>	36	30	30	34	32
<i>Scheduled</i>	29	22	23	32	26
<i>Current issue-related</i>	7	8	7	2	6
<i>Management talks</i>	135	118	92	67	71
<i>Company visits</i>	-	-	-	13	15
<i>Scheduled</i>	-	-	-	11	9
<i>Current issue-related</i>	-	-	-	2	6

Table 27: **Administrative penal proceedings concluded in relation to the WAG – investment firms incl. unauthorised business 2012–2016** (source: FMA register)

	2012	2013	2014	2015	2016
<i>Suspensions</i>	15	1	13	9	1
<i>Admonition orders</i>	0	2	1	3	0
<i>Penal decisions</i>	19	21	8	7	13
<i>Penal orders</i>	18	15	4	11	2
<i>Total</i>	52	39	26	30	16

Supervision of financial conglomerates

The worldwide trend of credit institutions, insurance undertakings and investment firms increasingly operating across more than one sector brings with it additional and cumulative risks. This interlinking of the different areas of activity means that in the event of a crisis the impact would be felt across all of the sectors through risk transfer (in relation to catastrophe bonds or asset backed securities, for example), the use of arbitrage options or the emergence of synchronised risks, on both the asset and the liability side of the balance sheet. This is why, in addition to any sector-based risk monitoring, the supervisory authority must ensure that risks are also effectively tracked at the level of the conglomerate in its consolidated entirety.

Directive 2002/87/EC (Financial Conglomerates Directive) subjects conglomerates to supplementary supervision, responsibility for which, as far as Austria is concerned, lies with the FMA. A financial conglomerate is defined as a group comprised of full or pro rata participations in companies from different financial sectors (insurance undertakings, banks, investment service providers) that has some relevance to the stability of the financial market.

SUPERVISED COMPANIES

In Austria, based on the statutory rules, the following three groups are subject to supplementary supervision pursuant to the Financial Conglomerates Act (FKG; *Finanzkonglomeratengesetz*), which transposes the European directive into Austrian law:

Coordinator FMA:

- Bausparkasse Wüstenrot AG and 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, Bankhaus Schelhammer & Schattera Aktiengesellschaft)

Coordinator ECB:

- Raiffeisenzentralbank Österreich AG and its significant investment in UNIQA Insurance Group AG

As part of the implementation of the new supervisory rules in banking and insurance supervision (CRD IV and Solvency II), the respective supervisory laws now stipulate that a consolidated overview of the financial conglomerate should be maintained in some areas.

In this context, an amendment to the FKG in relation to the implementation of a change to the Directive means that the FMA may now exclude conglomerates from supplementary supervision at financial conglomerate level if the group exceeds the threshold defined in Article 3 para. 2 FKG (10% of activity in one of the two financial sectors in each case) but the smaller of the financial sectors does not exceed total assets of € 6 billion. To date, the FMA has yet to make use of this option. The impact of these new rules on the exemption option will be subject to ongoing monitoring and analysis.

Where a financial conglomerate includes a credit institution that is directly supervised by the ECB within the Single Supervisory Mechanism (SSM), that financial conglomerate will also be supervised directly by the ECB. In Austria, this applies to the financial conglomerate Raiffeisenzentralbank Österreich AG with its investment in

UNIQA Insurance Group. As with banking supervision in the SSM, the supervision of financial conglomerates is, however, based on a decentralised approach under the leadership of the ECB, in other words with key input from the FMA.

CONTINUED SUPERVISION

In addition to the task of identifying which groups based in Austria are subject to separate supervision under the FKG, the FMA is also responsible for observing and analysing the groups' risk situation and how this develops on an ongoing basis. To this end, the groups concerned are required to report certain data and key figures to the supervisory authority on a regular basis pursuant to the Financial Conglomerates Quarterly Reporting Regulation (FK QUAB-V; *Finanzkonglomeratequartalsberichts-Verordnung*).

Pursuant to Article 15 para. 1 FKG, the FMA may also perform on-site inspections at companies that are subject to supplementary supervision. The focus of such inspections is on the group structure, group strategy, financial position and organisation, risk management and internal control system at the level of the respective financial conglomerate.

In addition to the sector-based supervision requirements at group level, comprising the Austrian Banking Act (BWG; *Bankwesengesetz*), the Capital Requirements Regulation (CRR) and the Insurance Supervision Act (VAG; *Versicherungsaufsichtsgesetz*), which already make provision for sector-wide risk management, an appropriate cross-sector risk management system encompassing also the financial conglomerate as a whole is additionally required under Article 11 para. 2 FKG. Against the background of developments since the financial crisis, the FMA has focused its supervision here on risk management and internal control systems. Additionally, from the FMA's perspective, scenario analysis at conglomerate level is crucial in order to arrive at a group-wide risk assessment and position.

Compliance supervision

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 and established practices. Appropriate compliance has the purpose of avoiding administrative sanctions as well as penalties defined by criminal or civil law. As a management responsibility, compliance is specifically a means of controlling business and reputational risks.

The Austrian financial market is closely interwoven. As the integrated supervisory authority with responsibility for all sectors, the Financial Market Authority (FMA) ensures a level playing field for all. Today, compliance is an issue that affects the supervision of all sectors, and one on which both companies and the supervisory authority have placed a strong focus over the last few years, not least due to its increasingly marked impact on companies' economic solvency. High-profile court cases dealing with investors who have suffered losses due to insufficient advice on securities, inappropriate commissions or a lack of transparency have highlighted just how vital it is nowadays that any company engaged in the capital market enshrines efficient and sustainable securities compliance in its corporate structure, integrating this far-reaching issue into its corporate culture as a matter of course.

In the current low-interest environment, banks are highly focused on securing their own capital requirements on the capital market. At the same time, the capital requirements of banks have risen due to the minimum requirement for own funds and eligible liabilities (MREL). With the prudential classification of certain financial instruments as equity, and in view of their MREL eligibility, banks are also keener to place such instruments. Since these instruments can be hard to understand for retail investors, with the risks not always being made sufficiently clear, the interplay between prudential and compliance requirements becomes more than apparent. Consequently, banks have to place particular emphasis on dealing with conflicts of interest in an appropriate manner when selling financial instruments that qualify as equity and are being issued to meet the higher capital and liquidity requirements. The pivotal point is to ensure that there is no mis-selling and that equity instruments are not used to replace savings accounts and sold to a bank's own customers without informing them of all of the risks involved.

Supervisory legislation includes some highly concrete and 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 by credit institutions, management companies (investment fund management companies), issuers, insurance undertakings and *Pensionskassen* to the rules of conduct and compliance-related provisions contained in the relevant supervisory laws such as the 2007 Securities Supervision Act (WAG 2007; *Wertpapieraufsichtsgesetz*), the Stock Exchange Act (BörseG; *Börsegesetz*) and the 2011 Investment Fund Act (InvFG 2011; *Investmentfondsgesetz*).

SUPERVISED COMPANIES

As at the reporting date of 30 December 2016, the following entities were subject to compliance supervision by the FMA (comparable figures for 2015 given in brackets)¹:

- 633 credit institutions licensed in Austria (742), including 21 management companies (29);
- 38 insurance undertakings established and licensed in Austria (41);
- 12 Austrian *Pensionskassen* (13), including six single-employer and six multi-employer; and
- 436 issuers (143), including 72 subject to the provisions of the 2007 Issuer Compliance Regulation (ECV 2007; *Emittenten-Compliance-Verordnung*).²

CONTINUED SUPERVISION

ON-SITE INSPECTIONS, COMPANY VISITS AND MANAGEMENT TALKS

On-site inspections are a particular means of verifying adherence to compliance-related provisions of law in a targeted way. These provisions are specified in Article 91 para. 3 no. 3 WAG 2007, Article 48q para. 1 no. 4 in conjunction with Article 86 para. 6 no. 8 BörseG, Article 3 para. 8 of the Austrian Banking Act (BWG; *Bankwesengesetz*) in conjunction with Article 147 paras. 1 and 2 InvFG 2011, as well as Article 56 paras. 1 and 2 no. 3 of the Alternative Investment Fund Managers Act (AIFMG; *Alternatives Investmentfonds Manager-Gesetz*). The FMA reviews the extent to which the compliance mechanisms in place meet the statutory requirements and whether the rules of conduct are actually being upheld in practice.

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 and to enable discussions of specific problems in response to current issues, thus raising the market standard in the area of compliance. Targeted use is also made of company visits and management talks as a follow-up measure.

In total, 80 on-site measures (on-site inspections and company visits) and management talks were conducted in 2016 (see Table 28).

Table 28: Supervisory measures 2012–2016

	2012	2013	2014	2015	2016
<i>On-site inspections</i>	11	11	15	14	13
<i>Management talks</i>	32	36	36	26	23
<i>Company visits</i>	18	25	35	47	44
Total	61	72	86	87	80

OFFICIAL PROCESSES

The FMA also analyses the annexes to audit reports prepared by the auditors in accordance with Article 63 paras. 5 and 7 BWG, as well as analysing the annual reports on activities submitted by issuers. Where necessary, the FMA uses a fit and proper test to determine whether compliance officers and directors of credit institutions have the requisite expertise in the area of rules of conduct and compliance.

If facts emerge in a specific case during the FMA's supervisory activities indicating that a supervised company has possibly acted in breach of compliance regulations or rules of conduct in accordance with the relevant legal standards, an investigation is launched to examine and clarify the case.

The FMA initiated a total of 64 such investigations during the reporting year.

Where an existing situation of non-compliance with statutory provisions is identified in the course of supervisory activities, the FMA's primary interest is to have legal compliance restored. The FMA will confront the company concerned with the existing defects and call upon it to define and implement remedial measures. To determine the extent to which the defects have been eliminated, the FMA will then implement regular follow-up measures.

Within the context of compliance supervision, supervisory measures are therefore implemented both on a sched-

¹ Source: FMA corporate database; number of issuers: monthly statistics for December 2016 of Wiener Börse AG.

² In 2016 the area of market abuse related to trading in financial instruments was further harmonised at the level of the European Union. Many of the provisions contained in the Market Abuse Directive (MAD) were standardised and are now included in the Market Abuse Regulation (MAR), which has been directly applicable since 3 July 2016. The new EU-wide law on market abuse has been extended and now applies to all financial instruments that are admitted to trading on a multilateral trading facility (MTF) or any other organised trading facility (OTF). Consequently, issuers in the third market segment of the Vienna Stock Exchange are now also subject to ad hoc disclosure requirements and must disclose any directors' dealings. Issuers whose shares or securities similar to shares are admitted to trading on a regulated market in Austria are additionally obliged to meet the terms of the ECV 2007.

uled basis and as cases arise. Such measures may either serve to review the complete range of supervisory issues relating to compliance supervision or may be limited to individual topics or cases subject to supervision.

OTHER ACTIVITIES

CONTRIBUTION TO EUROPEAN LEGISLATION IN THE AREA OF INVESTOR PROTECTION

In the context of its international activities, the FMA and its Compliance Division are permanently involved in the investor protection policy activities of the European Securities and Markets Authority (ESMA). In this function the FMA helps to prepare proposals and statutory regulations (technical advice, technical standards), interpretations of law and other measures (e. g. investor warning notices, guidelines, Q&As) on investor protection issues in the securities area.

ESMA's priority in 2016 regarding investor protection was on issuing Questions and Answers (Q&As). The last such Q&As published on the ESMA website in December dealt with MiFID II and MiFIR investor protection topics. The Q&As, which are addressed both to competent authorities and supervised companies, should help build consistent supervisory practices relating to the application of MiFID II and MiFIR in connection with investor protection issues. The Q&A tool provides a means for ESMA to answer questions from the members of the general public, market participants and competent authorities relating to the practical application of MiFID II and MiFIR. ESMA regularly amends and updates the Q&As as required. The Q&As will apply when the MiFID II provisions enter into effect, which is currently expected to be from 3 January 2018.

In order to ensure consistent standards of supervision, the FMA and its Compliance Division remain in regular contact with their partner authorities in other EU Member States. Apart from this regular exchange, study visits are also conducted among the supervisory authorities to establish best practices for supervision. In 2016 one such exchange of experience in the area of compliance was conducted with compliance supervision representatives at the German Federal Financial Supervisory Authority (BaFin).

DIALOGUE WITH STAKEHOLDERS

The FMA's Compliance Division maintains a continuous dialogue with representatives of the supervised companies and their interest groups. The key objective of compliance supervision – in line with the notion that prevention is better than cure – is to create more awareness of adherence to rules of conduct and compliance, thus ensuring that the supervised companies comply with the relevant regulations. To this end, the FMA experts regularly provide information about compliance rules and the FMA's supervisory practice in workshops, training sessions, seminars, meetings and public discussions. Specifically, 27 talks on compliance supervision were given in 2016. All of this is done to enforce uniform high standards in investor protection in the Austrian capital market, to strengthen investor confidence and consequently to contribute to the smooth functioning of the capital market.

Legal supervision of exchange operating companies

During the period under review, the Vienna Stock Exchange was once again the only securities and commodities exchange established in Austria pursuant to the Stock Exchange Act (*BörseG; Börsegesetz*). Its licensed operator and assigned legal entity under private law is Wiener Börse AG (WBAG). WBAG executes some official functions (in relation to the admission of financial instruments to trading) and to this extent may be viewed as an “enterprise charged with the fulfilment of sovereign functions”, or as being a partly official entity. With regard to financial market regulation, it therefore assumes a special role.

WBAG itself, as well as operating two regulated markets (official market and second regulated market) during the reporting period (as previously), also operated the “third market”, which, in the capacity of a multilateral trading facility (MTF), is only subject to limited supervision. The level of protection available to investors in this third market segment is therefore greatly reduced. However, for the first time, Regulation (EU) No 596/2014¹ (Market Abuse Regulation – MAR) applied during the reporting period, as a result of which the ad hoc disclosure and directors’ dealings reporting obligations also apply to issuers whose financial instruments are only offered on an MTF (and thus on the “third market”).

In line with its remit, the FMA was required during the reporting year to take the official steps set out in law in conjunction with staffing changes within the management of WBAG and to deal with various requests from the exchange operating company regarding changes to its General Terms and Conditions of Business. Examples included modification of the terms and conditions in relation to the ending of cooperation between WBAG and Central European Gas Hub AG (CEGH). This project, based on WBAG’s licence to operate a commodities and securities exchange, involved the operation of a spot and futures market for natural gas products. During the reporting period, CEGH entered into a cooperation project with the French energy exchange operator Powernext S.A., on the basis of which various natural gas products will be traded in future using Powernext S.A.’s licence instead. Consequently, the FMA’s responsibility has been transferred to the French supervisory authority, the *Autorité des marchés financiers* (AMF). This change has required tie-in official agreements between the FMA and the AMF. As a result, only the cooperation arrangement between WBAG and Energy Exchange Austria *Abwicklungsstelle für Energieprodukte AG* (EXAA) has been maintained in relation to Austrian exchange-based energy trading. This is, however, restricted to spot market products in the electricity sector.

Otherwise, the institutional environment (in terms of company law and with regard to cooperation) in which the Vienna Stock Exchange operates was barely subject to any changes during the reporting period. Wiener Börse AG, along with the Prague Stock Exchange, remains part of the CEE Stock Exchange Group (CEESEG), which is ultimately owned by Austrian credit institutions and issuers. The CEESEG sold its stakes in the Budapest and Ljubljana Stock Exchanges back in 2015. In addition to its own activities as a stock exchange company, the Vienna Stock Exchange still, however, provides trading system infrastructure for the above partner exchanges (as well as for the Zagreb Stock Exchange – ZSE) and also offers data distribution services (including beyond this client group). These data distribution services will be partly subject to supervision of their own under future regulations

¹ See also the section on the supervision of issuers in this regard.

(Directive 2014/65/EU – MiFID II and Regulation (EU) No 600/2014 – MiFIR). The company Central Counterparty Austria GmbH (CCP.A), which is a joint subsidiary of the Vienna Stock Exchange and Österreichische Kontrollbank AG, continues to act in the capacity of the clearing agency for securities trading. CCP.A has also been subject to separate supervision since 2014 under the terms of Regulation (EU) No 648/2012 (European Market Infrastructure Regulation – EMIR).

Supervision of the stock exchange and securities trading

The goal in supervision of the stock exchange and securities trading is to ensure orderly and fair trading in listed securities, to safeguard the integrity of the financial markets and to bolster investor protection as well as investors' trust in these markets. The relevant legal provisions applying in this context are defined in the Stock Exchange Act (BörseG; *Börsegesetz*), the 2007 Securities Supervision Act (WAG 2007; *Wertpapieraufsichtsgesetz*), the Market Abuse Regulation (MAR – Regulation (EU) No 596/2014 on market abuse) along with the delegated implementing acts, and the Market Abuse Directive (CSMAD – Directive 2014/57/EU on criminal sanctions for market abuse).

CSMAD and the provisions of MAR requiring implementation have been implemented in Austria through the amended BörseG (Federal Law Gazette I No. 76/2016), which entered into effect on 2 August 2016. Reference is made below only to the amended BörseG and to MAR.

The FMA's key task within this area of supervision is to combat market abuse. MAR and CSMAD define the term "market abuse", which includes insider dealings, the unlawful disclosure of inside information and market manipulation.

A case of market abuse can exist specifically where investors are harmed as a result of third parties using confidential information (insider dealings) or acting to distort the price of financial instruments or disseminating false or misleading information (market manipulation). In such cases the FMA has the legal mandate to expose the illegal activity and to take measures to prosecute the offence. Since the amended BörseG became law, both insider dealings and market manipulation can be classified as offences relevant for prosecution under administrative law or criminal law, with the severity of the violation mainly determining which law applies. The corresponding criteria for distinguishing cases are defined in the BörseG. If the FMA has reasonable suspicion of market abuse and the underlying offence falls within the jurisdiction of the courts, the FMA is obliged to report the case to the Central Public Prosecutor for Economic Crime and Corruption (WKStA), which takes up prosecution and as a rule subsequently commissions the FMA with further investigations.

The FMA is also mandated with monitoring compliance with the Vienna Stock Exchange's trading rules. These rules serve to prevent market abuse and to facilitate the exposure of actual breaches.

The FMA also monitors compliance of market participants with statutory disclosure, reporting and information obligations, and within the framework of administrative penal proceedings prosecutes any violations.

OFFICIAL TASKS

SUPERVISED COMPANIES

ISSUERS

As at 31 December 2016, a total of 8 873 financial instruments from 134 issuers were listed on the official market and the second regulated market of the Vienna Stock Exchange. An additional 1 350 financial instruments from a total of 337 issuers were listed on the third market, which has been operated as a multilateral trading facility (MTF) since 2007. Compared with the previous year, the number of issuers on the official market and the second

Table 29: Supervised markets, issuers and securities 2012–2016 (source: Wiener Börse AG)

NUMBER OF ISSUERS	2012	2013	2014	2015	2016
<i>OFFICIAL MARKET AND SECOND REGULATED MARKET</i>					
Foreign shares	6	7	6	5	5
Domestic shares	67	65	67	64	61
Profitsharing certificates	1	1	1	1	1
Warrants	3	2	2	2	2
Participation certificates	2	2	2	1	1
Bonds	97	95	93	93	87
Certificates	12	10	7	6	4
Exchange traded funds	3	3	2	2	2
Total issuers	157	152	146	141	134
<i>THIRD MARKET</i>					
Foreign shares	9	13	11	8	7
Domestic shares	17	17	15	15	10
Profitsharing certificates	3	4	4	4	3
Warrants	2	1	1	2	2
Participation certificates	1	1	1	1	0
Bonds	182	175	188	322	311
Certificates	11	11	9	6	6
Investment funds	1	1	1	1	2
Total issuers	216	213	221	353	337
NUMBER OF LISTED SECURITIES					
<i>OFFICIAL MARKET AND SECOND REGULATED MARKET</i>					
Foreign shares	6	7	6	5	5
Domestic shares	73	71	73	70	67
Profitsharing certificates	2	2	2	2	2
Warrants	1 857	1 684	1 529	1 510	2 007
Participation certificates	2	2	2	1	1
Bonds	2 808	2 616	2 359	2 051	1 957
Certificates	3 336	4 084	4 064	4 264	4 825
Exchange traded funds	21	20	20	9	9
Total securities	8 105	8 486	8 055	7 912	8 873
<i>THIRD MARKET</i>					
Foreign shares	9	13	11	8	7
Domestic shares	18	17	15	15	10
Profitsharing certificates	3	4	4	4	3
Warrants	4	2	2	3	3
Participation certificates	1	1	1	1	0
Bonds	818	802	868	1 253	1 202
Certificates	82	151	179	157	123
Investment funds	1	1	1	1	2
Total securities	936	991	1 081	1 442	1 350

regulated market fell slightly (2015: 141 issuers), while the number of issuers on the third market also decreased from the previous year (2015: 353 issuers).

