Austrian Banking Act (BWG; Bankwesengesetz)

Original Version: published in Federal Law Gazette 532/1993

Amendments: Federal Law Gazette 639/1993; 917/1993; 505/1994; 730/1994; 22/1995; 50/1995; 383/1995; 255/1996; 304/1996; 445/1996; 446/1996; 680/1996; 742/1996; 753/1996; 757/1996. From 1997 onwards in Federal Law Gazette I, unless indicated otherwise: 58/1997; 63/1997; 106/1997; 114/1997; 11/1998; 126/1998; 153/1998; 49/1999; 63/1999; 76/1999; 123/1999; 25/2000; 33/2000: 135/2000; 2/2001; 97/2001; 45/2002; 100/2002; 131/2002; 163/2002; 33/2003; 35/2003; 36/2003; 80/2003; 98/2003; 13/2004; Federal Law Gazette II 94/2004; 70/2004; 131/2004; 161/2004; 32/2005: 33/2005; 59/2005; 124/2005; 48/2006; 104/2006; 141/2006; 19/2007; 60/2007; 108/2007; 2/2008; 70/2008; 136/2008; 22/2009; 39/2009; 42/2009; 66/2009; 152/2009; 28/2010; 29/2010; 37/2010; 58/2010; 72/2010; 104/2010; 107/2010; 118/2010; 77/2011; 145/2011; 20/2012; 35/2012; 119/2012; 70/2013; 135/2013; 160/2013; 184/2013; 13/2014; 59/2014; 98/2014; 18/2015; 34/2015; 68/2015; 69/2015; 116/2015; 117/2015; 159/2015; 43/2016; 50/2016; 118/2016; 107/2017; 136/2017; 149/2017; 150/2017; 17/2018; 36/2018; 37/2018; 69/2018; 76/2018; 112/2018; 46/2019; 25/2021; 98/2021; 199/2021; 36/2022; 237/2022; 78/2023; 106/2023; 111/2024, 112/2024; 5/2025; 6/2025.

Note about this translation: this consolidated version reflects the version of the Federal Act up to including the amendment published in Federal Law Gazette I 6/2025 as of the date below.

Date: 06.05.2025

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SECTION I: GENERAL PROVISIONS

Credit Institutions and Financial Institutions

Article 1. (1) The term "credit institution" refers to an institution authorised to carry out banking transactions on the basis of Article 4 or Article 103 no. 5 of this federal act, or on the basis of special provisions under Austrian federal law. Banking transactions include the following activities if carried out for commercial purposes:

1. the acceptance of funds from other parties for the purpose of administration or as deposits (deposit business);
2. the provision of non-cash payment transactions, clearing services and current-account services for other parties (current account business);
3. the conclusion of money-lending agreements and the extension of monetary loans (lending business);
4. the purchase of cheques and bills of exchange, and in particular the discounting of bills of exchange (discounting business);
5. the safekeeping and administration of securities for other parties (custody business);
6. the issuance and administration of payment instruments such as credit cards, bankers' drafts and traveller's cheques, with no limitation applicable to the term of crediting in the case of credit cards;
7. trading for one's own account or on behalf of others in:
    a. Foreign means of payment (foreign exchange and foreign currency business);
    b. Money-market instruments;
    c. Financial futures contracts, including equivalent instruments settled in cash as well as call and put options on the instruments listed in lit. a and d to f, including equivalent instruments settled in cash (futures and options business);
    d. Interest-rate futures contracts, forward rate agreements (FRAs), interest-rate and currency swaps as well as equity swaps;
    e. Transferable securities (securities business);
    f. Derivative instruments based on lit. b to e;

unless these instruments are traded for private assets;

7a. trading on one's own account or on behalf of others in financial instruments pursuant to Article 1 no. 7 lits. e to g, j and k Securities Supervision Act 2018 (*WAG 2018; Wertpapieraufsichtsgesetz 2018*) published in Federal Law Gazette I No. 107/2017, except in the case of trading conducted by persons pursuant to Article 2 para. 1 nos. 6, 12 and 13 WAG 2018 as well as trading provided that it is conducted using private assets;

8. the assumption of suretyships, guarantees and other forms of liability for other parties where the obligation assumed is monetary in nature (guarantee business);

9. the issuance of covered bonds in accordance with the Pfandbrief Act (*PfandBG; Pfandbriefgesetz*) published in Federal Law Gazette I No. 199/2021 (securities underwriting business);
10. the issuance of other fixed-income securities for the purpose of investing the proceeds in other banking transactions (miscellaneous securities underwriting business);
11. participation in underwriting third-party issues of one or more of the instruments listed under no. 7 lit. b to f as well as related services (third-party securities underwriting business);
12. the acceptance of building savings deposits and the extension of building loans in accordance with the Building Society Act (*BSpG; Bausparkassengesetz*) (building savings and loan business);
13. the management of investment funds in accordance with the Investment Fund Act 2011 (*InvFG 2011; Investmentfondsgesetz*), Federal Law Gazette I No. 77/2011 (investment fund business);

13a. The management of real estate investment funds in accordance with the Real Estate Investment Fund Act (*ImmoInvFG; Immobilien-Investmentfondsgesetz*), Federal Law Gazette I No. 80/2003 (real estate investment fund business);

14. repealed
15. The business of financing through the acquisition and resale of equity shares (capital financing business);
16. The purchase of receivables from the delivery of goods or services, assumption of the risk of non-payment associated with such receivables – with the exception of credit insurance – and the related collection of such receivables (factoring business);
17. The conduct of money brokering transactions on the interbank market;
18. The brokering of transactions as specified in
    a. no. 1, except for transactions conducted by contract insurance undertakings;
    b. no. 3, except for the brokering of mortgage loans and personal loans by real estate agents, personal loan and mortgage loan brokers, and investment advisors;
    c. no. 7 lit. a where this applies to foreign exchange transactions;
    d. no. 8.
19. repealed
20. repealed
21. the acceptance and investment of severance payment contributions from salaried employees and self-employed persons (severance and retirement fund business);
22. the purchase of foreign means of payment (e.g. notes and coins, cheques, traveller's letters of credit and payment orders) over the counter and the sale of foreign notes and coins as well as traveller's cheques over the counter (exchange bureau business);
23. repealed

Undertakings, whose business purpose is covered fully by Article 3 para. 2 WAG 2018 and that do not require any licence pursuant to Article 4 para. 1, are not credit institutions.

(2) The term "financial institution" refers to an institution which is not a credit institution as defined under para. 1 and which is authorised to conduct one or more of the following activities for commercial purposes if they are conducted as the institution's main activities:

1. the conclusion of lease agreements (leasing business);
2. repealed;
3. the provision of advice to undertakings on capital structure, industrial strategy and related questions, as well as advice and services related to mergers and the purchase of undertakings;
4. repealed;
5. the provision of credit reporting services;
6. the provision of safe deposit services;
7. the provision of payment services pursuant to Article 1 para. 2 of the Payment Services Act 2018 (*ZaDiG 2018; Zahlungsdienstegesetz 2018*), Federal Law Gazette I No. 17/2018;
8. the issuance of electronic money pursuant to Article 1 para. 1 of the Electronic Money Act 2010 (*E-GeldG, E-Geldgesetz*), Federal Law Gazette I No. 107/2010.

(3) Credit institutions shall also be authorised to carry out the activities listed in para. 1 no. 22 (exchange bureau business) as well as in para. 2 nos. 1 to 6, and furthermore to provide the remittance services described in Article 1 para. 2 no. 6 ZaDiG 2018 as well as the activities described in Article 7 para. 2 no. 2 ZaDiG 2018, and to carry out all other activities which are directly related to banking activities in accordance with the scope of the respective licence or which constitute ancillary services to such banking activities; specific examples include the brokering of building savings contracts, of undertakings and businesses, units of investment fund and of equity shares, the provision of services in the field of automated data processing as well as the distribution of credit cards. In addition, credit institutions are authorised to trade in coins and medals as well as gold bars within the limits of legal provisions applying to foreign exchange, and to rent out safety deposit boxes (safes) under joint access agreements. They shall also be authorised to provide the investment services listed in Article 3 para. 2 nos. 1 to 3 WAG 2018 as well as the data reporting services pursuant to Article 1 nos. 60 and 62 WAG 2018 as well as points 34 and 36 of Article 2 (1) of Regulation (EU) No 600/2014; however they shall only be authorised to provide data reporting services provided that they are data reporting services with a limited significance for the internal market in accordance with the delegated act issued based on Article 2 (3) of Regulation (EU) No 600/2014. Credit institutions that hold a licence pursuant to para. 1 nos. 1 to 3 or pursuant to para. 1 no. 2, shall be authorised to perform the payment services described in Article 1 para. 2 nos. 1 to 5, 7 and 8 ZaDiG 2018, while credit institutions that hold a licence pursuant to para. 1 no. 6 shall be authorised to perform the payment services described in Article 1 para. 2 no. 5 ZaDiG 2018. Credit institutions that hold a licence pursuant to para. 1 nos. 1 and 3 or pursuant to para. 1 no. 2 or no. 6 are authorised to issue e-money pursuant to Article 1 para. 1 of the E-GeldG 2010. Finally, the provision of payment services on a commercial basis pursuant to Article 1 para. 2 ZaDiG 2018 and the issuance of e-money pursuant to Article 1 para. 1 of the E-Geldgesetz 2010 by credit institutions requires a licence from the FMA which is based on the licensing requirements set out in the BWG. Credit institutions holding

a licence pursuant to para. 1 nos. 1, 3, 7 or 8, shall be authorised to broker the respective banking transactions under para. 1 no. 18 lits. a to d. Under the conditions listed in Regulation (EU) 2023/1114 credits institutions shall be authorised to issue asset-referenced tokens (ARTs) pursuant to Article 3 (1) point 6 of Regulation (EU) 2023/1114, and to conduct crypto-asset services pursuant to Article 3 (1) point 16 of Regulation (EU) 2023/1114.

(4) The Federal Minister of Finance may issue regulations which amend or expand the list of activities under paras. 1 and 2 where necessary due to sufficiently defined obligations arising from the Republic of Austria's accession to the European Union. In cases where the list of activities under para. 2 is amended or expanded, the Federal Minister of Finance must issue such regulations in consultation with the Federal Minister for Digital and Economic Affairs.

(5) In decisions on legal disputes arising from banking transactions, a defence stating that a claim is based on a speculation on differences which can be classified as gambling or betting will not be admissible if at least one of the parties to the agreement is authorised to conduct such banking transactions for commercial purposes.

(6) Article 1346 para. 2 of the General Civil Code (*ABGB; Allgemeines Bürgerliches Gesetzbuch*) does not apply to liabilities assumed by credit institutions in the course of their business activities.

Applicability of Regulation (EU) No 575/2013

Article 1a. (1) For the purposes of this federal act, the following definitions shall apply:

1. CRR credit institutions: credit institutions as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013;
2. CRR investment firms: investment firms as defined in point (2) of Article 4(1) of Regulation (EU) No 575/2013;
3. CRR financial institutions: financial institutions as defined in point (26) of Article 4(1) of Regulation (EU) No 575/2013;
4. CRR institutions: institutions pursuant to point (3) of Article 4(1) of Regulation (EU) No 575/2013;

(2) Without prejudice to Article 3, the provisions of Regulation (EU) No 575/2013 as well as any legal acts introduced on its basis shall be applied to credit institutions that are not CRR credit institutions as if these credit institutions were CRR credit institutions. If the provisions of Regulation (EU) No 575/2013 are applied to credit institutions that are not CRR credit institutions, they shall be treated as CRR credit institutions by other credit institutions and within their own group of credit institutions.

Definitions

Article 2. For the purposes of this federal act, the terms listed below are defined as follows:

1. Directors:

a. Those natural persons authorised by law or the articles of association to manage the business of the credit institution or financial institution, particularly to set strategy, objectives and overall direction, and to legally represent it;

b. In the case of credit cooperatives, those natural persons entrusted with managing the business, particularly with setting strategy, objectives and overall direction, and appointed as directors by the management board, supervisory board or the general meeting; only directors are authorised to represent the credit cooperative, full powers of commercial representation (Article 48 Company Code (*UGB; Unternehmensgesetzbuch*)) and commercial powers of attorney (Article 54 UGB) notwithstanding; the appointment of directors is to be entered in the Commercial Register;

c. in the case of branches of foreign credit institutions or financial institutions, those natural persons authorised to manage the business of the branch and represent them externally; they shall be responsible for the applicable provisions in this federal act for branches of foreign credit institutions or financial institutions pursuant to Article 9 Administrative Penal Act (*VStG; Verwaltungsstrafgesetz*);

d. In the case of branches of credit institutions pursuant to Article 9 para. 1 and financial institutions pursuant to Article 11 or Article 13, those persons authorised to manage the business of the branch and represent it; they are responsible pursuant to Article 9 VStG for branches upholding the provisions stipulated in Article 9 para. 7, Article 11 para. 5 or Article 13 para. 4;

1a. Management body: a credit institution's body or bodies in its or their management or supervisory function, appointed in accordance with the national law of a Member State in order to set the institution's strategy, objectives and overall direction and to oversee and monitor management decision-making. The management body includes the persons who effectively direct the business of the institution; if a Member State's legislation provides for the management body to comprise various different bodies with specific functions, the requirements set for the management body in Directive 2013/36/EU shall apply only to those members of the management body who are authorised accordingly by legislation effective in the relevant Member State;

1b. Senior management: Those natural persons who exercise executive functions or perform executive activities within an institution and who are responsible and accountable to the management body for the day-to-day management of the institution;

2. Deposit guarantee schemes: deposit guarantee schemes pursuant to Article 7 para. 1 no. 1 of the Deposit Guarantee Schemes and Investor Compensation Act (*ESAEG; Einlagensicherungs- und Anlegerentschädigungsgesetz*), as published in Federal Law Gazette I No. 117/2015, including deposit guarantee schemes in a third country;

3. Deposit guarantee scheme: a deposit guarantee scheme pursuant to Article 1 para. 1 ESAEG;

4. Articles of association: the articles of association or cooperative society's charter, depending on the legal form of the undertaking;
5. Member State: any state which belongs to the European Economic Area;
5a. repealed
5b. repealed
6. Investor compensation schemes: investor compensation schemes pursuant to Article 44 no. 9 ESAEG including investor compensation schemes in a third country;
7. Resolution authority: a resolution authority pursuant to Article 2 no. 18 of the Bank Recovery and Resolution Act (*BaSAG; Bundesgesetz über die Sanierung und Abwicklung von Banken*), as published in Federal Law Gazette I No 98/2014;
8. Third country: any state which does not belong to the European Economic Area;
9. banking sector: a sector in Austria that covers several or all credit institutions;
10. third country group: a group pursuant to point 138 of Article 4 (1) of Regulation (EU) No 575/2013, the parent undertaking of which is established in a third country;
11. repealed
11a. repealed
11b. repealed
12. repealed
13. Foreign credit institution: an institution authorised in accordance with the legal provisions of its country of establishment to conduct business as defined in Article 1 para. 1 outside of the Member States;
14. Foreign financial institution: an institution authorised in accordance with the legal provisions of its country of establishment to conduct business as defined in Article 1 para. 2 outside of the Member States;
15. repealed
16. repealed
17. Representative office: a place of business which forms a legally dependent part of a credit institution not authorised in Austria and which does not carry out transactions pursuant to Article 1 para. 1;
18. Manager of a representative office: those natural persons authorised to manage the operations of the representative office and to externally represent the representative office; they shall be responsible for compliance by the representative offices with the obligations listed in Article 73 para. 2 pursuant to Article 9 VStG;
19. repealed
20. repealed
21. repealed
22. non-bank: any undertaking, including its branches, which is neither a credit institution nor a CRR credit institution authorised in a Member State or a third country;
23. global systemically important institution (G-SII):

a. a group headed by an EU parent institution, an EU parent financial holding company, or an EU parent mixed financial holding company; or
b. a credit institution or CRR institution established in another Member State that is not a subsidiary of an EU parent institution, of an EU parent financial holding company or of an EU parent mixed financial holding company, and

that was identified by the FMA pursuant to Article 23c para. 3 or an authority or body pursuant to Article 77 para. 5 no. 6 on the basis of Article 131 (2) or (2a) of Directive 2013/36/EU;

24. non-EU global systemically important institution (non-EU G-SII): a global systemically important non-EU CRR institution as defined in point 134 of Article 4 (1) of Regulation (EU) No 575/2013;
25. Systemically Important Institution (SII):
    a. a group headed by a EU parent institution, an EU parent financial holding company, or an EU parent mixed financial holding company, a parent institution in a Member State, a parent financial holding company in a Member State or a parent mixed financial holding company in a Member State, or
    b. a credit institution or CRR institution established in another Member State

    that was identified by the FMA or an authority or body pursuant to Article 77 para. 5 no. 6 on the basis of Article 131 (3) of Directive 2013/36/EU;
26. Internal Ratings Based (IRB) Approach: approach or model which is regulated in Articles 143(1), 221, 225, 312(2), 283, 363 and 259(3) of Regulation (EU) No 575/2013 and whose use by a credit institution requires a permission;
27. Risk of excessive leverage: risk resulting from a credit institution's de facto or potential leverage for its stability that requires unforeseen corrective measures to its business plan, including distressed selling of assets which could result in losses or in valuation adjustments to its remaining assets;
28. Model risk: the potential loss resulting from consequences of decisions that are based on the output of internal approaches, due to errors in the development, implementation or use of such approaches;
29. Investment service: An investment service or investment activity pursuant to Article 1 no. 3 WAG 2018;
30. repealed
31. repealed
32. repealed
33. Recognised clearing house: an organisation which
    a. is regulated and supervised by a government authority or a government-recognised authority;
    b. is directly accessible to members or indirectly accessible to non-members via a clearing member;

c. executes financial service transactions and itself acts as a counterparty in those transactions; and

d. requires its settlement partners to contribute reasonable margins to cover risks;

34. central securities depository: a legal person pursuant to Article 2 (1) (1) of Regulation (EU) No. 909/2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012, OJ L 257 of 28.08.2014 p. 1;

34a. named credit institution: a credit institution that is named by a central securities depository pursuant to Article 54 (2) (b) of Regulation (EU) No 909/2014;

35. investment fund shares: shares in an investment fund pursuant to Article 3 para. 2 no. 30 InvFG 2011.

36. repealed

37. repealed

38. repealed

39. repealed

40. debt instruments: securities which evidence debt claims as well as the financial instruments derived from them;

41. systemic risk: risk of disruption in the financial system as a whole or in parts of the financial system which could entail serious negative consequences for the financial system and the real economy;

42. material subsidiary: an undertaking pursuant to point 135 of Article 4 (1) of Regulation (EU) No 575/2013; classification as a material subsidiary shall be determined by the FMA by means of an administrative decision. The FMA must also send a copy of the administrative decision to the competent authority for the parent undertaking of the material subsidiary;

43. repealed

44. repealed

45. repealed

46. Real estate financing arrangements using debt instruments: loans and other financing agreements using debt instruments, intended for the construction or acquisition of either residential or commercial immovable property;

47. repealed

48. repealed

49. delta: the factor indicating the expected change in an option price as a proportion of a small change in the price of the instrument underlying the option, each expressed in monetary units;

50. repealed

51. repealed

52. repealed

53. repealed

54. gamma risk: the sensitivity of the delta to changes in the price of the underlying instrument;

55. vega risk: the sensitivity of the option price to fluctuations in the volatility of the underlying instrument;
56. repealed
57. repealed
57a. repealed
57b. repealed
57c. repealed
57d. repealed
57e. repealed
58. repealed
59. Severance payment contributions: contributions pursuant to Articles 6 and 7 of the Act on Severance and Retirement Funds for Salaried Employees and Self-Employed Persons (*BMSVG; Betriebliches Mitarbeiter- und Selbständigenvorsorgegesetz* – Federal Law Gazette I No. 100/2002) which were actually paid into the severance and retirement fund, including any interest charged for late payments;
59a. Severance fund contributions from self-employed persons: contributions pursuant to Articles 52 and 64 of the BMSVG, which have actually been paid into the severance and retirement fund (*BV-Kasse*), including any interest charged for late payments;
60. gender neutral remuneration policy: a remuneration policy based on equal pay for male and female workers for equal work or work of equal value;
61. repealed
61a. repealed
62. repealed
63. repealed
64. repealed
65. repealed
65a. repealed
66. repealed
67. repealed
68. repealed
69. repealed
70. repealed
71. contractual netting agreements: bilateral contracts for novation and other bilateral netting agreements; a bilateral contract for novation is considered to exist where mutual claims and obligations are automatically amalgamated in such a way that this novation fixes one single net amount each time novation applies and thus creates a legally binding, single new contract extinguishing former contracts;
72. repealed
73. repealed

74. repealed
75. repealed
76. repealed

Exceptions

Article 3. (1) The provisions of this federal act and of Regulation (EU) No 575/2013 shall not apply to:

1. the *Oesterreichische Nationalbank*, notwithstanding the duties assigned under this federal act;
2. central counterparties (CCP) pursuant to point (1) of Article 2 of Regulation (EU) No 648/2012, where they perform activities authorised pursuant to Articles 14 and 15 of Regulation (EU) No 648/2012;
3. the Austrian Post with regard to its money transfer services;
4. regional governments or local authorities which grant credit facilities or loans for the purpose of promotion or handle credit facilities or loans for regional governments or local authorities on the basis of authorisations under federal or provincial law;
5. official brokers, in conducting the transactions that they are permitted to conduct pursuant to Article 64 BörseG 2018;
6. undertakings which are promotion companies, do not receive deposits from the public and handle the promoted financing by means of the capital financing business, the guarantee business or the granting of credit facilities and loans (credit business) for regional governments or local authorities, and:
   a. in which regional governments or local authorities or other entities under public law hold at least 20%,
   b. in which, apart from entities under public law, only credit institutions and insurance undertakings participate, and
   c. in whose supervisory body, commensurate with the participation of entities under public law, persons have been appointed who were nominated by the entities under public law,

   and for whom the FMA did not determine by regulation, at their request, that Article 3 para. 1 no. 11 applies to the undertaking concerned;
7. the *Oesterreichische Kontrollbank Aktiengesellschaft* (OeKB) and the *Oesterreichische Entwicklungsbank AG* (OeEB) with regard to legal transactions in the context of export promotion pursuant to the Export Promotion Act 1981 (*AusfFG 1981; Ausfuhrförderungsgesetz*) published in Federal Law Gazette no. 215/1981 and the Export Finance Promotion Act 1981 (*AFFG; Ausfuhrfinanzierungsförderungsgesetz*) published in Federal Law Gazette No. 196/1967 with regard to Regulation (EU) No 575/2013 and Articles 22 to 24d, Article 39 para. 2d in conjunction with Article 69 para. 3, Article 39 paras. 3 and 4, with regard to Article 70 para. 4a nos. 1, 8, 9 and 11, Articles 70b to 70d as well as with regard to the inclusion of such legal transactions in the threshold amount pursuant to Article 5 para. 4; with regard to the

supervisory review pursuant to Article 69 para. 2 no reference shall be made to the rules contained in Regulation (EU) No 575/2013; the committees pursuant to Article 29 (nomination committee), Article 39c (remuneration committee), Article 39d (risk committee) and Article 63a para. 4 (audit committee) shall be established by the competent supervisory body of the *Oesterreichische Kontrollbank Aktiengesellschaft*; furthermore, the *Oesterreichische Kontrollbank Aktiengesellschaft* shall establish a risk management division as defined in Article 39 para. 5 that is operationally independent and a compliance function as defined in Article 39 para. 6 no. 2;

8. the Austrian Science Fund (FWF; *Fonds zur Förderung der wissenschaftlichen Forschung*) pursuant to Article 2 Research and Technology Promotion Act (*FTFG; Forschungs- und Technologieförderungsgesetz*), Federal Law Gazette No. 434/1982, and the Austrian Research Promotion Agency (*FFG; Österreichische Forschungsförderungsgesellschaft mbH*) with regard to the subsidised loans extended by these organisations;
9. the conduct of exchange bureau business (Article 1 para. 1 no. 22) with regard to Articles 31 to 34, Articles 36, 37 and 39a, Articles 42 to 65, unless cooperation in the preparation of consolidated financial statements for the responsible undertaking pursuant to Article 30 para. 6 is required, Article 1 para. 3, Article 5 para. 1 nos. 5, 12 and 13, Articles 27a to 28b, Article 30, Article 39 paras. 3 and 4 as well as Parts Two to Eight and Part One, Title II of Regulation (EU) No 575/2013, where it would be a superordinate credit institution, Articles 66 to 68, Article 73 para. 1 no. 1, Articles 74 to 76, Article 78 paras. 1 to 7, of Section XIX;
10. credit institutions pursuant to Article 5 no. 3 Corporate Tax Act 1988 (*KStG; Körperschaftsteuergesetz*) with regard to Articles 39a and 74, as well as Part 7a, Articles 394 and 415, Part Three, Title III and Part Eight of Regulation (EU) No 575/2013;
11. credit institutions which are promotion companies, do not receive deposits from the public and exclusively conduct capital financing business, guarantee business or grant credit facilities and loans (credit business) for the purpose of granting and administering promotions by regional governments or local authorities or European Union institutions and, in accordance with lits. a and b provided that:
    a. only entities under public law, credit institutions or insurance undertakings have an interest in said credit institutions;
    b. the following provisions of this Federal Act shall apply to such credit institutions: Article 5 para. 1 nos. 1 to 4a and nos. 6 to 14, Articles 38 to 39b with the exception of Article 39 para. 2d in conjunction with Article 69 para. 3, Article 41 to 42, Article 65, Articles 69 to 70a, Articles 71 to 73a and Articles 98 to 99e, although with regard to the supervisory review pursuant to Article 69 para. 2 no reference shall be made to the norms set forth in Regulation (EU) No 575/2013.
12. central securities depositories, if they are providing the core services that they are permitted to under Articles 16 and 19 pursuant to Section A of the Annex of Regulation (EU) No. 909/2014 and non-banking-type ancillary services pursuant to Section B of the Annex of Regulation (EU)

No. 909/2014 as long as they are providing the banking-type ancillary services they are permitted to provide pursuant to Article 54 or Article 56 of Regulation (EU) No. 909/2014 pursuant to Section C of the Annex of Regulation (EU) No. 909/2014, although only with regard to Parts Three, Six to Seven A with the exception of Article 430 (1) point c of Regulation (EU) No. 575/2013 as well as Articles 22 to 24d of this federal act;

13. named credit institutions, to the extent that they are providing the banking-type ancillary services that they are permitted to conduct pursuant to Article 54 or Article 56 of Regulation (EU) No 909/2014, pursuant to Section C of the Annex of Regulation (EU) No 909/2014, with regard to Parts Three, Six to Seven A of Regulation (EU) No 575/2013 as well as Articles 22 to 24d of this federal act.

