



## Rating Agencies Enforcement Act (RAVG; Ratingagenturenvollzugsgesetz)

### Long title

Federal Act implementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies (OJ L 302, 17.11.2009, p. 1) (RAVG; Ratingagenturenvollzugsgesetz)

### Original version:

Federal Law Gazette I No. 68/2010

### Amendments:

Federal Law Gazette I: No. 145/2011; No. 35/2012; No. 70/2013; No. 98/2014; No. 107/2017

### Text

### Preamble / Promulgation Clause

#### Table of contents

Article 1.	Purpose of this Act
Article 2.	Competent and sectoral competent authority
Article 3.	Supervision
Article 4.	Assistance for the supervisor of credit rating agencies on a European level
Article 5.	Penal provisions
Article 6.	Procedural provisions and publication
Articles 7-8.	References and Regulations
Article 9.	Enforcement
Article 10.	Transitional provision
Article 11.	Entry into force

### Text

#### Purpose of this Act

**Article 1.** (1) This Federal Act serves to allow Regulation (EC) No. 1060/2009 of the European Parliament and of the Council of 16 September 2009 on Credit Rating Agencies (OJ L 302, 17.11.2009, p. 1) in the version of Regulation (EU) No 462/2013 amending Regulation (EC) No 1060/2009 on Credit rating agencies (OJ L 146, 31.05.2013, p. 1).to enter into force.

(2) Where reference is made in the Federal Act to the "EC Regulation", this shall be understood to mean the Regulation pursuant to para. 1.

#### Competent and sectoral competent authority

**Article 2.** The FMA shall be both the competent authority as well as the respective sectoral competent authority for the purposes of the EC Regulation. Regardless of the other tasks conferred upon it in other Federal Acts, it shall perform the tasks and powers conferred upon a competent authority or a sectoral competent authority pursuant to the EC Regulation. During its supervisory activities as competent authority or sectoral competent authority it shall in particular take into account its role with regard to the excessive use of ratings by financial institutions pursuant to Article 5a and the Guidelines in accordance with Article 21 of the EC Regulation.



### Supervision

**Article 3.** (1) The FMA as the sectoral competent authority as defined in the EC Regulation shall monitor compliance with the obligation set out in Article 4 (1) first subparagraph of the EC Regulation. It shall perform this monitoring as a supervisory task in accordance with the relevant supervisory laws for the addressees of Article (4) (1) of the EC Regulation. In so doing it shall be afforded the supervisory powers and means in the same way and scope as set out in the relevant supervisory laws, that it may also make use of in the enforcement of other obligations in accordance with the sectoral legal regulations pursuant to Article 3 (1) q) of the EC Regulation.

(2) The FMA may cooperate with authorities and central banks in third countries, that perform a duty that corresponds to those of a competent authority or sectoral competent authority pursuant to Article 3 (1) p) or r) of the EC Regulation. Such cooperation shall be permitted provided that it is necessary for the fulfilment of a duty listed in the first sentence and that the information transmitted during such cooperation with such authorities and central bank are subject to a comparable professional secrecy to that listed in Article 32 of the EC Regulation and are consistent with Chapter IV of Directive 95/46/EC. The FMA may exclusively make use of its powers for the purposes of the cooperation in accordance with this paragraph; that shall also apply, in the case that the cooperation occurs on the basis of an investigative procedure in a third country in relation to behaviour that does not constitute a breach of a regulation applicable in Austria.

### Assistance for the supervisor of credit rating agencies on a European level

**Article 4.** The FMA shall assist the European Securities and Markets Authority (ESMA) as well as its authorised representatives in accordance with the provisions set out in the EC Regulation. The FMA may make use of assistance provided pursuant to Article 21 paras. 1, 2 and 4 FMABG.

### Penal provisions

**Article 5.** (1) Any person who, as person responsible (Article 9 Administrative Penal Act (VStG; Verwaltungsstrafgesetz 1991)) of a party using credit ratings as defined in Article 3 (1) points pa) to pi) of the EC Regulation

1. uses credit ratings in contravention of the first subparagraph of Article 4 (1) of the EC Regulation, or
2. solicits credit ratings in contravention of Article 8c of the EC Regulation,

commits an administrative offence and shall be punished by the FMA with a fine of up to EUR 100 000.

(2) Any person who, as person responsible (Article 9 VStG) of a party using credit ratings as defined in Article 3 (1) points pa) to pi) of the EC Regulation, fails to fulfil

1. his obligation to provide information in contravention of Article 4 (1) second subparagraph of the EC Regulation,
2. his obligation to disclose information about structured financial instruments in contravention of Article 8b of the EC Regulation, or
3. his obligation to provide documentation without delay in contravention of Article 8d (1) second sentence of the EC Regulation

commits an administrative offence and shall be punished by the FMA with a fine of up to EUR 30 000.

### Procedural provisions and publication

**Article 6.** (1) Administrative fines pursuant to Article 5 in the first instance are imposed by the FMA.

(2) In the case of administrative penal proceedings pursuant to Article 5, a limitation period of 18 months shall apply instead of the limitation period specified in Article 31 para. 1 VStG.

(3) For the enforcement of an administrative decision in accordance with this Federal Act or the EC Regulation, the amount of EUR 30 000 shall replace the amount specified in Article 5 para 3 VVG.