INSTITUTIONS UNDER REPORTING OBLIGATIONS

Companies that conclude transactions in listed financial instruments are required pursuant to Article 64 WAG 2007 to report each transaction to the FMA. Such companies include Austrian credit institutions and Austrian branches of foreign credit institutions. Instruments subject to reporting obligations are financial instruments, such as for example transferable securities that are admitted to trading on a regulated market or for which an application for admission to trading on a regulated market has been made. It is not relevant in this regard whether the transaction was concluded or executed on a regulated market. A total of 646 companies were subject to report to the FMA in 2016.

OTHER STOCK EXCHANGE MEMBERS

In addition, market participants that are based within the EU are required to report the securities transactions they carried out at the Vienna Stock Exchange to the authority of their home country, which subsequently forwards the reported data to the FMA. This regulation has been in effect since the implementation of the Markets in Financial Instruments Directive (MiFID) in 2007.

TRANSACTION REPORTING

In view of the imminent changes to the reporting regime resulting when the Markets in Financial Instruments Regulation (MiFIR) becomes applicable as of 3 January 2018, stronger attention was given to the necessary adaptations. The market participants were consistently provided with information through forums on the topic of market data reporting, held regularly by the FMA and the Austrian Federal Economic Chamber (WKO).

In 2016, 9 269 932 securities transaction reports (including changes and cancellations) were submitted to the FMA by the institutions under reporting obligations pursuant to Article 64 WAG 2007. Of these roughly 9.3 million reports, 4 503 446 were forwarded to the partner authority within the EU competent in the particular case. In its role as competent authority, the FMA additionally received 23 930 789 transaction reports from other European supervisory authorities. This meant that the FMA received 33 200 721 transaction reports in total, which represents a slight decrease from the previous year (34 014 703 reports; see Chart 26).

EMIR REPORTING

As in previous years, the reports submitted pursuant to Article 9 EMIR were regularly evaluated and analysed by the FMA. Here special attention was given to companies under reporting obligations whose reports turned out to be particularly defective. The FMA and the WKO regularly hold forums on the subject of EMIR to facilitate ongoing communication and ensure a consistent exchange of information on any questions or issues that arise in relation to the reports submitted to the trade repository.

In 2016 the FMA processed a total of some 415 million data sets received from the trade repositories with which it is connected.

MARKET SUPERVISION

The FMA's task is to ensure orderly and fair trading in securities listed on the financial markets, with specific obligations to expose any misuse of inside information, any market manipulation and any breaches of the Vienna Stock Exchange's trading rules.

Irregularities in trading become known to the FMA either through its own monitoring of the market, which includes routine analyses performed on an ongoing basis, or through third-party observations. In reporting suspicious transactions and orders, an increasingly significant role is being played by operators of trading venues and by individuals who carry out transactions with financial instruments on a professional basis. Such individuals are required to report suspicious orders and transactions to the FMA immediately, as follows from the existing obligation to establish and maintain effective arrangements, systems and procedures aimed at preventing market abuse and attempted market abuse (Article 16 MAR). Irregularities of any kind are subsequently investigated to determine either a plausible explanation or whether evidence exists pointing to a potential breach of a provision of law falling within the FMA's supervisory remit.

Where evidence pointing to a breach of law is found, further investigative measures suited to substantiating the suspicion are selected depending on the type of irregularity identified. For this purpose the FMA would, for example, investigate the trading behaviour of specific market participants or traders, or assess the investment behaviour

Chart 26: **Transaction reports received by the FMA 2012–2016** (pursuant to Article 64 WAG 2007; source: FMA)

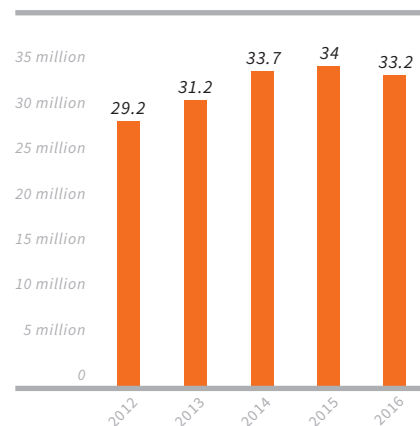


Table 30: Market supervision 2012–2016

	Routine analysis	Investigations into misuse of inside information, market manipulation and violation of trading rules			
	Warnings computed	Investigations initiated	Investigations forwarded for internal legal processing	Investigations dropped/completed	Reports forwarded to the Central Public Prosecutor for Economic Crime and Corruption (WKStA)
2012	1 209	61	7	25	1
2013	1 376	67	9	50	2
2014	1 380	61	10	31	3
2015	1 403	79	16	73	4
2016	1 192	92	21	86	4

Table 31: Official assistance market supervision 2012–2016

	Enquiries addressed to foreign supervisory authorities			Enquiries received from foreign supervisory authorities		
	BaFin	FCA	Other	BaFin	FCA	Other
2012	7	7	7	13	0	11
2013	6	5	11	34	0	21
2014	26	5	50	21	0	17
2015	13	2	18	22	0	16
2016	16	0	17	10	0	16

of a client on the basis of previously reported transactions and identify recurrent trading patterns. Another example would be to examine trading days before and after a suspicious transaction. More in-depth information such as professional securities analyses are included in any detailed analysis of the order and/or transaction data. When conducting investigations, the FMA also makes full use of its rights to demand information and carry out

inspections pursuant to the WAG 2007 and the BörseG, examining relevant documents, performing on-site inspections and interviewing the individuals involved. The FMA is also authorised to take other steps, including temporarily prohibiting individuals from practising their profession, freezing or seizing assets to secure illegal gains, requesting persons to temporarily desist from activities or requesting the temporary interruption of trading. Where there is reasonable suspicion, the FMA

is additionally authorised to search premises (insider dealings, unlawful disclosure of inside information, market manipulation, breaches of ad hoc requirements) and to obtain information on communications data (insider dealings, market manipulation, breaches of ad hoc requirements). When taking such steps, the FMA is assisted by police authorities, with the provisions of the Code of Criminal Procedure (StPO; *Strafprozessordnung*) applying.

In the reporting year, 1 192 routine analyses were carried out (see Table 30). Suspicions were substantiated in 92 cases and further analysis was performed. This subsequently led to the opening of an investigation, in 26 of those cases on account of suspected misuse of inside information and in 66 cases on suspicion of market manipulation or of a breach of trading rules. Compared with the previous year, there was a significant increase both for investigations initiated in response to suspected misuse of inside information (2015: 11 investigations) and for investigations initiated on suspicion of market manipulation or breach of trading rules (2015: 35 investigations).

During the period under review, 33 requests for official assistance were addressed to authorities in other countries, which represents no change compared with the previous year. With regard to enquiries, 16 (2015: 13 enquiries) were directed at the German Federal Financial Supervisory Authority (BaFin) and 17 were sent to partner authorities in other countries (see Table 31).

The number of requests received from foreign authorities decreased on the previous year, from 38 to 26. Ten of those requests were made by the German partner authority BaFin.

In the reporting year, the FMA again carried out special inspections on various subject areas as part of its investigative activities. Such focus activities are not initiated based on specific irregularities but are aimed at investigating and analysing subject areas with general relevance for investigative activities, dealing with these areas in depth and in their entirety. The goal of these special investigations is to analyse current market developments and thereby gain insights that will prove valuable for ongoing market observation. Special inspections can be launched in response to insights gathered either through ongoing market observation, pending investigations, or information or reports submitted by external parties. Examples of activities during special inspections include investigating securities trading in certain sectors, analysing new trading strategies, selected market areas or the trading behaviour of a market participant or a trader over an extended period of time, or researching the risks entailed in alternative electronic trading platforms.

MISUSE OF INSIDE INFORMATION

The main provisions regarding inside information are contained in Article 48c para. 1 nos. 1 and 2 BörseG in conjunction with Articles 8 to 11 and Article 14 MAR and in Article 48m BörseG.

According to the legal definition, inside information is information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more issuers or to one or more financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments (Article 7(1)(a) MAR). Inside information has to be of such a nature that a reasonable investor would be likely to use it as the basis of his or her investment decisions. For individuals such as agent traders, who are commissioned by customers to execute orders, confidential information concerning orders not yet placed can also represent inside information.

The scope of the offence described above includes taking advantage of inside information on one's own behalf or on behalf of a third party. Misuse can be committed by purchasing or selling a financial instrument, cancelling or modifying an order, recommending or inciting a third party to buy or sell a financial instrument, or by disclosing the information to third parties (unlawful disclosure of inside information). Disclosure is not unlawful, in contrast, when it occurs as part of performing work or professional duties, fulfilling responsibilities or carrying out market soundings (Article 11 MAR). A market sounding comprises the communication of information, prior to the announcement of a transaction, in order to gauge the interest of potential investors in a possible transaction and the conditions relating to it such as its potential size or pricing, to one or more potential investors. Sounding the interest of potential investors can be done by an issuer, a secondary offerer or by a third party acting on behalf of one of the former two. Market sounding can also take place in the context of takeover bids or mergers. Where inside information is involved, the disclosing market participant is required to maintain a written record of the entire procedure and to keep the record for at least five years.

The misuse of inside information is prohibited under Austrian law as specified in Article 48c para. 1 nos. 1 and 2 BörseG and Article 48m BörseG. In cases involving administrative offences (Article 48c para. 1 nos. 1 and 2 BörseG in conjunction with Article 14 MAR), the FMA is obliged to impose a maximum fine of € 5 million or of three times the amount of the benefit gained from the misuse, including any loss avoided thereby, provided that the benefit can be quantified. In cases as referred to in Article 48c para. 1 no. 1 BörseG, even the attempt is punishable if carried out with intent (Article 48c para. 2 BörseG). Where cases fall under the jurisdiction of criminal courts, the misuse of inside information is punishable by imprisonment for a maximum of five years (Article 48m BörseG). This applies in the case of primary insiders who are found guilty of intentionally carrying out prohibited insider dealings or making recommendations based on such information. The maximum prison sentence applies to secondary insiders only when they act knowingly. Unlawful disclosure of inside information is punishable by maximum imprisonment of two years. In both types of cases, i.e. when falling under court jurisdiction and when punishable under administrative penal law, the legal entity concerned can be made accountable.

In 2016 a total of 26 investigations involving inside information were opened, and 15 were closed. In four cases, as in the previous year, the FMA submitted a report pursuant to Article 48q para. 1 BörseG to the Central Public Prosecutor for Economic Crime and Corruption (WKStA) concerning the suspected misuse of inside information.

Table 32: Ad hoc reports by subject matter 2012–2016 (source: FMA)

	2012	2013	2014	2015	2016
<i>Share buyback/resale</i>	18	14	27	11	18
<i>Peculiarities/other items of ongoing business operations</i>	110	116	112	87	125
<i>Participations (acquisition, sale), partnerships</i>	29	24	60	45	81
<i>Financial reports/business figures</i>	197	187	121	151	108
<i>Large-scale order</i>	5	2	3	2	4
<i>Capital measures</i>	28	29	36	44	30
<i>Staff details</i>	45	45	43	46	36
<i>Forecasts, profit warning</i>	1	5	13	3	4
<i>Restructuring, recovery, insolvency</i>	7	17	4	16	8
<i>Strategic corporate decisions, investments</i>	10	10	17	11	16
<i>Management board meetings, resolutions</i>	0	3	8	3	5
Total	450	462	444	419	435

MARKET MANIPULATION

The main legal provisions regarding market manipulation are contained in Article 48c para. 1 no. 3 BörseG in conjunction with Articles 12 and 15 MAR and in Article 48n BörseG.

Market manipulation as defined in Article 12(1)(a) MAR refers to entering into a transaction, placing an order to trade or any other behaviour which:

- gives, or is likely to give, false or misleading signals as to the price or supply of or demand for a financial instrument; or
- secures, or is likely to secure, the price of a financial instrument at an abnormal or artificial level, unless the person entering into a transaction, placing an order to trade or engaging in any other behaviour establishes that such transaction, order or behaviour have been carried out for legitimate reasons, and conform with an accepted market practice (Article 13 MAR).

Other actions falling under the criminal offence of market manipulation include:

- transactions which are entered into or buy or sell orders placed under false pretences or by any other deceitful actions and which would be likely to influence the price of a financial instrument;
- the dissemination, via the media (including the Internet), of information that sends out or may send out false or misleading signals as to the price or supply of or demand for a financial instrument. This also applies to the dissemination of rumours where the person who disseminated that information knew or should have known that it was false or misleading;
- in relation to a benchmark, transmitting false or misleading information or providing false or misleading inputs while knowing or being responsible for knowing that the information was false or misleading, or taking any other behaviour which manipulates the calculation of a benchmark.

MAR enumerates forms of behaviour that potentially represent market manipulation. Examples of such include:

- the buying or selling of financial instruments, at the opening or closing of the market, which has or is likely to have the effect of misleading investors acting on the basis of the prices displayed;
- the placing of orders to a trading venue, including any cancellation or modification thereof, by any available means of trading, including by electronic means, such as algorithmic and high-frequency trading strategies, and which has the effects of
 - disrupting or delaying the functioning of the trading system of the trading venue or being likely to do so, or
 - making it more difficult for other persons to identify genuine orders or being likely to do so, or
 - creating or being likely to create a false or misleading signal about the price or supply of or demand for a financial instrument, in particular by entering orders to initiate or exacerbate a trend.

Depending on whether certain defined minimum criteria are met, market manipulation is sanctioned in the framework of either administrative penal proceedings or criminal court proceedings. As specified in Article 48c para. 1 no. 3 BörseG in conjunction with Article 15 MAR, in cases of market manipulation involving administrative offences, the FMA is obliged to impose a maximum fine of € 5 million or of three times the amount of the benefit gained from the manipulation, including any loss avoided thereby, provided that the benefit can be quantified. In addition, any pecuniary benefit gained thereby is to be declared forfeited. Where the offence falls under court jurisdiction as specified in Article 48n BörseG, a prison sentence of between six months and five years can be imposed. In both types of cases, i. e. when falling under court jurisdiction and when punishable under administrative penal law, the legal entity concerned can be made accountable. The amount of the fine is a maximum of € 15 million or 15% of the entity's total annual revenue or three times the amount of the benefit gained, including any loss avoided thereby, provided that the benefit can be quantified.

As with the misuse of inside information, even the attempt is punishable if carried out with intent (Article 48c para. 2 BörseG).

In the year under review, 66 investigations of suspected market manipulation were initiated and 71 were completed. An administrative penalty of a maximum of € 5 000 was imposed in nine cases with final effect.

SUPERVISION OF ISSUERS

As a step towards defining a new European system of capital market law, new provisions governing market abuse entered into effect as of 3 July 2016 with the Market Abuse Regulation (MAR – Regulation (EU) No 596/2014). Consequently, the rules aimed at preventing market abuse equally apply in future to financial instruments traded at multilateral trading facilities (MTFs) and to those traded at organised trading facilities (OTFs). Reporting and disclosure requirements, such as ad hoc disclosure and directors' dealings reporting requirements, also apply in future to issuers whose financial instruments are listed only at an MTF or OTF. At the Vienna Stock Exchange, the third market segment also falls under the new rules.

The provisions of the Regulation are now directly applicable in the EU Member States.¹

The supervision division responsible for issuers held an event on the topic of “New rules for the third market” for the entities concerned, to fully inform them and raise their awareness at any early stage of the obligations imminently facing them as well as to provide them with the opportunity to take the necessary legal steps as well as any requisite steps related to organisation and staffing to prepare for the new situation and rules.

As at 31 December 2016, a total of 436 issuers, accounting for a total of 10 223 securities listed on the Vienna Stock Exchange's official market and second regulated market and, as an MTF, on its third market, were subject to the disclosure obligations specified in the BörseG (source: Vienna Stock Exchange).

AD HOC DISCLOSURE

The timely disclosure of accurate and comprehensive information about security issuers and major holdings builds investor confidence and allows an informed assessment of issuers. The ad hoc reporting requirement is among the key disclosure obligations.

The ad hoc reporting requirement is the regulatory instrument designed to inhibit or counteract by preventive means the offence of insider dealing, i.e. the misuse of inside information. Ad hoc disclosure is an expression of a regulatory philosophy characterised by the notion of investor protection and based on the principle that the capital market should be supplied with all information required to exploit the individual financial instruments. Publishing inside information quickly and without delay makes such information common knowledge that is generally available to the public, in this way preventing anyone from illegally taking advantage of it by carrying out transactions involving listed financial instruments.

In 2016, 435 ad hoc reports were published, compared with 419 in 2015.

POSTPONEMENT OF AD HOC DISCLOSURE

The BörseG nonetheless provides for cases in which the disclosure of inside information can be postponed, which represents an exception from the general requirement to disclose such information immediately. The exception only applies, however, to the aspect of disclosing the information immediately; i.e. it is not a general suspension of the disclosure requirement per se but only a postponement (the issuer can refrain from disclosure if during the exemption period the inside information becomes irrelevant). In order for the issuer to use the postponement option, all of the following three conditions must be met:

1. the disclosure of the information could be potentially damaging to the issuer's legitimate interests;
2. suppression of the information is not likely to mislead the public;
3. the issuer is able to guarantee the confidentiality of the information.

When postponing disclosure of inside information, the issuer is required to inform the FMA of the postponement immediately after the inside information has been disclosed and to provide the FMA on request with written justification indicating how the conditions for postponement were met.

Issuers made use of the postponement option in 15 cases in 2016 (compared with 18 in 2015).

¹ For details refer to “The new supervisory regime for trading in listed securities: MAR and CSMAD” in our “Facts and figures, trends and strategies”.

Table 33: Supervision of issuers 2012–2016

	<i>Ad hoc disclosure</i>	<i>Periodic disclosure</i>	<i>Reports purs. to Article 48d para. 4 BörseG</i>	<i>Reports of major holdings</i>	<i>Investigations</i>		
	<i>Ad hoc reports received</i>	<i>Annual, half-yearly and quarterly reports received</i>	<i>Directors' dealings</i>	<i>Reports of voting rights received</i>	<i>Initiated</i>	<i>Forwarded</i>	<i>Dropped/completed</i>
2012	459	511	287	118	41	27	40
2013	462	526	283	293	17	14	30
2014	444	645	374	293	27	6	31
2015	419	518	363	261	33	14	29
2016	435	464	555	494	12	4	18

PERIODIC DISCLOSURE

Periodic disclosure, which refers to the requirement to periodically submit financial reports, results in a wealth of data which provides investors, analysts as well as the entire financial community with important facts. Investors, credit

rating agencies, banks, analysts, supervisory authorities and other affected parties must be able to rely on complete and timely financial reporting.

In the reporting year, the FMA received a total of 464 annual, half-yearly and quarterly reports (2015: 518, see Table 33).

DISCLOSURE OF MAJOR HOLDINGS

Requiring issuers to disclose any changes in major holdings allows investors to buy or sell shares of stock in full awareness of the modified voting rights, while on the whole providing for enhanced transparency of large capital flows within the market. Parties holding major portions of voting rights are obliged to advise the exchange operating company and the supervisory authority whenever the proportion of rights held in the company reaches, exceeds or falls short of certain thresholds. The reporting thresholds set in the BörseG are 4%, 5%, 10%, 15%, 20%, 25%, 30%, 35%, 40%, 45%, 50%, 75% and 90%.

The revised Transparency Directive, which focuses on closing transparency gaps relating in particular to disclosure of company holdings, was implemented in Austrian law effective as of 26 November 2015. Since then the number of reports of major holdings has almost doubled compared with 2015: in 2016 the FMA received 494 reports of major holdings, whereas the figure had been 261 in 2015.

DIRECTORS' DEALINGS

With MAR becoming effective as of 3 July 2016, reports of directors' dealings are no longer published as previously on the FMA's website with the consent of the party under reporting obligations. Instead, issuers are now required to disclose the reports throughout the EU and to submit them to the OAM Issuer Info service of the OeKB (as the central source of information from Austrian issuers).

The management and supervisory boards of listed companies and individuals closely associated with them reported a total of 555 securities transactions in 2016. The number of reports increased significantly from 2015 as a result of the widened scope (following entry into force of MAR) of the reporting requirement (2015: 363 reports).²

² For details refer to "The new supervisory regime for trading in listed securities: MAR and CSMAD" in our "Facts and figures, trends and strategies".

Supervision of capital market prospectuses

An issuer publicly offering securities or intending to apply for admission to a regulated market (of Wiener Börse AG) must prepare a comprehensive securities prospectus containing key information on the issuer and the securities to be issued. The legal basis is laid down in the Capital Market Act (KMG; *Kapitalmarktgesetz*), which transposes the Prospectus Directive (Directive 2003/71/EC as amended) into national law, and in Regulation (EC) No 809/2004 as amended (legal basis for preparing securities prospectuses). In cases where the prospectus includes securities for admission to the stock exchange, the Stock Exchange Act (*BörseG*; *Börsegesetz*) also applies accordingly.