(2) The provisions of Part Six of Regulation (EU) No 575/2013, Article 27a, Article 39 para. 2b no. 7 in conjunction with para. 4, Article 39 para. 3 and Article 74 para. 6 no. 3 lit. a in conjunction with Article 74 para 1 of this federal act are not applicable to:

1. credit institutions which do not have a licence to conduct savings deposit business (Article 1 para. 1 no. 1) and, on the basis of their articles of association, exclusively or predominantly conduct money-market, syndicated lending, fiduciary or commission business, especially for the federal government or other regional governments or local authorities, and for export finance business;
2. credit institutions which do not have a licence to conduct savings deposit business (Article 1 para. 1 no. 1) and, on the basis of their articles of association, exclusively or predominantly conduct guarantee business or capital finance business;
3. credit institutions which do not have a licence to conduct savings deposit business (Article 1 para. 1 no. 1) and, on the basis of their articles of association, exclusively or predominantly grant medium-term or long-term loans for investment purposes and do not grant revolving credit facilities;
4. repealed
5. existing credit institutions whose annual total balance sheet assets do not exceed EUR 73 million, which do not have a licence to conduct savings deposit business, and whose exclusive purpose of business is to grant medium-term or long-term loans for investment purposes, and for which funds are predominantly raised by issuing debt securities;
6. credit institutions which do not have a licence to conduct savings deposit business (Article 1 para. 1 no. 1) and, on the basis of their articles of association, exclusively or predominantly issue debt securities the proceeds of which are made available to credit institutions in the same sector if those credit institutions bear joint and several liability;
7. repealed
8. credit institutions which exclusively issue and administer credit cards, including the directly associated extension of credit and provision of guarantees;

9. credit institutions, which do not hold a licence for receiving eligible deposits (Article 7 para. 1 no. 4 ESAEG) and which upon the basis of their articles of association refinance themselves exclusively with matching maturities on the interbank market.

(2a) The provisions of Parts Six and Seven of Regulation (EU) No 575/2013, of Article 27a, Article 39 para. 2b no. 7 in conjunction with para. 4, Article 39 para. 3 and Article 74 para. 6 no. 3 lit. a in conjunction with Article 74 para. 1 of this federal act do not apply to credit institutions that, on the basis of their articles of association, predominantly conduct factoring business.

(3) The provisions of this federal act and of Regulation (EU) No 575/2013 shall not apply to the following undertakings if they conduct the transactions listed in Article 1 para. 1 as part of their core transactions:

1. contract insurance undertakings, with the exception of Article 31 para. 2, Article 38 para. 4, Article 41 paras. 1 to 4, 6 and 7;
2. *Pensionskassen* (pension companies) pursuant to the *Pensionskassen* Act (*PKG; Pensionskassengesetz*);
3. undertakings recognised as non-profit housing associations;
4. social insurance institutions;
5. undertakings which engage in pawn broking business;
6. recognised third-country investment firms pursuant to point (25) of Article 4(1) of Regulation (EU) No 575/2013, local firms pursuant to point (4) of Article 4(1) of Regulation (EU) No 575/2013 and undertakings established in a third country pursuant to Article 29 para. 1 nos. 3, 4 and 6 BörseG 2018, each with regard to the transactions named in Article 1 para. 1 no. 7 lit. b to f and no. 7a, which those undertakings conduct commercially in connection with their membership in a securities exchange, as long as they limit their activities in Austria exclusively to the commercial execution of transactions covered by their licences as members of an exchange;
7. AIFMs pursuant to Article 2(1)(a) to (c) of Directive 2011/61/EU, as long as they do not exceed the extent of their authorisation in accordance with said Directive.

(4) Articles 4 and 5 as well as the other provisions of this federal act shall only apply to credit institutions which are authorised to conduct investment fund business insofar as is required by the InvFG 2011; para. 8 shall be applied.

(4a) For credit institutions authorised to conduct real estate investment fund business pursuant to Article 1 para. 1 no. 13a, the following shall apply:

1. Articles 22 to 24d, 25, 27a, 28a paras. 5a and 5b, Article 39 paras. 2d, 3, 4, 6 and the final sentence of para. 5, Article 39a, Article 42 para. 1 final sentence, Article 43 para. 1a, Article 57 para. 5, Article 69 paras. 3 to 3d and 6, Article 70 paras. 1e, 4a and 4b, Article 70b to 70d, Article 73 para. 1b and 6, Article 74 para. 1 in conjunction with para. 6 no. 3 lit. a as well as Article 75 of this Federal Act and Parts 3 to 8 of Regulation (EU) No 575/2013 shall not be applicable;

2. regardless of the own funds requirement, the credit institution's own funds must not fall below the amount to be calculated in accordance with Article 10 para. 5 no. 1 WAG 2018.

(5) If the sole business activity of a special purpose vehicle consists in issuing debt securities, in taking out loans, in entering into hedges and in ancillary transactions based on this business activity in order to purchase an originator's exposures pursuant to point (1) of Article 5 of Regulation (EU) No 575/2013 or to assume the risks associated with such exposures, this business activity shall not constitute banking business; however, with regard to exposures pursuant to point (1) of Article 5 of Regulation (EU) No 575/2013 where the originator is a credit institution, the special purpose vehicle is obliged to comply with Article 38 in the same way as the credit institution acting as originator and the credit institution that is assigned responsibility for administering the exposures.

(6) Article 1a para. 2 and Articles 22 to 24d shall not apply to credit institutions that, on the basis of their articles of association, exclusively issue debt securities as trustees for the account of other credit institutions, with the issuing credit institution bearing only the management risk.

(7) For credit institutions authorised to conduct severance and retirement fund business, the following shall apply:

a. Article 5 para. 1 no. 5 is to be applied on the condition that the initial capital is EUR 1.5 million instead of EUR 5 million;

b. Article 69a para. 2 is to be applied on the condition that the own funds requirement pursuant to Article 20 BMSVG as shown in the quarterly report pursuant to Article 39 BMSVG for the fourth quarter of the last calendar year also be used in the calculation of the cost figure;

c. Articles 1 para. 3, Articles 22 to 24d, 27a, 28a paras. 5a and 5b, Article 39 para. 5 final sentence, Article 39a, Article 42 para. 1 final sentence, Article 43 para. 1a, Article 57 para. 5, Article 69 paras. 3 to 3d and 6, Article 70 paras. 1e, 4a and 4b, Article 70b to 70d, Article 73 para. 1b and 6, Article 74 para. 1 in conjunction with para. 6 no. 3 lit. a as well as Article 75 of this Federal Act and Articles 89 to 91 as well as Parts 3 to 8 of Regulation (EU) No 575/2013 shall not be applicable;

d. regardless of the capital requirements pursuant to a) and Article 20 BMSVG, the capital of the severance and retirement fund must not at any time be allowed to fall below the amount calculated in accordance with Article 13 (1) of Regulation (EU) 2019/233, with Annex 1 to Article 40 BMSVG, Form B, Item B.2. being referred to for the calculation of operating expenses;

e. Article 5 para. 1 no. 9a, Article 28a para. 5 no. 5, Article 29 and Article 42 para. 6 are to be applied on condition that the assets allocated to the collective investment undertaking are not included in the calculation of total assets.

(8) For credit institutions, which are authorised to conduct investment fund business, real estate investment fund business or severance and retirement fund business, Article 70 para. 1 no. 3 shall apply in that on-site inspections shall be performed by the FMA; such on-site inspections shall also include the respective custodian banks with regard to compliance with the provisions of the

InvFG 2011, the ImmoInvFG or the BMSVG. Article 70 para. 1a and 1b and Article 79 para. 4 shall not apply to these credit institutions. Article 79 para. 4a are applicable, on the understanding that only sentences one to three and the final sentence shall apply.
(9) With regard to compliance with Article 39 para. 2b no. 11, Article 41, Article 70 para. 1 no. 3 shall apply such that on-site inspections shall be performed by the FMA. Article 70 para. 1a and 1b and Article 79 para. 4 shall not apply in this case.
(10) Parts 3 to 8 of Regulation (EU) No 575/2013 as well as Articles 22 to 24d and Article 39a shall not apply to credit institutions that are not CRR credit institutions, with regard to the taking of monies from notarial trust transactions pursuant to Article 109a of the Notarial Code (*NO; Notariatsordnung*), published in Reich Law Gazette No. 75/1871, the conducting of current account business in this contexts as well as the investment of such monies.
(11) The FMA shall notify the European Banking Authority (EBA) (Regulation (EU) 1093/2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC, OJ L 331, 15.12.2010, p. 12) while informing the Federal Minister of Finance at the same time about those provisions in this Federal Act that permit credit institutions that are not CRR credit institutions to take deposits or other repayable funds from the public. This notification by the FMA must in particular also contain details about to what extent the provisions in this Federal Act and those in Regulation (EU) No 575/2013 shall apply to such credit institutions.

SECTION II: LICENSING

Granting of Licences

Article 4. (1) The performance of the transactions listed in Article 1 para. 1 require a licence issued by the Austrian Financial Market Authority (FMA). Where the performance of such business activities is covered by a licence pursuant to Article 3 WAG 2018 the granting of a licence in accordance with the first sentence shall not be permissible unless the undertaking fulfils the conditions pursuant to lit. b of Article 4 (1) point 1 of Regulation (EU) No 575/2013, and

1. the average of monthly total assets of the undertaking, calculated over a period of 12 consecutive months, is equal to or exceeds EUR 30 billion; or
2. the average of monthly total assets of the undertaking, calculated over a period of 12 consecutive months, is below EUR 30 billion and the undertaking belongs to a group in which the consolidated balance sheet total of all undertakings in the group, that individually have total assets of less than EUR 30 billion and conduct dealing on own account (Article 1 no. 3 lit. c WAG 2018) or underwriting of financial instruments and/or placing of financial instruments with a firm commitment basis (Article 1 no. 3 lit. f WAG 2018), is equal to or exceeds EUR 30 billion, in both cases calculated as an average over a period of 12 consecutive months.

If the undertaking held a licence pursuant to Article 3 WAG 2018 at the point in time that it or the group exceeded one of the thresholds stated in no. 1 or 2, then it shall be allowed to continue its securities business within the scope of that licence until the FMA has reached a legally binding decision about the application for a licence in accordance with the first sentence. Where the FMA determines, having received information pursuant to Article 112 para. 3 WAG 2018, that an undertaking pursuant to Article 5 shall be required to be authorised as a credit institution, it shall inform the undertaking about this and shall initiate the licensing procedure with effect from the day upon which it was informed. In cases of reauthorisation, the FMA shall ensure that the process is as streamlined as possible and that information from existing authorisations shall be taken into account.

(2) Valid licences must be issued in writing, otherwise they will be considered void; licences may be issued subject to the appropriate conditions and requirements and limited to one or more of the types of transactions listed under Article 1 para. 1, and the scope of the licence may exclude parts of the individual types of banking transactions.

(3) The applicant must enclose the following information and documents with the application for a licence:

1. the applicant's place of establishment and legal form of business organisation;
2. the applicant's articles of association;
3. the applicant’s business plan, from which the type of planned transactions, the organisational structure of the credit institution stating parent undertakings, financial holding companies and mixed financial holding companies within its group of credit institutions, the planned strategies and processes for the monitoring, controlling and limitation of risks arising from banking transactions and banking operations pursuant to Article 39 and the procedures and plans pursuant to Article 39a can be determined; furthermore the business plan must also contain
   a. a budget calculation and
   b. if the application for a licence includes an application to receive deposits, a forecast about the level of covered deposits pursuant to Article 7 para. 1 no. 5 ESAEG

   for the first three years;
4. the amount of initial capital freely available to the directors without limitations or charges in Austria;
5. the identity of and the amount contributed by owners who possess a qualifying holding in the credit institution, an indication of the group structure if those owners belong to a group of companies, as well as the information required for the purpose of assessing the reliability of the owners, the legal representatives and any of the owners' personally liable members;

5a. unless qualifying holdings pursuant to no. 5 exist, the identity of and the amount contributed by the twenty largest shareholders or members and an indication of the group structure if those owners belong to a group of companies;

6. the names of the designated directors and their qualifications for operating the undertaking;

7. The identity and address or place of establishment of all those natural or legal persons used by the credit institution outside of its place of establishment in the provision of remittance services (agents).

(4) A foreign credit institution (Article 2 no. 13) which applies for a licence to operate a branch in Austria must enclose the following information and documents in addition to the information indicated in para. 3 nos. 1 to 3, 5 and 6:

1. the last three annual financial statements of the undertaking;
2. the transactions conducted by the foreign undertaking pursuant to Article 1 para. 1 as well as the locations at which those transactions are conducted;
3. the amount in euro of the initial endowment freely available to the directors without limitations or charges in Austria;
4. the decision-making powers granted to the management of the branch as well as those of the head office whose consent is required for certain internal decisions;
5. a written declaration from the supervisory authority responsible for the undertaking's head office stating that it has no objections to the establishment of a branch of this undertaking in Austria.

(5) Before issuing a licence to a credit institution, the FMA is required to inform the competent authority in the undertaking's home Member State about the application if:

1. the application pursuant to para. 3 was submitted by a subsidiary of a credit institution authorised in another Member State as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013, of an asset management company as defined in Article 2(1)(b) of Directive 2009/65/EC (UCITS management company), of an investment firm, an e-money institution, a payment institution or an insurance undertaking;
2. the application in accordance with para. 3 was submitted by a subsidiary of the parent undertaking of a credit institution authorised in another Member State pursuant to point (1) of Article 4 (1) of Regulation (EU) No. 575/2013, of a UCITS management company, or an investment firm, of an e-money institution, of a payment institution or of an insurance undertaking;
3. the application pursuant to para. 3 was submitted by a credit institution controlled by the same natural or legal person as a credit institution authorised in another Member State as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013, an UCITS management company, an investment firm, an e-money institution, a payment institution or an insurance undertaking.

The FMA shall obtain opinions from the authority mentioned above when the suitability of the persons who possess qualifying holdings pursuant to Article 5 para. 1 no. 3 as well as the reputation and experience of the directors pursuant to Article 5 para. 1 nos. 6 to 9 involved in the management of another undertaking in the same group are reviewed.

(6) Prior to issuing a licence to a credit institution, the FMA shall simultaneously consult the *Oesterreichische Nationalbank* and shall notify the Federal Minister of Finance; the notification to the

Federal Minister of Finance must also include the licence application as well as any enclosures to the application and any supplementary documents received at a later point in time. If the licence application includes the authorisation to receive deposits (Article 7 para. 1 no. 4 ESAEG) or for conducting investment services that are subject to guarantee obligations (Article 45 para. 4 ESAEG), then the FMA shall also consult with the deposit guarantee schemes prior to granting the licence; the FMA shall be authorised for this purpose to forward the information received pursuant to Article 4 para. 3 no. 3.

(7) The FMA is authorised to inform the public that a specifically named natural or legal person (person) is not authorised to perform certain bank transactions, where this person has given cause to such action and this is necessary and proportionate in terms of possible disadvantages to the concerned party, by means of an announcement in the internet, in the Official Gazette of the Wiener Zeitung (*Amtsblatt zur Wiener Zeitung*) or in a newspaper distributed throughout Austria. The above-indicated publication measures may be taken in full or in part. The person must be clearly identifiable in the publication; for this purpose the FMA may also indicate, if known, the business address or residential address, company register number, internet address, telephone number and fax number. The party concerned by the publication can file a request to the FMA to verify the lawfulness of such publication by way of a procedure concluded with an administrative decision. In this case, the FMA shall notify the public of the initiation of such a procedure in the same way. If the investigation concludes that the publication was unlawful, the FMA shall correct the publication, or, at the request of the concerned party, revoke it or remove it from the internet.

(8) The FMA must provide information within a reasonable period of time on the scope of licences issued to credit institutions based upon individual requests. The FMA shall maintain a database containing information on the scope of the existing licences issued to credit institutions and to enable queries of these data via the internet.

Article 5. (1) The licence shall be issued if:

1. the undertaking is to be established as a credit institution in the legal form of a joint-stock company, a cooperative society or a savings bank;
2. the articles of association do not contain any provisions which would not ensure the security of the assets with which the credit institution is entrusted and the proper execution of transactions pursuant to Article 1 para. 1;

2a. the planned strategies and processes for the monitoring, controlling and limitation of risks arising from banking transactions and banking operations pursuant to Article 39 and the procedures and plans pursuant to Article 39a contained in the business plan submitted pursuant to Article 4 para. 3 no. 3 are effective and are appropriate for the nature, scope and complexity of the planned banking transactions;

3. the persons who hold qualifying holdings in the credit institution meet the requirements stipulated in the interest of sound and prudent management of the credit institution, and no facts are known which would raise doubts as to the personal reliability of those persons; if

such facts are known, then the licence may only be issued if the doubts are proven to be unfounded;

4. the FMA is not prevented from fulfilling its supervisory duties by the credit institution's close links to other natural or legal persons;

4a. the FMA is not prevented from fulfilling its monitoring duties by the laws, regulations or administrative provisions of a third country governing a natural or legal person with close links to the credit institution, or by difficulties involved in the enforcement of those laws, regulations or administrative provisions;

5. the initial capital or initial endowment amounts to at least EUR 5 million and is freely available to the directors without restrictions or charges in Austria;

6. no reasons for exclusion as specified in Article 13 paras. 1 to 3, 5 and 6 Trade Code 1994 (*GewO 1994; Gewerbeordnung*), Federal Law Gazette No. 194/1994 in the applicable version, are identified with regard to any of the directors, and bankruptcy proceedings have not been initiated for the assets of any of the directors or any entity other than a natural person on whose business a director has or has had a decisive influence, unless a reorganisation plan was agreed upon and fulfilled in the bankruptcy proceedings; this also applies to comparable situations which have arisen in a foreign country.

7. the personal finances of the directors are in order and no facts are known which would raise doubts as to their personal reliability, honesty and independence of mind as required for conducting transactions pursuant to Article 1 para. 1; membership of an undertaking associated with the credit institution or a legal entity associated with the credit institution does not in its own right constitute a circumstance which would substantiate doubts raised about the independence of mind of a director; when reviewing their reliability, the FMA must also consult the database set up by EBA pursuant to Article 69(1) of Directive 2013/36/EU; when such facts are known, the licence shall only be granted where such doubts are proven to be unfounded;

8. on the basis of their prior education, the directors possess the professional qualifications and experience necessary for operating the credit institution. The professional qualifications of the directors require that they possess sufficient theoretical and practical knowledge of the transactions applied for pursuant to Article 1 para. 1 as well as management experience; professional qualification for the management of a credit institution is to be assumed if the directors have carried out management activities in a company of comparable size and business type for at least three years;

9. with regard to a director of a credit institution who is not an Austrian citizen, no reasons for exclusion as specified in nos. 6, 7, 8 or 13 exist in the director's country of citizenship; this must be confirmed by the banking supervisor in the director's home country; however, if such a confirmation cannot be obtained, the director in question must provide credible evidence of this, certify the absence of the named reasons for exclusion and submit a declaration stating whether any of the named reasons for exclusion exist;

9a. the directors dedicate sufficient time to the performance of their duties at the credit institution; if a director carries out several activities in a managerial function or as member of a supervisory board, they will have to consider the circumstances in the individual case as well as the nature, scope and complexity of the credit institution's business; the directors of credit institutions considered to be of significant relevance as defined in para. 4 shall only be allowed to exercise one activity in a managerial function as well as an additional two activities as a supervisory board member; with regard to calculating the number of activities, several activities in a managerial function and as a member of the supervisory board shall be counted as a single activity, where they are held:

a. within the same group consisting of:

aa) the EU parent institution, its subsidiaries and own subsidiaries or other undertakings that belong to the same group of credit institutions, insofar as all the aforementioned are included within the scope of supervision on a consolidated basis or are subject to supplementary supervision pursuant to Article 6 para. 1 of the Financial Conglomerates Act (*FKG; Finanzkonglomerategesetz*), or

bb) bb) affiliated undertakings pursuant to Article 228 para. 3 UGB, Article 245a UGB or Article 15 of the Stock Corporation Act (*AktG; Aktiengesetz*);

b. in the case of members falling within the same institutional protection scheme as referred to in Article 113(7) of Regulation (EU) No 575/2013; or

c. in the case of undertakings in which the credit institution has a qualifying holding as referred to in point (36) of Article 4(1) of Regulation (EU) No 575/2013

Activities in a managerial function or as a member of a supervisory board of organisations that do not primarily pursue commercial aims should not be included in the calculation. The FMA may approve applications for this restriction to be exceeded by one activity as a member of a supervisory board. The FMA shall inform the EBA of such approvals on a regular basis;

10. the centre of at least one director's vital interests lies in Austria;

11. at least one director has a command of the German language;

12. the credit institution has at least two directors and the articles of association rule out individual powers of representation, individual powers of commercial representation and individual commercial powers of attorney for the entire business operation, or, in the case of credit cooperatives, the management of the business is restricted to the directors;

13. none of the directors practises another main profession outside the banking industry or outside insurance undertakings or *Pensionskassen* or outside payment institutions or e-money institutions or outside investment firms or investment service providers;

14. the place of establishment and head office are located in Austria;

15. the conditions set forth in Article 5a are met.

(2) A credit institution and any designation protected in accordance with Article 94 may only be entered in the Commercial Register as a company or branch if the corresponding legally effective

administrative decisions are presented as originals or certified copies. These administrative decisions need not be presented if the conduct of banking transactions is permitted pursuant to Article 9, Article 11, Article 13 or Article 103 no. 5. The competent court is to deliver rulings on such entries in the Commercial Register to the FMA and the *Oesterreichische Nationalbank*. The FMA must convey the information received in accordance with Article 9 paras. 2 and 5, Article 11 para. 3 and Article 13 para. 3 to the competent court.

(3) In cases where a licence is issued for the operation of a branch of a foreign credit institution in Austria, the FMA must convey a copy of the administrative decision to the supervisory authority responsible for the credit institution's head office.

(4) A credit institution shall be considered to be of significant relevance if on average its total assets have reached or exceeded EUR 5 billion at the relevant reporting dates of the past three completed business years; the following credit institutions shall always be deemed to be of significant relevance:

1. credit institutions which are not considered less significant pursuant to Article 6(4) of Regulation (EU) No 1024/2013 or, in the case of a significant supervised group pursuant to Article 2(22) of Regulation (EU) No 468/2014, only the consolidating credit institution pursuant to Part One of Regulation (EU) No 575/2013, or
2. credit institutions that have been classified by the FMA as a globally systemically important institution or as a systemically important institution, or in the case of a group classified as a globally systemically important institution or as a systemically important institution, only the consolidating credit institution pursuant to Part 1 of Regulation (EU) No 575/2013.

Intermediate EU Parent Undertaking

Article 5a. (1) Where the applicant is a third country group pursuant to Article 4 para. 3 of this federal act or pursuant to Article 3 WAG 2018, to which at least one further CRR institution established in the European Union belongs, then the licence shall only be granted in the case that the applicant and the other CRR institutions established in the European Union within the same third country group have the same intermediate EU parent undertaking or where the applicant itself is the intermediate EU parent undertaking.

(2) By way of derogation from para. 1 the FMA may also grant the licence where the applicant and the other CRR-institutions in the same third country group have two intermediate EU parent undertakings and the FMA has determined that the establishment of a single intermediate EU parent undertaking:

1. would be incompatible with the mandatory requirement for the separation of business lines, prescribed by rules or the supervisory authorities of the third country in which the ultimate parent undertaking of the third-country group has its headquarters, or

2. would weaken the resolvability compared to a situation with two intermediate EU parent undertakings in accordance with an assessment drawn up by the competent resolution authority for the intermediate EU parent undertaking.

(3) A CRR-credit institution or a financial holding company or mixed financial holding company licensed pursuant to Article 7b of this federal act or authorised pursuant to Article 21a of Directive 2013/36/EU shall in any case be considered to be an intermediate EU parent undertaking. Furthermore, a CRR-investment firm pursuant to Article 2 no. 3 BaSAG shall also be considered as an intermediate EU parent undertaking, where:

1. none of the CRR institutions listed in para. 1 is a CRR-credit institution, or
2. a second intermediate EU parent undertaking is required to be established in conjunction with investment activities, in order to meet a mandatory requirement pursuant to para. 2 no. 1, however in this case with regard to the second intermediate EU parent undertaking.

(4) Paras. 1 to 3 shall not apply where the total assets within the European Union of the third-country group are less than EUR 40 billion. The total assets within the European Union of the third-country group is the total of:

1. the total assets of all CRR institutions of the third-country group within the European Union, with, depending on applicability, either the consolidated total assets of the respective CRR institution or the total assets of the respective CRR institution on an individual basis applying, and
2. The total assets of all licensed branches within the European Union of the third-country group pursuant to Article 5 of this federal act, Directive 2013/36/EU, Article 21 of the Securities Supervision Act 2018 (*WAG 2018; Wertpapieraufsichtsgesetz*), Directive 2014/65/EU or Regulation (EU) No 600/2014.

(5) The FMA shall submit the following information to the EBA regarding every third country group that is active in Austria:

1. the company name and total assets of the CRR-institutions incorporated in Austria that belong to the third country group;
2. the company name and total assets of the branches belonging to the third country group, which are licensed in Austria pursuant to Article 5 of this federal, Article 21 WAG 2018 or Regulation (EU) No 600/2014, as well as the types of activities that that these branches are authorised to conduct;
3. the company name and type of intermediate EU parent undertaking pursuant to para. 3, provided one was established in Austria as well as the name of the third country group to which it belongs.

(6) For the purposes of this Article the term “CRR institution” also covers CRR investment firms.

Revocation of Licences

Article 6. (1) The FMA may revoke licences in cases where:

1. the business operations stipulated in the licence do not commence within twelve months of the date on which the licence was issued; or
2. the business operations stipulated in the licence have not been conducted for six consecutive months.

(2) The FMA must revoke licences in cases where:

1. the licence was obtained by providing false information or taking deceptive action, or by other fraudulent means;
2. the credit institution fails, with the exception of the prudential requirements pursuant to Articles 92a and 92b of Regulation (EU) No 575/2013, to fulfil the prudential requirements pursuant to Parts Three, Four and Six of Regulation (EU) No 575/2013 or Articles 70b or 70d, or to meet its obligations towards its creditors;
3. the conditions pursuant to Article 70 paras. 4 no. 3 or Article 70 para. 4b no. 3 exist;
4. bankruptcy proceedings are initiated for the assets of the credit institution;
5. the credit institution has adopted a corporate resolution to dissolve the undertaking and all banking transactions have been settled;
6. the credit institution uses its licence exclusively for dealing on its own account or on the account of others (Article 1 para. 1 nos. 7 and 7a) or for third-party securities underwriting (Article 1 para. 1 no. 11) and its average total assets for a period of five consecutive years were below the thresholds stated in lit. b of Article 4 (1) point 1 of Regulation (EU) No 575/2013. In this instance, where the conditions pursuant to Article 3 para. 5 WAG 2018 are met, the FMA shall convert the licence pursuant to Article 4 into a licence pursuant to Article 3 para. 5 WAG 2018 by means of an administrative decision.

(3) Paras. 1 and 2 notwithstanding, the FMA must revoke the licence of a branch of a foreign credit institution if the licence issued to its head office is revoked.

(4) An administrative decision revoking a licence will have the effect of a resolution to dissolve the credit institution unless the undertaking ceases to conduct the transactions pursuant to Article 1 para. 1 as its purpose of business and changes the undertaking's name pursuant to Article 94 within three months of the date on which the administrative decision goes into effect. The FMA is to convey a copy of this administrative decision to the Commercial Register Court and to the competent authority in the case of branches of foreign credit institutions; the revocation of the licence is to be entered in the Commercial Register.

(5) At the FMA's request, the court must appoint liquidators if the other persons appointed for the purpose of bankruptcy administration are unable to ensure orderly bankruptcy settlement. If the FMA is of the opinion that the persons appointed for the purpose of bankruptcy administration are unable to ensure orderly bankruptcy settlement, the FMA must request suitable liquidators at the competent first instance commercial court responsible for the credit institution's place of establishment; this court is to rule on the case in the process of alternative dispute resolution.

Lapsing of licences

Article 7. (1) The licence is considered to lapse:

1. upon expiration of its term;
2. if one of the conditions for dissolution is met (Article 4 para. 2);
3. if the licence is relinquished;
4. repealed;
5. repealed;
6. upon the entry of a merger or demerger of credit institutions in the Commercial Register for the transferring credit institution(s), or upon the entry of a universal successor in the Commercial Register on the basis of a request in accordance with Article 92 due to the existence of double or multiple licences at one institution;
7. upon the entry of a European company (*Societas Europaea; SE*) or a European cooperative society (*Societas Cooperativa Europaea; SCE*) in the register of the new country of establishment.