(4) The FMA shall publish sanctions in accordance with Article 5 by means of an announcement on the Internet, by means of an announcement being printed in the Official Gazette of the Wiener Zeitung (*Amtsblatt zur Wiener Zeitung*) or in any newspaper with nationwide circulation or by posting, unless such an announcement would considerably endanger the stability of the financial markets or would result in the involved parties incurring a disproportionately high loss. Such publication measures may also be taken cumulatively.

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



*(Note: para. 5 repealed by Federal Law Gazette I No. 145/2011)*

(6) The person subject to this publication may make an application to the FMA to review the lawfulness of the disclosure pursuant to para. 4 in a procedure that shall result in an administrative decision. In this case, the FMA shall announce the initiation of such proceedings in a similar manner. If, in the course of this review, it is found that the publication was unlawful, the FMA shall correct the publication or, at the request of the person subject to this publication, either revoke it or remove it from its website. If a complaint against an administrative decision, which has been announced pursuant to para. 4, is granted suspensory effect in proceedings conducted before public-law courts, the FMA shall make this known in the same manner. The publication shall be corrected or at the request of the concerned party either revoked or removed from the FMA's Internet presence, if the administrative decision has been repealed.

#### References and Regulations

**Article 7.** (1) Where this Federal Act refers to Directive 95/46/EC, it shall apply to the version of the Directive 95/46/EC of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

*(Note: para. 2 repealed by Federal Law Gazette I No. 145/2011)*

**Article 8.** Where expressions in this Federal Act relating to persons are given only in the masculine form, they shall refer equally to men and women. The respective gender-specific form shall be used when applied to specific persons.

#### Enforcement

**Article 9.** The Federal Minister of Finance shall be responsible for enforcing this Federal Act.

#### Transitional provision

**Article 10.** For procedures for the registration of credit rating agencies, for which the registration application was received by the competent authorities of the home Member State or the relevant college up until 7 September 2010, and which are not to be submitted to ESMA in accordance with Article 40a (1) of the EC Regulation, this Federal Act shall apply in the version of the Federal Act published in Federal Law Gazette I No. 68/2010.

#### Entry into force

**Article 11.** (1) Article 5 para. 2 in the version of the 2nd Stability Levy Act of 2012 (2. Stabilitätsgesetz 2012) as published in Federal Law Gazette I No. 35/2012 shall enter into force on 1 May 2012.

(2) Article 6 para. 2 in the version of Federal Law Gazette I No. 70/2013 shall enter into force on 1 January 2014.

(3) Article 1 para. 1, Article 2 third sentence, Article 3 para. 1 third sentence, and Article 5 in the version of the Federal Act published in Federal Law Gazette I No. 98/2014 shall enter into force on 1 January 2015.

(4) Art. 6 para. 2 no. 3 in the version of the Federal Act published in Federal Law Gazette I No. 107/2017, shall expire at the end of 2 January 2018.

#### Article 1

*(Note: from Federal Law Gazette I No. 145/2011, Articles 0 to 7 and 10, Federal Law Gazette I No. 68/2010)*

This Federal Act shall transpose:

1. Directive 2010/76/EU amending Directives 2006/48/EC and 2006/49/EC as regards capital requirements for the trading book and for re-securitisations, and the supervisory review of remuneration policies (OJ L 329, 14.12.2010, p. 3) and
2. Directive 2010/78/EU amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EG und 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) (OJ L 331 15.12.2010, p. 120).



**Article 1**  
**Transposition Note**

*(Note: from Federal Law Gazette I No. 107/2017, to Article 6, Federal Law Gazette I No. 68/2010)*

This Federal Act transposes the following legal acts of the European Union:

1. Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, OJ L 173, 12.06.2014, p. 349, last amended by Directive (EU) 2016/1034, OJ L 175, 23.06.2016, p. 8, as amended by the corrigendum, OJ L 64, 10.03.2017, p. 116;
2. Delegated Directive (EU) 2017/593 supplementing Directive 2014/65/EU with regard to safeguarding of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits, OJ L 87 p. 500.

Furthermore this Federal Act also serves for the effective enforcement of the following legal acts of the European Union:

1. Regulation (EU) No 600/2014 on markets in financial instruments and amending Regulation (EU) No 648/2012, OJ L 173, 15.05.2014, p. 84, most recently amended by Regulation (EU) No 2016/1033, OJ L 175, 23.06.2016, p. 1;
2. Commission Delegated Regulation (EU) 2017/565 supplementing Directive 2014/65/EU as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive, OJ L 87, p. 1;
3. Commission Delegated Regulation (EU) 2017/567 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to definitions, transparency, portfolio compression and supervisory measures on product intervention and positions, OJ L 87, p. 90.

**Article 1**  
**Transposition Note**

*(Note: from Federal Law Gazette I No. 98/2014, to Articles 1, 2, 3 and 5, Federal Law Gazette I No. 68/2010)*

This Federal Act transposes

1. Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, OJ L 173 of 12.06.2014, p. 190, and
2. Article 92 of Directive 2014/65/EU on markets in financial instruments and amending Directives 2002/92/EC and 2011/61/EU, OJ L 173, 12.06.2014 p. 349.