With regard to its remit of supervising capital market prospectuses, the FMA is in essence responsible for the following tasks:

- Auditing and approval of prospectuses and supplements when securities are offered to the public and/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: 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.

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 that are required based on the nature of the issuer and the publicly offered securities or investments, or the securities admitted to trading on a 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 trading on a regulated market.

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. It is not part of the FMA's remit to evaluate the correctness of the information contained in the prospectus during the approval procedure. The issuer is liable, pursuant to Article 11 KMG, for the correctness of the information provided in the prospectus or for any material incompleteness, such as undisclosed details.

COMPLETENESS

Within an approval procedure, 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. In particular, the summary to be included in the prospectus and the presentation of the risk factors associated with the security should be written in generally comprehensible language.

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 publishes a list of eligible prospectus auditors on its website.

OFFICIAL TASKS

The number of prospectus approvals has declined in 2016. With 53 approved prospectuses the number was around 11.6% down on 2015, when the FMA approved 60 prospectuses. Chart 27 shows the number of prospectus approval procedures, approved supplements and procedures discontinued during 2012 to 2016. This development can be attributed to geopolitical risks, economic recovery still being restrained, as well as the highly volatile financial markets resulting from the United Kingdom's decision to leave the European Union and the outcome of the presidential election in the USA, which came as a big surprise to many people.

The number of approved supplements dropped from 124 in 2015 to 71 in 2016. It should be noted in this context that the large number in 2015 was due to special factors (e. g. changes in the legal situation for credit institutions,

the downgrading of Austrian banks’ credit rating by European credit rating agencies, structural reforms in the Austrian Volksbank cooperative sector, and the impact the developments in relation to Hypo Alpe Adria had on the mortgage bank sector).

EEA NOTIFICATIONS

The primary 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 Member State of the European Economic Area (EEA) 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 the summary into the particular language of the EEA Member State.

Analogous to the decline in the number of approved prospectuses, the number of prospectuses notified by Austria to other EEA Member States has also fallen. While in 2015 the number of notified prospectuses was 29, the comparable figure for 2016 was 23, a drop of around 20.7% (see Chart 28). The majority of outgoing notifications were addressed to the competent authority in Germany. Some prospectuses or supplements were notified to countries in Eastern Europe and to Luxembourg.

At 346, the number of prospectuses notified in Austria in 2016 by other EEA Member States, was practically unchanged compared with one year earlier. The number of notified supplements rose by some 5%, from 1138 in 2015 to 1198 in 2016. The majority of incoming notifications to the FMA were submitted by the competent authorities in Germany and Luxembourg.

Chart 27: Approval procedures 2012–2016 (source: FMA)

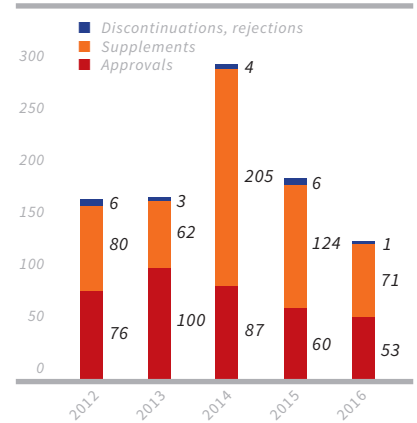
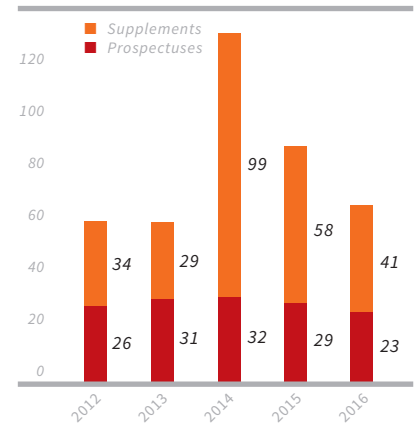


Chart 28: Outgoing notifications 2012–2016 (source: FMA)



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 27 such cases in 2016, 19 of which resulted in administrative penal proceedings being initiated. Five cases were referred to the public prosecutor for further proceedings.

Combating unauthorised business

The Financial Market Authority (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 huge sums of money 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 Austrian 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 329 of the 2016 Insurance Supervision Act (VAG 2016; *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 business operations, 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. If the party concerned fails to meet this request by the stipulated deadline, the FMA will issue an administrative decision ordering the necessary measures to be taken (extending as far as closure of the business operation) to ensure that a lawful situation is created. The issuing of such an administrative decision routinely 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 29 para. 1 of the Electronic Money Act (E-GeldG; *E-Geldgesetz*), Article 94 para. 1 WAG 2007, Article 48 para. 1 no. 1 BörseG, Article 47 PKG, Article 60 para. 1 of the Alternative Investment Fund Managers Act (AIFMG; *Alternatives Investmentfonds Manager-Gesetz*) and Article 329 of VAG 2016.

OFFICIAL TASKS

INVESTIGATIONS

The suspicion that business operations are being carried out without authorisation may be 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. Subsequently, individuals may be called upon to submit a written statement or be summoned to appear on the FMA's premises for questioning.

In 2016 the FMA initiated a total of 162 investigations, 204 of which could be completed. Furthermore, 11 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 pur-

suant 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 2016 a total of 40 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 three cases an administrative decision prohibiting business operations, simultaneously threatening a coercive penalty, had to be issued due to non-compliance with the procedural order.

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, 33 such announcements were made in 2016. 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 13 cases of administrative penal proceedings being initiated in 2016, and 11 penal decisions were issued.

ENFORCEMENT

In accordance with Article 22 para. 1 FMAGB, 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 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 2016 the FMA submitted a total of 49 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 partner 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

The FMA monitors the companies under its supervision to ensure compliance with the due diligence and disclosure obligations aimed at preventing money laundering and terrorist financing. The efforts to combat money laundering and terrorist financing are based on the FATF Recommendations, the internationally accepted standards drawn up by the Financial Action Task Force.

The Financial Action Task Force (FATF) is an independent intergovernmental body based at the Organisation for Economic Co-operation and Development (OECD). 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 check member states' implementation of these standards. Relevant European legislation also draws on the FATF Recommendations.

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, 62 on-site measures were carried out in total during 2016. Specifically, 31 on-site inspections were carried out within the framework of combating money laundering and terrorist financing during the year under review. In detail, 20 on-site inspections were conducted at credit institutions, two at insurance undertakings and nine at investment firms. Additionally, in relation to preventing money laundering and terrorist financing, the FMA carried out a total of 31 company visits during the year under review. Of those visits, 26 were held at credit institutions, four at insurance undertakings and one at an investment firm.

SUPERVISORY PROCEDURES

If during the FMA's supervisory activities facts emerge in a specific case indicating that a supervised company

Table 34: On-site measures to prevent money laundering and terrorist financing 2012–2016

	2012	2013	2014	2015	2016
<i>On-site inspections</i>	18	15	24	28	31
<i>Company Visits</i>	20	20	30	30	31
Total	38	35	54	58	62

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 a situation of non-compliance with statutory provisions is identified, it is the FMA's responsibility to enforce restoration of legal compliance and/or remedy of the associated defects.

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 these 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 seven penal decisions and three admonition orders were issued in 2016 due to breaches of anti-money laundering provisions.

During the reporting year there were 163 cases in total of supervisory procedures being initiated to prevent money laundering and terrorist financing. The procedures included 127 investigations, 20 procedural orders requesting compliance with statutory provisions to be restored and 16 cases of administrative penal proceedings.

EXCHANGE OF INFORMATION AND PUBLIC SPEAKING ACTIVITIES

To further intensify the exchange of information and cooperation with the supervised companies, the FMA not only participated in a substantial number of talks and discussions in 2016 on how to prevent money laundering and terrorist financing but also organised its own events dedicated to the issue. For instance, the FMA organised its second practice conference dedicated to "Compliance and Prevention of Money Laundering" on 21 November 2016. Experts from the FMA's Rules of Conduct and Compliance and Prevention of Money Laundering and Terrorist Financing Divisions were able to discuss related matters with representatives of the supervised companies at the conference. The focus was on talks about the implementation of the Fourth Anti-Money Laundering Directive through the Financial Markets Anti-Money Laundering Act (FM-GwG; *Finanzmarkt-Geldwäschegesetz*) and the Beneficial Owners Register Act (WiEReG; *Wirtschaftliche Eigentümer Registergesetz*).

In addition, the FMA attended the Second Austrian Anti-Money Laundering Convention in Innsbruck, an event organised by the Financial Intelligence Unit (Federal Ministry of the Interior). The Convention offered a platform for the exchange of information across authorities and sectors on how to prevent and combat money laundering and the financing of terrorism.

PANAMA PAPERS

Reports in the media about the so-called Panama Papers first appeared in April 2016. These papers represent history's biggest leak of confidential documents and account details relating to offshore companies. The Panama Papers are leaked, internal documents from a Panama-based law firm. The documents reveal the massive extent to which offshore structures are used to avoid paying taxes on assets or to conceal the origin of those assets.

Austrian credit institutions and their business relationships with, for example, politically exposed persons who were included in the law firm's database also found themselves under the media spotlight. The FMA began looking into the issue and launched on-site inspections at the credit institutions concerned a few days after the first reports appeared.

Financial reporting enforcement

In accordance with Austria's Financial Reporting Enforcement Act (RL-KG; *Rechnungslegungs-Kontrollgesetz*), the FMA is the authority responsible for verifying that capital market-based companies carry out proper financial reporting as governed by the International Financial Reporting Standards (IFRS) and the Austrian Corporate Code (UGB; *Unternehmensgesetzbuch*), and for legally enforcing such reporting. The companies affected are those whose home Member State under the terms of the Stock Exchange Act (*BörseG; Börsegesetz*) is Austria.

Alongside this review activity, enforcement is also based around EU-wide cooperation and prevention, and of particular relevance in this regard are pre-clearance, error disclosure and a range of information materials provided by the FMA. A process of exchange between experts for the improvement of financial reporting and comparability within the European single market is the main priority.

The FMA combines its reviews and its prevention work in an approach that is producing initial success. Despite the drop in the frequency of errors from 41% in 2015 to 33% in 2016, this figure is still higher than the EU average of around 25%.

DETECTION OF ERRORS

Enforcement is centred around processes to detect errors during which companies' financial statements and selected documents are checked for errors. A substantial part of the process to detect errors is carried out by the Austrian Financial Reporting Enforcement Panel (AFREP), with the subsequent results being analysed by the FMA. On the basis of three alternative statutory foundations, the FMA also carries out a small portion of the error detection processes. The FMA's reviews are carried out in response to: market observation, matters being raised with the FMA, and anonymous reports received via the FMA's whistleblowing system.

AFREP and the FMA have sufficient capacity for between 30 and 40 reviews per year. This resulted in market coverage of 26% in 2016, which is in line with the European average for comparable capital markets (29%). However, the duration of a review and the required workload can vary greatly depending on the size of the company and the complexity of the questions raised. The FMA's reviews regularly focused on foreign issues or involved complex international liaison with foreign entities.

With regard to AFREP reviews, the FMA must analyse whether there are significant doubts about the review result or with regard to the proper implementation of the review by AFREP. On the basis of a working arrangement, AFREP and the FMA engage in intensive dialogue and exchange information with each other. In this way, any conflicting assessments can be avoided from the outset. There was therefore only one case during the year of a renewed review being carried out due to incomplete results.

The FMA then consults with the European Securities and Markets Authority (ESMA) on the errors detected if these have not been dealt with conclusively or already handled by ESMA. Any apparent errors are compared against ESMA's case-handling database, which contains the details of some 1400 precedents. This approach has been agreed on a Europe-wide basis and serves to ensure that the errors detected are comparable.

With 37 errors being detected at 12 companies, the number of individual errors was the same as in the previous year. Given that several potential individual errors may be interrelated or originate from the same source, with the result that their materiality needs to be assessed on a cumulative basis, the individual errors are concentrated at certain companies.

The breakdown of the errors found varies greatly, with signs of the first trends. In consultation with ESMA, which has launched a European improvement initiative on disclosures, the FMA has made the disclosures in the financial report a particular focus of its review activity. Prior to the review season, companies were notified of the relevant review priorities, with numerous errors from 2015 being published. This gave companies the opportunity to improve their disclosures, as a result of which barely any errors were found in relation to disclosures, notes, segment reporting, interim reporting, etc. Thus this preventive approach proved successful.

In terms of value adjustments, calculation of fair values, deferred taxes, consolidation and financial instruments, the errors generally show a trend towards the improvement of typical performance indicators. This appears to show that such errors are frequently motivated by accounting policy. Consequently, measures designed to educate and any preventive enforcement measures are likely to be less effective in this regard. These areas should also be reviewed more intensively in future if the error rate is to be lowered over the long term.

The rise in the number of errors compared with the previous year in those areas that are particularly critical to performance analysis is a worrying aspect of the second review season. Companies are therefore being expressly asked to reach agreement on critical cases in the context of pre-clearance before publishing financial statements that could contain errors.

Appeals against the errors detected by the FMA and by AFREP were lodged in one case in both 2016 and 2015. This is in line with the experience of neighbouring countries. In the event of an appeal, the FMA may instigate a preliminary appeal decision process and refer the case, if further appeal measures are taken, to the responsible administrative court. Overall, cooperation between the FMA, AFREP and the companies proceeded efficiently. Given that all companies cooperated fully with the FMA and AFREP, no administrative penalties were imposed.

The constructive cooperation between the companies, AFREP and the FMA was also confirmed in 2016 during a survey commissioned by the Finance Ministry. According to the survey, Austrian enforcement is perceived as effective, with AFREP and the FMA being judged to be highly competent.

Table 35: **Review processes 2015–2016** (source: FMA)

	2015		2016	
	AFREP	FMA	AFREP	FMA
<i>Processes to detect errors</i>	31	8	33	3
<i>Publication processes</i>		14		13
<i>RL-KG appeals</i>		1		1
<i>Pre-clearance processes</i>		3		3
<i>Reviews instructed by ESMA</i>		3		5
Total number of processes	31	29	33	25
<i>Error rate for all reviews</i>		33%		41%
<i>Error rate for randomly selected reviews</i>		30%		39%
NUMBER OF ERRORS BY AREA				
<i>Funds statement</i>		3		9
<i>Financial instruments</i>		7		7
<i>Impairment of non-financial assets</i>		2		6
<i>Consolidation and business combinations</i>		8		5
<i>Deferred taxes</i>		1		5
<i>Calculation of fair values</i>		–		2
<i>Figures and notes</i>		4		1
<i>Interim reporting</i>		4		–
<i>Revenue recognition</i>		3		–
<i>Segment reporting</i>		2		–
<i>Other</i>		3		2
Total individual errors		37		37

PUBLICATION OF ERRORS

Although the companies concerned regularly correct the errors in subsequent financial statements, the RL-KG sets out a process by means of which the FMA publishes the errors. This promotes prevention. In ordering the publication of errors, the FMA is required to weigh up the public interest and the interests of the company concerned. However, the preventive effect desired by the lawmakers generally favours publication, with the result that all errors were published.

PRE-CLEARANCE

The FMA's prevention work comprises various elements including pre-clearance, written information on how to make improvements, and a range of information materials for companies and auditors. Since 2015 the FMA has offered companies the

opportunity to have prior questions on financial reporting pursuant to IFRS answered on a case-specific basis. This service was used three times in 2016, with two enquiries about consolidation and one regarding embedded derivatives. This number is in line with experience elsewhere in Europe, although not all European enforcers offer pre-clearance. As a general rule, pre-clearance takes place before the financial statements are published and therefore does not clash with audits. The results are confidential and are not published.

The FMA also offers those concerned further information at various levels, conducts management talks, and arranges an annual symposium with the involvement of AFREP. The FMA website contains comprehensive information on enforcement, covering Austrian and European enforcement cases, accounting guidelines, priority review areas and a pre-clearance guide (<https://www.fma.gv.at/en/cross-sectoral-topics/checking-of-financial-reporting-enforcement/>).

IFRS 9 PROJECT AND INTERNATIONAL COOPERATION

As of 2018, the new IFRS 9 standard on financial instruments will be applicable, bringing with it huge changes for credit institutions in particular. Against this background, IFRS 9 is the focus of numerous preventive reviews being carried out by the European banking supervisors (EBA and ECB). The FMA is playing a leading role in this process and contributed its expertise to the design of the European review. The quantitative impact of the standard, as well as its proper application and the implementation of high-quality models, are being reviewed at all of the significant banks directly and in some cases on site. The FMA has been engaging in intensive exchange with the major Austrian banks since 2016. At the same time, the supervisory expectations of implementation have been presented and discussed at numerous international IFRS 9 conferences.

The FMA has also been involved in the EBA Guidelines on accounting for expected credit losses, the ECB guidance to banks on non-performing loans, and the ECB's thematic review of IFRS 9.

During the European Enforcers Coordination Sessions (EECS), an ESMA working group, the FMA raised and discussed a total of six FMA cases in 2016 (four of which were emerging issues and two ex-post decisions). ESMA regularly reviews a random sample of companies with regard to certain main focuses, with the five reviews for Austria being implemented by the FMA. The FMA has also been involved in numerous ESMA analyses and surveys, and cooperated in reviews carried out by its partner authorities.

Recovery and resolution of banks

RESOLUTION PLANNING

In the first quarter of 2016, ongoing effort was devoted to resolution planning for those Austrian institutions that fall under the responsibility of the Single Resolution Board (SRB). The SRB's Resolution Planning Manual, which was finished in mid-March 2016 and made available to the national resolution authorities (NRAs), was used as the basis for resolution planning in Austria. The SRB also set up Internal Resolution Teams (IRTs) for the institutions under its responsibility, enabling joint work to begin on detailing the resolution plans in cooperation with representatives of the NRAs.

In addition to working within the IRTs to prepare resolution plans for SRB banks, the Financial Market Authority (FMA) in its role as Austrian NRA is tasked with drawing up resolution plans for the more than 500 Austrian CCR credit institutions within its responsibility. Consequently, the first steps were also taken at national level in 2016 to prepare these resolution plans in accordance with the defined classification of banks and using the risk-based approach, while concentrating on selected key chapters of the resolution plan. In this context, pursuant to Article 4 para. 1 in conjunction with Article 1 para. 2 of the Bank Recovery and Resolution Act (BaSAG; *Bankensanierungs- und Abwicklungsgesetz*), the principle of proportionality needs to be considered, meaning that the requirements applying in the multiple-year preparatory stage for resolution plans are not identical for all credit institutions.

Work on the resolution plans has been based on the Liability Data Template (LDT), which the FMA in its role as NRA first sent out back in 2015 and which is used to record the current volume of available bail-in capital and MREL eligible liabilities, as well as information on critical functions and IT and financial market infrastructure systems. The template was revised in consultation with the Oesterreichische Nationalbank (OeNB) in April 2016 and distributed to the Austrian credit institutions. The data collected is required in particular to respond to the following issues, which are raised as part of resolution planning:

- Definition of a resolution strategy to
 - enable financial restructuring: use of the bail-in tool to absorb losses and restore adequate capitalisation (debt conversion/write-down);
 - enable structural reorganisation: intervention in financial, legal and operational structures through the use of various resolution tools (e.g. sale or disposal of partial activities) to achieve the goal of appropriate capitalisation and viability, with a smaller basic entity if necessary.
- Determination of the loss absorbing capacity and the MREL eligible liabilities.
- Approximation of the maximum loss-absorption amount (LAA) while considering the financial resolution strategy.
- Determination of internal and external interdependencies such as loans and funding arrangements:
 - holdings;
 - own funds;
 - liabilities: credit lines, bonds, other liabilities;
 - customer deposits: share of guaranteed deposits;
 - identification of potential contagion risks.

- Determination of critical functions and core business lines.

In April 2016 the FMA invited those institutions required to complete the data template to a workshop to respond to any questions arising from the template and to explain any unclear items. The analysis and verification of the data templates received from the credit institutions were completed in close cooperation with the OeNB by the end of the second quarter. After analysis the data could be used in the preparation of resolution plans for the SRB banks and for the banks under national supervision.

The main activities in Q3 and Q4 2016 related to completing resolution planning in 2016 for both the SRB banks and the national banks and detailing standardised resolution plans for small banks. The latter case involves uniform resolution plans for those banks that from today's perspective would most likely be resolved through insolvency if they failed. The template for these plans, which is being prepared in cooperation with the Office for Specific Bank Resolution Matters at the OeNB, should be completed within the first six months of 2017.

The first resolution colleges for the SRB banks were also held in the fourth quarter. Representatives of the resolution authority participate as observers at these meetings. With regard to the banks for which the FMA is to set up resolution colleges, the FMA contacted the resolution authorities concerned as well as the European Banking Authority (EBA) in order to obtain the contact details and information required for establishing these colleges.

The draft resolution plans for the first credit institutions at the focus of national resolution planning in 2016 were forwarded to the SRB and the EBA at the end of the fourth quarter, with the request to examine the plans and comment on them. The reviews provided by the EBA and the SRB will subsequently be taken into account in the resolution plans. As part of preparing resolution plans next year, the plans will be updated and supplemented with additional chapters.