(2) The lapsing of a licence shall be declared by the FMA by means of an administrative decision. Article 6 paras. 4 and 5 are applicable in this context.

(3) The relinquishment of a licence (para. 1 no. 3) is only permissible in writing and only in cases where all banking transactions have previously been settled.

Dissolution of a Credit Institution

Article 7a. (1) The FMA shall be informed in writing at least three weeks in advance of a meeting of a corporate body of a credit institution at which the shareholders are to vote on the dissolution of the credit institution, of the purpose of the meeting; any comments delivered to the credit institution by the FMA are to be read prior to taking the resolution at the meeting of the corporate body, otherwise the resolution to dissolve the credit institution will be rendered void in accordance with Article 199 para. 1 no. 3 AktG 1965. The resolution to dissolve the credit institution in accordance with Article 199 para. 1 no. 3 AktG 1965 will also be rendered void if the FMA is not informed as specified in the first sentence of this provision. Except in the cases indicated under Article 200 para. 2 AktG 1965, the invalidation of a resolution to dissolve a credit institution is reversed if the FMA later declares its consent in writing. The entry of the dissolution in the Commercial Register in accordance with Article 204 AktG 1965 must be accompanied by a confirmation from the FMA regarding compliance with the information obligations set forth in this paragraph. The FMA is also authorised to repeal the action of annulment within a period of three years following the entry of the resolution revoking the licence in the Commercial Register. The provisions of this paragraph also apply mutatis mutandis to credit institutions which are not organised as stock corporations.

(2) Where a resolution to dissolve a credit institution is notified to the FMA in accordance with Article 73 para. 1 no. 1, the FMA must inform the competent supervisory authority without delay in

any host Member State in which a credit institution operates a branch and inform that authority of the concrete effects of the resolution to dissolve the credit institution.
(3) The liquidators must publish the dissolution in the Official Journal of the European Communities and in at least two national newspapers in each host Member State. This announcement must contain in particular the names of the liquidators and an indication that the dissolution is subject to Austrian law.
(4) The liquidators must individually inform known creditors whose usual place of residence, domicile or place of establishment is in a Member State other than Austria of the dissolution without delay. For this notification, the FMA must use a form with the heading "Invitation to lodge a claim. Time limits to be observed" in all official languages of the Member States. In this notification, the FMA must indicate the addressee with whom claims are to be lodged; where the credit institution is a stock corporation, the provisions of Article 213 AktG 1965, or otherwise the analogous provisions in the other relevant company laws, must be included in this invitation.
(5) Any creditor whose domicile, usual place of residence or place of establishment is in a Member State other than Austria can lodge claims and submit observations relating to claims in the official language of that Member State. In such cases, the lodgement of a claim must bear the heading "*Anmeldung einer Forderung*" (lodgement of claim) or "*Erläuterung einer Forderung*" (submission of observations relating to claims) in the German language. The liquidators may request a German translation of the lodgement or observations.
(6) The liquidators must inform creditors of the status of the liquidation process on a yearly basis by way of announcement in the publication media indicated in para. 3. Known creditors whose usual place of residence, domicile or place of establishment is in a Member State other than Austria must be informed individually.

Granting of licences for financial holding companies and mixed financial holding companies

Article 7b. (1) Parent financial holding companies, parent mixed financial holding companies, EU parent financial holding companies and EU parent mixed financial holding companies shall require a licence provided they are not exempted from the obligation to hold a licence due to their fulfilling the conditions of para. 6 or of Article 21a (4) of Directive 2013/36/EU; they shall also be required to apply for a licence, where the consolidating supervisor, has determined that the conditions in para. 6 or Article 21a (4) of Directive 2013/36/EU no longer exist. Other financial holding companies or mixed financial holding companies incorporated in Austria shall require a licence pursuant to this Article or Article 21a of Directive 2013/36/EU, where based on the provisions in this federal act, Directive 2013/36/EU or Regulation (EU) No 575/2013 they are subject to sub-consolidation provided they are not exempted from the obligation to hold a licence due to their fulfilling the conditions of para. 6 or of Article 21a (4) of Directive 2013/36/EU; they shall also be required to apply for a licence, where the consolidating supervisor has determined that the conditions in para. 6 or Article 21a (4) of Directive 2013/36/EU no longer exist.

(2) The financial holding companies or mixed financial holding companies listed in para. 1 shall submit an application to the consolidating supervisor for granting a licence or exemption from the obligation to hold a licence pursuant to para. 6 or Article 21a (4) of Directive 2013/36/EU. In cases where the FMA is not the consolidating supervisor, the financial holding companies or mixed financial holding companies listed in para. 1 shall also submit this application to the FMA at the same time.

(3) The applicant shall submit the following information and documentation along with their application pursuant to para. 2:

1. information about the organisational structure of the group, to which the financial holding company or the mixed financial holding company belongs, stating clearly about their subsidiaries and as applicable parent undertakings, as well as the place of incorporation and nature of the activities of the individual undertakings within the group,
2. the names of the persons who actually run the financial holding company or the mixed financial holding company (the directors), including stating whether the conditions pursuant to Article 30 para. 7a are met,
3. where the financial holding company or the mixed financial holding company has a credit institution as a subsidiary, details that are necessary for checking the criteria pursuant to Article 20b para. 1,
4. details about the internal organisation and distribution of duties within the group and
5. all other information that could be necessary to be able to check the existence of the conditions pursuant to para. 5 or 6.

The FMA may determine by means of a Regulation, what other information applications shall be required to be enclosed with the application pursuant to no. 5.

(4) Where a licensing procedure pursuant to this Article is conducted at the same time as a procedure for assessing the applicant pursuant to Article 22 of Directive 2013/36/EU in another Member State, then the FMA shall be required to reach an agreement with the competent authority that is conducting the procedure pursuant to Article 22 of Directive 2013/36/EU.

(5) The FMA shall grant a licence pursuant to para. 1, provided that the following conditions are fulfilled:

1. the FMA is the consolidating supervisor for the group to which the financial holding company or mixed financial holding company making the application belongs,
2. the financial holding company or mixed financial holding company has at least two directors,
3. The internal arrangements and allocation of duties within the group are appropriate for the purposes of observes the requirements of this federal act and those of Regulation (EU) No 575/2013 on a consolidated or sub-consolidated basis and are suitable especially
    a. to coordinate all subsidiaries of the financial holding company or the mixed financial holding company as necessary also by means of an appropriate allocation of duties between the subsidiary institutions,
    b. to prevent or overcome conflicts arising within the group, and

c. to enforce the group-wide strategies determined by the parent financial holding company or the parent mixed financial holding company throughout the entire group;

4. The organisational structure of the group, to which the financial holding company or the mixed financial holding company belongs, shall not impede or prevent the effective supervision of the subsidiary institutions or parent institutions with regard to their obligations that they are subject to on an individual basis, on a consolidated basis and as applicable on a sub-consolidated basis. The following, in particular shall be taken into account when assessing this criterion:
   a. the position of the financial holding company or the mixed financial holding company within a group that extends across several group levels,
   b. the shareholding structure and
   c. the role of the financial holding company or the mixed financial holding company within the group,
5. the financial holding company or the mixed financial holding company fulfils the requirements pursuant to Article 20b para. 1 and
6. the directors of the financial holding company or the mixed financial holding company fulfil the requirements set out in Article 30 para. 7a.

(6) The FMA shall exempt a financial holding company or mixed-financial holding company from the obligation to hold a licence, where the following conditions are met:

1. the FMA is the consolidating supervisor regarding the group to which the financial holding company or mixed financial holding company making the application belongs;
2. the principal activity of the financial holding company is the acquisition of participations in subsidiary undertakings, or in the case of a mixed financial holding company the principal activity in relation to CRR institutions or CRR financial institutions is the acquisition of participations in subsidiary undertakings;
3. the financial holding company or the mixed financial holding company is not named as a resolution entity in one of the group's resolution groups in accordance with the resolution strategy determined by the FMA under BaSAG or by another resolution authority pursuant to Directive 2014/59/EU;
4. a subsidiary credit institution is named as being responsible for ensuring the group observes supervisory requirements on a consolidated basis, and has all necessary means and legal powers for meeting such obligations effectively;
5. the financial holding company or the mixed financial holding company does not get involved in management-specific, operation or financial decisions that impact the group or its subsidiaries, in the case that they relate to CRR-institutions or CRR financial institutions.
6. no impediment exists for the effective supervision of the group on a consolidated basis.
7. Financial holding companies or mixed financial holding companies that are exempted from a licensing requirement under this paragraph, are not excluding from the scope of consolidation pursuant to this federal act, Directive 2013/36/EU and Regulation (EU) No 575/2013.

(7) The FMA as the consolidating supervisor shall monitor on an ongoing basis, whether the requirements listed in para. 5, or where applicable in para. 6 are met. Upon request, financial holding companies or mixed financial holding companies shall make all information available to the consolidating supervisor that is necessary to be able to monitor the organisational structure of the group and the conditions pursuant to para. 6 or where applicable para. 6 on an ongoing basis. The FMA as consolidating supervisor shall be required to submit this information to the competent authority of the Member State in which the financial holding company or mixed financial holding company is established.

(8) Where the FMA as the consolidating supervisor determines that the conditions pursuant to para. 5 are not met or are no longer met, then it shall apply appropriate supervisory measures towards the financial holding company or mixed financial holding company, in order to ensure or repair the continuity and integrity of supervision on a consolidated basis as well as the observance of the requirements pursuant to this federal act, Directive 2013/36/EU and Regulation (EU) No 575/2013 on a consolidated basis. In the case of a mixed financial holding company the impact of supervisory measures in particular shall also be taken into account on the financial conglomerate. Supervisory measures may cover the following options:

1. suspension of exercising of voting rights that are associated with the capital shares held in the subsidiary institutions by the financial holding company or the mixed financial holding company;
2. measures pursuant to Article 70 para. 4 or 4b as well as the initiation of administrative penal proceedings pursuant Article 98 para. 1b or 1c;
3. ordering the financial holding company or the mixed financial holding company to transfer their participations in their subsidiary institutions to their shareholders;
4. temporarily naming another financial holding company, another mixed financial holding company, or another CRR-institution within the group as responsible for ensuring the requirements under this federal act, Directive 2013/36/EU and Regulation (EU) No 575/2013 are met on a consolidated basis;
5. restricting or prohibiting distributions or interest payments to shareholders;
6. ordering the financial holding company or mixed financial holding company to dispose of or reduce participations in CRR-institutions or other undertaking in the financial sector;
7. ordering the financial holding company or the mixed financial holding company to submit a plan for re-establishing compliance with requirements without delay.

(9) If the financial holding company or mixed financial holding company is not established in Austria, then the FMA as consolidating supervisory authority shall cooperate in the decision about the granting of a licence pursuant to para. 5, the waiving of the obligation to hold a licence pursuant to para. 6, a determination pursuant to para. 1 second clause, or the application of supervisory measures pursuant to para. 8 with the competent authority of the member state in which the financial holding company or the mixed financial holding company is established in full cooperation. The FMA as consolidating supervisor shall draw up an assessment regarding the decisions pursuant

to para. 1 second clause, para. 5, 6 or 8, and shall pass it on to the competent authority of the Member State in which the financial holding company or the mixed financial holding company is established. The FMA as consolidating supervisor shall endeavour to reach a joint decision pursuant to para. 1 second clause, paras. 5,6 or 8 with the competent authority of the Member State in which the financial holding company or the mixed financial holding company is established within two months of submission of such an assessment. Joint decisions are to be presented in a single document with a comprehensive reasoning and communicated to the financial holding company or the mixed financial holding company by the FMA as consolidating supervisor. In accordance with the joint decision, the FMA, in the capacity of consolidating supervisor, shall issue an administrative decision and serve it to the financial holding company or mixed financial holding company.

(10) If the financial holding company or mixed financial holding company is established in Austria, then the FMA shall work together in full consultation with the consolidating supervisor in relation to decisions about the approval or exemption from approval pursuant to Article 21a (3) or (4) or Directive 2013/36/EU and supervisory measures pursuant to Article 21a (6) or (7) of Directive 2013/36/EU. The FMA shall endeavour to reach a joint decision with the consolidating supervisor in relation to decisions about the approval or exemption from approval pursuant to Article 21a (3) or (4) or Directive 2013/36/EU and supervisory measures pursuant to Article 21a (6) or (7) of Directive 2013/36/EU within two months of receipt of an assessment listed in Article 21a (8) of Directive 2013/36/EU.

(11) In the case that the competent authorities are unable to agree within the time frames pursuant to para. 9 or 10, then a decision must be temporarily delayed and the FMA shall refer the issue to EBA pursuant to Article 19 of Regulation (EU) No 1093/2010. In such a case the joint decision pursuant to para. 9 or 10 shall be made in accordance with EBA's decision. The matter shall not be referred to EBA after the end of the time frames pursuant to para. 9 or 10 or after a joint decision has been reached.

(12) The FMA as the consolidating supervisor shall obtain the approval of the affected coordinator with regard to joint decisions pursuant to para. 9, where neither the FMA itself nor the competent authority of the Member State in which the mixed financial holding company is established has been defined as the coordinator pursuant to Article 10 of Directive 2002/87/EC. Where the coordinator does not approve the joint decision, then the FMA as the consolidating supervisor shall refer the issue, depending on what is affected, either to EBA or the European Insurance and Occupational Pensions Authority (EIOPA) (Regulation (EU) No 1094/2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC, OJ L 331, 15.12.2010, p. 48). If an issue was referred by the FMA pursuant to this paragraph, or by another competent authority pursuant to Article 21a (9) of Directive 2013/36/EU to EBA or EIOPA, then the joint decision shall be taken in accordance with the EBA or EIOPA decision. A decision taken in accordance with this paragraph shall apply irrespective of the obligations pursuant to Directive 2002/87/EC or Directive 2009/138/EC.

(13) In the event of a licence application pursuant to para. 5 being rejected, the FMA as the consolidating supervisor shall legally deliver the administrative decision rejecting the application including the underlying reasons within four months

1. following receipt of the applicant pursuant to para. 2, or
2. following receipt of the complete details and information necessary for taking the decision, in the event that the licence application does not contain the complete necessary details and information pursuant to para. 3.

The FMA may, if necessary, combine the rejection of the licence application with applying the measures listed in para. 8. In any case, the FMA as the consolidating supervisor shall decide within six months of receipt of the application pursuant to para. 2 either to grant a licence or to reject the licence application, and shall legally delivery the decision to the applicant.

Licensing Information

Article 8. The FMA must inform the European Banking Authority (EBA) of:

1. the licensing requirements pursuant to Article 5;
2. any licence granted pursuant to Article 4 including the name of the deposit guarantee and investor compensation scheme, of which the CRR credit institution in question is a member;

2a. every licence granted pursuant to Article 4 for the operation of an Austrian branch of a foreign credit institution, as well as all subsequent changes of such licences;

2b. the regularly reported total assets and liabilities of Austrian branches of foreign credit institutions;

2c. the name of the third country group, to which an Austrian branch of a foreign credit institution belongs;

3. any withdrawal of a licence pursuant to Article 6 including a statement of reasons.

SECTION III: FREEDOM OF ESTABLISHMENT AND FREEDOM TO PROVIDE SERVICES

Credit Institutions from Member States in Austria

Article 9. (1) Subject to the provisions of paras. 2 to 8, CRR credit institutions which are authorised in a Member State, and established in said Member State, may carry out the activities listed in Annex I to Directive 2013/36/EU in Austria through a branch or under the freedom to provide services, provided that the credit institution's authorisation covers such activities.

(2) The establishment of a branch in Austria is permissible if the competent authority in the home Member State has provided the FMA with all information on the credit institution pursuant to Article 10 para. 2 nos. 2 to 4 and para. 4. If a credit institution based in another Member State has established several branches pursuant to point (17) of Article 4(1) of Regulation (EU) No 575/2013 in Austria, these branches shall be considered as one single branch.

(3) Once the information pursuant to para. 2 has been provided, the FMA may notify the credit institution under para. 1 of the following:

1. the reports under Articles 74 and 74a on transactions conducted in Austria which the FMA requires due to its interest in maintaining a functioning banking system in Austria;
2. the provisions with which the credit institution must comply pursuant to para. 7.

(4) After the notification pursuant to para. 3, but at the latest after the expiration of a period of two months, the credit institution under para. 1 may establish the branch and commence business operations.

(5) The credit institution under para. 1 must notify the FMA in writing of any changes in the information pursuant to Article 10 para. 2 nos. 2 to 4 and para. 4 no. 2 at least one month before such changes are carried out. The FMA may submit comments pursuant to para. 3 no. 1 or 2.

(6) The initial commencement of activities in Austria under the freedom to provide services requires a notification from the competent authority in the home Member State to the FMA indicating which of the activities listed in Annex I to Directive 2013/36/EU are to be carried out.

(7) Credit institutions pursuant to para. 1, which conduct activities in Austria by means of a branch, must comply with Articles 23h, 31 to 39a, 39e, 41, Article 44 paras. 3 to 6, Articles 60 to 63, Article 65 para. 3a, Articles 66 to 68, Articles 74 to 75, Article 93 para. 1, Article 94, Article 95 paras. 3 and 4 of this federal act, as well as, depending on the purpose of their business Articles 47 to 67, 69 and 70 WAG 2018, Articles 36 and Articles 44 to 70 of 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, as well as Articles 14 to 26 of Regulation (EU) No. 600/2014, Articles 5 and 6 and Chapters 3 and 4 ZaDiG 2018 and the other federal acts and EU regulations named in Article 69 as well as regulations and administrative decisions issued on the basis of the aforementioned regulations.

(7a) The FMA may request that every credit institution pursuant to para. 1 with a branch pursuant to point (17) of Article 4(1) of Regulation (EU) No 575/2013 in Austria provides regular reports on its activities in Austria. These reports may only be requested for statistical purposes or for information or supervision purposes. The FMA may in particular request credit institutions to provide the type of information that allows it to assess whether the branch is a significant branch pursuant to Article 18.

(8) Credit institutions pursuant to para. 1, who conduct activities in Austria by means of the freedom to provide services must comply with Articles 31 to 39a, 39e, 41, 66 to 68, Article 93 para. 1, Article 94, Article 95 paras. 3 and 4 BWG, as well as, depending on the purpose of their business Articles 5 and 6 and Chapters 3 and 4 ZaDiG 2018, and the other federal acts named in Article 69 and EU regulations as well as regulations and administrative decisions issued in conjunction with the aforementioned rules.

Austrian Credit Institutions in Member States

Article 10. (1) A credit institution may carry out its activities in Member States by the establishment of a branch or under the freedom to provide services, provided that the credit institution's licence covers such activities.

(2) Any credit institution wishing to establish a branch in the territory of another Member State must notify the FMA accordingly. This notification must be accompanied by the following information:

1. the member state within the territory of which the branch is to be established;
2. a programme of operations setting out the types of business envisaged and the structural organisation of the branch;
3. the address in the host Member State from which documents of the credit institution can be obtained;
4. the names of the directors of the branch.

(3) Unless the FMA has reason to doubt the adequacy of the administrative structure or the financial situation of the credit institution in light of the activities envisaged, the FMA must, within three months of receipt of the information referred to in para. 2, convey that information to the competent authority in the host Member State and inform the credit institution accordingly by means of an administrative decision within the same period.

(4) The FMA must also convey the following information to the competent authority in the host Member State:

1. the amount and composition of own funds and the total own funds requirements pursuant to Article 92 of Regulation (EU) No 575/2013, as well as the equity ratio of the credit institution;
2. specific information on the deposit guarantee schemes by which the protection of the branch's depositors (investors) is to be ensured;
3. all details relating to the management, administration and ownership structures of the credit institution that concern guaranteeing the stability of the financial system, supervision and the examination of the authorisation requirements;
4. any and all information that facilitates the monitoring of credit institutions, particularly with regard to liquidity, solvency, deposit guarantee, large exposures, accounting, internal auditing and other factors that could influence the systemic risk emanating from the credit institution;
5. without delay, any and all information and findings pertaining to monitoring liquidity in accordance with Part Six of Regulation (EU) No 575/2013 and Title VII, Chapter 3 of Directive 2013/36/EU with regard to the activities performed by the credit institution through a branch, provided such information is relevant to the security of the assets entrusted to the credit institution, the protection of depositors or investors in the host Member State or for the stability of the financial system of the host Member State; as well as
6. without delay, any material details where liquidity stress occurs or can reasonably be expected to occur and details about the planning and implementation of a recovery plan;

7. any information and findings that were obtained after on-site inspections, carried out by the FMA itself, of branches where Austria is the host Member State and which are relevant to the risk assessment of a credit institution or to the evaluation of the stability of the financial system in the home Member State; and
8. without delay, information on the revocation of the licence of an Austrian credit institution active in said Member State.

Moreover, the FMA shall communicate to the competent authorities of the host Member State how information and findings provided by the competent authorities of the host Member State pursuant to Article 50(1) to (3) of Directive 2013/36/EU have been taken into account, and inform them about any prudential supervision measures taken on the basis of the information provided. Upon request, relevant explanations shall also be provided. If the FMA objects to the measures taken by the competent authorities of the host Member State pursuant to Article 50 of Directive 2013/36/EU, it may refer the matter to EBA and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010.

(5) The credit institution must notify the FMA in writing of any changes in the information pursuant to para. 2 nos. 2 to 4 and para. 4 nos. 2 to 6 at least one month before such changes are carried out. The FMA must convey this information to the competent authority in the host Member State within three months.

(6) Any credit institution wishing to carry out its activities in the territory of another Member State for the first time by exercising the freedom to provide services must notify the FMA of those activities listed in Annex I to Directive 2013/36/EU which the credit institution wishes to carry out in that Member State.

(7) Within one month of receiving the notification provided for in para. 6, the FMA must convey that notification to the competent authority in the host Member State.

(8) The FMA must inform the European Commission and the EBA of the number and nature of cases in which it has refused to convey the information in para. 3 to the competent authority in the host Member State.

Cross-border demerger

Article 10a. (1) Credit institutions may demerge their assets as defined in Article 1 of the Demerger Act (*SpaltG; Spaltungsgesetz*) as published in Federal Law Gazette No. 304/1996 on a cross-border basis into a CRR credit institution, that has been founded under the law of another Member State, and which has its registered office as per its articles of association, its head office or its EU head office, or may assume parts of its assets from such a CRR credit institution by way of a merger.

(2) The provisions of the EU Company Reorganisation Act (*EU-UmgrG; EU-Umgründungsgesetz*) published in Federal Law Gazette I No. 78/2023 shall apply accordingly to a cross-border demerger as defined in para. 1.

(3) The point in time at which the cross-border demerger shall become effective, shall be assessed in accordance with the articles of association in relation to the legal person of the acquiring entity. The management boards of the entities involved in the demerger shall notify the demerger for entry at the competent court, in which district the acquiring entity has its registered office.

Financial Institutions from Member States in Austria

Article 11. (1) CRR financial institutions established in a Member State may carry out the activities listed in points 2 to 17 of Annex I to Directive 2013/36/EU in Austria by the establishment of a branch or under the freedom to provide services, provided that the financial institution is authorised to provide such services under the legal provisions of its country of establishment and the following requirements are fulfilled:

1. the parent undertaking is authorised as a CRR credit institution in that Member State by the law of which the subsidiary undertaking is governed, and the parent undertaking is established in that Member State;
2. the activities in question are actually carried out within the territory of the same Member State;
3. the parent undertaking holds at least 90% of the voting rights associated with shares in the subsidiary undertaking;
4. the parent undertaking must satisfy the FMA regarding the prudent management of the subsidiary undertaking and must have declared, with the consent of the competent authorities in the home Member State, that it jointly and severally guarantees the commitments entered into by the subsidiary undertaking;
5. the subsidiary undertaking must be included in the consolidated supervision of the parent undertaking in accordance with the rules set forth in Directive 2013/36/EU and Regulation (EU) No 575/2013, in particular for the purpose of calculating the required level of own funds pursuant to Article 92 of Regulation (EU) No 575/2013, for the control of large exposures and for the limitation of participations.

(2) Para. 1 also applies in cases where

1. the financial institution is a subsidiary undertaking of two or more parent undertakings which are authorised as CRR credit institutions in one or more Member States and have their places of establishment in the Member States in question; and
2. the other requirements set forth in para. 1 are fulfilled.

(3) The competent authority in the home Member State must provide the FMA with the following notifications from the competent authorities in the home Member State:

1. compliance with the requirements set forth in para. 1 or para. 2;
2. the amount of own funds of the financial institution pursuant to para. 1 or 2; and
3. the consolidated solvency ratio of the financial institution's parent credit institution(s);

4. a programme of operations setting out the types of business envisaged and the structural organisation of the branch;
5. the address from which documents of the financial institution can be obtained under para. 1 or 2 in Austria;
6. the names of those to be responsible for the management of the branch.

The financial institution must notify the FMA in writing of any changes in the information specified in nos. 4 to 6; the provisions governing procedure in Article 9 para. 5 apply in this context.

(4) The initial commencement of activities in Austria under the freedom to provide services requires a notification from the competent authority in the home Member State to the FMA indicating which of the activities listed in points 2 to 17 of Annex I to Directive 2013/36/EU are to be carried out.

(5) Financial institutions under para. 1 or 2 which, through a branch in Austria,

1. carry out activities pursuant to Article 1 para. 1 nos. 2 to 8, 11 or 15 to 17 must comply with Articles 34 to 39a, 39e, 41, 44 paras. 3 to 6, 60 to 63, 74 to 75 and 94;
2. carry out activities pursuant to Article 1 para. 2 must comply with Article 39 para. 3 and Article 41;
3. carry out activities pursuant to Article 1 para. 2 no. 1 must also comply with Article 75, no. 2 notwithstanding.

Depending on the business activities carried out, the other federal acts listed in Article 69 as well as the regulations and administrative decisions issued based on the aforementioned provisions must also be observed.

(6) Financial institutions pursuant to para. 1 which, under the freedom to provide services,

1. carry out activities pursuant to Article 1 para. 1 nos. 2 to 8, 11 or 15 to 17 in Austria must comply with Articles 34 to 39a, 39e and 94;
2. carry out activities pursuant to Article 1 para. 2 in Austria must comply with Article 39 para. 3.

Depending on the business activities carried out, the provisions set forth in Regulation (EU) No 575/2013, the other federal acts listed in Article 69 as well as the regulations and administrative decisions issued on the basis of the provisions mentioned above must also be observed.

Article 12. repealed

Subsidiaries of Financial Institutions from Member States in Austria

Article 13. (1) A CRR financial institution which is a subsidiary undertaking of financial institutions which fulfil the requirements set forth in Article 11 para. 1 nos. 1 to 5 or Article 11 para. 2 may carry out the activities listed in points 2 to 17 of Annex I to Directive 2013/36/EU by the establishment of a branch or under the freedom to provide services. The financial institution (secondary subsidiary undertaking) commencing activities in Austria must be authorised to carry out those activities in its country of establishment under the legal provisions of that country of establishment.

(2) In addition, the following requirements must be fulfilled:

1. the parent financial institution must be authorised to carry out its activities as a financial institution on the basis of the relevant provisions in the Member State by the law of which the subsidiary undertaking is governed;
2. the activities in question must actually be carried out by the secondary subsidiary undertaking within the territory of the same Member State;
3. the superordinate credit institution must be authorised as a CRR credit institution, be established in the Member State in question, and hold a total of at least 90% of the voting rights associated with the shares in the financial institution in question;
4. the superordinate credit institution and the financial institution which is its immediate subsidiary undertaking must satisfy the FMA regarding the prudent management of the financial institution (secondary subsidiary undertaking) which is to commence activities in Austria and must have declared, with the consent of the competent authorities in the home Member State, that they jointly and severally guarantee the commitments entered into by the secondary subsidiary undertaking;
5. the secondary subsidiary undertaking must be included in the consolidated supervision of the superordinate credit institution in accordance with the rules set forth in Directive 2013/36/EU and Regulation (EU) No 575/2013, in particular for the purpose of calculating the solvency ratio, for the control of large exposures and for the limitation of participations.(3) The competent authority in the home Member State must convey the information indicated in Article 11 paras. 3 and 4 to the FMA. The financial institution must notify the FMA in writing of any changes in the information in Article 11 para. 3 nos. 4 to 6; the provisions governing procedure in Article 9 para. 5 apply in this context.

(4) Financial institutions under para. 1 which, through a branch in Austria,

1. carry out activities pursuant to Article 1 para. 1 nos. 2 to 8, 11 or 15 to 17 must comply with Articles 34 to 39a, 39e, 41, 44 paras. 3 to 6, 60 to 63, 74 to 75 and 94;
2. carry out activities pursuant to Article 1 para. 2 must comply with Article 39 para. 3, and Article 41;
3. carry out activities pursuant to Article 1 para. 2 no. 1 must also comply with Article 75, no. 2 notwithstanding.

Depending on the business activities carried out, the other federal acts and regulations listed in Article 69 as well as the regulations and administrative decisions issued on the basis of the provisions mentioned above must also be observed.

(5) Financial institutions pursuant to para. 1 which, under the freedom to provide services,

1. carry out activities pursuant to Article 1 para. 1 nos. 2 to 8, 11 or 15 to 17 in Austria must comply with Articles 34 to 39a, 39e and 94;
2. carry out activities pursuant to Article 1 para. 2 in Austria must comply with Article 39 para. 3.

Depending on the business activities carried out, the other federal acts and regulations listed in Article 69 as well as the regulations and administrative decisions issued on the basis of the provisions mentioned above must also be observed.

Austrian CRR financial institutions in Member States

Article 13a. (1) A CRR financial institution established in Austria shall be allowed to conduct the activities listed in Annex I of Directive 2013/36/EU in Member States via a branch or under the freedom to provide services, provided it is authorised on the basis of regulations under federal law, and providing that the following conditions are met:

1. the parent undertaking is authorised in Austria as a CRR credit institution, and is incorporated in Austria;
2. the relevant activities are actually conducted in Austria;
3. the parent undertaking holds at least 90 % of the voting rights attached to units or shares of the subsidiary;
4. the parent undertaking must satisfy the competent authority of the host Member State regarding the prudent management of the subsidiary, and declare with the consent of the FMA that they jointly and severally guarantee the commitments entered into by the subsidiary;
5. the subsidiary is included in supervision on a consolidated basis that is imposed on the parent undertaking in accordance with the rules set out in this Federal Act as well as in Regulation (EU) No 575/2013, in particular with regard to the determination of the minimum own funds requirement in accordance with Article 92 of Regulation (EU) No 575/2013, the checking of large exposures and the restrictions on participations.

(2) Para. 1 shall also apply where

1. the CRR financial institution is a subsidiary or two or more parent undertakings that are authorised in Austria or in several Member States as CRR credit institutions and which are incorporated in these respective Member States, and
2. the other conditions in para. 1 are met.

(3) Every CRR financial institution that wishes to establish a branch in another Member State that notify the FMA about this. The following information must be included with this notification:

1. that the conditions contained in para. 1 or para. 2 are met;
2. the amount of own funds of the CRR financial institution pursuant to para. 1 or 2 and
3. the amount of the consolidated solvency coefficients of the CRR financial institution's parent credit institution or parent credit institutions;
4. a programme of operations that sets out, inter alia, the types of business envisaged and the structural organisation of the branch;
5. the address at which the documentation about the CRR financial institution pursuant to para. 1 or 2 may be requested in the host Member State;
6. the names of the responsible managers of the branch.

The CRR financial institution shall notify the FMA in writing about every change in the details pursuant to nos. 1 and 4 to 6, with procedural provisions applying pursuant to Article 10 para. 5.

(4) Provided that the FMA has no reason to doubt the adequacy of the administrative structures and the financial situation of the CRR financial institution in relation to the establishment of a branch in

a Member State, it shall pass on the details pursuant to para. 3 within three months of receiving all the information to the competent authority in the host Member State; the FMA shall communicate with the CRR financial institution about this within the aforementioned deadline by way of an administrative decision.
(5) Every CRR financial institution that wishes to perform its activities for the first time within the territory of another Member State under the freedom to provide services, shall notify the FMA about those activities in accordance with Annex I of Directive 2013/36/EU that it wishes to conduct in this Member State. The notification must also contain the necessary details to allow the checks to be able to be conducted that the conditions pursuant to paras. 1 and 2 are met.
(6) The FMA shall transmit the notification pursuant to para. 5 to the competent authority of the host Member State within one month of receiving it. The CRR financial institution shall notify the FMA in writing about every change in the details pursuant to para. 1 or para. 2, with procedural provisions applying pursuant to Article 10 para. 5.

Subsidiaries of Austrian CRR financial institutions in Member States

Article 14. (1) A CRR financial institution established in Austria, that is a subsidiary of such CRR financial institutions that fulfil the conditions listed in Article 13a para. 1 nos. 1 to 5 or Article 13a para. 2 (a subsidiary of a subsidiary) shall be allowed to conduct the activities listed in Annex I of Directive 2013/36/EU in Member States via a branch or under the freedom to provide services, provided it is authorised on the basis of regulations contained under federal law, and providing that the following conditions are met:

1. Both the parent financial institution as well as the subsidiary of the subsidiary are authorised to conduct their activities in Austria as CRR financial institutions.
2. the relevant activities are actually conducted in Austria by the subsidiary of the subsidiary;
3. the superordinate credit institution must be authorised in Austria as a CRR credit institution, be incorporated in Austria, and must hold at least 90 % of the voting rights attached to the units or shares of the CRR financial institution concerned;
4. the superordinate credit institution and the CRR financial institution that is its direct subsidiary, must satisfy the competent authority of the host Member State regarding the prudent management of the CRR financial institution (subsidiary of the subsidiary) that is active in that Member State and declare with the consent of the FMA that they jointly and severally guarantee the commitments entered into by the subsidiary of the subsidiary;
5. the subsidiary of the subsidiary is included in supervision on a consolidated basis that is imposed on the superordinate credit institution in accordance with the rules set out in Directive 2013/36/EU, in particular with regard to the solvency coefficients, the checking of large exposures and the restrictions on participations.

(2) Every CRR financial institution pursuant to para. 1 that wishes to establish a branch in another Member State that notify the FMA about this. The following information must be included with this notification:

1. that the conditions contained in para. 1;
2. the amount of own funds of the CRR financial institution pursuant to para. 1 or 2 and
3. the amount of the consolidated solvency coefficients of the CRR financial institution's superordinate credit institution or credit institutions;
4. a programme of operations that sets out, inter alia, the types of business envisaged and the structural organisation of the branch;
5. the address at which the documentation about the CRR financial institution pursuant to para. 1 or 2 may be requested in the host Member State;
6. the names of the responsible managers of the branch.

The CRR financial institution shall notify the FMA in writing about every change in the details pursuant to nos. 1 and 4 to 6, with procedural provisions applying pursuant to Article 10 para. 5.

(3) Provided that the FMA has no reason to doubt the adequacy of the administrative structures and the financial situation of the CRR financial institution in relation to the establishment of a branch in a Member State, it shall pass on the details pursuant to para. 2 within three months of receiving all the information to the competent authority in the host Member State; the FMA shall communicate with the CRR financial institution about this within the aforementioned deadline by way of an administrative decision.

(4) Every CRR financial institution pursuant to para. 1 that wishes to perform its activities for the first time within the territory of another Member State under the freedom to provide services, shall notify the FMA about those activities in accordance with Annex I of Directive 2013/36/EU that it wishes to conduct in this Member State. The notification must also contain the necessary details to allow the checks to be able to be conducted that the conditions pursuant to para. 1 are met.

(5) The FMA shall transmit the notification pursuant to para. 4 to the competent authority of the host Member State within one month of receiving it. The CRR financial institution shall notify the FMA in writing about every change in the details pursuant to para. 1 or para. 2, with procedural provisions applying pursuant to Article 10 para. 5.

Supervision in the Context of the Freedom of Establishment and the Freedom to Provide Services

Article 15. (1) Should a credit institution which carries out its activities in Austria through a branch pursuant to point (17) of Article 4(1) of Regulation (EU) No 575/2013 or under the freedom to provide services breach provisions of Regulation (EU) No 575/2013, of Articles 31 to 39a, 39e and 41, Article 44 paras. 3 to 6, Articles 60 to 63, Article 65 para. 3a, Articles 66 to 68 and 74 to 75, Article 93 para. 1, Article 94 and Article 95 paras. 3 and 4, or the other federal acts and regulations listed in Article 69, or any regulations and administrative decisions issued on the basis of the provisions mentioned above, or if a significant risk of such a breach exists, then the FMA must, the application of Articles

96 to 98 and Article 99 para. 1 no. 7 notwithstanding, inform the competent authorities of the home Member State without delay and request that appropriate measures are taken without delay in order for the credit institution concerned to restore legal compliance or take measures to counter the risk of the law being breached.

(1a) If the FMA is of the opinion that the competent authority of the home Member State did not meet its obligations pursuant to para. 1 or will not meet them, it may refer the matter to EBA and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010.

(2) Where a credit institution pursuant to para. 1 continues to breach the provisions set out in para. 1 in spite of measures having been or due to be enforced by the home Member State, the FMA shall at the same time notify the competent authorities of the home Member State, European Commission and the EBA,

1. to instruct those responsible for the management of the branch of the credit institution under threat of a coercive penalty to restore legal compliance at the level of the branch within a period that is appropriate in light of the prevailing circumstances in the case in hand; in so doing the FMA may also demand that those responsible for the management of the branch also submit a plan to restore legal compliance on the level of the branch, and set a deadline for the implementation of this plan, as well as, if required, demanding improvements with regard to the scope and timeframe of the plan;
2. to prescribe those persons responsible for the management of the branch of the credit institution to reinforce the rules, procedures, mechanisms and strategies to be introduced at branch level to ensure compliance with Articles 39 and 39a;
3. may demand those persons responsible for the management of the branch of the credit institution to limit or restrict the branch's activities, including the distribution of certain products or to reduce the associated risk of such products;
4. prescribe those persons responsible for the management of the branch of the credit institution to undertake additional reporting or shorter reporting intervals;
5. prohibit those responsible for the management of the credit institution's branch either partially or entirely from managing the branch, and/or
6. to prohibit the initiation of new business activities in Austria by the credit institution in the case of further breaches.

(3) In cases of imminent danger to the fulfilment of the obligations of the credit institution pursuant to para. 1 vis-à-vis its creditors, in particular to the security of assets entrusted to the credit institution, the protection of common interests of depositors or investors, in the case of systemic or procyclical risk, or to guarantee the stability of the Austrian financial system, the FMA may, provided that the competent authorities in the Home Member State have not yet taken any measures or reorganisation measures pursuant to Article 2 of Directive 2001/24/EC on the reorganisation and winding up of credit institutions, OJ L 125, 05.05.2001, p. 15, issue an administrative decision ordering measures under para. 2 nos. 1 to 2 for a limited period of time in order to avert that danger and simultaneously inform the competent authorities in the home Member State, the European

Commission and EBA; such measures shall cease to be effective no later than 18 months after entering into effect. The precautionary measures:

1. must not include any discriminatory or restrictive treatment due to the authorisation of the credit institution in another Member State;
2. must be reasonably proportionate to the purpose stipulated in the first sentence of para. 3;
3. must not lead to the creditors of the credit institution in Austria being given preferential treatment compared with the creditors in other Member States;
4. shall cease to have effect as soon as the competent authorities or courts of the home Member State take reorganisation measures pursuant to Article 2 of Directive 2001/24/EC.

The FMA shall stop the precautionary measures as soon as they become void in its view, unless they in any case become ineffective pursuant to no. 4.

(4) Should a credit institution's licence be revoked pursuant to para. 1, the FMA must prohibit the credit institution from commencing new business activities without delay. Article 6 paras. 4 and 5 are applicable in this context.

(5) After first informing the FMA, the competent authorities of the home Member State may themselves or through persons appointed for that purpose carry out inspections at the branch as required for the monitoring of the branch in banking supervision terms pursuant to Article 52 of Directive 2013/36/EU. The FMA may also carry out such inspections, as well as those required pursuant to para. 1, itself under one of the procedures indicated in Article 70 para. 1 nos. 1 to 3. If the competent authority of the home Member State provides information and findings to the FMA that it obtained in the course of an inspection pursuant to Article 52 of Directive 2013/36/EU, the FMA shall take this into account when determining its supervisory examination programme (Article 69 para. 2) as well as the aim of safeguarding the stability of the financial system in the home Member State.

(6) After first informing the competent authorities of the home Member State, the FMA is entitled to inspect the activities of credit institutions in Austria carried out through branches pursuant to point (17) of Article 4(1) of Regulation (EU) No 575/2013, provided this is of relevance to the stability of the Austrian financial system. Following inspection, the FMA must inform the competent authorities of the home Member State about any information and findings obtained that are material to assessing the credit institution’s risk or to evaluating the stability of the Austrian financial system.

(7) The FMA must submit to the competent authorities of the home Member State any details on management, administration and ownership structures of the credit institution that concern guaranteeing the stability of the financial system, supervision and the examination of the authorisation requirements, as well as any information that facilitates the monitoring of credit institutions, particularly with regard to liquidity, solvency, deposit guarantee, large exposures, accounting, internal auditing and other factors that may influence the systemic risk posed by the credit institution.

(8) The FMA may ask the competent authorities of the home Member State how the information and findings it provided were considered and which measures have already been taken on the basis of the details provided, and may also request additional explanations. If the FMA concludes even after receiving additional explanations that the competent authorities of the home Member State have not taken appropriate measures, the FMA may, after informing the competent authorities of the home Member State and EBA, take appropriate measures itself to prevent further irregularities and thus protect the interests of depositors or investors and to guarantee the stability of the Austrian financial system.

Article 16. (1) Should an Austrian credit institution which carries out its activities in a Member State through a branch or under the freedom to provide services breach the national legal provisions of the host Member State, the FMA must take appropriate measures in accordance with Article 70 paras. 4 and 4a and Articles 70b to 70d after being notified by the competent authorities of the host Member State in order to restore legal compliance in the host Member State. The competent authority of the host Member State must be informed in writing about the measures taken without delay.

(2) Should the licence of an Austrian credit institution be revoked, the FMA must inform the competent authorities in the Member States in which the credit institution carries out its activities in writing without delay.

Article 17. (1) Should a financial institution which carries out its activities in Austria through a branch or under the freedom to provide services breach the provisions of Regulation (EU) No 575/2013, Articles 34 to 39a, 39e and 41, Article 44 paras. 3 to 6, Articles 60 to 63, 74 to 75 and 94, or the other federal acts and regulations listed in Article 69 or any regulations or administrative decisions issued on the basis of the provisions mentioned above, or if a significant risk of such a breach exists, then the FMA must, the application of Articles 96 to 99 notwithstanding, inform the competent authorities without delay of the home Member State and request that these competent authorities of the home Member State take appropriate measures without delay in order for the credit institution to restore legal compliance or to counter the risk of the law being breached.

(1a) If the FMA is of the opinion that the competent authority of the home Member State did not meet its obligations pursuant to para. 1 or will not meet them, it may refer the matter to EBA and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010.

(2) Where a financial institution pursuant to para. 1 continues to breach the provisions set out in para. 1 in spite of measures having been or due to be enforced by the home Member State, the FMA shall at the same time notify the competent authorities of the home Member State, European Commission and the EBA,

1. to instruct those responsible for the management of the branch of the financial institution under threat of a coercive penalty to restore legal compliance at the level of the branch within a period that is appropriate in light of the prevailing circumstances in the case in hand; in so doing the FMA may also demand that those responsible for the management of the branch also submit a plan to restore legal compliance on the level of the branch, and set a deadline

for the implementation of this plan, as well as, if required, demanding improvements with regard to the scope and timeframe of the plan;

2. to prescribe those persons responsible for the management of the branch of the financial institution to reinforce the rules, procedures, mechanisms and strategies to be introduced at branch level to ensure compliance with Articles 39 and 39a;
3. demand those persons responsible for the management of the branch of the financial institution to limit or restrict the branch's activities, including the distribution of certain products or to reduce the associated risk of such products;
4. prescribe those persons responsible for the management of the branch of the credit institution to undertake additional reporting or shorter reporting intervals;
5. prohibit those responsible for the management of the financial institution's branch either partially or entirely from managing the branch; and/or
6. prohibit the initiation of new business activities in Austria by the financial institution in the case of further breaches.

(3) Should a financial institution pursuant to para. 1 lose the authorisation to carry out its activities, the FMA must prohibit the financial institution from commencing new business activities without delay. Article 6 paras. 4 and 5 are applicable in this context.

(4) After first informing the FMA, the competent authorities of the home Member State may themselves or through persons appointed for that purpose carry out inspections at the branch as required for the monitoring of the branch pursuant to Articles 41 and 52 of Directive 2013/36/EU. The FMA may also carry out such inspections itself under one of the procedures indicated in Article 70 para. 1 nos. 1 to 3.

(5) After first informing the competent authorities of the home Member State, the FMA is entitled to inspect the activities of financial institutions in Austria carried out through branches pursuant to point (17) of Article 4(1) of Regulation (EU) No 575/2013, provided this is of relevance to the stability of the Austrian financial system. Following inspection, the FMA must inform the competent authorities of the home Member State about any information and findings obtained that are material to assessing the financial institution’s risk situation or to evaluating the stability of the Austrian financial system.

Significant Branches

Article 18. (1) As the competent authority of the host Member State, the FMA may make a request to the consolidating supervisor, or, if there is no consolidating supervisor, to the competent authority of the home Member State, for a branch pursuant to point (17) of Article 4(1) of Regulation (EU) No 575/2013 of a credit institution in a Member State (Article 9) to be considered significant. In that request, the FMA shall provide reasons for considering the branch to be significant. For the assessment of branch significance, the FMA shall consider in particular:

1. whether the market share of the branch in question in terms of deposits exceeds 2% in Austria;

2. the potential impact of a suspension or closure of the operations of the credit institution on systemic liquidity, and the payment, clearing and settlement systems in Austria;
3. the size and the importance of the branch in terms of number of clients within the context of the banking or financial system in Austria.

(2) The FMA, the consolidating supervisor, provided there is such a supervisor, and the other competent authorities concerned shall reach a joint decision, within two months of receipt of the request, on the designation of a branch as significant.

(3) If no decision is reached within the time period set forth in para. 2, the FMA as competent authority of the host member country shall take its own decision on whether the branch is significant within a further period of two months, and take into account any views and reservations expressed within this period by the consolidating supervisor, if there is one, and by the competent authority of the home Member State. The FMA shall transmit its fully reasoned decision to the competent authorities concerned in writing.

(4) For the FMA as consolidating supervisor or competent authority in the home Member State, para. 2 applies as appropriate. A decision taken by the competent authority of the host Member State in accordance with para. 3 shall be recognised as determinative and applied by the FMA accordingly.

(5) The FMA as consolidating supervisor or competent authority of the home Member State shall communicate to the competent authorities of a host Member State where a significant branch is established the information referred to in Article 117(1)(c) and (d) of Directive 2013/36/EU and carry out the tasks referred to in Article 112(1)(c) of Directive 2013/36/EU in cooperation with the competent authorities of the host Member State.

(6) If an Austrian credit institution performs its activities in a Member State through the intermediary of a significant branch and if this credit institute is not part of a group of credit institutions, for which a college of supervisors has been established by the consolidating supervisor in another Member State in accordance with Article 116 of Directive 2013/36/EU, the FMA as competent authority of the home Member State shall establish and chair a separate college of supervisors for this credit institution, to facilitate cooperation between the competent authorities concerned under para. 5 and to facilitate the transmission of information. The establishment and functioning of the college shall be based on written agreements determined by the FMA after consultation with competent authorities concerned and transmitted to them by the FMA. The FMA shall decide which competent authorities participate in a meeting or in an activity of the respective college. The decision of the FMA shall take account of the relevance of the supervisory activity to be planned or coordinated for those authorities, in particular the potential impact on the stability of the financial system in the Member States concerned referred to in Article 69 para. 4 and the obligations referred to in para. 5 and Article 77 para. 8. Article 77 b para. 2 third sentence shall apply.

Service of Documents

Article 19. In connection with the service of documents containing instructions as defined in Articles 16 para. 1 and 18 para. 1 from the competent authority in a host Member State, the recipient may only refuse to accept documents pursuant to Article 12 para. 2 Process of Service Act (*ZustellG; Zustellgesetz*) in cases where such documents are not written in the official language of a Member State.

SECTION IV: OWNERSHIP PROVISIONS AND APPROVALS

Qualifying Holdings in Credit Institutions

Article 20. (1) Any party who has taken a decision to hold a qualifying holding in a credit institution directly or indirectly, or to increase such a qualifying holding directly or indirectly (proposed acquirer), in such a way that the limits of 20%, 30% or 50% of the voting rights or capital are reached or exceeded, or in such a way that the credit institution becomes a subsidiary undertaking of that party, must first notify the FMA in writing accordingly with an indication of the amount of the participation and the information required under Article 20b para. 3. The notification requirements also apply to persons acting jointly who would acquire or reach a qualifying holding together. Notification may be carried out jointly by all or several of the acting persons together, or by each acting person separately.
(2) The notification requirements under paragraph 1 apply in the same way to the decided disposal of a directly or indirectly held qualifying holding or any underrun of the limits indicated in para. 1 regarding participations in credit institutions.
(3) Credit institutions must notify the FMA of any acquisition or disposal of qualifying holdings as well as any cases in which the participation limits defined in paras. 1 and 2 are reached, exceeded or underrun in writing without delay as soon as the credit institutions become aware of such transactions. Moreover, credit institutions must notify the FMA in writing at least once per year of the names and addresses of shareholders and other members holding qualifying holdings as well as the sizes of such participations as shown in particular by the information received at the annual general meetings of shareholders or other members, or as a result of the information received on the basis of Articles 130 to 135, 138 and 139 Stock Exchange Act 2018 (*BörseG 2018; Börsegesetz 2018*).
(4) The FMA must take appropriate measures, in particular pursuant to para. 5 nos. 1 and 2 against the parties indicated in paras. 1 and 2, if they fail to fulfil their obligations of prior notification or if they acquire a participation despite an objection pursuant to Article 20a para. 2, during the assessment period pursuant to Article 20a para. 1, or without approval pursuant to Article 21 para. 2. The voting rights associated with the shares held by the shareholders or other members will be suspended:

1. until the FMA determines that the acquisition of the participation pursuant to Article 20a para. 2 would not have been prohibited, or
2. until the FMA determines that the reason for previously prohibiting the acquisition no longer exists.

(5) Where the danger exists that the influence exercised by the persons possessing qualifying holdings will not meet the requirements for the sound and prudent management of the credit institution, the FMA must take the measures necessary to avert the danger or to put an end to such a situation. In particular, such measures may include:

1. measures in accordance with Article 70 para. 2; or
2. sanctions against the directors in accordance with Article 70 para. 4 no. 2; or
3. the submission of a motion to a first-instance commercial court at the credit institution's place of establishment for the suspension of voting rights associated with those shares held by the shareholders or members in question,
   a. for the duration of this danger, with its end being determined by the court; or
   b. until those shares are purchased by third parties after not being prohibited pursuant to Article 20a para. 2;

   this court is to rule in the process of alternative dispute resolution.

(6) If a court orders the suspension of voting rights in accordance with para. 5, then the court must simultaneously appoint and transfer the exercise of voting rights to a trustee who fulfils the requirements of Article 5 para. 1 no. 3. In cases where measures are taken pursuant to para. 4, the FMA must request the appointment of a trustee at the competent court pursuant to para. 5 without delay upon becoming aware that the voting rights have been suspended. The trustee has a right to reimbursement of their expenses and to remuneration for their activities in an amount to be determined by the court. The credit institution as well as the shareholders or members in question are to bear joint and several liability for such expenses and remuneration. The obliged parties will have recourse against decisions determining the amount of remuneration for the trustee and of the expenses to be reimbursed to the trustee. Appeals beyond rulings of the provincial superior court will not be permitted.

(7) Article 130 paras. 2 to 4 BörseG 2018 in conjunction with Article 133 and Article 134 paras. 2 and 3 BörseG 2018 shall apply to the calculation of voting rights with regard to Article 4 para. 3 no. 5 and Article 5 para. 1 no. 3 and with regard to the calculation of voting rights with regard to Articles 20 to 20b and Article 21 para. 1 no. 2, although in the case of Articles 20 to 20b and Article 21 para. 1 no. 2 of this Federal Act, voting rights or capital shares that are held by investment firms or credit institutions as a result of the underwriting of financial instruments or placing of financial instruments on a firm commitment basis under Article 1 no. 3 lit. f WAG 2018 shall not be taken into consideration, provided that such rights are not exercised or otherwise used to intervene in the management of the issuer and are sold within one year of the date of acquisition.

Assessment Procedure

Article 20a. (1) The FMA shall promptly and in any event within two working days following receipt of the notification required under Article 20 para. 1 as well as following the possible subsequent receipt of the information referred to in paragraph 3, acknowledge receipt thereof in writing to the proposed acquirer and shall inform the proposed acquirer of the date of the expiry of the assessment period at the time of acknowledging receipt. If the FMA points out to the proposed acquirer that certain documents or information are obviously missing in the notification, Article 13 para. 3 last sentence General Administrative Procedure Act (*AVG; Allgemeines Verwaltungsverfahrensgesetz*) shall not apply.

(2) The FMA shall have a maximum of 60 working days as from the date of the written acknowledgement of receipt of the notification and all the documents required in Article 20b para. 3 to prohibit the proposed acquisition in writing following assessment according to the assessment criteria set forth in 20b, provided there are reasonable grounds therefore or the information submitted by the proposed acquirer is incomplete. The prohibition notice shall be dispatched within two working days of the date of the prohibition decision made by the FMA. If the FMA does not oppose the proposed acquisition in writing within the assessment period, it shall be deemed approved. If the proposed acquisition is not prohibited, the FMA can stipulate a date by which the proposed acquisition in Article 20 para. 1 must be complete. This period can be extended where appropriate. At the request of the proposed acquirer, the FMA shall also provide an administrative decision in the event that the acquisition has not been prohibited. The FMA shall indicate any views or reservations expressed by the competent authority responsible for the proposed acquirer in the reasons for the ruling underlying each written prohibition notice or assessment. Conditions and obligations may be attached to the ruling, in order to warrant compliance with the criteria set forth in Article 20b. The FMA may make the ruling and underlying reasons accessible to the public at the request, or even without such request, of the proposed acquirer, provided it complies with the requirements set forth in Article 22c no. 3 lit. a to c Financial Market Authority Act (*FMABG; Finanzmarktaufsichtsbehördengesetz*).

(3) The FMA may, during the assessment period, if necessary, and no later than on the fiftieth working day of the assessment period (para. 2), request any further information that is necessary to complete the assessment. Such request shall be made in writing and shall specify the additional necessary information. The request for information shall interrupt the assessment period for the period between the date of request for information and the receipt of a response thereto by the proposed acquirer. The interruption shall not exceed 20 working days. Any further requests by the FMA for completion or clarification of the information shall be at its discretion but may not result in an interruption of the assessment period.