RESOLUTION FUND

The data necessary for calculating contributions to the Single Resolution Fund (SRF) was collected by the FMA in the first quarter of 2016 from the institutions required to contribute to the Fund. The data was collected using a template specified by the SRB. After validating the data with the support of the OeNB, the FMA made the information available to the SRB.

In the second quarter of the year, the SRB notified the FMA of the calculated amount of contributions due to be paid into the Fund in 2016. To collect the calculated amount, the FMA issued and sent administrative decisions requesting a total of € 203.7 million in contributions to 604 credit institutions. The contributions collected for 2016 were remitted in full to the SRF on 29 June 2016, by the specified deadline.

As early as mid-October 2016, the SRB released the template for collecting data that will be used to calculate individual contributions in 2017. The FMA forwarded a German version of the template to the Austrian Federal Economic Chamber (WKO) for distribution to the institutions concerned. Prior to this a workshop had been held to introduce the template to financial sector representatives. Key information on the template as well as a Q&A were also published on the FMA website. The first completed templates were received from the banking industry as early as December 2016 (the submission deadline was 31 January 2017). The percentage of templates returned had already reached around 20% (or 566 institutions) by the end of December 2016.

HETA

The resolution of HETA continued in 2016. In the way of supervisory measures, on 10 April 2016 the FMA issued an administrative decision in relation to the challenge procedure (*Vorstellungsbescheid*), thereby confirming the limited-term moratorium imposed through the emergency administrative decision (*Mandatsbescheid*) of 1 March 2015. The complaints against the administrative decision in relation to the challenge procedure were filed with the Federal Administrative Court (BVwG) on 10 April 2016. As a first step, the BVwG rejected all petitions for suspensive effect of the complaints.

On the same date as the administrative decision in relation to the challenge procedure, the FMA issued an addi-

tional emergency administrative decision to apply the resolution tool of bailing in creditors. The main points included in that decision are:

- a 100% bail-in for all subordinated liabilities;
- a 53.98% bail-in, resulting in a 46.02% quota, for all eligible preferential liabilities;
- the reduction of interest rates; and
- a revision of the maturities of all eligible liabilities to 31 December 2023.

Challenges against the emergency administrative decision of 10 April 2016 were submitted to the FMA by 218 parties. The challenging parties were for the most part the same as those challenging the emergency administrative decision of 1 March 2015. The resolution authority subsequently initiated investigation procedures. However, the number of challenging parties participating in the procedure has significantly diminished in response to the buy-back programme initiated by the Carinthian government's fund for compensation payments (*Kärntner Ausgleichszahlungs-Fonds* or KAF).

Furthermore, based on the BRRD, the FMA applied for the interruption of civil proceedings against HETA in Germany in May 2016. Similarly worded petitions were also filed with courts in Croatia. In connection with the civil proceedings, three courts requested a preliminary ruling from the European Court of Justice (ECJ), with the resolution authority submitting a statement in the proceedings. In the meantime the reference for a preliminary ruling by the ECJ has been dropped as a result of the complaint becoming void through acceptance of the KAF buy-back programme.

Ongoing activities to wind down HETA in accordance with the resolution objectives defined by law are continuously supervised by the resolution authority.

IMMIGON PORTFOLIO AG / ÖVAG (ÖSTERREICHISCHE VOLKSBANKEN AG)

In 2016 immigon portfolioabbau ag (IMMIGON) continued activities to wind down the portfolio of ÖVAG. In addition to disposing of holdings and claims, existing liabilities were significantly reduced through buy-back programmes. In 2016 subordinate liabilities in particular were terminated or repaid before maturity.

As a result, claims held by customers could be reduced by more than 50%. Total assets decreased in 2016 by almost 40%. In view of the progress made in winding down the portfolio, initial consideration was given to applying for liquidation proceedings in future.

The winding-down proceedings have been consistently monitored by the resolution authority to ensure compliance with the winding-down plan and to verify that the goals pursued are in line with the BaSAG.

Legal and enforcement affairs

The Financial Market Authority (FMA) has administrative penal jurisdiction in the first instance and is therefore authorised to conduct administrative penal proceedings where provisions of the supervisory laws are breached. The FMA represents itself if necessary during all stages of appeal, that is in all proceedings before the Federal Administrative Court (BVwG), the courts of public law and the European courts of law, and in proceedings on appeal within the scope of the European supervisory structure. Where the FMA recognises a breach of a provision of law within its scope of supervision that is punishable as a criminal offence, it is required to file a report with the public prosecutor's office, providing a statement of the facts of the case. Where as part of supervisory activities facts come to light that are grounds for suspecting a breach of a legal provision to be prosecuted by another authority, the FMA may report the case to that authority. Such reports are especially submitted to the public prosecutor's office, district administration authorities and other authorities, such as the telecommunications supervisory authority, and originate in all supervisory departments of the FMA.

ADMINISTRATIVE PENAL PROCEEDINGS

As at the beginning of 2016, 104 proceedings were pending at the FMA. A further 191 administrative penal proceedings were initiated, and 160 cases were concluded with an administrative decision during the year under review. Of the administrative penal proceedings concluded, 86 resulted in penal decisions, 12 in penal orders and 62 in admonitions. In all, 58 cases were dropped, and in 143 cases no administrative penal proceedings were initiated. As at the end of 2016, proceedings were still pending in 78 cases.

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 must not exceed € 600 per violation, but fines incurred for several breaches may be imposed on a cumulative basis. Where the significance of the right protected under criminal law, the magnitude of the impairment resulting from the offence and the fault of the accused are negligible, the FMA may refrain from a penalty while issuing a formal admonition calling attention to the unlawfulness of their conduct.

In 2016 the FMA imposed 98 fines totalling € 1 590 700, of which € 1 582 300 related to penal decisions and € 8 400 to penal orders. The average fine resulting from a penal decision was thus € 18 399 in 2016, with fines from penal orders averaging € 700. The highest fine imposed was € 867 000.

Article 98 para. 6 of the Austrian Banking Act (BWG; *Bankwesengesetz*), Article 190 para. 7 of the 2011 Investment Fund Act (InvFG 2011; *Investmentfondsgesetz*), Article 95 para. 12 of the 2007 Securities Supervision Act (WAG 2007; *Wertpapieraufsichtsgesetz*) and Article 67 para. 12 of the Payment Services Act (ZaDiG; *Zahlungsdienstegesetz*) entered into force on 1 January 2014; as a result, failure to comply with certain notification obligations is no longer a criminal offence provided that institutions subsequently comply with the obligations before the FMA becomes aware of non-compliance. In this context, a further drastic decrease in "minor" proceedings could be observed in 2016, while in a substantial number of cases the penalty was replaced by a positive incentive for the

Chart 29: Administrative penalties and admonitions 2012–2016 (source: FMA)

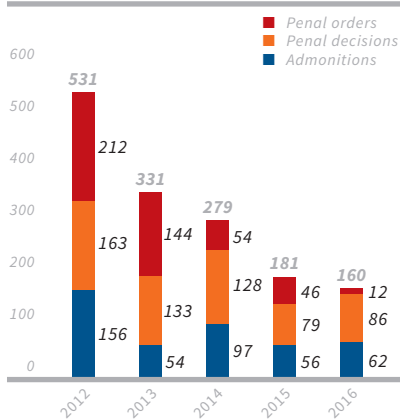


Chart 30: Facts reported to public prosecutors 2012–2016 (source: FMA)

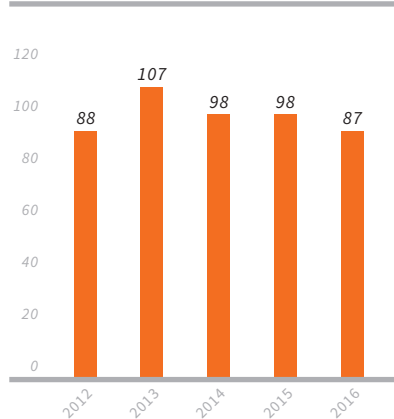
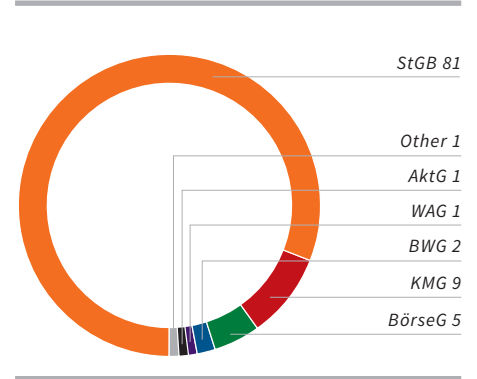


Chart 31: Facts reported by subject (in %; source: FMA)



company concerned to make up for the missed notification, which is lastly also in the interests of supervision. At two penal orders and two penal decisions, the total number of penalties imposed on account of notification obligations was limited.

STATEMENTS OF FACTS AND REPORTS SUBMITTED TO OTHER AUTHORITIES

Some of the laws included in the FMA’s supervisory remit also cover criminal offences. Where the FMA has reasonable grounds to suspect the breach of such a law, a report must be filed with the public prosecutor’s office or the criminal investigation department. The courts of law are then responsible for imposing any sanctions. Examples of such offences include 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*). In the course of supervisory duties, the FMA is also frequently confronted with circumstances leading to suspicion of a breach of criminal law, which must also be reported. The most frequent cases of this type involve suspected breaches of trust and/or fraud.

In 2016 the FMA forwarded 87 statements of facts to the public prosecutor’s office. In 81% of these cases, the statements of facts related to reports made on suspected breaches of the Criminal Code (StGB; *Strafgesetzbuch*), 9% were based on suspected breaches of the KMG, 5% were based on suspected violations of the BörseG, 2% based on suspected breaches of the BWG and 1% pertained to the suspicion of having breached provisions of the Stock Corporation Act (AktG; *Aktiengesetz*), the WAG or other penal provisions outside the StGB.

SELECTED PENAL DECISIONS ACCORDING TO AREA OF THE LAW CONCERNED¹

ANTI-MONEY LAUNDERING PROVISIONS

Within the banking sector, the FMA issued seven penal decisions in response to breaches of provisions aimed at preventing money laundering and combating terrorist financing during the year under review. Five of the decisions were issued against natural persons responsible for credit institutions. Two of the penal decisions targeted credit institutions directly (administrative penalties against the legal entity), with one fine of € 209 000 and one total fine of € 867 000 having to be imposed.

SECURITIES SUPERVISION ACT (WAG)

Of the 24 penal decisions issued in response to breaches of the WAG 2007, eleven concerned credit institutions and seven involved other investment service providers. The penal decisions issued against credit institutions

¹ Some of the penal decisions relate to breaches of various material laws.

Table 36: Administrative penal proceedings concluded 2012–2016 (by law)

	2012	2013	2014	2015	2016
<i>AIFMG Violations of notification obligations</i>	-	-	-	-	2
<i>BWG Violations of notification obligations</i>	93	64	37	26	27
<i>BWG Bank auditor provisions</i>	-	-	-	-	-
<i>BWG Protection of designations</i>	1	-	-	-	-
<i>BWG Deckungsstock</i>	22	8	46	8	4
<i>BWG Owner control</i>	22	18	-	-	-
<i>BWG Deposit guarantee and investor compensation</i>	4	2	-	-	-
<i>BWG Money laundering</i>	37	29	10	31	32
<i>BWG Violations of reporting requirements</i>	81	51	14	7	8
<i>BWG Accounting</i>	16	11	14	14	5
<i>BWG Unauthorised business</i>	55	22	17	8	9
<i>BWG Consumer protection provisions</i>	2	-	2	-	1
<i>BWG Presentation obligations</i>	-	-	1	-	-
<i>ZaDiG Consumer protection</i>	4	1	20	26	10
<i>ZaDiG Unauthorised business</i>	3	1	-	1	1
<i>PKG Violations of notification obligations</i>	-	-	-	-	-
<i>PKG Approval requirements</i>	3	-	-	-	-
<i>PKG Protection of designations</i>	-	-	4	-	-
<i>PKG Violations of information requirements</i>	-	-	-	-	-
<i>PKG Unauthorised pension company business</i>	-	-	-	-	-
<i>PKG Violations of investment provisions</i>	5	-	-	-	2
<i>VAG Violations of notification obligations</i>	12	10	13	-	9
<i>VAG Instructions</i>	-	-	2	-	-
<i>VAG Unauthorised business</i>	-	-	1	-	-
<i>VAG Money laundering</i>	-	-	-	-	3
<i>InvFG Violations of notification obligations</i>	17	9	6	23	4
<i>InvFG Protection of designations provisions</i>	7	1	3	3	-
<i>InvFG Fund rules</i>	-	-	2	6	5
<i>InvFG Organisational requirements</i>	-	5	10	4	5
<i>InvFG Accounting</i>	14	5	2	-	2
<i>InvFG Violations of advertising provisions</i>	10	3	2	7	-
<i>InvFG Protection of investors' interests/ investment provisions</i>	6	57	67	25	3
<i>ImmoInvFG Violations of notification obligations</i>	-	-	-	2	-
<i>ImmoInvFG Protection of designations</i>	-	-	-	-	-
<i>ImmoInvFG Violations of advertising provisions</i>	4	-	-	-	-
<i>BeteilFG Violations of protection of designations provisions</i>	-	-	-	-	-
<i>WAG Violations of notification obligations</i>	5	10	4	1	-
<i>WAG Capital requirements</i>	3	2	4	3	2
<i>WAG Owner control</i>	4	8	-	4	7
<i>WAG Organisational requirements</i>	40	26	27	17	22
<i>WAG Unauthorised business</i>	2	1	3	-	-
<i>WAG Conduct of business</i>	55	23	28	15	2
<i>BörseG Violations of obligation to report holdings</i>	33	22	-	6	-
<i>BörseG Directors' dealings</i>	3	5	8	5	-
<i>BörseG Market manipulation</i>	7	9	22	4	21
<i>BörseG Non-disclosure of inside information</i>	15	4	10	4	13
<i>BörseG Violations of periodic disclosure obligation</i>	7	3	7	3	-
<i>BörseG Other violations</i>	7	1	1	-	-
<i>BörseG Unauthorised business</i>	-	-	-	2	-
<i>BörseG Violations of Vienna Stock Exchange trading rules</i>	6	-	-	-	-
<i>KMG Other violations of prospectus rules</i>	25	5	4	18	18
<i>KMG Violations of advertising provisions</i>	-	1	-	-	1
Total	630	417	391	273	218

were all related to deficiencies in organisational standards, in particular the failure to take appropriate precautions to prevent unauthorised staff transactions. The penal decisions directed against other investment service providers were also imposed due to deficiencies in organisational standards, as well as due to the failure to comply with minimum capital requirements. Sanctions in six cases related to breaches of owner control provisions.

STOCK EXCHANGE ACT (BÖRSEG)

Penal decisions were issued in 21 cases in response to breaches of the terms of the BörseG. Five penal decisions were issued in response to the failure to publicise inside information in time. Three penal decisions were issued due to failure to comply with reporting obligations in cases of suspected inside dealing or market manipulation. In 13 cases, private individuals were the subject of penal decisions due to market manipulation. The majority was related to negligent cross-trading of illiquid securities by individuals for tax reasons.

In the biggest case of market manipulation last year, a bank employee used his position and the opportunities it afforded him, specifically of expeditiously carrying out securities transactions through the bank's trading book, to manipulate the market. This was done with the aim of securing profits or avoiding losses for a private securities account registered in the name of a family member. In detail, transactions in shares and turbo certificates carried out for a securities account with another bank and registered under the name of a third party were coordinated with trading activities conducted through the bank's trading book. The bank employing the individual did not know of the securities account with the other bank. The value of the private

securities account rose as a result of price changes caused intentionally through high-volume purchases and sales transacted by the market maker or via the bank's proprietary trading access.

INVESTMENT FUND ACT (InvFG 2011)

Seven penal decisions were issued in response to breaches of the terms of the InvFG 2011. The penal decisions were issued due to breaches of approved fund regulations and securities lending under unlawful terms and because unit holders were charged disproportionately high fees.

CAPITAL MARKET ACT (KMG)

Eight penal decisions were issued in response to breaches of the terms of the KMG. The subjects of the decisions included: a public offering made without having a securities prospectus that complied with the provisions of the KMG; misleading advertising resulting from overly emphasising the yield and security of a real estate bond; the failure to publish an investment prospectus supplement in time; and publicly offering index certificates even though the underlying base prospectus was no longer valid.

AUSTRIAN BANKING ACT (BWG)

Eight penal decisions were issued, either because the credit institution failed to comply with notification obligations or displayed deficiencies in the reporting system or because it was late in submitting the audited (consolidated) financial statements and reports for the third year in succession. In the latter case, fines were imposed against both the directors and the credit institution as a legal entity.

SELECTED PROCEEDINGS BEFORE THE FEDERAL ADMINISTRATIVE COURT

As in 2015, the focus of proceedings in 2016 was on cases pursuant to the Administrative Penal Act (VStG; *Verwaltungsstrafgesetz*).

MISLEADING ADVERTISING RELATED TO MARKETING COMMUNICATIONS

The Federal Administrative Court (BVwG) upheld penal decisions issued by the FMA on account of misleading advertising. Concurring with the FMA's legal opinion, the court determined that advertising with an enlarged plus sign touting the investment as "investing with a double return" was misleading as it suggested that the fund required to be purchased along with the bond would exclusively yield profits, and customers could not lose even a portion of the capital invested. In the reasons for the ruling, the BVwG explained in detail that the reference to the possibility of receiving further terms and conditions at all branches of the credit institution, which was furthermore printed only in small letters on the last page of the marketing communication in each case, cannot change the misleading character of the communication, since it had to be interpreted as an "advertising message in the sense of being a suggestion to contact the investment adviser in order to complete a transaction, while in no way suited to create an obligation for customers to question the information contained in marketing communications as to being potentially incorrect". The Administrative Court (VwGH) rejected the appeals filed against the ruling.

INDEPENDENCE OF THE COMPLIANCE FUNCTION

Following the arguments presented by the FMA, the BVwG confirmed that a bank had failed to comply with the provision in Article 18 WAG 2007 requiring independence of the compliance function, since the compliance officer was not directly subordinate to the entire management board and because she did not report directly to the directors on activities. The BVwG explained in detail that, when deciding whether the compliance function is exercised independently, it is always necessary to comprehensively assess whether the compliance officer is able to independently meet their responsibilities without being influenced, considering the concrete situation at the company.

EQUITY CAPITAL

The BVwG examined the corporate structure of the investment firm in question and ruled that the firm failed to

comply with the requirement specified in Article 9 WAG 2007 to establish a suitable organisation; the reasons given were that capital requirements were calculated only on a quarterly basis, no ongoing monitoring took place, changes in equity capital could not be tracked retrospectively, and the limited liability company (GmbH) did not have sufficient knowledge of the accounts and bookkeeping of its branch office in Germany.

PAYMENT SERVICES

In breach of Article 9(2) of Regulation (EU) No 260/2012, a payee requested proof of an Austrian bank or credit card account when establishing a business relationship with customers. The BVwG followed the legal opinion put forth by the FMA, ruling that it is unlawful for a payee to prescribe the Member State in which a payer must hold an account, by using unlawful general terms and conditions of business and thereby preventing customers from becoming aware of the possibility of establishing a business relationship by means of a SEPA account in another country.

POLITICALLY EXPOSED PERSONS

Pursuant to Article 40 para. 1 no. 3 lit. a BWG, a credit institution is required to have “appropriate, risk-based” methods in place which allows it to determine whether a customer is a politically exposed person (PEP). In a case involving systematic examination of customers to identify those qualifying as PEPs, the BVwG found that conducting systematic checks for PEP characteristics only among customers with a certain minimum level of assets (€ 100 000) or falling into the category of “non-EU citizens” does not adequately implement the mandatory risk-based approach as defined in Article 40b para. 1 no. 3 lit. a BWG.

AD HOC DISCLOSURE

In the specific case, the information that the supervisory board of a company had consented to taking up negotiations with investors inevitably had to be considered inside information as defined in Article 48a para. 1 no. 1 BörseG, so that the issuer, after having obtained the supervisory board’s full consent, was under obligation to immediately disclose the information. As the FMA has stated in its circular, such an obligation applies regardless of trading hours. The BVwG confirmed every point of the penal decisions issued on account of a delayed ad hoc report.

PUBLIC OFFERING SUBJECT TO THE PROSPECTUS OBLIGATION

The FMA had argued that, where the intention to sell securities can be recognised by an outsider and thus the objective impression of a wish to sell exists, a public offering qualifies as falling under the prospectus obligation; the BVwG subsequently confirmed this view. These conditions were met in this case due to the available information on the offer and in particular due to the circumstance that the securities were offered as a continuous issue, so that the impression was conveyed that subscription of the securities was possible until the continuous issue was closed.

SELECTED PROCEEDINGS BEFORE THE COURTS OF PUBLIC LAW

PERSONAL TRANSACTIONS

Concurring with the FMA’s legal opinion, the VwGH ruled that the clear and unequivocal wording of Article 18 para. 2 no. 2 InvFG 2011 allowed only a single interpretation, specifically that the management company must be informed of each and every personal transaction by a relevant individual – and not only under the conditions enumerated in Article 18 para. 1 no. 1 InvFG 2011.

MARKETING COMMUNICATIONS

The VwGH confirmed the legal opinion of the FMA and the BVwG, according to which a marketing communication did not fulfil the requirements of Article 41 para. 2 WAG 2007 since it contained no information on the risks entailed in the specific financial product. The VwGH ruled that it was not sufficient to provide general information concerning the possible risks of securities and financial instruments not specifically named, while emphasising in detail the potential benefits of the particular investment product.

AD HOC REPORTING REQUIREMENT

The VwGH confirmed the legal opinion of the FMA, which had argued that an item of information relevant to prices that originated from interim action could also represent inside information (regardless of the probability of the final event occurring). The rulings by the BVwG were consequently lifted as unlawful.

The specific case involved a delay in the disclosure of inside information related to the signing of a memorandum of understanding (MoU). According to the explanation given by the VwGH, very fundamentally speaking, the transactions in question obviously represented a protracted process. Yet, as the court noted, the MoU was at the same time an independent event that had already occurred, so that the probability of it occurring was not relevant. This circumstance was not, in the view of the VwGH, affected by the fact that uncertainties remained until the transaction was finally completed. The MoU was a sufficiently specific item of information to allow a conclusion about its potential impact on the price of the financial instruments concerned, as the VwGH notes. With this ruling, in its words the VwGH “takes into account the ECJ’s legal opinion and its duty to enforce the laws of the European Union”.

In the continued proceedings, on the order of the VwGH, the BVwG had to deal with the question as to whether the information was relevant for the price. The BVwG had to clarify this question directly since it could not be resolved through expert evidence, the higher court stated. The VwGH also observed that an item of information could represent a partial basis for an investment decision even when it could not be anticipated whether the price would rise or fall.

The ruling by the BVwG in the continued proceedings, in the meantime completed, confirmed the penal decisions by the FMA on every point.

EXECUTION POLICY

The VwGH ruled that the WAG 2007 could not be construed as requiring the execution policy that is referred to in Article 52 WAG 2007 to be summarised in a single, standard document. That Act does in particular not support the conclusion that customers must be presented with the entire execution policy as a single document.

INVESTMENT ADVICE

A transaction that is recommended to a customer when providing investment advice or carried out as part of portfolio management services is required to be aligned with the customer’s investment goals. The VwGH ruled that this requirement does not imply that a credit institution may not on the customer’s express instructions additionally carry out transactions that are not congruent with the customer’s original risk preference. Where risk thresholds are exceeded on the customer’s initiative and when, after advising the customer, a note is subsequently printed on the purchase order to remind the customer, then no breach is committed of the obligation on the part of the portfolio manager or investment adviser to recommend to customers only transactions that meet the requirements of Article 44 para. 2 WAG 2007.

ERROR DETECTION IN ACCORDANCE WITH THE RL-KG – NO SUSPENSIVE EFFECT

The VwGH rejected the extraordinary high-court appeal filed against a ruling by the BVwG which had granted no suspensive effect to a complaint lodged against an administrative decision identifying an error that was issued by the FMA in accordance with Article 5 para. 1 of the Accounting Control Act (RL-KG; *Rechnungslegungs-Kontrollgesetz*).

The material grounds on which the high court based the ruling were that a declaratory decision as referred to in Article 5 para. 1 RL-KG was in itself not subject to execution and thus did not give rise to any immediate effects. The VwGH further noted that only a later decision, issued as referred to in Article 5 para. 2 RL-KG subsequent to the original decision identifying the error and ordering disclosure of the error, was subject to execution. Considering that a basic condition for granting suspensive effect was not met, judged from the outcome, the BVwG was justified in rejecting the petition.

International cooperation

The Financial Market Authority (FMA) is a member of many European, global and transnational organisations and associations. FMA employees are also permanently involved in different international organisations, committees and working groups, the most important of which are described in brief below.

GLOBAL COOPERATION

INTERNATIONAL ASSOCIATION OF INSURANCE SUPERVISORS (IAIS)

The global body of insurance supervisors and regulators, IAIS has members from approximately 140 different countries. Austria is represented by the FMA in the person of Peter Braumüller, Director of the Insurance and Pension Supervision Department, who holds voting rights.

As in previous years, the IAIS focused on the issue of global financial market stability during 2016. The Financial Stability Board (FSB) published an updated list of global systemically important banks in November 2016, prepared according to the revised IAIS methodology for designating such institutions. Because these undertakings will be subject to enhanced supervision, the IAIS is developing supervisory standards to be applied to insurance groups with international operations and to 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 Basic Capital Requirements (BCR), Higher Loss Absorbency (HLA) requirements and a risk-based global Insurance Capital Standard (ICS) are being developed over several stages. In addition, the IAIS intensified work in the area of recovery and resolution of insurance undertakings.

Alongside work on the capital standards, the continued development and worldwide implementation of the Insurance Core Principles (ICPs) remains a primary focus of the IAIS. As of December 2016, supervisory authorities from 61 jurisdictions, among them the FMA, had signed the IAIS Multilateral Memorandum of Understanding (IAIS MMoU), designed to promote the exchange of information and cooperation between IAIS members.

The IAIS General Meeting and Annual Conference 2016 were held in Asunción, Paraguay. The focus topic at the event was “Risk based supervision to promote a safe and stable insurance industry”. Further information on the IAIS is available at www.iaisweb.org.

INTERNATIONAL ORGANISATION OF PENSION SUPERVISORS (IOPS)

The IOPS was set up in July 2014 and now comprises 83 organisations holding member or observer status and coming from 72 countries with highly varying pension and supervision schemes, especially with regard to pension funds and *Pensionskassen* (pension companies). A founding member of the IOPS, the FMA has sat on the organisation’s Executive Committee since October 2014. As part of the IOPS Working Paper Series, the organisation published a working paper entitled “The Concept of Target Retirement Income: Supervisory Challenges”.

In the year under review, the Organisation discussed issues including “Supervision of investment management, including non-traditional investment, infrastructure and long-term investment”, “Macro- and micro dimensions of supervision of large pension funds” as well as “Supervision of lost accounts and unclaimed pension benefits”. A report on the results of an FMA-led study of the role of supervisors in consumer protection within the pension sector will soon be completed, subsequently serving as the basis for identifying a set of good practices. In response to revision of the OECD Core Principles of Private Pension Regulation, the required work has been initiated to update the IOPS Principles of Private Pension Supervision. Further information on the IOPS is available at www.iopsweb.org.

INTERNATIONAL ORGANIZATION OF SECURITIES COMMISSIONS (IOSCO)

IOSCO, the International Organization of Securities Commissions, currently has 137 ordinary members. A total of 109 of these have signed the Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (IOSCO MMoU), which lays the foundation for the worldwide exchange of information. Based on that MMoU, originally adopted in 2002, more than 3 100 information requests were submitted in 2016.

Further development of the MMoU became necessary to reflect changes in technology and in the general regulatory framework. Following in-depth discussions, at the Annual Conference in May the Presidents Committee adopted the text of the Enhanced Multilateral Memorandum of Understanding (IOSCO EMMoU), defining the following new powers, some of which are very extensive: to request and forward audit work papers, to compel personal testimony and sanction the failure to appear for testimony, to provide assistance and information to freeze assets or to sequester funds or assets for another authority, and to request subscriber records held by internet or telephone service providers, except for the contents of such communications.

The next step will involve discussions of procedures for implementing the EMMoU.

Other focus topics of IOSCO’s work programme include asset management, OTC derivatives, cyber risks and FinTech.

Personnel developments: Ashley Ian Alder was elected Chairman of the IOSCO Board, consisting of representatives from 30 supervisory authorities; the Vice-Chairman is Jean-Paul Servais, Chairman of Belgium’s supervisory authority. Further information on IOSCO is available at www.iosco.org.

FATF – EGMLTF – AMLC

The FMA participates in various international bodies dedicated to the prevention of money laundering and the financing of terrorism. It is a member of the Austrian delegation to the Financial Action Task Force (FATF), to the Expert Group on Money Laundering and Terrorist Financing (EGMLTF) with the European Commission, and to the Anti-Money Laundering Sub-Committee (AMLC), an expert group of the Joint Committee of the three European Supervisory Authorities, namely EBA, EIOPA and ESMA.

Highlights of the past year included the FATF country evaluation of Austria and negotiations to amend the Fourth Anti-Money Laundering Directive. The FATF country evaluation was closed with the discussion and adoption of the corresponding report during the FATF Plenary taking place in Busan, South Korea, in June. In its report, the FATF takes a critical view of the measures and strategies applied in Austria to combat money laundering and terrorist financing, while identifying the need for improvement in various sectors and especially with regard to the effectiveness of Austria’s system. Based on the findings of the FATF report, a package of measures was adopted which is aimed at correcting the identified weaknesses and at implementing the stated recommendations. Included in the measures are an increase in the FMA’s resources for preventing money laundering, to the end of enhancing the authority’s on-site presence at banks. Another aspect is to adapt legislation through the new Financial Markets Anti-Money Laundering Act (FM-GwG; *Finanzmarkt-Geldwäschegesetz*), which among other things provides for measures to strengthen cross-border prevention of money laundering at group level.

In July 2016 the Commission put forth its proposal for amending the Fourth Anti-Money Laundering Directive. The changes concern issues related to combating terrorist financing in response to the terrorist attacks in Europe, and include steps towards enhanced transparency, specifically through modified provisions on the register of beneficial ownership, in response to the disclosures contained in the Panama Papers. It is expected that the Directive will be adopted during the first six months of 2017. Further information on the FATF is available at www.fatf-gafi.org.

EUROPEAN COOPERATION

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

- macroprudential supervision through the European Systemic Risk Board (ESRB);
- microprudential supervision through the European Supervisory Authorities (ESAs) and
- the national competent authorities (NCAs), which 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). It is tasked with evaluating and monitoring systemic risks within the financial system, with the aim of strengthening the shock resilience of financial markets. To this end, 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 required to the EU, one or more Member States, ESAs or NCAs.

Microprudential supervision at European level (see Figure 1) is the role of:

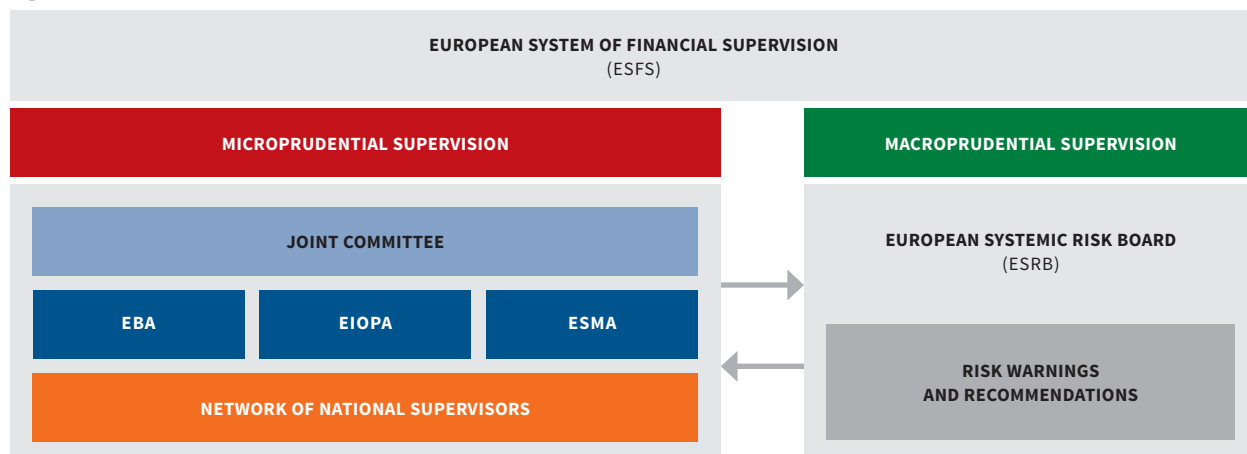
- the European Banking Authority (EBA) in London;
- the European Insurance and Occupational Pensions Authority (EIOPA) in Frankfurt; and
- the European Securities and Markets Authority (ESMA) in Paris.

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.

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

- preparing Regulatory Technical Standards (RTS) and Implementing Technical Standards (ITS);
- issuing guidelines and recommendations;
- monitoring and enforcing supervisory convergence;
- consumer protection.

Figure 1: European supervisory architecture



In this way they have a key role to play in creating a level playing field for financial services in the European single market. 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.

In terms of their organisational structure, the ESAs share the same features. The Board of Supervisors (BoS) is the decision-making body, on which the FMA sits as a voting member. In the case of the EBA, the OeNB is also a non-voting representative. The BoS sets the guidelines for the authority's activities, prepares its work programme and takes decisions on regulatory matters. 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 Chairpersons are Andrea Enria (EBA), Gabriel Bernardino (EIOPA) and Steven Maijoor (ESMA).

The BoS elects a Management Board, composed of the Chairperson and six additional voting members. An Executive Director is responsible for the administrative management of the authority, preparing the work of the Management Board. Currently serving as Executive Directors are Adam Farkas (EBA), Fausto Parente (EIOPA, since March 2016) 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.

With effect from 4 November 2014, operational banking supervision in the euro area has been restructured, with the setting up of the Single Supervisory Mechanism (SSM) headed by the ECB. The SSM forms part of the ESFS. However, the members of the national competent authorities continue to hold the voting rights in the EBA Board of Supervisors.

EUROPEAN BANKING AUTHORITY (EBA)

The EBA's remit, particularly with the creation of the SSM, is focused on regulation and on strengthening supervisory convergence. The EBA plays a key role in the development of the Single Rulebook, thus contributing in a major way to creating a level playing field for financial institutions and thereby enhancing the quality of financial regulation.

In this context, the EBA has fleshed out the details of some of the key provisions of the CRR and the BRRD by providing draft technical standards, opinions and guidelines to the European Commission on subjects including internal models, the advised regulatory review of those models, liquidity indicators, recovery plans, provisions on large exposures, and loss absorption as part of the BRRD review. The EBA has also signed a general framework that regulates cooperation with five US supervisors (FRB, FDIC, OCC, SEC and NYDFS) and covers topics relating to resolution, with the aim of facilitating the future conclusion of specific agreements.

Other reports and advice were submitted to the Commission concerning shadow banking (prepared jointly with ESMA and EIOPA), calibrating banks' borrowing ratio, the minimum refinancing rate, prudential requirements for investment banks (in consultation with ESMA), covered bonds, and a review of the large exposure regime including recommendations.

The EBA submitted a report to the European Commission and the European Parliament on the asset quality of 160 banks in the EU. In its role as coordinator of the EU-wide stress test, the EBA published the test results in July, along with a position paper addressing the subject of incorporating stress test results in supervisory activities. An initial impact study was published on the new accounting standards (IFRS 9) which will become applicable as of 2018. In response to the package of Basel reform measures still currently under negotiation, the EBA prepared a joint EU position paper.

Other sets of guidelines were published to explain regulatory requirements in detail, the topics including securitisation transactions, stress tests for deposit guarantee schemes, cooperation agreements between deposit guarantee schemes, and limits on exposures to shadow banking entities.

Issues related to FinTech and IT risks were given high priority by the EBA. The EBA also focused stronger attention on consumer protection issues, including specifically innovative uses of consumer data by financial institutions,

with the EBA responding in the form of draft technical standards, guidelines and discussion papers based on legislation such as the Payment Accounts Directive (PAD) and the revised Payment Services Directive (PSD2). Lastly, the EBA submitted an opinion on virtual currencies to the Commission, maintaining that such currencies equally fall under provisions of the Fourth Anti-Money Laundering Directive. Further information on the EBA is available at www.eba.europa.eu.

EUROPEAN SECURITIES AND MARKETS AUTHORITY (ESMA)

In the first five years of its existence, ESMA succeeded in creating a Single Rulebook. In 2016 ESMA adopted a Supervisory Convergence Work Programme, thereby setting new goals and focusing on application of the entire set of rules in keeping with the principles of convergence. The goal is to implement the rules consistently and effectively in order to prevent arbitrage and to ensure transparent framework conditions for all investors. The work programme makes specific mention of MiFID II/MiFIR along with the corresponding IT infrastructure, the OTC derivative markets and the Capital Markets Union.

To implement the programme, numerous Q&As were approved, specifically relating to MiFID II/MiFIR, AIFMD and to MAR, while further progress was made in advancing the IT projects which, delegated to ESMA, are being funded exclusively by the supervisory authorities involved.

Within this context, the FMA is participating in the Financial Instruments Reference Data System (FIRDS) project, which is dedicated to collecting, and subsequently publishing, reference data on financial instruments from trading venues and which in the final stage is planned to manage transparency calculations and suspensions from trading. One focal aspect for ESMA is data quality and management, especially in relation to the trade repositories specified under EMIR. To this end, a data quality action plan has been drafted to ensure ongoing enhancement of data quality. The peer review is another instrument contributing to improved convergence. Reports were published in 2016 on the prospectus approval process and on the MiFID suitability requirements applied when providing investment advice.

Cross-sector convergence, which is a major concern for the FMA, is covered in the Joint Committee of the three ESAs. In 2016 progress in this regard included a cross-sector report on bilateral margins and a consultation paper on the guidelines on the assessment of the suitability of the members of the management body.

Work related to the Single Rulebook continues to make up an integral part of ESMA's work programme. ESMA published consultation papers on technical standards under the Benchmarks Regulation in September and December in addition to submitting technical advice to the Commission. In 2017 work in the regulatory field will continue to focus on the Benchmarks Regulation and on the Regulation on reporting and transparency of securities financing transactions.

In the area of direct supervision of credit rating agencies, ESMA imposed a fine of € 1.38 million – the highest in its history – on Fitch Ratings Limited for a series of negligent breaches, among them failure to have proper internal controls in place.

The Management Board elected a new member from Portugal in December 2016. Austria is represented on the Board by Klaus Kumpfmüller, enabling active participation in shaping strategic issues. The other members sitting on the Board have been delegated by France, Germany, Ireland and Poland.

Efforts in 2017 will continue to focus on enhancing convergence. New challenges will arise in particular from the impact of the UK's expected secession from the EU (Brexit) and as result of new technologies (FinTech). Further information about ESMA is available at www.esma.europa.eu.

EUROPEAN INSURANCE AND OCCUPATIONAL PENSIONS AUTHORITY (EIOPA)

With the Solvency II regime entering into effect as of 1 January 2016, EIOPA's focus during the year under review shifted from finalising the legal framework to implementation by the supervisory authorities and undertakings at national level as well as to the initial (reporting) duties specified in the Solvency II Framework Directive. Specifi-

cally, work was carried out in connection with the SCR review, the long-term guarantee (LTG) measures and the risk-free interest rate (RFR) curve. In addition, a report was prepared on exemptions regarding the submission by undertakings of regular supervisory reporting. An opinion was issued on disclosure of information related to the use of transitional measures in the calculation of technical provisions, while advice on infrastructure corporates was submitted in response to a Commission request. The results of EIOPA's insurance stress tests in 2016 were published, along with relevant recommendations to supervisory authorities.

Guidelines were adopted covering topics such as facilitating an effective dialogue between insurance supervisors and statutory auditors or governance arrangements by insurance undertakings and insurance distributors, the latter in preparation for the Insurance Distribution Directive (IDD) scheduled to enter into effect. Also in the context of the IDD, a proposal for a delegated act was submitted to the Commission.

A discussion paper on potential harmonisation of recovery and resolution frameworks for insurers was published for consultation.

In the area of pensions, EIOPA presented advice on the development of an EU Single Market for personal pension products (PPP) in response to a call by the Commission, issued an opinion on a common framework for risk assessment and transparency for institutions for occupational retirement provision (IORPs), and also published a report on a peer review, based on a comprehensively revised methodology, to evaluate the statement of investment policy principles for IORPs.

The EIOPA Fifth Consumer Trends Report examines in detail product-related trends as well as developments in personal and occupational retirement provision.

The FMA is represented on the Board of Supervisors by its Director for Insurance and Pension Supervision, Peter Braumüller, who has served as Alternate Chair of EIOPA since 2015. More details about EIOPA are available at www.eiopa.europa.eu.

SINGLE SUPERVISORY MECHANISM (SSM)

2016 was the second year in which the SSM exercised its full scope of responsibilities. That year was also marked by activities to harmonise supervisory practice, to develop uniform methods for evaluating the supervised institutions and to improve the internal organisation and processes.