(4) The FMA may extend the interruption period of 20 working days to a maximum of 30 working days if the proposed acquirer is

1. situated or regulated outside the EEA; or

2. is not subject to supervision under Directives 2013/36/EU, 2009/65/EC, 2009/138/EC or 2014/65/EU.

(5) For the assessment of a proposed acquisition or the increase of a qualifying holding under Articles 20 to 20b, the FMA shall cooperate closely with the competent authority of any other Member State or sector and shall, exchange with them any information which is essential or relevant for the assessment without delay, if the proposed acquirer is one of the following:

1. a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in another Member State or in a sector other than that in which the acquisition is proposed;
2. the parent undertaking of a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in another Member State or in a sector other than that in which the acquisition is proposed; or
3. a natural or legal person controlling a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in another Member State or in a sector other than that in which the acquisition is proposed.

(6) In the event of a procedure as described in para. 5, the FMA shall provide upon request all relevant information and communicate on its own initiative all essential information to the competent authorities, in particular information regarding assessment and/or prohibition of the acquisition. The FMA shall obtain the opinions of the responsible authorities under Article 20b para. 1 nos. 1 to 5.

(7) Where competent authorities in another Member State are conducting a licensing procedure pursuant to Article 21a of Directive 2013/36/EU regarding a proposed acquirer at the same time as a procedure pursuant to this Article, then the FMA shall come to an agreement with the consolidating supervisor pursuant to point 41 of Article 4 (1) of Regulation (EU) No 575/2013 and the competent authority of the Member State in which the proposed acquirer is established. In such a case, the assessment period pursuant to para. 2 from the start through to the conclusion of the procedure pursuant to Article 21a of Directive 2013/36/EU is suspended, even when the procedure pursuant to Article 21a of Directive 2013/36/EU lasts longer than 20 working days.

Assessment Criteria

Article 20b. (1) In assessing the notification provided for in Article 20 para. 1, the FMA shall, in order to ensure the sound and prudent management of the credit institution in which an acquisition is proposed, and having regard to the likely influence of the proposed acquirer on the credit institution, appraise the suitability of the proposed acquirer and the financial soundness of the proposed acquisition against all of the following criteria:

1. the reliability of the interested acquirer pursuant to Article 5 para. 1 nos. 6, 7 and 9;

2. the reliability, professional qualifications and experience pursuant to Article 5 para. 1 nos. 6 to 9 of any person who will direct the business of the credit institution as a result of the proposed acquisition;
3. the financial soundness of the proposed acquirer, in particular in relation to the type of business pursued and envisaged in the credit institution in which the acquisition is proposed;
4. whether the credit institution will be able to comply and continue to comply with the prudential requirements based on Directives 2009/110/EC, 2002/87/EC, 2013/36/EU and Regulation (EU) No 575/2013 and, in particular, whether the group of which it will become a part has a structure that makes it possible to exercise effective supervision, effectively exchange information among the competent authorities and determine the allocation of responsibilities among the competent authorities (Article 5 para. 1 nos. 4 and 4a);
5. whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing within the meaning of Article 1 of Directive (EU) 2015/849 is being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof.

(2) The assessment of the proposed acquisition shall not be geared to the economic needs of the market.

(3) The FMA shall define by means of a Regulation in accordance with Article 23(4) of Directive 2013/36/EU taking the European practices in this area into account, a list of information to be submitted to the FMA. This information must be suitable and necessary for the prudential assessment of compliance with the criteria in para. 1 nos. 1 to 5. The information to be provided shall be proportionate and adjusted to the nature of the proposed acquirer and the proposed acquisition. This shall take into account the size and type of the participation as well as the size and activities of the proposed acquirer and the credit institution in which the acquisition is proposed. In the regulation, the FMA shall also specify the nature and form of the transmission of information, in order to enable rapid and accurate identification of the application's content.

(4) Where two or more proposals to acquire or increase qualifying holdings in the same credit institution have been notified to the FMA, the latter shall treat the proposed acquirers in a non-discriminatory manner.

Approvals

Article 21. (1) Special FMA approval is required for the following:

1. any merger or amalgamation of credit institutions or of CRR credit institutions authorised in a Member State or a third country where at least one of the credit institutions or CRR credit institutions involved is deemed to be a credit institution pursuant to Article 1 para. 1;
2. any case in which the limits of 10% (qualifying holding), 20%, 33% and 50% of the voting rights or capital of a credit institution or CRR credit institution based in a third country are reached, exceeded or not reached;

3. any change in the legal form of a credit institution;
4. repealed
5. the establishment of branches in a third country;
6. demergers of credit institutions pursuant to Article 1 of the Demerger Act (*SpaltG; Spaltungsgesetz*), published by Federal Act in Federal Law Gazette No. 304/1996, or pursuant to Article 1 of the Act on the Demerger of Cooperative Societies (*GenSpaltG; Genossenschaftsspaltungsgesetz*), published in Federal Law Gazette I No. 69/2018 and for the cross-border demerger of credit institutions and CRR credit institutions authorised in an EU Member State, in which at least one of the credit institutions concerned or CRR credit institutions is a credit institution pursuant to Article 1 para. 1;
7. any merger or amalgamation of credit institutions with non-banks, except for subsidiary undertakings pursuant to Article 59 para. 3;
8. any expansion of the purpose of business to include activities related to insurance mediation pursuant to Article 137 GewO;
9. any expansion of the purpose of business by credit institutions authorised in Austria as defined in Article 4(1)(1) of Regulation (EU) No 575/2013 to include the activity of submitting bids as defined in Article 3(5) of Regulation (EC) No 1031/2010 on behalf of clients.

(1a) Before issuing approvals pursuant to para. 1 nos. 1, 6 and 7, the FMA must consult the *Oesterreichische Nationalbank*.

(2) Articles 4 to 6 apply mutatis mutandis to approvals pursuant to para. 1; however, only Article 4 para. 2 and Article 5 para. 2 apply to demergers if approval pursuant to para. 1 no. 6 was issued on the condition that the demerged part must be assimilated by or merged with an existing credit institution. In the case of demergers for the formation of new companies, Article 92 para. 7 applies with regard to networks, irrespective of the legal form of business organisation.

(3) Approvals pursuant to para. 1 nos. 1, 6 and 7 may only be entered in the Commercial Register if the corresponding legally effective administrative decisions are presented as originals or certified copies. The competent court is to deliver orders and rulings on such entries in the Commercial Register to the FMA and the *Oesterreichische Nationalbank*.

(4) In granting approvals pursuant to para. 1 no. 8, the FMA must apply the provisions of the GewO 1994 unless otherwise specified in nos. 1 to 4 or paras. 5 and 6:

1. no insurance and guarantee obligation pursuant to Article 137c GewO 1994 exists; in cases of damage pursuant to Article 137c GewO 1994, credit institutions are liable with their own funds;
2. Article 137b GewO 1994 is not applicable to the directors of credit institutions;
3. the FMA must enter all information without delay about the activities of credit institutions as insurance intermediaries into the *Gewerbeinformationssystem Austria* – GISA (Trade Information System for Austria) (Article 365 GewO 1994); for this purpose and for supervising the activities of credit institutions as insurance intermediaries, the FMA shall be provided free of charge with access to the data in the GISA.

4. Article 376 no. 18 para. 11 GewO 1994 shall not apply to credit institutions.

Otherwise credit institutions shall observe the provisions relating to the performance of insurance mediation pursuant to Articles 137 to 138 GewO 1994 as well as all provisions contained in a Regulation issued on the basis of Article 69 para. 2 GewO 1994 with regard to the performance of the trade of insurance mediation pursuant to Articles 137 to 138 GewO 1994 (Professional Rules of Conduct for Insurance Mediation); breaches shall not constitute administrative offences under the GewO 1994.

(5) By way of derogation from Article 70 para. 1 no. 3 on-site inspections in relation to the provisions relating to the performance of insurance mediation pursuant to Articles 137 to 138 GewO 1994, the provisions of a Regulation issued on the basis of Article 69 para. 2 GewO 1994 with regard to the performance of the trade of insurance mediation pursuant to Articles 137 to 138 GewO 1994 (Professional Rules of Conduct for Insurance Mediation), Delegated Regulation (EU) 2017/2358 and Delegated Regulation (EU) 2017/2359, by credit institutions shall be performed by the FMA; in this regard Article 70 paras. 1a and 1b as well as Article 79 para. 4 shall not be applicable. The costs of supervision of credit institutions with regard to the observance of the provisions relating to the performance of insurance mediation pursuant to Articles 137 to 138 GewO 1994, the provisions of a Regulation issued on the basis of Article 69 para. 2 GewO 1994 with regard to the performance of the trade of insurance mediation pursuant to Articles 137 to 138 GewO 1994 (Professional Rules of Conduct for Insurance Mediation), Delegated Regulation (EU) 2017/2358 and Delegated Regulation (EU) 2017/2359 shall be considered as insurance supervision costs and shall be allocated to accounting group 2 pursuant to Article 19 para. 1 no. 2 FMABG.

(6) Article 376 no. 10 para. 18 GewO 1994 shall apply for employees, who were regularly directly involved in insurance mediation for a credit institution prior to the entry into force of the Federal Act as amended in Federal Law Gazette I No. 112/2018.

(7) In granting and withdrawing authorisations pursuant to para. 1 no. 9, the FMA shall apply the provisions of Article 59 of Regulation (EU) 1031/2010.

Additional Requirements for Procedures

Article 21a. (1) Taking account of Article 20 of Regulation (EU) No 575/2013 and the implementing standards to be issued by EBA pursuant to Article 20(8) of Regulation (EU) No 575/2013, the FMA is to issue a regulation specifying provisions pursuant to nos. 1 and 2 on the performance of approval procedures for Internal Ratings Based Approaches and other procedures which are performed based on Regulation (EU) No 575/2013, in the interest of legal security or more detailed regulations on the use of IRB Approaches, particularly the authorisation procedure, ongoing supervision and the withdrawal or revocation of authorisations:

1. in the case of IRB Approaches, provisions on the requirements for an authorisation, on ongoing supervision and on the revocation of authorisations;

2. provisions on the application and notification procedures as specified in Regulation (EU) No 575/2013.

In accordance with the first sentence, the FMA must, when issuing regulations, consider Article 101(4) of Directive 2013/36/EU as well as European conventions and possible regulatory and implementing technical standards issued by the European Commission pursuant to Articles 10 and 15 of Regulation (EU) No 1093/2010. The procedural provisions must be appropriate and necessary for supervisory procedures. The amount of information to be provided shall be proportionate and adjusted to the relevant procedure.

(2) In the approval procedure for IRB Approaches pursuant to Article 143(1) and (3), Article 221(1) and (2), Article 225(1), Article 259(3), Article 283(1), Article 312(2) and Article 363(1) and (3) of Regulation (EU) No 575/2013, the FMA must obtain an expert opinion from the *Oesterreichische Nationalbank* on the fulfilment of the relevant requirements as specified in the said Regulation.

(3) The FMA must monitor the application of IRB Approaches within the meaning of Regulation (EU) No 575/2013 routinely but at least every three years, applying well prepared and current techniques and best practices. In doing so, the FMA must particularly take account of changes in the credit institution's management and the application of IRB Approaches to new products.

(4) Should the credit institution not meet the requirements pertaining to the use of IRB Approaches, with considerable impact, it must submit a plan to the FMA showing that the relevant conditions as defined in Regulation (EU) No 575/2013 will again be fulfilled within a reasonable and specific period of time. The FMA shall request the plan be improved if the periods stated in it are inappropriate or if the measures are unsuitable for restoring legal compliance. If the credit institution is unable to restore legal compliance within a reasonable period of time, the FMA must revoke approval of an IRB Approach, provided that this is an appropriate and effective way of restoring legal compliance. In the case of major defects, the FMA may impose higher multipliers or additional capital requirements pursuant to Article 70 para. 4a or revoke the approval of an IRB Approach, or limit it to those areas of application where there is legal compliance or where it can be restored within a reasonable period of time.

(5) If, in an institution that applies an IRB Approach to market risk, the instances of limits being exceeded determined pursuant to Article 366 of Regulation (EU) No 575/2013 are so numerous that the IRB Approach is not or no longer precise enough, the FMA shall take effective and appropriate measures to ensure that the IRB Approach is rapidly improved by the institution or revoke the approval.

Other FMA Powers to Issue Regulations

Article 21b. (1) The FMA is authorised to exercise the powers granted to it by Article 6(4), Article 18(3) and (5) to (8), Article 26, Article 27(1)(a), Article 77, Article 78, Article 89(3), Article 124(1a) and (2), Article 125(3), Article 129(1)(c) and (3), Article 147(5), Article 164(6), Article 178(1)(b) and (2)(d), Article 298(4), Article 311(3), Article 327(2), Article 329(1), Article 336(4)(a), Article 380, Article 395(1),

Article 473, Article 481(2), Article 495(1), Article 495e, and Article 500a(2) of Regulation (EU) No 575/2013 or the powers granted to it in the Implementing Technical Standards issued pursuant to Articles 394, 415, and part 7a of Regulation (EU) No 575/2013 by way of a Regulation.
(2) By means of a regulation, the FMA shall determine the percentages and factors pursuant to Article 465(2), Article 467(3), first subparagraph of Article 468(2), Article 468(3), Article 478(3), Article 479(4), Article 480(3), Article 481(5) and Article 486(6) of Regulation (EU) No 575/2013, considering the national economic interest in a functioning banking sector and in financial market stability. Prior to issuing such a regulation, the FMA is required to obtain the consent of the Federal Minister of Finance.
(3) When issuing a regulation, the FMA must consider the regulatory and implementing technical standards pursuant to Articles 10 and 15 of Regulation (EU) No 1093/2010, which are linked in content to the provisions of Regulation (EU) No 575/2013 mentioned in paras. 1 and 2.

SECTION V: CAPITAL CONSERVATION BUFFER, CAPITAL CONSERVATION MEASURES AND MACROPRUDENTIAL TOOLS

Subsection 1: Capital Conservation Buffer and Combined Buffer Requirement

Capital Conservation Buffer

Article 22. (1) Credit institutions and groups of credit institutions shall also hold a capital conservation buffer made up of Common Equity Tier 1 capital in addition to the Common Equity Tier 1 capital that is required to comply with the minimum own funds requirements pursuant to Article 92 (1) points a, b and c of Regulation (EU) No 575/2013. The capital conservation buffer equal to 2.5% of the total risk exposure amount, which is calculated on a consolidated basis or on an individual institution basis pursuant to Article 92 (3) of Regulation (EU) No 575/2013.
(2) Repealed
(3) Credit institutions and groups of credit institutions that do not hold the requisite amount of capital conservation buffer shall be subjected to restrictions on distributions pursuant to Article 24.

Combined Buffer Requirement

Article 22a. (1) The combined buffer requirement is the total Common Equity Tier 1 capital required to meet the requirement for the capital conservation buffer extended as applicable by the capital buffer requirement for the countercyclical capital buffer, the systemic risk buffer, the buffer for other systemically important institutions and the buffer for global systemically important institutions.
(2) Credit institutions and groups of credit institutions shall not be allowed to use Common Equity Tier 1 capital that is maintained to meet

1. the combined buffer requirement pursuant to para. 1, for meeting one of the requirements pursuant to points a, b and c of Article 92(1) of Regulation (EU) No 575/2013, the additional own funds requirement prescribed in Article 70b to address other risks than the risk of excessive leverage or supervisory expectations pursuant to Article 70c to address other risks than the risk of excessive leverage;
2. one of the elements of its combined buffer requirement to meet the other applicable elements of its combined buffer requirement, or
3. the combined buffer requirement pursuant to para. 1, to meet the risk-based components of the requirements on minimum requirements on own funds and eligible liabilities in accordance with Articles 92a and 92b of Regulation (EU) No 575/2013 and in Articles 102 and 103 BaSAG.

Subsection 2: Macroprudential Tools

Macroprudential Supervision within the Single Supervisory Mechanism

Article 23. (1) If the FMA, in its function as the competent authority pursuant to Article 23a para. 2, Article 23a para. 2, Article 23d para. 2, Article 23e para. 2, Article 23h para. 2 of this federal act, intends to proceed pursuant to Article 5(3) of Regulation (EU) No 1024/2013, it shall inform the Financial Market Stability Board (*FMSG; Finanzmarktstabilitätsgremium*) (Article 13 of the Financial Market Authority Act (*FMABG; Finanzmarktaufsichtsbehördengesetz*) published in Federal Law Gazette I no. 97/2001) in a timely manner in advance, submitting the relevant documentation, and give the Board an opportunity to issue a recommendation within a reasonable period of time. If the FMA does not comply with this recommendation, it must justify its actions to the Financial Market Stability Board, submitting the relevant documentation.
(2) If the European Central Bank, pursuant to Article 5(4) of Regulation (EU) No 1024/2013, informs the FMA in its function as the competent authority pursuant to Article 23a para. 2, Article 23c para. 2, Article 23d para. 2, Article 23e para. 2 and Article 23h para. 2 of this federal act of a planned decision pursuant to Article 5(2) of Regulation (EU) No 1024/2013, the FMA shall immediately inform the Financial Market Stability Board and the Federal Minister of Finance, submitting the relevant documentation. The Financial Market Stability Board may, by adhering to the stipulated period pursuant to Article 5(4) of Regulation (EU) No 1024/2013, recommend to the FMA that it raise objections against the planned ECB decision. The Financial Market Stability Board must state the reasons for such a recommendation. If the FMA does not comply with this recommendation, it shall be required to justify its actions to the FMSG, including the submission of relevant documentation.
(3) If the European Central Bank raises objections pursuant to Article 5(1) of Regulation (EU) No 1024/2013 against the FMA's planned decisions pursuant to Articles 23a, 23b, 23c, 23d, 23e or 23h of this federal act, the FMA shall immediately inform the Financial Market Stability Board, submitting the relevant documentation.

Capital buffer requirement for the countercyclical capital buffer

Article 23a. (1) Credit institutions and groups of credit institutions shall be required to hold a countercyclical capital buffer composed of Common Equity Tier 1 capital, which is required to correspond to the total risk exposure calculated pursuant to Article 92 (3) of Regulation (EU) No. 575/2013, multiplied by the weighted average of the countercyclical capital buffer ratio and which is calculated in accordance with Part One Title II of Regulation (EU) No. 575/2013 on an individual institution basis or on a consolidated basis (capital buffer requirement for the countercyclical capital buffer). The Financial Market Stability Board may advise the FMA about risks with a pro-cyclical effect pursuant to Article 136 of Directive 2013/36/EU and recommend it to prescribe a capital buffer requirement for a countercyclical capital buffer. If the FMA does not comply with this recommendation, it shall be required to justify its actions to the FMSG, including the submission of relevant documentation.

(2) The FMA is the competent authority for the purposes of Article 136(1) of Directive 2013/36/EU.

(3) For the purposes of para. 1 the FMA may obtain an expert opinion from the *Oesterreichische Nationalbank* and taking into consideration the relevant standards issued by EBA and the European Systemic Risk Board (ESRB) (Regulation (EU) No 1092/2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board, OJ L 331, 15.12.2010, p. 1) and with the consent of the Federal Minister of Finance may determine by means of a Regulation:

1. the amount of the capital buffer requirement for the countercyclical capital buffer for credit institutions and groups of credit institutions incorporated in Austria in accordance with the **Annex to Article 23a**;
2. the amount of the capital buffer requirements for the countercyclical capital buffer that were determined by other authorities or bodies pursuant to Article 77 para. 5 no. 6 or competent third-country authorities in an amount of over 2.5 %, and which were recognised by the FMA in accordance with para. 5 and Article 23b for the calculation of the capital buffer requirements for the countercyclical capital buffer of credit institutions established in Austria;
3. the amount of the capital buffer requirement for the countercyclical capital buffer for third countries in the cases listed in and in accordance with Articles 138 and 139 of Directive 2013/36/EU.

(4) The FMA shall as a minimum publish, and as applicable update, on a quarterly basis the following information on its website:

1. the countercyclical buffer rate to be used;
2. the relevant ratio between the volume of loans granted in Austria and the Gross Domestic Product (Credit-to-GDP ratio) as well as its deviation from the long-term trend;
3. the buffer guide calculated in accordance with para. 7;
4. a justification for that buffer rate;

5. in the event of an increase in the buffer rate, the expected point in time from when credit institutions and groups of credit institutions shall apply the higher buffer rate for calculating the capital buffer requirement for the countercyclical capital buffer;
6. where the point in time referred to in no. 5 is less than 12 months after the date of the announcement under this paragraph, the exceptional circumstances that justify that shorter deadline for application;
7. in the event of a reduction in the buffer rate, the period of time during which no increase in buffer rate is to be expected, with the reasons to assume this period of time being required to be stated;
8. in the event of the deviation from a recommendation by the Financial Market Stability Board pursuant to para. 1 the reasons for deviating from this recommendation.

The FMA shall take all necessary steps that are appropriate for coordinating the announcement in accordance with this paragraph with other authorities or bodies pursuant to Article 77 para. 5 no. 6. The FMA shall inform the ESRB about any change in the rate for the countercyclical capital buffer requirement and about the necessary details pursuant to nos. 1 to 7.

(5) Where the countercyclical capital buffer requirement is recognised pursuant to Article 23b para. 1 or determined pursuant to para. 3, then the FMA shall inform about at least the following information, by publishing it on its website:

1. the capital buffer requirement for the countercyclical capital buffer;
2. the Member State or the third country for which this countercyclical capital buffer requirement applies;
3. when setting the buffer rate of the countercyclical capital buffer for the first time for a value of over 0 % as well as in the event of increasing a buffer rate, the point in time from when credit institutions and groups shall apply the higher buffer rate for calculating the buffer requirement for the countercyclical capital buffer, and
4. where the point in time referred to in no. 3 is less than 12 months after the date of the announcement under this paragraph, the exceptional circumstances that justify that shorter deadline for application;

(6) Credit institutions and groups of credit institutions that do not hold a capital buffer for covering the capital buffer requirement for the countercyclical capital buffer shall be subjected to restrictions on distributions pursuant to Article 24.

(7) The FMA shall calculate a buffer guide every quarter that will be used to determine the rate for the capital buffer requirement for the countercyclical capital buffer pursuant to para. 8. The buffer guide shall take into consideration the credit cycle and the risks due to excess credit growth in Austria in a meaningful way, and shall duly take into account specificities of the national economy. The buffer guide shall be based on the deviation from the long-term trend of the volume of loans granted to the gross domestic product, with inter alia an indicator for domestic credit growth and an indicator that reflects changes in the domestic credit-to-GDP ratio taking into account any ESRB guidance as defined in Article 135 (1) b) of Directive 2013/36/EU.

(8) The FMA shall review the intensity of the domestic procyclical risks and the adequacy of the applicable capital buffer requirement on a quarterly basis and as applicable determine or adapt the countercyclical capital buffer rate. In doing so it shall take into account the buffer guide rate pursuant to para. 7, and as applicable the ESRB's guidance pursuant to Article 135 (1) lits. a, c and d of Directive 2013/36/EU for setting a buffer rate as well as other variables that the FMA considers material in order to mitigate the intensity of procyclical risks.
(9) The countercyclical buffer rate, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 of institutions that have credit exposures in Austria, shall be between 0 % and 2.5 %, determined in steps of 0.25 percentage points or multiples of 0.25 percentage points. For the purposes stated in the Annex to Article 23a, the FMA may set a higher rate in excess of 2.5 % of the total risk exposure amount calculated in accordance with Article 92 (3) of Regulation (EU) No 575/2013, provided it considers this justified based on the purposes listed in para. 8.
(10) If the countercyclical buffer rate is determined by the FMA over a value of zero for the first time, or if the previous rate is raised by the FMA at a later point in time, then the FMA must determine a date, from when the credit institutions and groups of credit institutions shall first have to apply this increased rate for calculating the countercyclical buffer rate. That date shall be no later than 12 months after the date when the increased buffer setting is announced pursuant to para. 4. If the date is less than 12 months after the increased buffer setting is announced, then that shorter deadline for application shall be justified on the basis of exceptional circumstances.
(11) If the FMA reduces the existing rate for the countercyclical buffer rate based on the available data at the time of its being announced in accordance with this paragraph, then it shall determine an expected period, that is not binding for the FMA, during which no increasing of the buffer rate is to be expected.

Recognition of capital buffer requirements for countercyclical capital buffers

Article 23b. (1) Die FMA may recognise the buffer ratio set by an authority or body pursuant to Article 77 para. 5 no. 6 or a competent third-country authority that exceeds 2.5 % of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 for the purpose of calculation of the countercyclical capital buffer by credit institutions and groups of credit institutions that are authorised in Austria. Where the FMA intends to apply a countercyclical capital buffer ration that is applied by another Member State, then it shall notify the Financial Market Stability Board about this in advance, and to obtain a recommendation from the Financial Market Stability Board.
(2) The FMA may set the rate to be used for the calculation for the requirement for the countercyclical capital buffer by credit institutions and groups of credit institutions taking into consideration the ESRB's recommendation. If the ESRB has recommended a rate for the countercyclical capital buffer of a third country pursuant to Article 138 lit. a of Directive 2013/36/EU and the FMA intends to follow

this recommendation, then the FMA shall notify this to the Financial Market Stability Board, and obtain a recommendation from the Board in advance.
(3) If a competent third-country authority has set and published a countercyclical capital buffer rate for the respective third country and the FMA assumes that the rate set by the competent third-country authority is inadequate for protecting credit institutions and groups of credit institutions against the risks of excessive credit growth in the affected third country, the FMA may determine another buffer rate for this third country for calculating the capital buffer requirements for the countercyclical capital buffer by credit institutions and groups of credit institutions. Where the FMA intends to apply or to increase a countercyclical capital buffer that has been determined by a third-country authority, then it shall notify the Financial Market Stability Board about this in advance, and to obtain a recommendation from the Financial Market Stability Board.
(4) Where the FMA makes use of the power pursuant to para. 3, then it shall not set the countercyclical buffer rate lower than the value determined by the competent third-country authority, unless the buffer rate exceeds 2.5 % of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 of credit institutions and groups of credit institutions that have credit exposures in that third country.
(5) Where the FMA sets a countercyclical buffer rate for a third country pursuant to para. 2 or 3 that exceeds the applicable countercyclical buffer rate, then it shall decide the date from which credit institutions and groups of credit institutions shall be required to apply that buffer rate for the purposes of calculating their countercyclical capital buffer. That date shall be no later than twelve months from the date when the buffer rate is announced pursuant to Article 23a para. 4. If that date is less than 12 months after the setting is announced, that shorter deadline for application shall be justified on the basis of exceptional circumstances.

Capital buffer requirement for Global Systemically Important Institutions

Article 23c. (1) The FMA shall identify global systemically important institutions incorporated in Austria on a consolidated basis and allocate them to a subcategory. The FMA shall advise the Financial Market Stability Board about global systemically important institutions that are active in Austria, and their subsidiaries that are incorporated in Austria about the capital buffer requirements allocated to these global systemically important institutions and as applicable about changes in capital buffer requirements. The Financial Market Stability Board may recommend to the FMA to prescribe a capital Buffer for Global Systemically Important Institutions incorporated in Austria. If the FMA does not comply with this recommendation, it shall be required to justify its actions to the Financial Market Stability Board, including the submission of relevant documentation. The FMA shall classify credit institutions and groups of credit institutions as global systemically important institutions by means of an administrative decision.
(2) The FMA is the competent authority for the purposes of Article 131(1) of Directive 2013/36/EU.