FMA Executive Director Helmut Ettl is a voting member of the SSM Supervisory Board and is represented in this role by fellow FMA Executive Director Klaus Kumpfmüller as his deputy. Since April 2016 Helmut Ettl has also been a member of the Steering Committee of the SSM Supervisory Board. This body, which prepares the Board's meetings, consists of Supervisory Board Chair Danièle Nouy, Vice-Chair Sabine Lautenschläger, one permanent ECB representative and five voting members representing national supervisors. Helmut Ettl will continue to sit on the Steering Committee until the end of March 2017.

Operational supervision mainly consisted of the Supervisory Review and Evaluation Process (SREP), which targets the institutions' business models, solvency and liquidity, as well as the EU-wide stress test. In the latter context, strong emphasis was placed on developing in more detail a harmonised method of valuation and on refining the method used to take assessment results into account in the institutions' capital requirements. In keeping with the supervisory priorities set for 2016, the SSM focused on the supervision of business models and profitability risk in the banking sector, on identifying and reducing the volume of non-performing loans, and on reviewing internal data management at banks.

Further steps were taken towards harmonising supervision under the SSM. The final documents for harmonising the numerous national discretions made available through EU law went into effect as of 1 October 2016. Work simultaneously progressed towards a similar application for less significant institutions, and public consultations have already been held. A task force dedicated to the issue of non-performing loans has published the results of its assessment, while also preparing an ECB guidance to advise banks in dealing with non-performing loans in future. Furthermore, a draft guide to fit and proper assessments for all banks under the SSM was prepared and put out for public consultation.

Closer cooperation was established with the Single Resolution Board (SRB). According to the Memorandum of Understanding signed between the ECB and the SRB in late 2015, the SRB Chair regularly attended supervisory board meetings where the topics included banks facing challenging business conditions, banks engaged in restructuring or any banking crisis. The European Central Bank also continuously shared information about banks under the SSM with the SRB, while the ECB has been consulted on matters including the first resolution plans.

The ECB has adopted three priorities to guide its supervision throughout 2017: business models and profitability drivers; credit risk, with a focus on NPLs and concentrations; and risk management. Another focus will be a targeted review of banks' internal models. More details on the SSM are available at www.bankingsupervision.europa.eu.

SINGLE RESOLUTION BOARD (SRB)

A relatively new institution, the SRB basically has two types of meeting: executive sessions and plenary sessions.

The voting rules for each of the two types of meeting allow the interests of all countries to be considered while also allowing effective decisions to be taken at banking union level. FMA Executive Director Klaus Kumpfmüller is a voting member at plenary sessions. A new SRB committee structure was established in September 2016, which includes three committees: the Resolution Committee, the Administrative and Budget Committee, and the Fund Committee, as well as networks in legal matters and in information and communication technology (ICT). The new committees are intended to serve as central platforms for sharing information and preparing plenary decisions.

In close cooperation with the national resolution authorities (NRAs), the first resolution plans were drafted in 2016 for the majority of credit institutions falling under the jurisdiction of the SRB. These plans will be fleshed out and further elaborated in the coming years. Moreover, initial draft plans will be prepared this year for those credit institutions for which no such resolution plans have yet been started. The plans prepared in 2016 were presented to the extended executive session (which is additionally attended by an NRA representative of the credit institution concerned) and formally recognised at the meeting. The credit institutions were invited to participate in workshops to prepare for their new responsibilities in resolution planning.

The Single Resolution Fund (SRF) became operational in 2016, thereby replacing the national resolution financing arrangements in the banking union's member states. In the event that an institution has to be resolved, it is planned to use the Fund to support the resolution process. In the

Table 37: **Bilateral Memoranda of Understanding concluded** (incl. year of conclusion)

Country	Banking	Insurance	Securities	AIFMD-MoU
Albania		2009		
Australia				2013
Bahamas				2015
Bermuda				2013
Bosnia and Herzegovina	2015			
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
Hong Kong				2013
Hungary	2001	2002	1998	
Isle of Man				2013
Italy	1998			
Japan				2013
Jersey				2013
Kosovo		2016		2013
Liechtenstein	2009			
Macedonia		2010		
Malaysia				2013
Malta	2007			
Montenegro		2009		
Netherlands	1997			
Poland			1999	
Romania	2006	2005		
Russian Federation	2010			
Serbia		2009		
Singapore				2013
Slovakia	2003	2002		
Slovenia	2001		2001	
Switzerland	2012	2006		2013
Thailand				2014
United Kingdom	1994/1998			
USA				2013

final stage, the Fund is to have at its disposal funding amounting to 1% of the covered deposits of the banking union. While the SRB calculates the level of contributions to the SRF, the competent NRAs are responsible for collecting the funds and transferring them to the Fund.

BILATERAL AND MULTILATERAL COOPERATION

MEMORANDA OF UNDERSTANDING

The FMA has entered into bilateral cooperation agreements (Memoranda of Understanding – MoUs) with foreign supervisory authorities. These simplify and expedite cross-border supervisory activities. They also serve to build confidence, in particular with non-EEA Member States, and to facilitate the FMA's continued efforts to strengthen operational cooperation with its partner 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.

An MoU on cooperation and the exchange of information for the purpose of insurance supervision was concluded with the Kosovar insurance supervision authority in 2016.

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, thus helping to harmonise and simplify the exchange of information between the participating authorities. The IOSCO MMoU in relation to the securities sector and the IAIS MMoU covering the insurance sector are particularly relevant to the FMA.

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 (OeNB). 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 institutions (see Figure 3). 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 FMABG and changes thereto;
- the Compliance Code pursuant to Article 6 para. 4 FMABG 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 FMABG;
- the conclusion of collective bargaining and works agreements.

In accordance with Article 9 para. 1 FMABG, the Supervisory Board is required to hold meetings at least once every calendar quarter. In 2016 the Supervisory Board convened on 8 March, 13 July, 9 September and 23 November. At its meeting on 13 July 2016, the Supervisory Board unanimously discharged the Executive Board for the 2015 financial year pursuant to Article 18 para. 4 FMABG.

Figure 2: Organisation chart of the FMA (as at 31 December 2016)

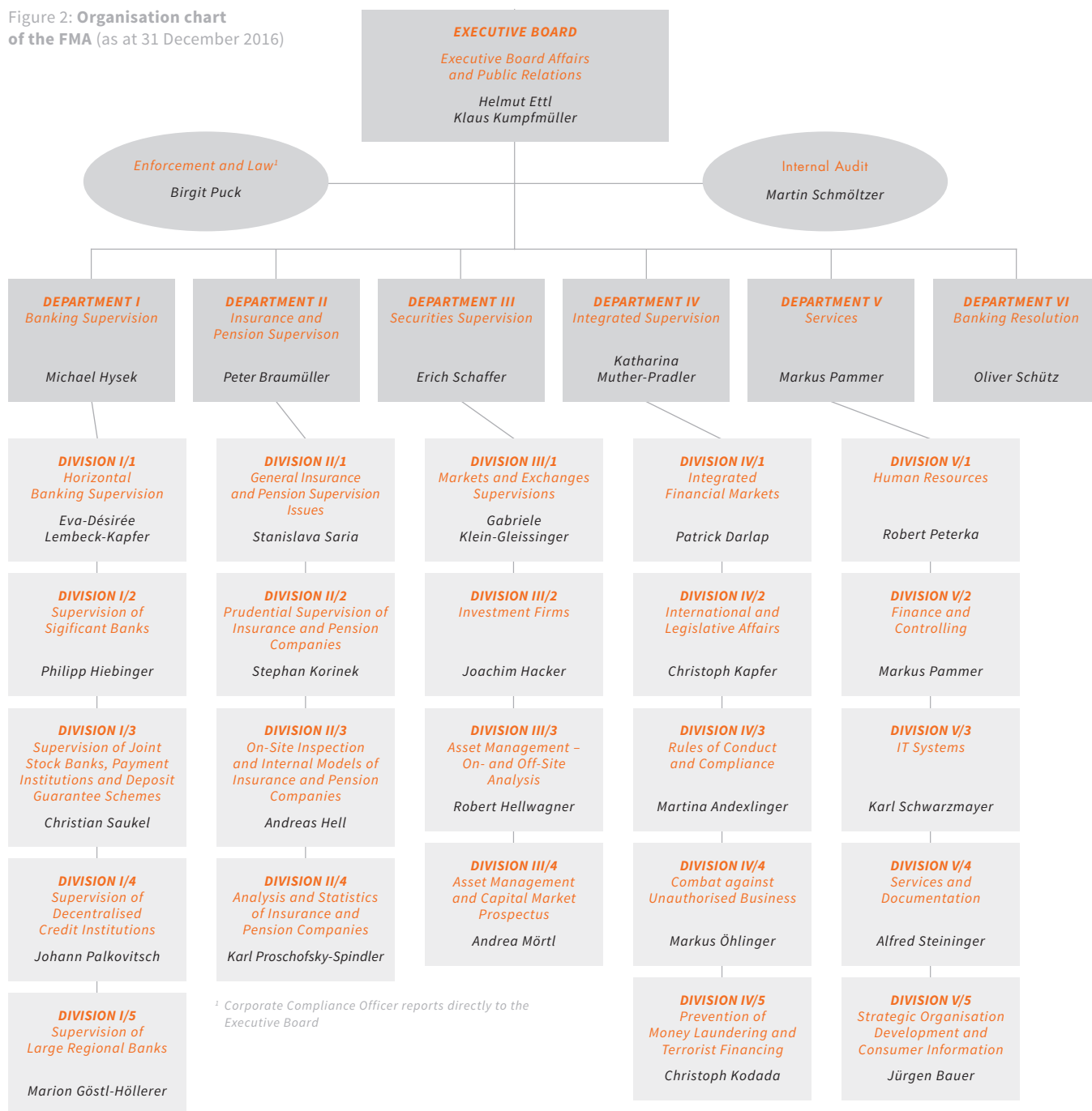
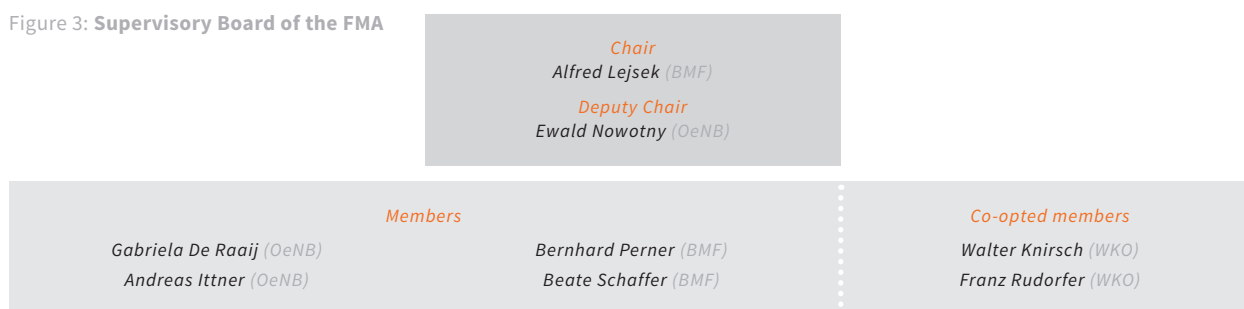


Figure 3: Supervisory Board of the FMA



Staff

NUMBER OF STAFF

The Supervisory Board had approved a staffing target of 392 full-time equivalents (FTEs) for 2016. The actual number of staff employed by the FMA as at 31 December 2016 was 379.80 FTEs, which corresponds to 411 employees (excluding those on leave). A breakdown of the planned distribution of staff among the individual Departments compared with the actual figures is shown in Table 38.

The staff turnover rate increased to 6.71% in 2016. This percentage compares with 2.51% in 2015 and 4.09% in 2014. The slightly higher rate was due to a natural change following the extremely low turnover rates of the past few years and also to the personal circumstances of our employees, with higher mobility levels in evidence, not just within Austria but also abroad. Employees whose fixed-term contracts expired during the year are not included.

The number of civil servants assigned to duty at the FMA by the Federal Ministry of Finance dropped to 17.1 FTEs because of one individual retiring and part-time contracts. The proportion of civil servants thus dipped from 4.89% to 4.50% at the 2016 year-end. There was an increase in the number of contractual employees, up from 4.65 to 5.65 FTEs due to one individual returning from parental leave. The proportion of contractual employees, based on the total FMA staff, therefore rose from 1.25% to 1.49%.

The average age of FMA employees increased from 39 to 40 years. The share of part-time employees was 20.68% in 2016; most of these were parents taking part-time leave. Women accounted for 53.77% of the total workforce in 2016, a slight increase compared with 53.12% in 2015. They held 39% of all managerial positions, a comparably high figure which is unchanged on the previous year. The share of university graduates rose to 81.75%. The proportion of employees with additional qualifications, such as a second degree, a postgraduate qualification, or professional qualifications in law or tax accountancy, was 40.63% in 2016. Including those 54 employees who graduated from the two-year postgraduate, vocational university programme in Financial Market Supervision, developed jointly by the

FMA, Oesterreichische Nationalbank (OeNB) and Vienna University of Economics and Business (WU), the percentage rises to 53.77%.

Table 38: Planned and actual staffing levels in FTEs in 2016*

Organisational Unit	Planned staffing levels as at 31 Dec.	Actual staffing levels as at 31 Dec.	Difference in %
Executive Board Affairs, Enforcement and Law, Internal Audit	28.00	28.00	0.00
Banking Supervision Department	78.50	76.65	-2.36
Insurance and Pension Supervision Department	59.00	55.83	-5.38
Securities Supervision Department	82.15	79.90	-2.74
Integrated Supervision Department	66.25	63.98	-3.43
Services Department	53.10	53.09	-0.02
Banking Department	25.00	22.35	-10.60
Total	392.00	379.80	-3.12

* Differences due to rounding to two decimal places are ignored.

TRAINING AND CAREER DEVELOPMENT

As an expert organisation, the FMA considers it especially important to provide training and career development for its employees. Its training programme encompasses a range of measures for the different target groups and training needs:

- the university programme in Financial Market Supervision offered in conjunction with the OeNB (since 2010), which has been upgraded to an MBA course (as of the 2013 intake of students);
- the executive development programme “Basic and Advanced Leadership” (since 2011) and the new executive development programme “Proactive Leadership at the FMA” (since 2015);
- the FMA Academy (since 2005);
- international seminars organised by the European Supervisory Authorities (ESAs); and
- third-party seminars offered individually.

EXECUTIVE DEVELOPMENT PROGRAMMES

The “Basic and Advanced Leadership” executive development programme, developed specifically for the FMA, has been offered since 2011. More than 75% of all executives have already successfully completed the four modules that make up the programme.

In 2016 an executive mission statement was drawn up together with executive employees and the Executive Board. This provides a guide to the FMA’s expectations of its executives.

FMA ACADEMY

The seminars offered by the FMA Academy are grouped around target groups and subject areas:

- | | |
|--------------------------------|---|
| ■ New employees/basic seminars | ■ Specialist knowledge |
| ■ Assistants | ■ IT seminars |
| ■ Trainees | ■ Language skills |
| ■ Heads of office | ■ E-Learning |
| ■ Specialists | ■ Decentralised measures |
| ■ Executives | ■ International seminars |
| | ■ Study visits and staff exchange |
| | ■ University programme in Financial Market Supervision and upgrade to MBA programme |

In 2016 the FMA Academy organised a total of 150 seminars, workshops and lectures in which 2 213 individuals participated. In addition to these centrally organised seminars, FMA staff attended more than 358 specialised training courses at third-party educational establishments targeted at individual career development in their specific fields.

INTERNATIONAL SEMINARS

Besides its attendance at numerous international seminars held by the European Supervisory Authorities and the European Central Bank (ECB) within the scope of the Single Supervisory Mechanism (SSM), the FMA also coordinated a teambuilding event for the Joint Supervisory Team (JST) of BAWAG/the Volksbank cooperatives.

INTERNATIONAL COOPERATION

COOPERATION WITH THE EUROPEAN CENTRAL BANK

The FMA continued to cooperate with the ECB in 2016 in relation to the personnel issues associated with the Single Supervisory Mechanism (SSM). As well as target setting and performance feedback, the main priorities were human resources development, training and seminars, and trainee programmes. By regularly attending the Human Resources Conference (HRC) meetings in SSM composition, the FMA was included in the ongoing processes and developments, actively helping to shape them.

In house, the FMA prepared guidelines for SSM secondments to the ECB and kept its staff informed of current developments on a continuous basis by staging information events. Furthermore, the “Supporting Mobility SSM”

programme was set up to prepare employees interested in working at the ECB by providing them with targeted training seminars and regular information events. These measure proved fruitful, increasing employees' mobility and consequently nearly doubling the number of secondments to the ECB compared with 2015.

COOPERATION WITH THE SINGLE RESOLUTION BOARD

Contacts with the Single Resolution Board were intensified in 2016. Some FMA employees participated in training courses offered by the Board. Involvement in exchange programmes is already being planned for next year.

COOPERATION WITH EUROPEAN PARTNER AUTHORITIES

OUTGOING STUDY VISITS

In addition to the extensive exchange programme with the ECB, six FMA employees made study visits during the year under review and were thus able to engage more closely with their international contacts at partner authorities. One employee from Securities Supervision and one from Integrated Supervision worked at the German Federal Financial Supervisory Authority (BaFin) in Frankfurt, while another employee was seconded to the European Insurance and Occupational Pensions Authority (EIOPA), also based in Frankfurt. One FMA employee visited the Financial Conduct Authority (FCA) in London, another spent time at the Financial Market Authority (FMA) in Liechtenstein, and one member of staff also had the opportunity to spend time at the Commission de Surveillance du Secteur Financier (CSSF) in Luxembourg.

INCOMING STUDY VISITS

In 2016 the FMA again also offered its partner authorities the opportunity to engage in study visits. Two colleagues from the Deutsche Bundesbank and one from the German Federal Financial Supervisory Authority (BaFin) were given a work placement. Additionally, one colleague from the Swiss Financial Market Supervisory Authority (FinMa) temporarily moved from Bern to Vienna for a study visit to the FMA.

GLOBAL COOPERATION

One employee from the Executive Board Affairs Division was seconded to the European Commission in Brussels.

RECRUITMENT

An applicant management tool was introduced in late 2015, which should optimise the recruitment process and make it more efficient. One year later it can be said that the new system has been very well received by FMA executives, and the periods between advertising and filling a position have been significantly reduced. All in all, the tool helped to greatly improve the recruitment process, for applicants, executives and the Human Resources division. The more efficient recruitment process also made a valuable contribution to the FMA's employer branding.

HUMAN RESOURCES MARKETING

During the reporting year the FMA intensified its social media activities in connection with its employer branding efforts. In detail, corporate sites were set up on XING, a leading online business network in D-A-CH, and the kununu employment review platform to provide potential applicants with a wealth of information about and insights into everyday working life at the FMA, but also to give them the possibility of writing reviews about the FMA as employer. Additionally, having proved successful, the Facebook campaigns launched in 2015 were continued in 2016, and again had a high impact. Major progress was also made in relation to the Careers section on the FMA website. This section was restructured and expanded, and now also includes targeted information for job

seekers under the headings of “Professionals” and “Graduates” (in German). Staying personally in touch with graduates who want to know about job opportunities at the FMA continues to be an important cornerstone too. Experts from the FMA’s Human Resources Division therefore participated in three relevant recruitment fairs, offering students there the chance to take part in in-house events at the FMA, giving them a better idea of the FMA and its work.

RECONCILIATION OF WORK AND FAMILY LIFE

The FMA was awarded the basic “workandfamily” audit certificate, which is an official quality label, by the Federal Ministry of Economy, Family and Youth in 2013. The audit provided an important foundation for a better work/life balance for FMA employees. More specifically, measures were planned and implemented enabling teleworking, more flexible working hours, the introduction of a “daddy month” and the opening of a workplace kindergarten. The certificate expired in October 2016.

To continue promoting a consistently family-friendly atmosphere, the FMA Executive Board has consented to a re-auditing process. This process involves a repeat audit, thereby identifying additional measures to further raise awareness for family issues throughout the FMA.

Finance and controlling

FINANCING

The Financial Market Authority's (FMA) finances are based on three pillars, as stipulated in the Financial Market Authority Act (FMABG; *Finanzmarktaufsichtsbehördengesetz*): The FMA receives an annual lump sum of € 4 million from the federal budget as prescribed by law. In its capacity as an authority, the FMA may levy fees for particular services as defined by law (other income). The remaining amount is contributed by the supervised entities according to the share of costs incurred in each case.

In addition, in its capacity as resolution authority pursuant to Article 74 para. 5 of the Bank Recovery and Resolution Act (BaSAG; *Bankensanierungs- und Abwicklungsgesetz*), the FMA may request that the institution under resolution reimburse the FMA for all reasonable expenses properly incurred in connection with the application of a resolution tool or exercise of its resolution power.

Pursuant to Article 19 FMABG, four accounting groups are to be set up for the apportionment of costs to the supervised entities according to the share incurred in each case: banking, insurance, securities and pension supervision. The supervisory costs must be apportioned on a direct basis as far as possible:

- direct costs must be allocated directly to the relevant accounting group,
- costs that cannot be directly allocated are to be apportioned based on a ratio which represents the share of the relevant accounting group in the direct costs.

After deducting the federal contribution and other income from the overall costs, the share of other costs accounted for by each accounting group can be calculated. Using the statutory benchmark, this share is to be allocated and charged to each individual supervised entity.

TIME AND PERFORMANCE TRACKING

The FMA uses a time and performance tracking system to allocate personnel expenses to the legally stipulated accounting groups according to the share incurred. For this purpose, every FMA employee's individual working time is recorded electronically to the nearest minute. Each FMA employee is then required to use an electronic tool to assign the actual working times recorded to the accounting groups by activity on the basis of pre-defined activities, which are catalogued in a product list.

The FMA's Controlling Division generates quarterly analyses for the various levels of the organisation. This analysis is then used by the management to verify and confirm that the activities have been assigned to the correct accounting group. It also serves as a basis for apportioning FMA costs according to the share incurred and as a proven control and management instrument.

NOTICES OF PAYMENT DUE

In accordance with the provisions of Article 19 FMABG, the costs of the FMA are borne by the supervised com-

panies. These costs are determined using the financial statements including statement of costs. The individual amount to be paid by each company is determined on the basis of the data reported by the supervised companies themselves or by the Vienna Stock Exchange.

The FMA Cost Regulation (FMA-KVO; *FMA-Kostenverordnung*) specifies the reimbursement of costs (calculation of actual costs), the implementation of advance payments per accounting group and the apportionment among the entities liable to pay costs, including deadlines for the notices of payments due and for payments.

The FMA sent out the payment notices for the actual costs incurred in 2015 in November 2016, together with those for the advance payments for 2017. Compared with 2015, when some 1 900 payment notices were issued, around 3 000 such notices were issued in 2016. This is due to the cost calculations carried out for the first time according to the BaSAG and the Deposit Guarantee Schemes and Investor Compensation Act (ESAEG; *Einlagensicherungs- und Anlegerentschädigungsgesetz*). Additional payments of approximately € 7.8 million from the entities liable to pay costs were needed to cover the actual costs for 2015, based on the costs reported in the 2015 financial statements of the FMA minus the advance payments made that year.

FINANCIAL STATEMENTS

Applying Chapter III of the Corporate Code (UGB; *Unternehmensgesetzbuch*), the FMA is required to draw up financial statements for the previous financial year in the form of an annual balance sheet, an income statement and notes pursuant to Article 18 FMABG, as well as a balance sheet and an income statement for the resolution financing arrangement pursuant to Article 123d para. 2 BaSAG in conjunction with Article 18 FMABG.

Article 18 para. 3 FMABG stipulates a deadline of five months from the end of the particular financial year (i. e. by 31 May), by which time the FMA Executive Board must have submitted the financial statements including statement of costs as audited by an auditor or an auditing firm to the FMA Supervisory Board for approval.

The Supervisory Board, in turn, must approve the financial statements including statement of costs in a timely manner so that the Executive Board is able to submit the financial statements including statement of costs to the Federal Minister of Finance within six months of the previous financial year-end and to publish them on the FMA website (pursuant to Article 18 para. 6 FMABG) and in the form of an announcement in the “Wiener Zeitung” newspaper.

Contax Wirtschaftstreuhandgesellschaft mbH carried out the statutory audit of the FMA’s financial statements and statement of costs for 2015 as well as of the 2015 balance sheet and income statement for the resolution financing arrangement. Upon completion of the audit the auditor issued unqualified opinions in each case, confirming compliance with the statutory provisions.

In accordance with Article 10 para. 2 no. 4 FMABG, the Supervisory Board approved the 2015 financial statements of the FMA and of the resolution financing arrangement on 27 June 2016.

The 2015 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

Pursuant to Article 17 FMABG, the FMA is required to submit a financial plan including an investment and staff plan to the Supervisory Board by 31 October of each year for the following financial year.

This financial plan must then be approved by the Supervisory Board by no later than 15 December.

Financial planning is based on individual targets that the FMA sets each year, as well as on the statutory requirements. Based on these targets, a draft financial plan for 2017 was prepared together with the Executive Board in the summer of 2016, and broken down by Controlling in cooperation with the planning managers to the level of cost centres and accounts.

The Controlling Division reported to the Executive Board on an ongoing basis, and implemented any of the changes it requested. ►

2016 PRELIMINARY FINANCIAL STATEMENTS

According to Article 18 FMABG, the Executive Board is required 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 2016 financial statements have not yet been approved by the auditor, the balance sheet and income statement figures given below are provisional and may be subject to change.

The most important items of the 2016 preliminary financial statements can be summarised as follows:

- The share contributed by entities liable to pay costs increased over the previous year by some € 3.5 million to approximately € 56.5 million. The income and expenses relating to the reimbursement of costs in accordance with Article 74 para. 5 no. 2 BaSAG in 2015 and 2016 and the Asset Quality Review (AQR) in 2015 do not have any impact on the share of the entities liable to pay costs since both income and expenses are entered in the income statement in exactly the same amount. The reimbursement of costs as referred to in Article 74 para. 5 no. 2 BaSAG and in the AQR may thus be omitted. The increase of around € 3.5 million in this share is attributable to lower other operating income (around € 0.7 million without reimbursement of costs pursuant to Article 74 para. 5 no. 2 BaSAG and the AQR) but most of all to higher personnel expenses (approx. € 1.6 million without reimbursement of costs pursuant to Article 74 para. 5 no. 2 BaSAG and the AQR) and to other operating expenses (approx. € 1.4 million without reimbursement of costs pursuant to Article 74 para. 5 no. 2 BaSAG and the AQR).
- Other operating income fell by around € 6.8 million to around € 6.2 million, as there was no income from the AQR in 2016.
- The year-on-year rise of € 1.8 million in personnel expenses to about € 40.0 million was due to the higher number of staff, up by an average of 10.5 FTEs, and to the annual salary progressions and the adjustment of salary levels for inflation.
- Other operating expenses fell by some € 4.8 million to approximately € 24.8 million. This is mainly due to there being no expenses for AQRs, which accounted for costs of around € 6.5 million in 2016. In contrast, there were year-on-year increases in external supervisory services provided by the OeNB in accordance with the BaSAG (€ 1.0 million) and the ESAEG (€ 0.5 million – paid for the first time in 2016).

The 2016 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 2015 financial statements can be found in the Annex to this Annual Report.

RESOLUTION FINANCING ARRANGEMENT

INCOME STATEMENT

The account management fees and charges amounting to € 3k are borne by the FMA. The negative interest of around € 142k will be charged to the Single Resolution Fund (SRF, see Tables 41 and 42).

BALANCE SHEET

Assets:

The current assets of € 150 can be broken down into approximately € 43 of receivables mainly due from the FMA for account management fees, and liquid assets of around € 107.

Liabilities:

The other liabilities item in the amount of € 150 comprises bank charges for December 2016 which were not debited until 2017.

Table 39: 2016 preliminary income statement

INCOME STATEMENT FOR THE FINANCIAL YEAR FROM 1 JAN. TO 31 DEC. 2016 (preliminary result, amounts in €)

		Previous year in € thousands
1. Federal Government contribution pursuant to Article 19 FMABG	4 000 000.00	3 500
2. Income from fees and notices of payment due	5 770 109.68	11 859
3. Other operating income		
a) Income from the disposal of fixed assets	0.00	2
b) Income from the release of provisions	198 990.08	915
c) Other	222 198.26	179
	421 188.34	1 097
4. Personnel expenses		
a) Salaries	-31 310 375.85	-30 071
b) Expenses for severance pay and contributions to corporate staff provision funds	-781 471.42	-548
c) Expenses for old-age pensions	-1 215 625.29	-1 091
d) Cost of statutory social security, payroll-related taxes and mandatory contributions	-6 325 540.32	-6 116
e) Other social security costs	-352 854.26	-346
	-39 985 867.14	-38 172
5. Amortisation and write-downs of intangible assets, depreciation and write-downs of tangible assets	-1 540 981.38	-1 437
6. Other operating expenses		
a) Direct costs pursuant to Article 79 para. 4b BWG – Banking Supervision	-8 000 000.00	-8 000
b) Direct costs pursuant to Article 182 para. 7 VAG	-108 900.00	-230
c) Direct costs pursuant to Article 3 para. 5 BaSAG	-2 000 000.00	-1 000
d) Direct costs pursuant to Article 6 para. 6 ESAEG	-500 000.00	0
e) Other	-14 181 717.52	-20 397
	-24 790 617.52	-29 627
7. Subtotal of items 1 to 6	-56 126 168.02	-52 780
8. Other interest income	205.20	0
9. Interest expenses	-58 203.67	-21
10. Subtotal of items 8 to 9	-57 998.47	-21
11. Appropriation to reserve pursuant to Article 20 FMABG	-332 857.68	-262
12. Share of entities liable to pay costs	56 517 024.17	53 063
13. PROFIT OR LOSS FOR THE YEAR	0.00	0

Table 40: 2016 preliminary balance sheet

BALANCE SHEET AS AT 31 DECEMBER 2016 (preliminary amounts in €)

A S S E T S		Previous year in € thousands	
A. Fixed Assets			
I. Intangible assets			
Industrial property and similar rights and licences in such rights		771 424.41	628
II. Tangible assets			
1. Buildings on third-party land		1 228 470.66	1 229
2. Other equipment, operating and office equipment		1 655 195.57	1 623
		2 883 666.23	2 852
		3 655 090.64	3 480
B. Current assets			
I. Services not yet invoiced to entities liable to pay costs		56 517 024.17	53 063
II. Receivables and other assets			
1. Trade receivables		1 751 453.07	6 769
2. Other receivables and assets		1 313 600.42	1 966
		3 065 053.49	8 735
III. Cash at bank and in hand		22 600 821.06	17 509
		82 182 898.72	79 307
C. Prepaid expenses			
		1 282 558.17	1v139
		87 120.547 53	83 926

Table 41: 2016 preliminary balance sheet of the resolution fund

BALANCE SHEET AS AT 31 DECEMBER 2016 (preliminary amounts in €)

A S S E T S				E Q U I T Y A N D L I A B I L I T I E S			
				Previous year in € thousands		Previous year in € thousands	
A. Current assets				A. Liabilities			
I. Forderungen				I. Liabilities			
1. Allocation of SRF receivables		0.71	34	1. Allocation of SRF liabilities		0.00	198 226
2. Allocation of FMA receivables		42.15	0	2. Other liabilities		150.00	2
		42.86	34			150.00	
II. Allocation of resolution financing arrangement							
Bank balances		107.14	198 194				
		150.00	198 228			150.00	198 228

Table 42: 2016 preliminary income statement of the resolution fund

INCOME STATEMENT FOR THE FINANCIAL YEAR FROM 1 JAN. TO 31 DEC. 2016 (preliminary result, amounts in €)

		Previous year in € thousands	
1. Other operating income			
Other		144 541,41	34
		144 541.41	34
2. Other operating expenses			
Other		-2 926,55	-1
		-2 926.55	-1
3. Subtotal of items 1 to 2		141 614.86	33
4. Interest expenses		-141 614.86	-33
5. Subtotal of item 4		-141 614.86	-33
6. PROFIT OR LOSS FOR THE YEAR		0.00	0

		<i>EQUITY AND LIABILITIES</i>	
		<i>Previous year</i>	
		<i>in € thousands</i>	
A.	Reserve pursuant to Article 20 FMABG	3 151 408.07	2 819
B.	Provisions		
1.	Provisions for severance pay	1 810 577.95	1 434
2.	Other provisions	<u>9 655 174.34</u>	<u>7 859</u>
		11 465 752.29	9 293
C.	Liabilities		
1.	Advance payments received pursuant to Article 19 FMABG	49 027 312.15	44 985
2.	Trade payables	19 874 936.21	22 105
3.	Other liabilities		
a)	Taxes	642 155.33	676
b)	Social security and similar obligations	691 187.86	645
c)	Actual cost accounting for previous years	239 691.64	827
d)	Other	<u>1 212 076.74</u>	<u>1 970</u>
		<u>2 785 111.57</u>	<u>4 117</u>
		71 687 359.93	71 207
D.	Deferred income	816 027,24	608
		87 120 547.53	83 926

Additional resources required for the areas of money laundering and terrorist financing could be covered by shifting staff internally, so that there are no plans to hire any new employees in 2017. Personnel costs were planned centrally, and based on human resources planning and the existing salary system.

With regard to other operating expenses, those reimbursement amounts that, pursuant to Article 19 FMABG, are to be paid by the FMA to the OeNB for services rendered in the area of banking and insurance supervision were also taken into account.

Furthermore, write-downs and allocations to the reserve established in accordance with Article 20 FMABG were also computed.

The planned costs and income were apportioned to the accounting groups pursuant to the FMABG in a way that made it possible to estimate the share of the entities liable to pay costs per accounting group.

For the purposes of effective cash management, Controlling prepared a liquidity calculation encompassing all income and expenses planned for 2017.

The 2017 financial plan (including the financial plan pursuant to Article 123d BaSAG – resolution financing arrangement) was presented to the Supervisory Board at the end of October 2016, and was discussed and approved by the Supervisory Board at its meeting on 23 November 2016.

PROJECT CONTROLLING

Activities that do not figure in the FMA's regular remit but that meet certain parameters are defined and handled as projects within the FMA, according to its own project standard. The FMA uses this standard as well as quarterly project reporting to monitor these projects. The reporting covers content, goals, timing and resources. The Executive Board of the FMA is updated on the status of projects on a quarterly basis and as required whenever projects are completed.

IT Solutions

During the 2016 reporting year, the IT Systems Division implemented a number of hardware and software projects aimed at providing even better support to users in their daily activities and at further improving supervision efficiency.

TELEPHONE SYSTEM REPLACEMENT

As an integral part of today's information society, communication by versatile and mobile means is also a current subject at the FMA's IT Division. The previous telephone system was replaced by a modern Voice over IP system (VoIP), which alongside the basic phone functions enables uniform fixed network and mobile phone numbers and allows staff to take their personal extension numbers with them when changing desks, thus supporting more flexible working conditions. As part of implementing the project, phone functions were also integrated with PC workstations.

Another important aspect was to implement a redundant VoIP phone system. This enables the best possible availability of service. In implementing the new system, the ISDN lines as well as the VoIP core components already in service were distributed between the FMA's two data centres.

This arrangement thus additionally provides a basis for ensuring that, in the event of complete site failure at Otto-Wagner-Platz 5, the Business Continuity Management (BCM) emergency site can be reached by phone, including the call centre and phone conference service.

WORKPLACE 2016

The FMA's IT workplaces were equipped with a new operating system and a new Office version (Outlook, Word, Excel, PowerPoint). While the Microsoft Windows 8.1 operating system was installed on PCs and notebooks, staff members working with a thin client in a CITRIX environment were provided with a Microsoft Windows 2012 R2 terminal solution as their new platform. Office 2013 was installed on the machines.

As part of updating the system, the end-user hardware devices were replaced after reaching their end of service life.

The new set-up, referred to as "Workplace 2016", allows the FMA's IT Division to upgrade protection mechanisms to even higher standards as well as to implement the specifications applying under the IT policies of the European System of Central Banks (ESCB) for the Single Supervisory Mechanism (SSM).

This development provides the FMA's staff with a working environment that is both stable and flexible and ensures high performance.

EXCHANGE 2016 INCLUDING NEW MAIL ARCHIVE

The previous mail system, consisting of Microsoft Exchange 2010 in combination with a Symantec Enterprise

Vault 11 mail archive, was replaced with the current 2016 version of Microsoft Exchange including an integrated archive feature.

Sourcing the mail system and archive from a single manufacturer has significantly simplified the maintenance and care required for the system and allowed a two-thirds reduction in the number of server systems implemented. Removal of the systems no longer needed has additionally resulted in cost-savings.

As part of the system migration, the storage capacity of end-user mailboxes was also increased.

SOFTWARE PROJECTS

REPORTS ON HOLDINGS

A web application was implemented that supports reporting holdings in listed companies. Ensuring that the data is verified and submitted to the FMA in structured form, the application replaces the previous system of reporting unstructured data via e-mail.

SOLVENCY II

The reporting system for insurance undertakings, which is based on eXtensible Business Reporting Language (XBRL) and has been available to reporting parties since 1 January 2016, was adapted during 2016 to comply with a modified EIOPA XBRL taxonomy. In addition, expanded analysis options based on data cubes were created for departmental use, supporting the analysis of reported data in fine detail.

OPTIMISATION OF INTERNAL PROCESSES FOR THE SSM

A SharePoint application including suitable workflows was developed that largely automates SSM procedures and allows preparatory meetings to be held online. This way, the two processes can be taken care of in a way that makes efficient use of time and resources. Introducing the new standardised processes has additionally enhanced data security and transparency.

RISK-BASED SUPERVISION

The Incoming Platform web application was supplemented with the addition of one analysis questionnaire each for the Divisions Rules of Conduct and Compliance and Prevention of Money Laundering and Terrorist Financing. Questions prepared by the relevant Department of the FMA are automatically integrated in the web application and made available to supervised companies for their responses. FMA staff can then analyse the responses using the risk-based supervision program.

Public relations

F

or the FMA staff responsible for external communications, 2016 was a particularly challenging year, with the Authority in its role as regulator and supervisor having to explain its position on highly complex issues. Among the many sets of issues, the following are especially prominent:

- the questions relating to regulation and supervision raised by the parliamentary enquiry committee investigating the affair involving the Hypo Alpe Adria Bank;
- communicating the FMA's role as resolution authority, in particular in the practical context of the case of Heta Asset Resolution AG, including a haircut, public liability and claims filed with European courts;
- communicating the effectiveness of the integrated approach to supervision as seen after a decade and a half of practical experience in regulation and supervision;
- presenting the FMA's role in anti-money laundering, particularly as related to the Panama Papers and the back-to-back transactions by Meindl Bank;
- the media coverage of the implementation and application in practice of the new supervisory regime for insurance undertakings, i. e. the 2016 Insurance Supervision Act (VAG 2016; *Versicherungsaufsichtsgesetz*) and Solvency II;
- conveying the FMA's role in investor and consumer protection as well as the limits to this role with reference to publicly discussed cases of fraud and damage to investors and
- explaining the challenges facing the supervised entities due to the continued low-interest environment and presenting regulatory and supervisory measures taken in response, such as the package of measures for the life insurance industry.

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 classic 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 market. To this end, whilst implementing this communications strategy, the FMA utilises conventional PR tools such as press releases, press conferences, background discussions, presentations and arranging one-on-one interviews of the Executive Directors by selected media.

The FMA published a total of 32 press releases during the reporting year (2015: 32). These are 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 in German and English.

The FMA also published 33 official announcements in the official gazette "Amtsblatt zur Wiener Zeitung" (2015: 40). These usually take the form of investor warnings, informing investors that a named provider was not authorised to offer particular financial services that require a licence in Austria. This information was also made avail-

able on the FMA website at the same time. In addition, the FMA website is also available for the publication of investor warnings issued by partner organisations. Over the years a very comprehensive database of dubious providers of financial services has been built up in this way, and is easy to access for any interested parties.

The broadest media coverage was achieved by the press events with the FMA Executive Directors, which were held on six occasions in 2016 (2015: 8).

- 19 January 2016, Press meeting at the Economic Writers' Club: "Investment funds" and "Resolution"
- 11 April 2016, Press meeting: "Haircut of Heta Asset Resolution AG"
- 19 May 2016, Balance sheet press conference: "Presentation of the FMA's Annual Report for 2015"
- 26 September 2016, Presentation of the "Handbook on Insurance Supervision – VAG 2016"; panel discussion: "Initial experience with the new supervisory regime from the perspective of insurance undertakings and auditors"
- 5 October 2016, Press luncheon with Andrea Enria, Chair of the European Banking Authority (EBA), at the FMA Supervision Conference
- 12 December 2016, Background talk: "FinTechs", "FMA measures to further restrict foreign currency loans" and "Consumer protection in banking – securities falling under bail-in requirements"

All of these events met with keen interest among 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 2016 in order to communicate to selected target groups the Authority's remit and goals, as well as technical and specific issues.

At the same time, the FMA itself organised various events on specific topics.