(3) The determination of classification of global systemically important institutions incorporated in Austria and their allocation to a sub-category may occur based on the simple or additional methodology based respectively on quantifiable indicators:

1. The simple methodology takes into consideration the respective equally-weighted criteria
   a. the size of the group of credit institutions;
   b. the interconnectedness of the group of credit institutions with the financial system;
   c. the substitutability of the financial services or of financial infrastructure provided by the group of credit institutions;
   d. the complexity of the group of credit institutions; and
   e. cross-border activities of the group of credit institutions with other Member States and third countries.
2. In addition to the criteria named in no. 1 lits. a to d, the additional methodology also considers the cross-border activities of the group of credit institutions, with the exception of the group in other participating Member States of the Single Supervisory Mechanism as defined in Article 4 of Regulation (EU) No 806/2014 as an equally weighted criterion.

The FMA shall produce an overall score based on the simple and additional methodology, that allows global systemically important institutions to be determined and to be assigned to a sub-category.

(4) Global systemically important institutions shall be split into five sub-categories. The lowest boundary and the boundaries between each sub-category shall be determined by the scores under the methodology pursuant to para. 3 no. 1. The cut-off scores between adjacent sub-categories shall be defined clearly and shall adhere to the principle that there is an increase of systemic significance, between each sub-category resulting in a linear increase in the requirements of additional Common Equity Tier 1 capital, with the exception of sub-category five and every added sub-category. For the purposes of this paragraph, systemic significance is the expected impact exerted by the global systemically important institution distress on the global financial market. The lowest sub-category of global systemically important institutions result in a capital buffer requirement of 1 % of the total risk exposure amount calculated in accordance with Article 92 (3) of Regulation (EU) No 575/2013. For each subsequent sub-category the buffer shall increase in steps of at least 0.5 % of the total risk exposure amount calculated in accordance with Article 92 (3) of Regulation (EU) No 575/2013.

(5) Irrespective of paras. 1 and 4 and when applying the sub-categories and cut-off scores listed in para. 4, the FMA may

1. re-allocate a global systemically important institution from a lower sub-category to a higher sub-category;
2. allocate an undertaking pursuant to para. 1, for which the overall score pursuant to para. 3 no. 1 is lower than the lowest score for the lowest sub-category, into this sub-category or a higher sub-category and therefore classify it as global systemically important institution;
3. re-allocate a global systemically important institution from a higher sub-category to a lower sub-category, taking into consideration the Single Resolution Mechanism (SRM) and based on the total score pursuant to para. 3 no. 2.

(6) Global systemically important institutions shall hold a capital buffer on a consolidated basis made up of Common Equity Tier 1 capital that is not used for any other purpose (capital buffer requirement for Global Systemically Important Institutions) that is in line with the sub-category to which it was allocated. When determining the capital buffer, the sub-category into which a global systemically important institution is allocated shall be taken into account. The FMA shall allocate global systemically important institutions incorporated in Austria and prescribe a capital buffer requirement by means of a Regulation and taking into account the relevant EBA and ESRB standards with the consent of the Federal Minister of Finance.
(7) Where a group of credit institutions is subject on a consolidated basis to a capital buffer requirement for Global Systemically Important Institutions and a capital buffer requirement for Systemically Important Institutions, then it shall be required to comply with the higher buffer requirement.
(8) Where a credit institution or a group of credit institutions is required to observe a capital buffer requirement for the systemic risk buffer pursuant to Article 23e, then this buffer shall apply in addition to a capital buffer requirement for systemically important institutions to be observed pursuant to Article 23d para. 5 or as applicable a capital buffer requirement for Global Systemically Important Institutions to be observed pursuant to para. 6. Where the total of the capital buffer requirement for the systemic risk buffer and the capital buffer requirement for global systemically important institutions or the capital buffer requirement for systemically important institutions for the purposes of Article 23e paras. 7 to 10 that the same credit institution or group of credit institutions is subject to exceeds 5 %, the FMA shall apply the procedure pursuant to Article 23d para. 6.
(9) The FMA shall notify a list containing the names of global systemically important institutions and systemically important institutions incorporated in Austria, as well as the respective sub-category to which every global systemically important institution has been allocated to the ESRB. A justification for exercising or not exercising of supervisory discretion pursuant to para. 5 nos. 1 to 3 shall be attached to the notification. The FMA shall update this notification annually.
(10) For the purposes of para. 1, the FMA shall obtain an expert opinion from the *Oesterreichische Nationalbank* on the existence of the required documentary evidence and conditions.

Capital buffer requirement for Systemically Important Institutions

Article 23d. (1) The FMA shall identify systemically important institutions incorporated in Austria on an individual basis, a sub-consolidated basis and consolidated basis. The FMA shall advise the Financial Market Stability Board about systemically important institutions that are active in Austria, about the capital buffer requirements allocated to these systemically important institutions, and as appropriate about changes in their capital buffer requirements and any scopes of application exploited. The Financial Market Stability Board may advise the FMA about credit institutions and groups of credit institutions, that should potentially be classified as, or no longer classified as, a

systemically important institution and shall recommend that FMA to prescribe a capital buffer for systemically important institutions incorporated in Austria. If the FMA does not comply with this recommendation, it shall be required to justify its actions to the Financial Market Stability Board, including the submission of relevant documentation. The FMA shall classify credit institutions and groups of credit institutions as systemically important institutions by means of an administrative decision.

(2) The FMA is the competent authority for the purposes of Article 131(1) of Directive 2013/36/EU.

(3) The FMA shall determine the classification as a systemically important institution pursuant to para. 1 by means of an administrative decision. Systemic relevance shall be assessed based on at least one of the following criteria taking into consideration of relevant EU standards:

1. size,
2. relevance for the economy of the European Union or Austria,
3. significance of cross-border activities;
4. interconnectedness of the credit institution or group of credit institutions with the financial system.

(4) For the purposes of para. 1, the FMA shall obtain an expert opinion from the *Oesterreichische Nationalbank* on the existence of the required documentary evidence and conditions.

(5) The FMA may oblige systemically important institutions to hold a capital buffer of between 0 % and 3 % of the total risk exposure amount calculated in accordance with Article 92 (3) of Regulation (EU) No 575/2013 made up of Common Equity Tier 1 capital that is not used for any other purpose, taking into consideration the criteria pursuant to para. 3 and the supplementary condition pursuant to para. 6 on an individual basis, consolidated basis or sub consolidated basis (capital buffer requirement for systemically important institutions).

(6) The FMA may also oblige systemically important institutions pursuant to para. 1 to hold a capital buffer of more than 3 % of the total risk exposure amount calculated in accordance with Article 92 (3) of Regulation (EU) No 575/2013 made up of Common Equity Tier 1 capital that is not used for any other purpose, taking into consideration the criteria pursuant to para. 3 on an individual basis, consolidated basis or sub consolidated basis (capital buffer requirement for systemically important institutions). The supplementary condition for prescribing a capital buffer requirement of over 3 % shall be the adoption of a legal act by the European Commission pursuant to Article 131 (5a) 3rd subparagraph of Directive 2013/36/EU or the expiry of the time frame mentioned in Article 131 (5a) 3rd subparagraph of Directive 2013/36/EU.

(7) The FMA shall prescribe a capital buffer requirement pursuant to para. 5 or 6 for systemically important institutions incorporated in Austria by means of a Regulation, taking into account the relevant EBA and ESRB standards, with the consent of the Federal Minister of Finance.

(8) The conditions for the prescribing of a capital buffer requirement pursuant to para. 5 or 6 by the FMA is:

1. the capital buffer requirement for systemically important institutions shall not be allowed to lead to inappropriate negative effects on the financial market of the European Union or the

financial markets of other Member States in the form of an impediment for the smooth functioning of the internal market;

2. The FMA shall review the classification as a systemically important institution and the appropriateness of the buffer requirement at least once a year and shall where necessary amend the prescribed capital buffer requirement for systemically Important Institutions pursuant to para. 5 or 6.

(9) One month prior to the publication pursuant to Article 69b para. 1 no. 8 of a decision about a capital buffer requirement for systemically important institutions pursuant to para. 5 and three months prior to the publication of the decision about a capital buffer requirement for systemically important institutions pursuant to para. 6, the FMA shall notify the ESRB of this intention, attaching the following information:

1. the assumptions that have led to a buffer requirement pursuant to para. 5 or 6 being considered to be an effective and appropriate measure for addressing systemic risk;
2. an estimation of the potential positive and negative effective as a result of the buffer requirement pursuant to para. 5 or 6 on the internal market, and
3. the rate of the capital buffer requirement for systemically important institutions that the FMA intends to set.

(10) If a systemically important institution is a subsidiary of a globally systemically important institution or a systemically important institution that is either a credit institution or a group of credit institutions with an EU parent institution as the lead institution and for which a capital buffer requirement for systemically important institutions applies on a consolidated basis, then the capital buffer requirement that apply on an individual basis or on a sub-consolidated basis for the systemically important institution shall not exceed the lower of the following amounts:

1. The total of the higher of the two rates applicable for the group of credit institutions on a consolidated basis of the capital buffer requirement for global systemically important institutions or for systemically important institutions and 1 % of the total risk exposure amount calculated in accordance with Article 92 (3) of Regulation (EU) No 575/2013, and
2. 3 % of the total risk exposure amount calculated pursuant to Article 92 (3) of Regulation (EU) No 575/2013 or of the rate approved by the European Commission pursuant to para. 6 for the group of credit institutions on a consolidated basis.

Capital buffer requirement for the systemic risk buffer

Article 23e. (1) The FMA may set a common equity tier 1 capital systemic risk buffer for parts of or the entire banking sector for a subset of or all exposures pursuant to no. 2 of the Annex to Article 23e, in order to avoid or mitigate systemic risks that are not covered by Regulation (EU) No. 575/2013 or by Articles 23a to 23d, that are manifested in such a way that it might lead to the disruption of the financial system with potentially significant negative impacts on the financial system and the domestic real economy (capital buffer requirement for the systemic risk buffer). The Financial

Market Stability Board may advise the FMA about exposures or parts of exposures, the manifestation of which leads to a systemic risk with a potentially significant negative impact on the national financial system and the domestic real economy and recommend prescribing a capital buffer requirement for the systemic risk buffer for parts of or the entire banking sector. If the FMA does not comply with this recommendation from the Financial Market Stability Board, it must justify its actions to the Committee, submitting the relevant documentation.

(2) The FMA is the competent authority for the purposes of Article 133(1) of Directive 2013/36/EU.

(3) For the purposes of para. 1 the FMA may obtain an expert opinion from the *Oesterreichische Nationalbank* and may prescribe by way of a Regulation taking into consideration the relevant Recommendations and Guidelines of the EBA with the consent of the Federal Minister of Finance, that credit institutions and groups of credit institutions maintain on an individual basis, on a consolidated basis or a sub-consolidated basis a capital buffer requirement for the systemic risk buffer consisting of Common Equity Tier 1 capital, which is calculated pursuant to no. 1 of the Annex to Article 23e.

(4) A capital buffer requirement for the systemic risk buffer has to apply for all exposures or a subset of exposures pursuant to no. 2 of the Annex to Article 23e for a part of or all credit institutions in the banking sector and which is adapted in steps of 0.5 % or a multiple thereof. Different requirements may be used for the different subsets of credit institutions and groups of credit institutions.

(5) The capital buffer requirement for the systemic risk buffer shall not have to cover any risks, that have already been covered by Articles 23a to 23d and shall not be able to have any disproportionately negative impact for parts of or the entire financial system of other Member States or of the Union as a whole forming or creating an obstacle to the functioning of the internal market. The FMA shall review the adequacy of the capital buffer requirement for the systemic risk buffer at least every two years.

(6) Prior to the publication of the decision about on the setting or resetting of capital buffer requirements for the systemic risk buffer pursuant to para. 11 the FMA shall submit a notification about this decision to the ESRB. If the credit institution or the group of credit institutions, for which one or more systemic risk buffer rates apply, is a subsidiary of a parent undertaking that is established in another Member State, then the FMA shall also notify this to the authority or body pursuant to Article 77 para. 5 no. 6. If a capital buffer requirement for the systemic risk buffer also applies for exposures situated in third countries, then the FMA shall also be required to notify this to the ESRB. The notification shall contain the following information:

1. the systemic risks existing in Austria;
2. the reasons why these systemic risks threaten the stability of the financial system in Austria to such an extent that justify the buffer rate;
3. the justification of the assumption that the capital buffer requirement for the systemic risk buffer is considered likely to be effective and proportionate to mitigate the risk;
4. an evaluation for the likely positive or negative impact of the capital buffer requirement for the systemic risk buffer on the internal market;

5. the rate or the rates of the capital buffer requirement for the systemic risk buffer that the FMA intends to prescribe, as well as for which exposures these rates apply and which credit institutions are to be subjected to these rates;
6. in the case that the capital buffer requirement for the systemic risk buffer applies for all exposures, a justification about why the FMA is of the view that the capital buffer requirement for the systemic risk buffer does not overlap with the capital buffer requirement for the systemically important institutions pursuant to Article 23d.

If the decision on the setting of the capital buffer requirement for the systemic risk buffer leads to a decrease or to no change compared to the previously determined capital buffer requirement for the systemic risk buffer, the FMA may publish the determining of the capital buffer requirement immediately following its submission of the notification to the ESRB.

(7) If the setting of a capital buffer requirement for the systemic risk buffer(s) for a subset of or all exposures pursuant to no. 2 of the Annex to Article 23e leads to a combined capital buffer requirement for the systemic risk buffer of up to 3 % and where it is a resetting of or an increase in the applicable capital buffer requirement for any of these risk exposures, then the FMA shall notify the ESRB about this in accordance with para. 6 one month prior to the publication of the setting. When calculating whether the threshold has been reached the recognition of a capital buffer requirement set by another Member State for the systemic risk buffer pursuant to Article 23f shall not be taken into account.

(8) If the setting or resetting of a capital buffer requirement for the systemic risk buffer(s) for all exposures or for a subset of exposures pursuant to no. 2 of the Annex to Article 23e leads to a combined capital buffer requirement for the systemic risk buffer of between 3 % and 5 % for any of these exposures and if the credit institution or the group of credit institutions is not a subsidiary of a parent undertaking that is established in another Member State, then the FMA shall request an opinion from the European Commission in the notification pursuant to para. 6. If there is an opinion from the European Commission, then the FMA act upon this opinion. In the case this it does not act upon the opinion, it shall be required to explain why not.

(9) If the setting or resetting of a capital buffer requirement for the systemic risk buffer(s) for all exposures or for a subgroup of exposures pursuant to no. 2 of the Annex to Article 23e leads to a combined capital buffer requirement for the systemic risk buffer of between 3 % and 5 % for any of these exposures and if the credit institution or the group of credit institutions is the subsidiary of a parent undertaking that is established in another Member State, then the FMA shall request an opinion from the European Commission and the ESRB in the notification pursuant to para. 6. If a negative opinion is not issued within six weeks following receipt of the notification by the European Commission and the ESRB, the FMA may enact the capital buffer requirement for the systemic risk buffer(s). In the event of divergent views by the competent authority or public body pursuant to Article 77 para. 5 no. 6 of the parent undertaking regarding the applicable capital buffer requirement for the credit institution in question and in the case of there being a negative opinion by the European Commission and the ESRB, the FMA may act upon this, or submit the issue to the EBA in

accordance with Article 19 of Regulation (EU) No 1093/2010 and request EBA's assistance in this matter. In this case the FMA shall refrain from setting the capital buffer requirement for the systemic risk buffer for these exposures until EBA has issued a decision.

(10) If the setting or resetting of a capital buffer requirement for the systemic risk buffer(s) for one of the exposures or for a subset of exposures pursuant to no. 2 of the Annex to Article 23e leads to a combined capital buffer requirement for the systemic risk buffer of more than 5 %, then the FMA shall obtain the consent of the European Commission prior to setting the capital buffer requirement.

(11) If the FMA has set or reset one or more buffer requirements for a systemic risk buffer, then it shall announce this by publishing it on its website, publishing at least the following information:

1. The capital buffer requirement for the systemic risk buffer(s);
2. the credit institutions and groups of credit institutions for which the capital buffer requirement for the systemic risk buffer apply;
3. the exposures for which the capital buffer requirement for the systemic risk buffer(s) apply;
4. a justification for the setting or resetting of a capital buffer requirement for the systemic risk buffer(s);
5. from when the credit institutions or groups of credit institutions are required to apply the increased capital buffer requirements for the systemic risk buffer, and
6. the names of the countries where exposures located in those countries are recognised in the capital buffer requirement for the systemic risk buffer.

If publishing the information pursuant to no. 4 could jeopardise the stability of the financial system in one or more Member States, then the information pursuant to no. 4 shall not be allowed to be published.

(12) If a credit institution or group of credit institutions does not fully comply with the capital buffer requirement for the systemic risk buffer pursuant to para. 1, then the distribution restrictions defined in Article 24 shall apply. If the Common Equity Tier 1 capital of a credit institution or a group of credit institutions does not increase to a satisfactory extent with regard to the relevant systemic risk as a result of the application of restrictions on distributions, the FMA may take measures pursuant to Article 70 paras. 4 and 4a, and Articles 70b to 70d.

(13) Where the FMA decides to set a capital buffer requirement for the systemic risk buffer based on exposures located in other Member States, then is shall be set in the same way for all exposures located within the European Union, unless the buffer is set in order to recognise the capital buffer requirement for the systemic risk buffer set by another Member State pursuant to Article 23f.

(14) The FMA may request the ESRB on the basis of Article 134 (5) of Directive 2013/36/EU to issue a recommendation under Article 16 of Regulation (EU) No. 1092/2010 to one or more Member States, to recognise a capital buffer requirement determined by the FMA pursuant to para. 1.

Recognition of capital buffer requirements for systemic risk buffers

Article 23f. (1) The FMA may recognise capital buffer requirements determined in accordance with Article 133 of Directive 2013/36/EU for the systemic risk buffer of other Member States and apply them by means of a Regulation for credit institutions or groups of credit institutions that are authorised in Austria for those exposures that are located in the Member State that determines this ratio. Where the FMA intends to apply a capital buffer requirement for the systemic risk buffer that is determined by another Member State, then it shall notify the Financial Market Stability Board about this in advance, and to obtain a recommendation from the Financial Market Stability Board.
(2) Where the FMA recognises a capital buffer requirement for the systemic risk buffer for credit institutions or groups of credit institutions incorporated in Austria pursuant to para. 1, then it shall notify this to the ESRB.
(3) In its decision regarding the recognition of a capital buffer requirement for the systemic risk buffer pursuant to para. 1 the FMA shall take information into account that the Member State setting this ratio is required to supply based on Article 133 (9) and (13) of Directive 2013/36/EU.
(4) Where the FMA recognises a capital buffer requirement for the systemic risk buffer for credit institutions or groups of credit institutions incorporated in Austria, this this capital buffer requirement may apply in addition to a capital buffer requirement for the systemic applied pursuant to Article 133 of Directive 2013/36/EU provided that the buffers cover different risks. Where the buffers cover the same risk, then only the higher buffer shall be applied.
(5) If a credit institution or group of credit institutions incorporated in Austria is the subsidiary of a parent undertaking established in another Member State, for which in the view of the authority or public body pursuant to Article 77 para. 5 no. 6 of the parent undertaking, one or more capital buffer requirements for the systemic risk buffer should apply for this subsidiary, in the event that the FMA does not share this view then pursuant to Article 19 of Regulation (EU) No 1093/2010 the FMA may submit this matter to EBA.
(6) If EBA has made a decision pursuant to Article 19 of Regulation (EU) No 1093/2010, by which the FMA is obliged to recognise the decision about the setting of capital buffer requirements for the systemic risk buffer(s) by another Member State pursuant to Article 133 of Directive 2013/36/EU, then the FMA shall inform the Financial Market Stability Board about this and shall issue a Regulation in which the EBA decision is recognised.

National measures to limit systemic risk

Article 23g. (1) The Financial Market Stability Board may recommend the FMA to take national measures as defined in Article 458 (2) lit. d of Regulation (EU) No. 575/2013 for all or several credit institutions and groups of credit institutions that the FMA supervises, where the following conditions exist:

1. systemic risk exists and is pronounced in such a way that it could potentially result in a significant negative impact on the financial system and the real economy in Austria, and

2. other macroprudential tools pursuant to Regulation (EU) No 575/2013 or this federal act are ineffective or less effective.

(2) The FMA is the competent authority for the purposes of Article 458 (1) of Regulation (EU) No 575/2013.

(3) Based on the Financial Market Stability Board's recommendation pursuant to para. 1, the FMA may adopt a Regulation containing national measures as defined in Article 458 (2) lit. d of Regulation (EU) No 575/2013 for the duration of up to two years or until the systemic risk has been mitigated accordingly or no longer exists, in the event that this is case at an earlier point in time, where such national measures are suitable for effectively reducing the extent of the systemic risk, or to eliminate the risk. If the FMA does not follow the Financial Market Stability Board's recommendation, it shall be required to justify its actions to the Financial Market Stability Board including the submission of relevant documentation. The FMA may petition the ESRB in accordance with Article 458 (8) of Regulation (EU) No 575/2013 to instruct other Member States to extend national measures taken by the FMA to branches active in Austria or exposures of credit institutions and groups of credit institutions located in Austria within the scope of competence of these Member States.

(4) The adoption of an FMA Regulation pursuant to para. 3 requires the following:

1. the provision of the necessary quantitative and qualitative proof pursuant to Article 458 (2) lits. a to f of Regulation (EU) No 575/2013.
2. the submission of the notification to the European Commission and the ESRB pursuant to Article 458 (2) first subparagraph of Regulation (EU) No 575/2013;
3. the deadline for Article 458 (4) of Regulation (EU) No 575/2013 having passed without the Council of the European Union having issued an implementing decision rejecting the intended national measures, and
4. consent having been given by the Federal Minister of Finance for the FMA Regulation.

(5) The FMA shall review the national measures that have been determined in accordance with para. 3 prior to the expiry of the deadline set forth in Article 458 (9) of Regulation (EU) No 575/2013 in consultation with EBA and the ESRB. Where the conditions for issuing national measures continue to prevail, the FMA may amend the Regulation as necessary and may extend the national measures by up to two years as necessary. Prior to extending such measures, the FMA shall obtain a recommendation from the Financial Market Stability Board, with the conditions set forth in para. 4 being required to be observed. If the FMA deviates from this recommendation, it must justify this deviation to the Financial Market Stability Board, submitting the relevant documentation.

(6) Prior to the adoption of amendment of existing national measures by means of a Regulation pursuant to para. 3, the FMA may obtain an expert opinion from the *Oesterreichische Nationalbank* about the existence and nature of the systemic risk as well as the suitability of national measures for effectively reducing or eliminating the systemic risk. Prior to the recognition of national measures pursuant to para. 7 and prior to the adoption of measures pursuant to para. 8, the FMA shall obtain an expert opinion from the *Oesterreichische Nationalbank*.

(7) The FMA may recognise in full or in part the measures adopted by other Member States pursuant to Article 458 of Regulation (EU) No. 575/2013 effective for branches pursuant to Article 10 or exposures of credit institution licensed in Austria taking into consideration the criteria set out in Article 458(4) of Regulation (EU) No. 575/2013 and shall inform the Council of the European Union, the European Commission, EBA, the ESRB and the Member State that adopted these measures. Prior to recognising such measures, the FMA shall obtain a recommendation from the Financial Market Stability Board (FMSG). If the FMA deviates from this recommendation, it must justify this deviation to the Financial Market Stability Board, submitting the relevant documentation.
(8) Independently of the procedure set forth in Article 458 (3) to (9) of Regulation (EU) No 575/2013 and provided that the conditions and notification obligations set forth in paras. 1, 3 and 4 in conjunction with Article 458 (2) of Regulation (EU) No 575/2013 are observed, the FMA, taking into consideration a lead period of six months, may impose the measures listed in Article 458 (10) of Regulation (EU) No 575/2013 for a duration of up to two years or until the systemic risk no longer exists by means of a Regulation, where such measures are suitability for reducing the intensity of the systemic risk.

Measures for the limitation of systemic risks in real estate financing

Article 23h. (1) Where the Financial Market Stability Board identifies changes in the manifestation of systemic risks arising from real estate financing arrangements using debt instruments that may potentially have negative effects on financial market stability, the Financial Market Stability Board shall recommend the FMA to make use of suitable instruments pursuant to para. 2 to reduce the manifestation of systemic risks. In identifying such systemic risks, it shall in particular be taken into account, whether such risks arise or increase due to an increase in the level of new business of real estate financing arrangements using debt instruments as well as due to changes to the indicators listed in para. 2. If the FMA does not comply with this recommendation, it shall be required to justify its actions to the FMSG, including the submission of relevant documentation.
(2) On the basis of the recommendation pursuant to para. 1, the FMA shall obtain an expert opinion from the *Oesterreichische Nationalbank* on the existence of systemic risks arising from real estate financing arrangements using debt instruments, and shall issue a Regulation, with the consent of the Federal Minister of Finance, that is effective for all or some credit institutions for a period of up to three years. The measures set out in the Regulation shall apply for the newly agreed financing arrangements agreed during the period of effect of the Regulation and must be suitable to reduce the identified changes in intensity of systemic risk for real estate financing arrangements using debt instruments. The following shall be defined in the Regulation:

1. Caps for the ratio of the total loan liabilities of a borrower arising from real estate financing arrangements using debt instruments towards this credit institution, and the total of the market values of all immovable properties acting as collateral against this amount, less existing pledges and plus other collateral (loan-to-value ratio);

2. Caps for the ratio arising from the total of all outstanding loan liabilities of a borrower and the income or other suitable operating indicator in the case of legal persons within a defined period of time (debt-to-income ratio);
3. Caps for the ratio of the total interest payments and repayments arising from the servicing of all loan liabilities of the borrower, that become due during a defined period of time, and income in the case of natural persons or cash flow or another suitable operating indicator in the case of legal persons during this period of time (debt service-to-income ratio); in the case of financing arrangements that are repayable at maturity (bullet loans) it shall be assumed that ongoing repayments are made that are evenly distributed across the entire term of the financing arrangement;
4. Requirements for the maximum term of real estate financing arrangements using debt instruments (restriction of term), although such a restriction of the term shall not be allowed to be restricted to less than fifteen years;
5. the time frame, within which a defined proportion of the total volume paid out to the borrower must be repaid at latest (repayment requirement);
6. Regulations for ensuring the domestic application of measures imposed in other Member States and third countries, that serve the purpose of limiting systemic risks from real estate financing using debt instruments, and which are comparable to the national measures imposed, for exposures in those Member States and third countries.

(3) The following shall be excluded from the measures pursuant to para. 2:

1. extensions of existing real estate financing arrangements using debt instruments up to the amount of the respective outstanding residual loan liability;
2. real estate financing arrangements using debt instruments, that have been allocated an exposure class pursuant to Article 112 (a) to (e) of Regulation (EU) No. 575/2013;
3. real estate financing arrangements using debt instruments to borrowers who are recognised as housing associations in the public interest pursuant to the Limited Profit Housing Act (*WGG; Wohnungsgemeinnützigkeitsgesetz*), published in Federal Law Gazette No. 139/1979.

(4) In the Regulation pursuant to para. 2, provided that the objective, effectiveness and proportionality of such measures require this, the FMA may:

1. restrict the scope of their application, both in terms of their content and they geographical range, to specific forms of use of immovable properties, their location or financial purposes;
2. define different caps dependent on the type and amount of the financing agreements;
3. determine a proportion of a credit institution's new business in relation to real estate financing arrangements using debt instruments, that shall be exempted from the application of the measures (exemption amount);
4. exclude real estate financing arrangements using debt instruments up to a maximum amount to be defined (materiality threshold) from the application of the measures, although a cap shall also be defined for the proportion of the amount of financing arrangements to excluded

out of a credit institution's new business for real estate financing arrangements using debt instruments;

When issuing the Regulation, the FMA shall determine more precise calculation rules, in particular with regard to the components of the ratio, exemption amounts, materiality thresholds and the characteristics of the loan.