- On 18 January 2016 the Insurance and Pension Supervision Department hosted the EIOPA Forum for IORPs, with discussions centring on the results of the 2015 EIOPA stress tests, further developments of stress tests at national level and adaptation of the related FMA Information Requirements Regulation as well as investment topics.
- On 27 April 2016 the Vienna University of Economics and Business (WU) and the FMA jointly organised a research conference on the topic of "New approaches to tackling market abuse and insider dealing".
- A dialogue on practice was held for insurance undertakings on 29 April 2016, covering topics including PRIIPs, stress tests, the SCR review, ORSA and ALM.
- On 19 May 2016 the Securities Supervision Department hosted the annual "WPDLU-Forum", providing an occasion for presenting and discussing the schedule for implementation of MiFID II and PRIIPs in particular.
- On 22 June 2016 the FMA hosted the first meeting of the ESRB Insurance Group in Vienna.
- The Seventh FMA Supervision Conference took place at the Austria Center Vienna on 5 October 2016. The theme of the Conference, namely "Financial Markets 2.0 – (R)evolution?", attracted keen interest from the more than 900 delegates.
- The FMA also held the second practice conference on "Compliance and Prevention of Money Laundering" on 21 November 2016.
- On 7 December 2016 the Insurance Supervision Department organised the second dialogue on practice to deal in greater detail with the topics of PRIIPs, stress tests, the SCR review and the IDD.

PUBLICATIONS

The FMA Annual Report 2015 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 2015 was printed only in German. The electronic version is available in German and English,

and can be downloaded from the FMA website (www.fma.gv.at). In addition to its Annual Report, providing a review of 2016, the FMA again published “Facts and figures, trends and strategies” in the reporting year, providing an analysis and outlook for 2017 in relation to topical issues of relevance to the FMA. The publication offers a summary of changes in national and international legislation pertaining to the FMA’s supervisory remit and covers topics including an in-depth analysis of the FMA’s integrated approach to supervision based on some fifteen years of practical experience.

The FMA also published quarterly reports on the development of foreign currency loans to Austrian households, the performance of insurance undertakings and *Pensionskassen*, and the supervision of capital market prospectuses.

In 2016 the FMA’s publication series, previously including handbooks on Solvency II and Money Laundering, was expanded with the publication of the “Handbook on Insurance Supervision – VAG 2016”, which was presented on the occasion of a panel discussion (all of these handbooks are available in German only).

WEBSITE

The new version of the FMA website went live in late June 2016. Every aspect of the FMA’s online presence was fundamentally revised, with the structure, navigation and design being completely redefined during several workshops to take into account various target groups. The FMA website is now also responsive, meaning that content is displayed in the appropriate size and resolution depending on the user device on which it is viewed.

Consumer protection, consumer information and complaints system

The Financial Market Authority (FMA) is legally bound to protect consumers collectively, i.e. to protect all investors, creditors and consumers in accordance with the statutory provisions. The FMA protects in particular the interests of various different groups of consumers, e.g. groups of savers or investors, or the customers of a certain class of insurance. In contrast, protecting individual consumer interests is not within the FMA's remit but is the responsibility of ombudsmen, arbitration bodies and ordinary courts of law.

In 2016 one priority area for the FMA in relation to collective consumer protection was verification that supervised companies are complying with their information obligations. Responsible consumers should be able to choose the financial product that best matches their expectations, requirements and risk propensity. To this end, consumers must receive all information in a fair and clear manner that is not misleading in order to be able to make a sound decision.

The FMA has a dedicated section for consumers on its website, which was redesigned in 2016. In this section, the FMA offers clear and unambiguous information, particularly in the form of FAQs, not only providing answers and explanations but also including informative charts. Crowdfunding models, alternative currencies, binary options and foreign currency loans are just some of the subject areas focused on.

In this special Consumer section, the FMA also lists its current investor warnings about providers acting illegally in the market, warning consumers that these providers are not authorised to carry out transactions requiring a licence, and explains how to recognise dubious providers. Information about the most frequent forms of fraud is also provided. Consumers are advised to always obtain as much information as possible and to critically review it, and to buy only those products or enter into those contracts that they have fully understood.

In "The basics: the financial market" section, the FMA gives valuable tips, e.g. on points to be considered when taking out a loan or concluding a building savings contract, lists the principles of consultations with advisers, as well as the 10 commandments of investing.

Handling complaints is another FMA service available to consumers. At the same time, valuable information for the FMA's supervisory activity is also distilled on an ongoing basis from the numerous reports received from consumers.

COMPLAINTS PROCEDURES

The FMA evaluates consumer complaints to determine whether they are relevant to supervisory activities and requests a written statement from the supervised companies. Upon receipt of this statement and all other documents, the Authority analyses the facts of the case based on supervisory laws. Specifically, the FMA verifies supervised companies' compliance with the Guidelines on Complaints-Handling, i.e. whether the supervised entities have handled any customer complaints in accordance with the related Directive.

For more than ten years now the FMA has had a central complaints system in place that complies with the requirements specified in the Guidelines on Complaints-Handling, in this way having set an example for supervised companies from the outset. The FMA has prepared printed guidelines defining complaints procedures and has

competent staff at its disposal whom complainants can contact. Information in this regard can be found on the FMA website.

The FMA handled and finally settled a total of 8 800 enquiries and complaints in 2016, about 2 260 of which concerned banking supervision, around 1 240 insurance supervision and some 1 180 securities supervision. The majority of those enquiries and complaints, around 5 800, were received by the FMA in writing, and around 3 000 were made by phone.

The enquiries and complaints covered a wide range of issues:

BANKING SUPERVISION

With regard to banking supervision, it was striking that a large number of enquiries and complaints related to the fact that various kinds of information letters, documents and other information provided by banks to their customers were judged to be incomprehensible.

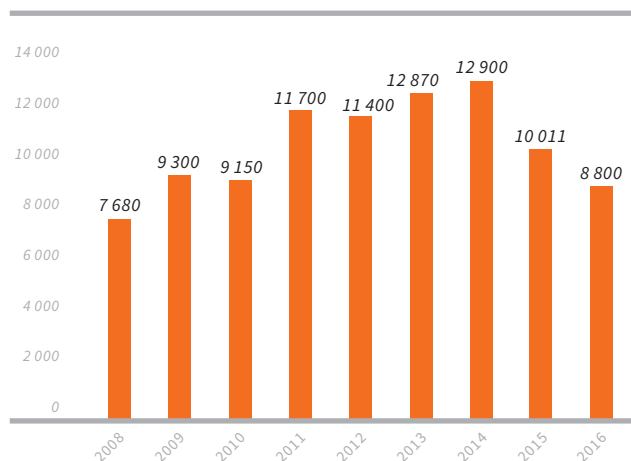
In the second half of the year the FMA mainly had to deal with enquiries related to the basic payment account. In accordance with the Consumer Payment Accounts Act (VZKG; *Verbraucherzahlungskontogesetz*), every consumer has been entitled to a basic payment account since 18 September 2016. A basic payment account is an account allowing essential payment services such as the facility to deposit cash and to withdraw cash at the counter or an ATM within the EU, to make payments via direct debit (within the EU), to make payments online and with a payment card. Furthermore, banks and payment service providers are additionally obliged to offer to consumers a clear, quick and safe procedure to switch payment accounts. Enquiries in this regard mainly concerned the right to a basic payment account, complaints about such basic payment accounts being denied as well as about payment account switching.

Recurring issues, as in previous years, were foreign currency loans and repayment vehicles, as well as 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 concerning identification and proof of identity, and the terms and conditions of deposit guarantee schemes.

INSURANCE SUPERVISION

With regard to insurance supervision, enquiries and complaints frequently related to the incomprehensibility of the information provided by insurance undertakings in the life insurance sector. Enquires here mostly concerned the actual amount of the capital guarantee, doubts as to the accuracy of calculations and the lack of clarity in policy summary reports, termination of the contract, and exemption from or discounts on premiums. In non-life insurance, a large number of complaints concerned the slow settlement of claims.

Chart 32: Number of enquiries and complaints 2008–2016



SECURITIES SUPERVISION

With regard to securities supervision, there were quite a few complaints concerning problems that had arisen when deposits had to be transferred after an online broker had terminated its business activities.

Other complaints related to failure to observe rules of conduct, lack of proper advice, failure to protect investors' interests, investment of funds at an inappropriate level of risk, and once again information that was difficult to understand.

INVESTMENTS IN PRECIOUS METALS

An increasing number of enquiries related to investments in precious metals. However, trading in physical bars or coins and also purchases with no physical deliv-

ery, including by way of gold savings plans or gold accumulation plans, do not constitute banking activities. The buyer only acquires a claim, based on the law of obligations, to delivery of the physical precious metal. Therefore, executing such transactions does not as a general rule require a licence from the Financial Market Authority. This also means that such providers are not subject to supervision by the FMA. The FMA warned investors several years ago of the risk associated with purchasing gold, either through a one-time payment or via gold savings plans, if the gold is not handed over to the investor at the time of payment. This risk applies regardless of the fact that investing in gold is generally assumed to be a particularly safe form of investment.

UNAUTHORISED BUSINESS OPERATIONS

The number of enquiries and complaints relating to unauthorised business operations has remained high.

Whistleblowing – Experiences and statistics in 2016

The Financial Market Authority (FMA) has had an IT-supported, dedicated whistleblowing system in place since 1 February 2014. This can be used for the anonymous reporting of confidential information on potential instances of malpractice in supervised companies. By setting up this system, the FMA has not only created a central unit responsible for taking receipt of information but has also established a dedicated tool and procedure for the protection of whistleblowers and of those people affected by a whistleblowing report. Information on any form of malpractice within a company supervised by the FMA may also be reported at any time in writing, electronically or by using the FMA’s telephone hotline. Whistleblowers who wish to report an actual or potential breach of the Market Abuse Regulation (Regulation (EU) No 596/2014) to the FMA may also do this personally by talking to an employee at the whistleblowing unit on the FMA’s premises. The major advantage of the IT-based system, however, is that a mailbox can be set up for the purposes of anonymous communication. This is important in that it enables any questions that arise in the course of an investigation to be clarified. In this way, whistleblowers can make a key contribution to the investigation process.

In 2016 the FMA received 177 reports from whistleblowers, 152 of which were received through the IT-based system. Of the 177 reports received, 129 were taken further in the context of the FMA’s supervisory remit. Only 13 of the reports turned out to be complaints, and were duly handled as such by the FMA. A further 13 reports were forwarded to trade authorities, while only 22 were found not to contain any relevant information. Reports regarding tax affairs fell significantly in 2016.

This meant that the number of relevant reports increased, along with an improvement in the quality of the reports compared with previous years. The FMA’s provision of clear information on the whistleblowing homepage also contributed in this regard. Whistleblowing reports submitted in 2016 resulted in further supervisory measures being taken in 27 cases, including on-site inspections, company visits and “fit and proper” tests. Additionally, there were seven cases of administrative penal proceedings being launched, seven instances of admonitions being issued, thirteen reports submitted to the public prosecutor’s office (including economic crime and corruption departments) and six instances of investor warnings being published. Out of the 129 relevant reports, 44 related to banking supervision, seven concerned insurance and pension supervision, and 16 were submitted in relation to markets and exchanges supervision. A further 15 reports were concerned with money laun-

Chart 33: Reports 2016

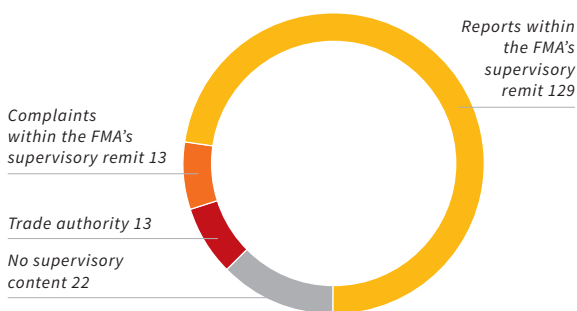
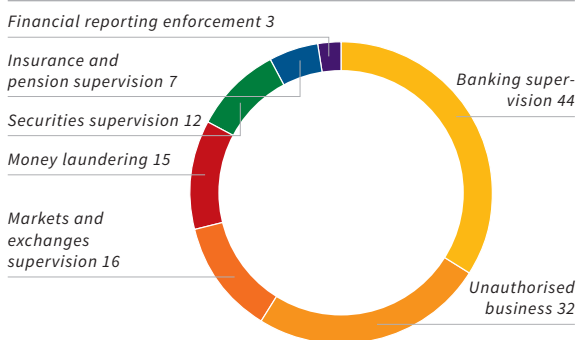


Chart 34: Cases by subject area (in %)



dering and the financing of terrorism, with twelve relating to securities supervision, three to financial reporting enforcement and 32 to the operation of unauthorised business.

The FMA expects to continue to receive high-quality information from the supervised markets in future, enabling it to detect breaches of standards and take consistent action to punish these. Creating greater awareness of malpractice among the public at large, combined with a heightened sense of justice, is a key part of this approach. In this way, the FMA's whistleblowing system promotes compliance with the law and has a preventive effect regarding adherence to supervisory standards. Ultimately, this helps to strengthen confidence in the Austrian financial market.

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LIST OF ABBREVIATIONS

ABGB	Allgemeines Bürgerliches Gesetzbuch (General Civil Code)	ELTIF	European Long-term Investment Funds
AFREP	Austrian Financial Reporting Enforcement Panel	EMIR	European Market Infrastructure Regulation
AIF	Alternative Investment Fund	ESA	European Supervisory Authority
AIFM	Alternative Investment Fund Manager	ESCB	European System of Central Banks
AIFMG	Alternatives Investmentfonds Manager-Gesetz (Alternative Investment Fund Managers Act)	ESFS	European System of Financial Supervision
AktG	Aktiengesetz (Stock Corporation Act)	ESMA	European Securities and Markets Authority
AMA	Advanced Measurement Approach	ESRB	European Systemic Risk Board
AMLC	Anti-Money Laundering Sub-Committee	EURIBOR	Euro Interbank Offered Rate; three-month interbank rate
APA	Austria Press Agency	EURO STOXX 50	Stock index of the 50 largest listed companies in the eurozone
AQR	Asset Quality Reviews	EuSEF	European Social Entrepreneurship Funds
AVG	Allgemeines Verwaltungsverfahrensgesetz (Code of Administrative Procedure)	EuVECA	European Venture Capital Funds
BaFin	Federal Financial Supervisory Authority (Germany)	FATF	Financial Action Task Force
BaSAG	Bankensanierungs- und Abwicklungsgesetz (Bank Recovery and Resolution Act)	FCA	Financial Conduct Authority (UK)
BCM	Business Continuity Management	Fed	Federal Reserve (USA)
BeteilFG	Beteiligungsfondsgesetz (Equity Fund Act)	FKG	Finanzkonglomeratengesetz (Financial Conglomerates Act)
BIRG	Bankeninterventions- und -restrukturierungsgesetz (Banking Intervention and Restructuring Act)	FK-QUAB-V	Finanzkonglomeratequartalsberichts-Verordnung (Financial Conglomerates Quarterly Reporting Regulation)
BMF	Federal Ministry of Finance	FMA	Financial Market Authority
BMSVG	Betriebliches Mitarbeiter- und Selbständigen-vorsorgegesetz (Company Employee and Self-Employment Provisions Act, as amended)	FMABG	Finanzmarktaufsichtsbehördengesetz (Financial Market Authority Act)
BörseG	Börsegesetz (Stock Exchange Act)	FSAPs	Financial Sector Assessment Programs
BoS	Board of Supervisors	FSB	Financial Stability Board
BRRD	Bank Recovery and Resolution Directive	FST	Financial Stability Table; EU Economic and Financial Committee
BVQA-V	Betriebliche Vorsorgekassen-Quartalsausweisverordnung (Regulation on the Quarterly Financial Statements for Corporate Provision Funds)	FTE	Full-time Equivalent
BVwG	Bundesverwaltungsgericht (Federal Administrative Court)	FTSE 100	Financial Times Stock Exchange Index (UK)
BWG	Bankwesengesetz (Austrian Banking Act)	FX	Foreign exchange/foreign currency loans
CA	Comprehensive Assessment	GDP	Gross Domestic Product
CCPA	Central Counterparty Austria GmbH	GewO	Gewerbeordnung (Trade Act)
CCPs	Central Counterparties	GmbH	Gesellschaft mit beschränkter Haftung (limited liability company)
CDS	Credit Default Swaps	GSA	Bundesgesetz zur Schaffung einer Abbaueinheit (Federal Act on the Creation of a Wind-down Entity)
CEA	Comité Européen des Assurances; European insurance and reinsurance federation	HETA	HETA Asset Resolution AG
CEESEG	CEE Stock Exchange Group	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 issued by the Federal Government) held as direct investments (held to maturity or HTM).
CEGH	Central European Gas Hub AG	IAIS	International Association of Insurance Supervisors
CESEE	Central, Eastern and South-Eastern Europe	IFRS	International Financial Reporting Standards
CESEE EEA	Central, Eastern and South-Eastern Europe – European Economic Area	IMF	International Monetary Fund
CESEE non-EEA	see CESEE EEA	ImmInvFG	Immobilien-Investmentfondsgesetz (Real Estate Investment Fund Act)
CIS	Commonwealth of Independent States	InvFG	Investmentfondsgesetz (Investment Fund Act)
ComFrame	Common Framework for the Supervision of Internationally Active Insurance Groups	IOPS	International Organisation of Pension Supervisors
CRD	Capital Requirements Directive	IOSCO	International Organization of Securities Commissions
CRR	Capital Requirements Regulation	IPS	Institutional Protection Scheme
CSSF	Commission de Surveillance du Secteur Financier (Luxembourg)	IRB	Internal Ratings Based (Approach)
DAX	German stock index	IRG	Investment and risk sharing group
EBA	European Banking Authority	JRAD	Joint Risk Assessment and Decision (Process)
EC	European Commission	JSTs	Joint Supervisory Teams
EC	European Community	KIID	Key Investor Information Document
ECB	European Central Bank	KMG	Kapitalmarktgesetz (Capital Market Act)
EEA	European Economic Area	KVO	Kostenverordnung (Cost Regulation)
EIOPA	European Insurance and Occupational Pensions Authority		

LSI	<i>Less Significant Institution</i>	S&P	<i>Standard & Poor's</i>
MAR	<i>Market Abuse Regulation</i>	Security-oriented IRG	<i>Security-oriented investment and risk sharing group</i>
MBA	<i>Master of Business Administration</i>		
MiFID	<i>Markets in Financial Instruments Directive</i>	SEE	<i>South-Eastern Europe</i>
MiFIR	<i>Markets in Financial Instruments Regulation</i>	SI	<i>Significant Institution</i>
MMoU	<i>Multilateral Memorandum of Understanding</i>	SMEs	<i>Small and Medium-sized Enterprises</i>
MONEYVAL	<i>Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism</i>	SRB	<i>Single Resolution Board</i>
		SREP	<i>Supervisory Review and Evaluation Process</i>
MoU	<i>Memorandum of Understanding</i>	SRF	<i>Single Resolution Fund</i>
MREL	<i>Minimum Requirement for Own Funds and Eligible Liabilities</i>	SRM	<i>Single Resolution Mechanism</i>
		SSM	<i>Single Supervisory Mechanism</i>
MTF	<i>Multilateral Trading Facility</i>	StPO	<i>Strafprozessordnung (Code of Criminal Procedure)</i>
NCAs	<i>National Competent Authorities</i>	TAN	<i>Transaction Authentication Number</i>
NMS	<i>New Member States (EU)</i>	UCITS	<i>Undertakings for Collective Investment in Transferable Securities</i>
NRAs	<i>National Resolution Authorities</i>		
NYSE	<i>New York Stock Exchange</i>	UGB	<i>Unternehmensgesetzbuch (Corporate Code)</i>
OECD	<i>Organisation for Economic Co-operation and Development</i>	VAG	<i>Versicherungsaufsichtsgesetz (Insurance Supervision Act)</i>
OeKB	<i>Oesterreichische Kontrollbank AG</i>	VERA	<i>Asset, income and risk statements</i>
OeNB	<i>Oesterreichische Nationalbank</i>	VfGH	<i>Verfassungsgerichtshof (Constitutional Court)</i>
OPEC	<i>Organization of the Petroleum Exporting Countries</i>	VStG	<i>Verwaltungsstrafgesetz (Administrative Penal Act)</i>
PIN	<i>Personal Identification Number</i>	VSTOXX	<i>EuroStoxx 50 volatility index</i>
PK	<i>Pensionskasse (pension company)</i>	VwGH	<i>Verwaltungsgerichtshof (Administrative Court)</i>
PKG	<i>Pensionskassengesetz (Pensionskassen Act)</i>	WAG 2007	<i>Wertpapieraufsichtsgesetz (2007 Securities Supervision Act)</i>
PK-RIMAV	<i>Pensionskassen-Risikomanagementverordnung (Risk Management Regulation for Pensionskassen)</i>	WKO	<i>Austrian Federal Economic Chamber</i>
PR	<i>Public Relations</i>	WKStA	<i>Central Public Prosecutor for Economic Crime and Corruption</i>
PRIIPs	<i>Packaged Retail and Insurance-based Investment Products</i>	XBRL	<i>eXtensible Business Reporting Language</i>
PSPP	<i>Public Sector Purchase Programme</i>	ZaDiG	<i>Zahlungsdienstegesetz (Payment Services Act)</i>
QIS	<i>Quantitative Impact Study</i>		
RL-KG	<i>Rechnungslegungs-Kontrollgesetz (Accounting Control Act)</i>		