(5) The issuing of a Regulation by the FMA pursuant to paras. 2 and 3 shall be subject to the following conditions having been fulfilled:

1. the necessary evidence and conditions relating to systemic risks arising from the financing of real estate using debt instruments causing a threat to financial market stability shall have been provided;
2. information shall have been sent to the ESRB about the existence of systemic risks from real estate financing arrangements using debt instruments.

(6) The FMA shall review the measures determined pursuant to paras. 2 and 3 prior to the expiry of the deadline set. Where conditions continue to prevail for the application of the measures determined pursuant to paras. 2 and 3, the FMA may amend the Regulation as necessary, and extend its applicability for a period of up to two years. The FMA shall obtain a recommendation from the Financial Market Stability Board (FMSG), an expert opinion from the *Oesterreichische Nationalbank* on the existence of systemic risks arising from real estate financing arrangements using debt instruments and the consent of the Federal Minister of Finance prior to extending the duration of the deployed measure. In the event that the FMA deviates from the FMSG's recommendation, it shall be required to justify this to the FMSG, including submitting relevant documentation in writing.

Subsection 3: capital conservation measures

Restrictions on Distributions

Article 24. (1) Credit institutions and groups of credit institutions that fail to meet the combined buffer requirement shall prepare a capital conservation plan pursuant to para. 2 and submit it to the FMA no later than five working days once the credit institution or the responsible undertaking pursuant to Article 30 para. 6 for the group of credit institutions has identified that it no longer meets the capital buffer requirement. The FMA may, at the request from a credit institution or a responsible undertaking pursuant to Article 30 para. 6, and taking into account the size and complexity of the business operated by a credit institution or a group of credit institutions, extend the deadline to ten working days.

(2) Credit institutions and groups of credit institutions that fail to meet the combined buffer requirement or as applicable the leverage ratio buffer requirement shall be required to calculate the Maximum Distributable Amount (MDA) and notify the FMA immediately of this amount. In such cases, credit institutions and groups of credit institutions shall refrain from the following measures until the Maximum Distributable Amount (MDA) has been calculated:

1. Making distributions in connection with Common Equity Tier 1 capital pursuant to para. 4;

2. Creating an obligation to pay variable remuneration or discretionary pension benefits or paying variable remuneration if the corresponding obligation was created at a time when the credit institution or the group of credit institutions failed to meet the combined buffer requirement;
3. Making payments in conjunction with Additional Tier 1 instruments.

Where a credit institution or a group of credit institutions fails to meet the combined buffer requirement, measures pursuant to nos. 1 to 3 shall only be allowed to be undertaken up to the amount of the Maximum Distributable Amount (MDA) calculated pursuant to the Annex to Article 24.

(3) Credit institutions and groups of credit institutions that fail to meet the buffer requirement and that intend distributing distributable profits or implementing a measure pursuant to para. 2 nos. 1 to 3 shall notify this to the FMA, providing the following information:

1. The amount of own funds held by the credit institution or the group of credit institutions, broken down into:
   a. Common Equity Tier 1 capital,
   b. Additional Tier 1 capital,
   c. Tier 2 capital;
2. Amount of the interim and year-end profits;
3. The MDA calculated in accordance with para. 2;
4. Amount of distributable profits and the intended allocation to:
   a. dividend payments or other profit distributions,
   b. buybacks or other repurchasing of shares or other own funds instruments as listed in Article 26(1)(a) of Regulation (EU) No 575/2013 by the credit institution or the responsible undertaking pursuant to Article 30 para. 6 for the group of credit institutions,
   c. payments in conjunction with Additional Tier 1 capital instruments,
   d. payment of variable remuneration or discretionary pension benefits whether by creation of a new obligation to pay or payment pursuant to an obligation to pay created at a time when the credit institution or group of credit institutions failed to meet the combined capital buffer requirement.

Credit institutions and groups of credit institutions shall maintain arrangements to ensure that the amount of distributable profits and the maximum distributable amount are calculated accurately and that the accuracy of this calculation is able to be proven to the FMA at any time upon request.

(4) Distributions in connection with Common Equity Tier 1 capital shall include the following:

1. Payment of cash dividends or other profit distributions in cash;
2. The issuing of fully or partly paid bonus shares or other capital instruments referred to in Article 26(1)(a) of Regulation (EU) No 575/2013;
3. A redemption or purchase by a credit institution or by the responsible undertaking pursuant to Article 30 para. 6 of its own shares or other capital instruments referred to in Article 26(1)(a) of Regulation (EU) No 575/2013;

4. A repayment of amounts paid up in connection with capital instruments referred to in Article 26(1)(a) of Regulation (EU) No 575/2013;
5. A distribution of items referred to in Article 26(1)(b) to (e) of Regulation (EU) No 575/2013.

(5) The restrictions listed in paras. 1 to 3 shall only apply to payments that lead to a reduction in the Common Equity Tier 1 capital or profits and to the extent that the suspension of a payment or a delayed payment shall not represent a default event or a prerequisite for the introduction of proceedings in accordance with the insolvency rules applicable to the credit institution.

Capital Conservation Plan

Article 24a. (1) Credit institutions and groups of credit institutions that fail to meet the combined buffer requirement shall prepare a capital conservation plan pursuant to para. 2 and to be submitted to the FMA no later than five working days once the credit institution or the responsible undertaking pursuant to Article 30 para. 6 for the group of credit institutions has determined that it no longer fulfils the capital buffer requirement. The FMA may, at the request from a credit institution or a responsible undertaking pursuant to Article 30 para. 6, and taking into account the size and complexity of the business operated by a credit institution or a group of credit institutions, extend the deadline to ten working days.

(2) The capital conservation plan consists of:

1. estimates of income and expenditure and a forecast balance sheet;
2. measures for increasing the capital ratios of the credit institution or the group of credit institutions;
3. a plan and time frame for increasing own funds in order to meet the combined capital buffer requirement or as applicable the leverage ratio buffer requirement;
4. any other information that the FMA considers to be necessary to carry out the assessment required by paragraph 3.

(3) The FMA shall assess the capital conservation plan, and shall approve the plan only if it considers that the plan, if implemented, would be particularly likely to conserve or raise sufficient capital to enable the credit institution or the group of credit institutions to meet the combined buffer requirement of as applicable the leverage ratio buffer requirement within a period which the FMA considers appropriate

(4) If the FMA does not approve the capital conservation plan in accordance with paragraph 3, it shall:

1. require the credit institution or the responsible undertaking pursuant to Article 30 para. 6 to increase own funds to specified levels within specified periods, or
2. exercise its powers under Article 70 para. 4a to impose more stringent restrictions on distributions than those required by Article 24.

The FMA may also apply measures pursuant to nos. 1 and 2 cumulatively.

Meeting the Combined Capital Buffer Requirement

Article 24b. The combined capital buffer requirement shall be considered to have been met for the purposes of Article 24 for a credit institution or a group of credit institutions, where the credit institution or group of credit institutions holds own funds in the necessary amount and quality in order to simultaneously fulfil the combined capital buffer requirement and

1. a Common Equity Tier 1 capital ratio of 4.5 %,
2. a Tier 1 capital ratio of 6 %, and
3. a total capital ratio of 8 %.

as well as meeting the additional own funds requirement for covering other risks than the risk of excessive leverage pursuant to Article 104 (1) of Directive 2013/36/EU.

Restrictions on distributions in the case of the leverage ratio buffer requirement not being met

Article 24c. (1) Credit institutions and groups of credit institutions that meet the leverage ratio buffer requirement pursuant to Article 92 (1a) of Regulation (EU) No 575/2013, shall desist for making distributions in connection with Common Equity Tier 1 capital pursuant to para. 6, where making such distributions would deplete their Common Equity Tier 1 capital to such an extent that the leverage ratio buffer requirement would no longer be met.

(2) Credit institutions and groups of credit institutions that fail to meet the leverage ratio buffer requirement, shall calculate the maximum distributable amount (MDA) in relation to the leverage ratio buffer and notify it to the FMA without delay. In such cases, credit institutions and groups of credit institutions shall refrain from the following measures in relation to the leverage ratio until the maximum distributable amount (MDA) has been calculated:

1. making distributions in connection with Common Equity Tier 1 capital pursuant to para. 6;
2. creating an obligation to pay variable remuneration or discretionary pension benefits or paying variable remuneration if the corresponding obligation was created at a time when the credit institution or the group of credit institutions failed to meet the leverage ratio buffer requirement;
3. making payments in conjunction with Additional Tier 1 instruments.

(3) Where a credit institution or a group of credit institutions fails to meet the leverage ratio buffer requirement, it shall only be allowed to take measures pursuant to para. 2 nos. 1 to 3 up to the amount of the maximum distributable amount (MDA) calculated pursuant to the Annex to Article 24c in relation to the leverage ratio.

(4) Credit institutions or groups of credit institutions that do not meet the requirement for the leverage ratio buffer that intend to make a distribution of distributable profits or a measure pursuant to para. 2 nos. 1 to 3, shall notify the FMA also stating the information listed in Article 24 para. 3 nos. 1 to 4, except for no. 1 lit. c, as well as stating the calculated maximum distributable amount (MDA) pursuant to the Annex to Article 24c in relation to the leverage ratio.

(5) Credit institutions and groups of credit institutions shall take measures in order to ensure that:

1. the amount of distributable profits and the maximum distributable amount (MDA) are calculated precisely with regard to the leverage ratio and
2. the accuracy of this calculation is able to be proven to the FMA at any time upon request.

(6) A distribution in connection with Common Equity Tier 1 capital shall cover all of the measures listed in Article 24 para. 4.

(7) The restrictions listed in paras. 1 to 3 shall only apply to payments that lead to a reduction in the Common Equity Tier 1 capital or profits and to the extent that the suspension of a payment or a delayed payment shall not represent a default event or a prerequisite for the introduction of proceedings in accordance with the insolvency rules applicable to the credit institution.

Leverage ratio buffer requirement being met

Article 24d. For the purposes of Article 24c, the leverage ratio buffer requirement in a credit institution or in a group of credit institutions shall be considered to have been met, where the credit institution or the group of credit institutions has an adequate amount of Tier 1 capital, in order to at the same time meet the requirement determined in Article 92 (1a) of Regulation (EU) No 575/2013 and the requirement defined in Article 92 (1) (d) of that Regulation and pursuant to Article 70 para. 4a no. 1 for covering the risk of excessive leverage that is not adequately covered by Article 92 (1) (d) of Regulation (EU) No 575/2013.

SECTION VI: REGULATORY STANDARDS

Subsection 1: Outsourcing

Outsourcing

Article 25. (1) Credit institutions shall possess adequate personnel resources at all times. In the event of resorting to using third parties (service providers) for the performance of material operational tasks, appropriate measures shall be taken pursuant to the Annex to Article 25. The outsourcing of material tasks in relation to banking operations shall not to be allowed to materially impair the quality of the credit institution's internal control mechanisms as well as the credit institution's supervision by the FMA with regard to its compliance with the requirements set out in Article 69 of this Federal Act. When concluding, implementing or terminating an agreement in relation to the outsourcing of material tasks relating to banking operations, it shall be necessary to proceed with due required professionalism and diligence. In particular, the clear division of the rights and obligations shall be undertaken between the credit institution and the service provider in the form of a written agreement. A particularly high level of due care shall be applied for outsourcings to a service provider incorporated in a third country.

(2) Any task in relation to banking transactions shall be deemed to be material as defined in in para. 1, if a defect or failure in its performance would compromise the continued compliance with the credit institution's obligations pursuant to this Federal Act or other applicable provisions listed in Article 69, or would affect its solvency, liquidity or the solidity or continuity of the banking activities conducted.

(3) The outsourcing of material tasks in relation to banking operations shall not be allowed to

1. result in the delegation of the tasks of the senior management;
2. alter the relationship and obligations of the credit institution towards its business partners and customers pursuant to the terms of this Federal Act;
3. prevent or impede compliance with the provisions listed in Article 69; and
4. lead to the removal or modification of the other requirements under which the credit institution's licence was granted.

(4) Provided that the credit institution and the service provider belong to the same group of credit institutions, or the same institutional protection scheme (IPS) pursuant to Article 113 (7) of Regulation (EU) No 575/2013 or the same affiliation of credit institutions, it may be taken into account to what extent the service provider may be controlled or its actions influenced.

(5) Credit institutions shall notify the FMA in writing about the intended outsourcing of material operational tasks prior to the conclusion of such an agreement pursuant to para. 1. The FMA may request all necessary information from credit institutions about service providers with which outsourcing agreements are intended to be concluded or already have been concluded. Such information may not be refused to be given as a result of an obligation of secrecy existing in accordance with other regulations. Credit institutions shall ensure the availability at all times of the necessary information, even in the case that the service provider is incorporated in a third country.

Subsection 2: Company Law

Contingent Convertible Bonds

Article 26. (1) Credit institutions with the legal form of a stock corporation may issue bonds for which the contractual terms and conditions provide for conversion into Common Equity Tier 1 instruments upon the occurrence of a triggering event defined in advance and for which the conversion ratio is determined or can be determined upon issuing (contingent convertible bonds). The provisions of Articles 159 and 174 AktG shall also apply to these contingent convertible bonds.

(2) Credit institutions with the legal form of a cooperative may issue bonds for which the contractual terms and conditions provide for conversion into Common Equity Tier 1 instruments upon the occurrence of a triggering event defined in advance and for which the conversion ratio is determined or can be determined upon issuing (contingent convertible bonds). The cooperative must at the same time obtain from the subscribers an undated and irrevocable declaration of enrolment with regard to the conversion.

Instruments without Voting Rights

Article 26a. (1) Credit institutions may issue capital share instruments without voting rights. Credit institutions with the legal form of a stock corporation may also issue instruments of this type as non-voting shares. With the exception of the voting right, such non-voting shares grant each shareholder the rights relating to the share.
(2) When allocating the profit to instruments defined in para. 1, the amount allocated shall be a pre-defined multiple of the dividend on a share with a voting right or the share of profit attributable to a cooperative share with a voting right. Under no circumstances may a preferential amount be paid subsequently.
(3) Capital from instruments pursuant to para. 1 may only be reduced by applying the statutory capital reduction rules analogously or be redeemed pursuant to the provisions of Article 26b.
(4) If a measure results in a change to the existing ratio between property rights of beneficiaries from instruments pursuant to para. 1 and those rights associated with Common Equity Tier 1 capital (Article 25 of Regulation (EU) No 575/2013), this shall be settled appropriately, with the option of settlement from company assets being excluded.
(5) Beneficiaries of instruments without voting rights may attend the shareholders' meeting and request information pursuant to Article 118 AktG. Also in the case of savings banks, state mortgage banks and the Mortgage Bond Division of the Austrian State Mortgage Banks, the beneficiaries of instruments pursuant to para. 1 shall be given an annual opportunity to request information from the directors of these credit institutions during a meeting at which the annual financial statements are presented. The provisions of the AktG on the convening of the annual general meeting shall also apply to this meeting.
(6) The total instruments pursuant to para. 1 in the credit institution itself, in a dependent company and a controlling company may not exceed 10% of the instruments issued in accordance with para. 1. Articles 65 to 66a AktG, which govern the acquisition, sale, retirement and pledging of the company's own shares as security, the acquisition of the company's own shares by third parties and the financing of the acquisition of the company's shares, are applicable.
(7) Instruments pursuant to para. 1 may only be issued up to the amount of one third of the share capital. Moreover, the total capital from instruments pursuant to para. 1 and from preferential shares pursuant to Article 12a AktG may not exceed one half of the share capital.

Redemption of Own Funds

Article 26b. (1) Capital pursuant to Article 26a may be redeemed by the credit institution in accordance with the following paragraphs subject to the FMA's consent in accordance with Article 77 of Regulation (EU) No 575/2013. The redemption shall include the entire capital or individual tranches defined at the time of issue. Partial redemption of capital from individual issues or partial redemption of capital from individual tranches shall be permitted if equal treatment of the beneficiaries of these capital issues or tranches is guaranteed. Any redemption of individual

tranches of capital, based on the provisions of the Financial Market Stability Act (*FinStaG; Finanzmarktstabilitätsgesetz*), Federal Law Gazette I No. 136/2008 shall require the prior consent of the beneficiaries of the respective instruments. Approval by the federal government shall be granted by the Federal Minister of Finance in agreement with the Federal Chancellor.

(2) The resolution to redeem shall be taken at the credit institution by the bodies responsible for taking up capital pursuant to para. 1 with the majority votes required to take up capital pursuant to para. 1. The articles of association may authorise the management board to redeem capital pursuant to para. 1 for a maximum of five years.

(3) In cases where the credit institution is a stock corporation with listed shares and capital pursuant to Article 26a, the redemption must be preceded by a conversion offer for shares within a period of six months prior to the announcement of the redemption. The announcement of the conversion offer must include a reference to the planned redemption. In this conversion offer, any additional payments must not be set higher than the difference between the average stock exchange price of the relevant share and the average stock exchange price of the instruments pursuant to para. 1 over the twenty exchange trading days preceding the resolution regarding the conversion offer.

(4) The credit institution must carry out the capital redemption pursuant to para.1 in cash. If compensation to beneficiaries in accordance with para. 5 from capital pursuant to para. 1 is permitted, an adequate cash payment shall be granted. In this case, Article 2 para. 3 of the Transformation Act (*UmwG; Umwandlungsgesetz*) is to be applied analogously with regard to the reports to be prepared, audits and legal remedies available to the persons entitled to compensation, with the redemption plan substituting for the transformation plan.

(5) Own funds may not be redeemed during a difficult financial or liquidation situation or if the redemption would result in an inappropriate dilution of the other issued capital of other instruments.

(6) The capital pursuant to para. 1 shall be considered to be redeemed upon announcement of the resolution pursuant to para. 2. Out of the capital pursuant to para. 1 and taking into account para. 5, the beneficiary shall therefore only be entitled to a cash payment pursuant to para. 4. In the announcement, the beneficiaries from the capital pursuant to para. 1 are to be informed about their rights in connection with the compensation. Certificates issued for capital in accordance with para.1 shall be retained by the credit institution.

(7) In cases where the compensation amount for the capital pursuant to para. 1 cannot be credited to an account or where the beneficiary from the capital pursuant to para. 1 does not provide instructions concerning the compensation amount, the amount is to be surrendered to a trustee to be appointed in the resolution to redeem capital. The trustee shall then be responsible for further settlement, and may avail himself of the credit institution's support in this regard.

(8) Capital pursuant to para. 1 must be redeemed against the net profit or loss for the year resulting from the annual balance sheet or against an unappropriated reserve. Capital pursuant to para. 1 may also be redeemed if alternative capital of equal or better quality is procured.

Special Requirements for Credit Cooperatives

Article 27. Credit cooperatives or management cooperatives as former credit cooperatives (Article 92 para. 8) may lay down in their cooperation agreements that the liability of their members is limited to their cooperative share (Article 86a of the Cooperative Societies Act (*GenG; Genossenschaftsgesetz*)). The necessary amendment to the cooperation agreement may, where the liability sum surcharges are no longer eligible pursuant to Article 484(5) and Article 486(4)(g) of Regulation (EU) No 575/2013, only be adopted if an auditor appointed in accordance with the legal provisions pertaining to the auditing of cooperative societies confirms in a written opinion that compliance with the regulatory provisions under Parts Two to Eight of Regulation (EU) No 575/2013 continues to be guaranteed even without the liability sum surcharge being included. In any case, Article 33a GenG applies to the limitation of liability to the cooperative share with the proviso that the immediate notification of known creditors pursuant to the last sentence of Article 33a para. 1 GenG need not be made if the auditor states in his report that the limitation of liability to the cooperative share is compatible with the interests of the cooperative society's creditors. The liability of the auditor for the content of his opinion is determined by Article 10 of the Act on Audits of Cooperative Societies 1997 (*GenRevG 1997; Genossenschaftsrevisionsgesetz*) in conjunction with Article 62a.

Liquidity Associations

Article 27a. In order to ensure financial stability, credit institutions that are associated with a central institution must participate in a joint cash-clearing operation system. For this purpose, they must hold liquidity reserves in the amount of 10% of savings deposits and 20% of other euro-denominated deposits, but no more than 14% of total euro-denominated deposits, at their central institution or at another credit institution stipulated by contractual or statutory means and established in a Member State. The credit institution must be authorised to accept deposits and, on the basis of its business structure, be capable of fulfilling the requirements arising from guaranteeing a liquidity association. In particular, the credit institution must be of sufficient credit quality, and liquid funds as well as refinancing possibilities must be available on an ongoing basis in order to be able to provide liquidity quickly when necessary. The arrangements regarding the actual provision of liquidity between the central institution or other credit institution with which the liquidity reserve is held and the other credit institutions participating in the liquidity association must be governed by contractual or statutory means with due attention to Article 39 para. 1. The contractual or statutory arrangements must include the following in particular:

1. The requirements for the provision of liquidity to associated credit institutions when necessary;
2. A specific description of the obligation to provide liquidity when necessary on the part of the central institution or other credit institution with which the liquid funds are held;
3. The relevant decision-making process, in particular the requirements for resolutions;

4. A notice period which must be at least one year in duration.

The amount of the liquidity reserve is to be calculated on the basis of the volume of deposits at the end of March, June, September and December and adjusted for the ensuing quarter in each case. If deposits fall more than 20% below the level of the latest relevant assessment base, the credit institution may request an adjustment as of the last day of the following month. Other deposits are payment funds repayable on demand (demand deposits), all deposits redeemable at notice and deposits with agreed maturity, as well as deposits for which cash certificates are issued. Deposits pursuant to Article 27 (3) of Commission Delegated Regulation (EU) 2015/61 to supplement Regulation (EU) No 575/2013 with regard to liquidity coverage requirement for credit institutions, OJ L 11, 17.01.2015 p. 1, shall not count towards the assessment base of the liquidity reserve. This shall also apply accordingly for central institutions, which pursuant to Article § 30c have been exempted from the application of liquidity requirements on an individual basis.

Subsection 3: Bodies

Transactions with Management and Related Parties

Article 28. (1) A credit institution may, either directly or indirectly, conclude legal transactions with

1. its directors,
2. its management board members insofar as the credit institution is organised as a cooperative society,
3. the members of its supervisory board or other supervisory bodies competent according to applicable law or the articles of association,
4. its legal representatives and senior executives in its subordinate and superordinate undertakings
5. spouses, common-law spouses as defined in Article 72 para. 2 Penal Code (StGB; Strafgesetzbuch), children, adopted and foster children of the persons indicated in nos. 1 to 4, but only legal representatives in the case of no. 4, or
6. third parties acting for the account of a person indicated in nos. 1 to 5,

only on the basis of a unanimous resolution taken by all directors and subject to the consent of the supervisory board or other supervisory body competent according to applicable law or the articles of association. The party involved is not entitled to vote on resolutions regarding transactions with management and related parties. In the case of loans, the resolutions must also govern the interest rate and repayment. For the credit institution's employees, their spouses and minor children, the consent of the supervisory board or other supervisory body competent according to applicable law or the articles of association is required for loans and advances only; no. 6 is applicable in this context.

(2) The provisions of para. 1 do not cover the following:

1. loans and advances whose total volume does not exceed 25% of annual remuneration;

2. other legal transactions in which the appropriate consideration does not exceed 25% of annual remuneration or is less than EUR 5 000;
3. Continuing obligations in which the adequate consideration, capitalised on an annual basis, does not exceed 25% of annual remuneration;
4. everyday banking transactions concluded on standard market terms.

(3) Where a director, a beneficial owner (Article 24 Federal Tax Code (*BAO; Bundesabgabenordnung*)) or a member of an executive body of the credit institution, or one of these persons' relatives indicated in para. 1 no. 5, is a director, economic owner or member of an executive body of an undertaking at the same time, legal transactions may be concluded with that undertaking only with the consent of the supervisory board or other supervisory body of the credit institution competent according to applicable law or the articles of association. Para. 2 is applicable in this context.

(4) For specific legal transactions or types of legal transactions, consent pursuant to paras. 1 and 3 may be granted for one year in advance. The supervisory board or other supervisory body competent according to applicable law or the articles of association must receive a report on each of these legal transactions and each of these loans and advances at least once per year. Legal transactions concluded with executives pursuant to para. 1 no. 4, their relatives pursuant to para. 1 no. 5, and loans and advances to employees may also be reported in aggregate form; however, information on specific legal transactions, loans and advances is to be provided at the request of a member of the supervisory body.

(5) Where legal transactions with management and related parties are concluded in breach of paras. 1, 3 and 4, the loans and advances granted are to be repaid without delay regardless of any agreements to the contrary unless a unanimous resolution by the directors and consent by the supervisory board or other supervisory body competent according to applicable law or the articles of association are issued subsequently. The directors and members of the supervisory board or other supervisory body competent according to applicable law or the articles of association are to bear joint and several personal liability for the repayment of loans and advances if these are granted to their knowledge and without their objection in breach of the provisions of paras. 1, 3 and 4. In the event that the credit institution is damaged by other legal transactions concluded to their knowledge and without their objection in breach of the provisions of paras. 1, 3 and 4, the persons indicated above are also jointly and severally liable if a unanimous resolution by the directors and consent by the supervisory board or other supervisory body competent according to applicable law or the articles of association are not issued subsequently.

(6) Credit institutions shall adequately document information about the loans that were granted to the following persons:

1. directors of the credit institution,
2. members of its supervisory board or other supervisory bodies competent according to applicable law or the articles of association,

3. spouses or partners pursuant to Article 72 para. 2 of the Austrian Criminal Code (*StGB; Strafgesetzbuch*), children, adopted and foster children or parents of one of the persons listed in nos. 1 or 2.
4. commercial undertakings in which one of the persons listed in nos. 1 to 3 holds a qualifying holding of 10 percent or more of the capital or the voting rights or in which one of the persons listed in nos. 1 to 3 may exert a significant influence, or in which one of the persons listed in nos. 1 to 3 belongs to the management body, the supervisory board or the senior management.

Special Requirements for Bodies of Credit Institutions

Article 28a. (1) Directors (Article 2 no. 1) may not take up activities as the chairperson of the supervisory board within the same undertaking in which they previously served as directors until a period of at least two years has passed since the termination of their function as directors.
(2) Should a director take on the function of chairperson of the supervisory board in breach of para. 1, that director will not be considered elected to the position of chairperson.
(2a) The directors shall define and oversee the internal principles of proper business management, guaranteeing the requisite level of care when managing the institution, and in particular, focus on the segregation of duties in the organisation and the prevention of conflicts of interest. The directors shall regularly assess the effectiveness of these principles and take appropriate steps to address any deficiencies.
(2b) The directors shall be responsible for effective oversight of the credit institution's senior management.
(2c) The supervisory board or other supervisory body competent according to applicable law or the articles of association shall discuss the strategic goals, risk strategy and internal principles of proper business management with the management, and monitor implementation by the directors.
(3) Without prejudice to other provisions of federal law, only those persons who fulfil the following requirements on a continuing basis may perform the functions of a supervisory board chairperson at a credit institution:

1. no reasons for exclusion as specified in Article 13 paras. 1 to 3, 5 and 6 GewO 1994 are identified, and bankruptcy proceedings have not been initiated for the assets of the chairperson of the supervisory board or any entity other than a natural person on whose business the chairperson of the supervisory board has or has had a decisive influence, unless a reorganisation plan was agreed upon and fulfilled in the bankruptcy proceedings; this also applies to comparable situations which have arisen in a foreign country;
2. the chairperson of the supervisory board is in an orderly economic situation and no facts are known which would raise doubts as to their personal reliability, honesty and independence of mind as required for exercising the function of chairperson of the supervisory board; membership of an affiliated undertaking to the credit institution or a legal entity affiliated to

the credit institution does not in its own right constitute a circumstance which would substantiate doubts raised about the independence of mind of the chairperson of the supervisory board; when reviewing reliability the FMA shall also avail itself of the database set up by the EBA pursuant to Article 69(1) of Directive 2013/36/EU;

3. the chairperson of the supervisory board possesses the professional qualifications and experience necessary for performing their function; such professional qualifications require expertise in the fields of bank finance and accounting as appropriate to the credit institution in question;
4. with regard to a supervisory board chairperson who is not an Austrian citizen, no reasons for exclusion for this function as specified in nos. 1 to 3 exist in the chairperson's country of citizenship; this must be confirmed by the banking supervisor in the chairperson's home country; however, if such a confirmation cannot be obtained, the chairperson in question must provide credible evidence of this, certify the absence of the named reasons for exclusion and submit a declaration stating whether any of the named reasons for exclusion exist;

(4) The FMA must be informed in writing of any changes in the person appointed as chairperson of the supervisory board along with certification of the fulfilment of the requirements pursuant to para. 3 within two weeks. At the FMA's request, the competent first-instance commercial court is to overturn the election of the chairperson in the process of alternative dispute resolution if the chairperson does not fulfil the requirements set forth in para. 3. This request must be submitted within four weeks after the result of the election is conveyed to the FMA. The function of the chairperson of the supervisory board is to be suspended until a legally effective ruling has been handed down by the court. Where the chairperson of the supervisory board is a director of a credit institution established in a Member State, the FMA may assume that the requirements pursuant to para. 3 nos. 1 to 4 are fulfilled if no indications to the contrary become known.

(5) Without prejudice to other provisions of federal law and the requirements pursuant to para. 3, members of the supervisory board or a credit institution’s other supervisory body competent according to applicable law or the articles of association shall fulfil the following requirements at all times:

1. There are no identified reasons for exclusion as specified in Article 13 paras. 1 to 3, 5 and 6 GewO 1994, and bankruptcy proceedings have not been initiated for the assets of any member of the supervisory board or any entity other than a natural person on whose business one of the supervisory board members has or has had a decisive influence, unless a restructuring plan has been agreed upon and fulfilled in the bankruptcy proceedings; this shall similarly apply if a comparable situation has occurred abroad;
2. The members of the supervisory board are in an orderly economic situation and no facts are known which would raise doubts as to their personal reliability, honesty and independence of mind as required for exercising the function of a member of the supervisory board; membership of an affiliated undertaking to the credit institution or a legal entity affiliated to the credit institution does not in its own right constitute a circumstance which would

substantiate doubts raised about the independence of mind of the member of the supervisory board; when reviewing reliability the FMA shall also avail itself of the database set up by the EBA pursuant to Article 69(1) of Directive 2013/36/EU;

3. The members of the supervisory board possess the qualifications, skills and experience needed to be jointly in a position to understand the business activities of the respective credit institution including the associated risks to the extent necessary to be able to monitor and control the decisions made by the directors;
4. With regard to members of the supervisory board who are not Austrian citizens, no reasons for exclusion for this function as specified in nos. 1 to 2 exist in the members' country of citizenship; this must be confirmed by the banking supervisor in the member's home country; however, if such a confirmation cannot be obtained, the member in question must provide credible evidence of this, certify the absence of the named reasons for exclusion and submit a declaration stating whether any of the named reasons for exclusion exist;
5. The members of the supervisory board shall dedicate sufficient time to the fulfilment of their activities at the credit institution; in particular, when exercising further activities in a managerial function or as a member of the supervisory board, a member of the supervisory board shall take into account the circumstances in the individual case and the nature, scope and complexity of the credit institution's business; provided they are not acting as representatives of the Republic of Austria in the supervisory board, members of the supervisory board of credit institutions that are of significant relevance as defined in Article 5 para. 4 may only exercise one activity in a managerial function in conjunction with two activities as a member of a supervisory board or a total of four activities as a member of a supervisory board; with regard to calculating the number of activities, several activities in a managerial function and as a member of the supervisory board
    a. within the same group consisting of:
        aa) the EU parent institution, its subsidiaries and own subsidiaries or other undertakings that belong to the same group of credit institutions, insofar as all the aforementioned are included within the scope of supervision on a consolidated basis or are subject to supplementary supervision pursuant to Article 6 para. 1 FKG, or
        bb) affiliated undertakings pursuant to Article 228 para. 3 UGB, Article 245a UGB or Article 15 AktG;
    b. in the case of members falling within the same institutional protection scheme as referred to in Article 113(7) of Regulation (EU) No 575/2013, or
    c. in the case of undertakings in which the credit institution has a qualifying holding as referred to in point (36) of Article 4(1) of Regulation (EU) No 575/2013

shall be deemed to constitute one activity. Activities in a managerial function or as a member of a supervisory board of organisations that do not primarily pursue commercial aims, or activities as member of a supervisory board of a credit institution performed as representative of the Republic of

Austria shall not be included in the calculation. The FMA may approve applications for this restriction to be exceeded by one activity as a member of a supervisory board. The FMA shall inform the EBA of such approvals on a regular basis.

(5a) The supervisory board or any other competent supervisory body of a credit institution as defined by law or the articles of association shall contain:

1. at least one independent member pursuant to para. 5b,
2. in the case of a credit institution of significant relevance pursuant to Article 5 para. 4 or a credit institution that has issued transferable securities that are admitted to trading on a regulated market pursuant to Article 1 no. 2 BörseG 2018, at least two independent members pursuant to para. 5b.

Members of the supervisory board, who are appointed to the supervisory board pursuant to Article 110 of the Labour Constitution Act (*ArbVG; Arbeitsverfassungsgesetz*), published in Federal Law Gazette No. 22/1974, shall not be considered for the purpose of achieving the minimum number of independent members respectively stated in nos. 1 and 2. The obligation pursuant to no. 1 shall not apply to credit institutions, the shares of which are held 100% by an Austrian credit institution and which is neither of significant relevance pursuant to Article 5 para. 4, nor has issued transferable securities that are admitted to trading on a regulated market pursuant to Article 1 para. 2 BörseG 2018.

(5b) Any member of the supervisory board or any other competent supervisory body of a credit institution as defined by law or the articles of association shall not be deemed to be independent, if they:

1. were in the last five years a director of the credit institution in question or a credit institution within the group pursuant to para. 5 no. 5 lit. a sublit. aa that belongs to the credit institution in question;
2. are a controlling shareholder pursuant to Article 22 (1) of Directive 2013/34/EU or a representative of the interests of the controlling shareholder, even in the case that the controlling shareholder is the Austrian State or an Austria statutory body under public law;
3. have a material financial or business relationship with the credit institution in question;
4. are an employee of the controlling shareholder pursuant to no. 2 or have another material business relationship with the controlling shareholder pursuant to no. 2;
5. are an employee of the credit institution in question or an entity within the group pursuant to para. 5 no. 5 lit. a sublit. aa that belongs to the credit institution in question, unless,
   a. the member is not part of the senior management pursuant to Article 2 no. 1b of the credit institution in question, and
   b. the member was delegated to the supervisory board pursuant to Article 110 ArbVG;
6. were part of the senior management pursuant to Article 2 no. 1b within the last three years within the credit institution in question or an entity within the group pursuant to para. 5 no. 5 lit. a sublit. aa that belongs to the credit institution in question;

7. were active in the last three years as bank auditor of the credit institution in question or another entity within the group pursuant to para. 5 no. 5 lit. a sublit. aa that belongs to the credit institution in question, or signed the audit opinion, or were active in an advisory capacity to a material degree for the credit institution in question or another entity within the group pursuant to para. 5 no. 5 lit. a sublit. aa that belongs to the credit institution in question;
8. were a material contractual partner of the credit institution in question or another entity within the group pursuant to para. 5 no. 5 lit. a sublit. aa that belongs to the credit institution in question in the last year, or held a material business relationship with this material contractual partner in the last year;
9. receive in addition to remuneration for the function of member of the supervisory board of the credit institution or from the financial or business relationship pursuant to no. 3 additional payments of a material amount or other material benefits from the credit institution or an entity within the group pursuant to para. 5 no. 5 lit. a sublit. aa;
10. were a director or member of the supervisory board of the credit institution in questions for a period of at least 12 consecutive years;
11. are a close family member pursuant to Article 28 para. 1 no. 5 of a director of the credit institution in question, or a person as defined in nos. 1 to 8.

(5c) The mere fact that one of the criteria listed in Article 28a (5b) is applicable to a member does not mean that that member must automatically not be considered as not being independent. Instead the credit institution may prove to the competent supervisory authority that despite the existence of the criteria listed in Article 28a (5b) the member of the supervisory board may continue to be considered to be independent. This possibility shall not exist for the first independent member of the supervisory board; they shall be required to fulfil all criteria relating to independence.

(6) The credit institution must have access to an appropriate level of personnel and financial resources to facilitate the induction of the directors and members of the supervisory board or other supervisory body competent according to applicable law or the articles of association and to guarantee their continuing professional development.

(7) The FMA shall collect the information disclosed pursuant to point (c) of Article 435 (2) of Regulation (EU) No 575/2013, and use them to benchmark practices for promoting diversity. The FMA shall make this information available to the EBA.

Special Obligations of Bodies with regard to Lending

Article 28b. (1) Notwithstanding the effectiveness of the legal transaction in question, every large exposure determined pursuant to Article 392 of Regulation (EU) No 575/2013 in an amount of at least EUR 500 000 shall require the explicit prior consent of the supervisory board or the credit institution's other supervisory body competent according to applicable law or the articles of association. Blank authorisations given before they are actually required are not permissible in this context. The credit institution's supervisory board or other supervisory body competent according

to applicable law or the articles of association must receive a report on every large exposure at least once per year. Where a central government, which is assigned a risk weight of not more than 100 % pursuant to Article 114 of Regulation (EU) No 575/2013, has direct control over one or more than one natural or legal person, or is directly connected with one or more than one natural or legal person, then the central government may be ignored for the purposes of this paragraph with regard to the formation of a group by way of derogation from number 39 of Article 4 (1) of Regulation (EU) No 575/2013. This also applies in the case of regional governments and local authorities, to whom Article 115 (2) of Regulation (EU) No 575/2013 applies and pursuant to which a risk weight of not more than 100 % is to be assigned.

(2) With regard to large exposures as defined in Article 392 of Regulation (EU) No 575/2013 or exposures of at least EUR 750 000 as defined in Article 389 of Regulation (EU) No 575/2013, the directors of the credit institution must have the economic circumstances of the obligors and guarantors disclosed before granting such a loan to a client or a group of connected clients and, for the duration of the exposure, remain sufficiently informed about the economic development of the obligors and guarantors as well as the value and enforceability of the collateral, and require the regular presentation of annual financial statements. In cases where annual financial statements are not presented, the directors of the credit institution must obtain sufficient information on the obligors and guarantors from other sources. The first and second sentences shall not apply to:

1. exposures to the Austrian federal government, provincial governments, municipal governments, regional governments or local authorities based outside Austria, central banks, central governments, public sector entities (point (8) of Article 4(1) of Regulation (EU) No 575/2013), international organisations or multilateral development banks;
2. balances held with credit institutions;
3. fiduciary loans and transmitted loans where the credit institution bears only the management risk; and
4. exposures to the EEA parent credit institution, its subsidiaries and own subsidiaries that are included in the consolidated supervision.

Nomination Committee

Article 29. At credit institutions of any legal form that are of significant relevance as defined in Article 5 para. 4, the credit institution's supervisory board or other supervisory body competent according to applicable law or the articles of association must appoint a nomination committee. In the case of credit cooperatives, the non-full-time management board may also set up the nomination committee. The nomination committee shall:

1. consider applicants for the filling of managerial vacancies and propose candidates to the supervisory board;

2. if provided by law for the credit institution's legal form, support the supervisory board with the preparation of proposals to the general meeting for the filling of vacancies on the supervisory board;
3. in the context of its remit pursuant to nos. 1 and 2, take into account the balanced and diverse nature of the knowledge, skills and experience of all members of the body concerned, prepare a job description and applicant profile, and state the time required for performance of the task;
4. in the context of its remit pursuant to nos. 1 and 2, set a target for the under-represented gender in the management body and the supervisory board, and develop a strategy to achieve this target; the target and strategy, as well as progress reports, are to be published pursuant to Article 435(2)(c) of Regulation (EU) No 575/2013;
5. in the context of its remit pursuant to nos. 1 and 2, take account of the need to ensure that the management body's or supervisory board's decision-making is not dominated by any one individual or small group of individuals in a manner that is detrimental to the interests of the institution as a whole;
6. regularly, and whenever necessitated by events, carry out a review of the structure, size, composition and performance of the management body and supervisory board, and make any necessary recommendations to the supervisory board;
7. regularly, and at least annually, assess the knowledge, skills and experience of the directors and also individual members of the supervisory board and of the respective body in its entirety, and report to the supervisory body accordingly;
8. review the course of the directors with regard to the selection of senior managers and support the supervisory board in preparing recommendations for the directors.
9. In performing its remit, the nomination committee shall be able to use any forms of resources that it considers to be appropriate, and shall receive appropriate funding from the credit institution to that effect.

Subsection 4: Group Perspective

Group of Credit Institutions and the FMA as Consolidating Supervisor

Article 30. (1) A group of credit institutions is deemed to exist in cases where a superordinate institution, a superordinate financial holding company or mixed financial holding company incorporated in Austria, in relation to one or more credit institutions, to CRR credit institutions, financial institutions, CRR financial institutions, investment firms or CRR investment firms authorised in a Member State or third country, or to ancillary services undertakings (subordinate institutions) incorporated in Austria or abroad,

1. fulfils the legal requirements pursuant to Article 244 para. 1 UGB for preparing consolidated financial statements;
2. holds a majority of the voting rights in the company;

3. has the right to appoint or dismiss the majority of the members of the administrative, management or supervisory body, and is a shareholder at the same time;
4. repealed
5. may exercise or actually exercises a controlling influence;
6. on the basis of a contract with one or more members, has the right to make decisions as to how members' voting rights are to be exercised in the appointment or dismissal of the majority of members of the management or supervisory body where necessary in order to attain a majority of all votes; or
7. holds a participation pursuant to point (35) of Article 4(1) of Regulation (EU) No 575/2013 in the subordinate institution and this participation is managed by a group undertaking jointly with one or more undertakings which do not belong to the group of credit institutions, provided that the liability of the undertakings concerned is limited to their capital share.

For the purposes of this provision, financial institutions also include undertakings which are recognised as non-profit housing associations as well as undertakings which are permanently exempted from the application of directives applicable to credit institutions as provided for in Article 2(5) of Directive 2013/36/EU. The central banks of Member States are not considered to be financial institutions.

(2) In addition to para. 1 a group of credit institutions is considered to exist, where

1. a parent financial holding company, parent mixed financial holding company, EU parent financial holding company or EU parent mixed financial holding company is incorporated in another Member State, and:
   a. at least one CRR credit institution incorporated in Austria is subordinate to that company (para. 1 nos. 1 to 7), and
   b. the subordinate CRR credit institution incorporated in Austria has, or the subordinate CRR credit institutions incorporated in Austria collectively have a higher level of total assets than the CRR credit institutions that belong to group that are authorised in another Member State have collectively;
2. repealed.
3. consolidation pursuant to Article 18 (3) or (6) of Regulation (EU) No 575/2013 is necessary and a CRR credit institution incorporated in Austrian that belongs to the group or the CRR credit institutions incorporated in Austria that belong to the group collectively have a higher level of total assets than the CRR credit institutions that belong to the group that are authorised in another Member State have collectively.
4. repealed.
5. repealed.

(2a) The provisions of this federal act that concern groups of credit institutions must not be applied to financial institutions and ancillary services undertakings that are subordinate to credit institutions pursuant to Article 1 para. 1 that are not bound by the provisions of Regulation (EU) No 575/2013 pursuant to Article 3 where:

1. their total assets amount to either less than EUR 10 million or less than 1% of the superordinate credit institution's total assets, with the lower of the two amounts taken as a basis in each case, or
2. their total assets amount to less than 1% of the superordinate credit institution's total assets and the relevant undertaking is only of minor significance for regulatory purposes.

Where several subordinate institutions meet the requirements set forth in nos. 1 or 2 and such institutions together are not insignificant for regulatory purposes, the provisions of this federal act applicable to groups of credit institutions shall apply.

(3) Indirectly held participations are only to be included if they are held through a subsidiary pursuant to Article 4(1)(16) of Regulation (EU) No 575/2013. Article 244 paras. 4 and 5 UGB shall be applied.

(4) A group of credit institutions is not considered to exist in the case of the following superordinate institutions:

1. the credit institution incorporated in Austria is at the same time subordinate to another credit institution, another financial holding company or another mixed financial holding company incorporated in Austria;
2. repealed
3. the credit institution incorporated in Austria, except for the central body, is a member of an affiliation of credit institutions (Article 30a).

(5) The superordinate credit institution of a group of credit institutions is that credit institution incorporated in Austria which itself is not subordinate to any other group credit institution incorporated in Austria. If more than one credit institution fulfils this requirement, then the credit institution with the highest total assets is to be considered the superordinate credit institution.

(6) The following shall be responsible for compliance with the provisions of this Federal Act which are applicable for the group of credit institutions:

1. the credit institution that was named towards the FMA pursuant to Article 7b para. 6 no. 4,
2. the financial holding company or mixed financial holding company licensed by the FMA as the consolidating supervisor pursuant to Article 7b para. 5,
3. the financial holding company or mixed financial holding company named by the FMA as the consolidating supervisory authority pursuant to Article 7b para. 8 no. 4 or the CRR institution named by the FMA as the consolidating authority pursuant to Article 7b para. 8 no. 4, or
4. in the event that none of the cases listed in nos. 1 to 3 exists, then the superordinate credit institution pursuant to para. 5, where the FMA is the consolidating supervisory authority for the group of credit institutions.

(7) The institutions in the group of credit institutions shall be required to establish adequate administrative, accounting and internal control mechanisms in order to be able to provide the responsible undertaking pursuant to para. 6 with all documents and information required for consolidation. In particular, the institutions must also provide each other with all information which appears necessary in order to ensure the adequate capturing, assessment, limitation, management

and monitoring of risks as specified in Articles 39 to 39b as well as the capturing, identification and evaluation of credit risks necessary for banking operations in the group of credit institutions and the institutions belonging to the group. The requirements listed in the first and second sentence shall not apply for institutions of a group of credit institutions that are not subject to this Federal Act or to Directive 2013/36/EU, and for which the responsible undertaking pursuant to para. 6 is able to prove to the FMA that the observance of these requirements is inadmissible based on the legal provisions of the third country in which the affected institution is incorporated. Institutions in the group of credit institutions, that are not subject to this Federal Act or to Directive or to Directive 2013/36/EU, shall in any case be required to observe the requirements that apply to their industry on an individual basis. In addition, undertakings in which a credit institution or a responsible undertaking pursuant to para. 6 holds a participation must provide information on any participations that may have to be accounted for by the responsible undertaking pursuant to para. 6 in relation to the consolidation requirements for indirect participations.

(7a) The requirements defined in Article 5 para. 1 nos. 6 to 9a and Article 28a para. 5 nos. 1 to 5 shall, taking into account any differences in terms of business model and organisational structure, also be applied accordingly to the directors and members of the supervisory board of financial holding companies and mixed financial holding companies.

(8) The responsible undertaking pursuant to para. 6 shall ensure that information is provided by the subordinate institutions, a superordinate financial holding company or a mixed financial holding company. Should the superordinate holding company fail to fulfil its obligation to provide information pursuant to para. 7, the responsible undertaking pursuant to para. 6 must notify the FMA accordingly. If the provision of information required for consolidation is not ensured in cases where a participation subject to consolidation requirements is acquired, the superordinate institution is not allowed to acquire that participation.

(8a) Upon request, affiliated undertakings incorporated outside of Austria and subject to supervision on a consolidated basis must provide the FMA with all documents and information required for consolidated supervision where this is necessary for the fulfilment of the FMA's duties under this federal act or under Regulation (EU) No 575/2013 and permissible under the law of the other country.

(9) Subsidiary undertakings which are incorporated in Austria and are subject to a consolidation requirement vis-à-vis financial holding companies, mixed financial holding companies, credit institutions, CRR credit institutions, investment firms, CRR investment firms, CRR financial institutions or financial institutions as parent undertakings incorporated outside Austria must provide the parent undertaking with all documents and information required for consolidation; such subsidiary undertakings must also provide the parent undertaking and other institutions subordinate to that undertaking with all documents and information required for the capture, determination and evaluation of credit risks necessary for banking operations.

(9a) Where a credit institution has as its parent undertaking an institution, a financial holding company or a mixed financial holding company incorporated outside the European Union and is not

subject to supervision on a consolidated basis pursuant to Part One, Title II, Chapter 2 of Regulation (EU) No 575/2013, then:

1. the FMA must review whether this institution is subject to supervision on a consolidated basis by the competent authority in the third country and whether that supervision fulfils the principles of supervision on a consolidated basis as set forth in this federal act and in Regulation (EU) No 575/2013;
2. the FMA must apply the provisions of this federal act and of Regulation (EU) No 575/2013 to the credit institution with regard to consolidated supervision if equivalent supervision is not exercised. In such cases, the FMA must, after consultation with the competent authorities in a third country and the EBA, carry out this review at the request of the parent undertaking, or an undertaking authorised in the Community or on its own initiative;
3. where the application of this supervisory technique is adequate and the competent authority in the third country consents, the FMA may require the establishment of a financial holding company or mixed financial holding company incorporated in the European Union in order to attain the objectives of supervision on a consolidated basis, and the application of the provisions regarding supervision on a consolidated basis to the consolidated financial statements of that holding company. The FMA must inform the competent authorities in the third country, the European Commission, the EBA and the competent authorities in the other Member States with competence in the particular case of the application of this supervisory technique;
4. the FMA must take into consideration general guidance provided by the European Banking Committee (EBC) under Article 127(2) of Directive 2013/36/EU and for this purpose consult the EBA before taking a decision.

(10) The documents and information pursuant to paras. 7 and 9 comprise in particular the following areas of consolidation and the capture, determination and evaluation of risks necessary for banking operations, both on a consolidated basis and in individual institutions:

1. asset and liability items as well as income statement items,
2. off-balance sheet transactions (Annex I of Regulation (EU) No 575/2013),
3. derivatives (Annex II of Regulation (EU) No 575/2013),
4. own funds (Part Two of Regulation (EU) No 575/2013),
5. large exposures (Part Four of Regulation (EU) No 575/2013),
6. qualifying holdings (Title IV of Part Two of Regulation (EU) No 575/2013),
7. annual financial statements, including the notes to the financial statements and the management report,
8. credit register and comparable registers abroad,
9. foreign exchange positions,
10. positions included in the consolidation of price risk, liquidity risk, interest rate risk or securities risk,
11. governance arrangements (Article 39),

12. credit institutions' internal mechanisms for assessing capital adequacy (Article 39a),
12a. principles of remuneration policy and practices (Article 39b),
13. disclosure requirements (Part Eight of Regulation (EU) No 575/2013),
14. liquidity (Part Six of Regulation (EU) No 575/2013), and
15. leverage (Part Seven of Regulation (EU) No 575/2013).

(11) Where a group of credit institutions pursuant to this Article has a superordinate credit institution pursuant to para. 5, then the FMA shall be the consolidating supervisor for this group of credit institutions; this shall not however apply in the following cases:

1. the superordinate institution in the group of credit institutions is
   a. a parent financial holding company, a parent mixed financial holding company, EU parent financial holding company or EU parent mixed financial holding company respectively incorporated in Austria that does not have a subordinate CRR credit institution established in Austria, but which has one or more CRR credit institutions or CRR investment firms established in other Member States;
   b. a parent financial holding company, a parent mixed financial holding company, EU parent financial holding company or EU parent mixed financial holding company respectively incorporated in Austria, to which or or more CRR credit institutions in another Member State is subordinate to that collectively have a higher level of total assets than all subordinate CRR credit institution incorporated in Austria have collectively.

   By way of derogation from lits. a and b, the FMA shall be the consolidating supervisor in the instances in which it allows the tasks and responsibilities to be entrusted upon it in accordance with point b) of Article 116 (1) of Directive 2013/36/EU, because consolidated supervision by another competent authority would be inappropriate with regard to the relative importance of the activities of a credit institution, a financial holding company or mixed-financial holding company in other Member States, or with regard to ensuring the necessity of continuous supervision on a consolidated basis by the same competent authority. The FMA shall be required to inform the European Commission and the EBA of any decision made pursuant to Article 111(6) of Directive 2013/36/EU.
2. Where the FMA refrains from consolidated supervision for groups of credit institutions, since doing so would be inappropriate with regard to the relative importance of the activities of a credit institution in Austria or with regard to the necessity to ensure a continuous monitoring on a consolidated situation by the same competent authority, and in accordance with Article 77b para. 4 no. 2 confers the tasks and responsibilities upon another competent authority. The FMA shall be required provide the EU parent company, the EU parent financial holding company, the EU parent mixed financial holding company or the institution with the highest total assets the opportunity to present a statement before the adoption of the administrative decision in this regard. The FMA shall be required to inform the European

Commission and the EBA of any decision made pursuant to Article 111(6) of Directive 2013/36/EU.

Affiliation of Credit Institutions

Article 30a. (1) Credit institutions established in Austria that are permanently affiliated to a credit institution established in Austria as a central body can join with the central body to form an affiliation of credit institutions if:

1. the central body is a credit institution in accordance with Article 1 para. 1, and
2. the requirements pursuant to Article 10(1) of Regulation (EU) No 575/2013 are fulfilled.

The affiliation of credit institutions is formed through the conclusion of a contract between the central body and the affiliated credit institutions. To be valid in all participating companies, such a contract requires the approval of the shareholders' or general meeting with the majority required for an amendment of the articles of association. The companies must also adapt their articles of association accordingly.

(2) An affiliation of credit institutions is not a group of credit institutions as defined in Article 30 para. 1.

(3) The formation of an affiliation of credit institutions is subject to approval by the FMA; the application must be submitted by the central body on behalf of the central body and the affiliated credit institutions. The application must be accompanied by documents which reflect in particular the control, monitoring and risk management processes, the ability of the affiliation to comply permanently with the prudential requirements, and other significant information.

(4) The FMA shall approve the establishment of the affiliation of credit institutions if the conditions set forth in para. 1 are met. The approval issued in the form of an administrative decision may include appropriate obligations and conditions. The approval in the form of an administrative decision must be issued within three months of the date on which the FMA was in receipt of all documents and information required for its assessment. The administrative decision must be transmitted to the central body. Upon transmission to the central body, the administrative decision is deemed to have been transmitted to all members of the affiliation of credit institutions. The central body must bring the administrative decision to the attention of all affiliated credit institutions without delay. The FMA may prescribe a date by which the intended establishment of the affiliation of credit institutions must be completed.

(5) Subject to para. 5a changes in the composition of the membership of the affiliation of credit institutions must be reported to the FMA by the central body prior to implementation in writing, accompanied by the documents referred to in para. 3. If the conditions set forth in para. 1 are no longer met, or if the affiliation of credit institutions is no longer able to meet the prudential requirements under para. 7, the FMA shall declare by administrative decision that the affiliation of credit institutions no longer exists, and as of what date. The composition of the affiliation of credit institutions and changes thereto shall be published on the website of the central body. The fact that

the conditions set forth in para. 1 are no longer met, or that the affiliation of credit institutions is no longer able to meet the prudential requirements under para. 7, shall be notified to the FMA by the central body in writing.

(5a) The resignation of a member from the affiliation of credit institutions may only happen subject to the observance of the normal notice periods pursuant to the contractual arrangements between the central body and the affiliated credit institutions and shall require approval by the FMA; the resigning affiliated credit institution shall be entitled to submit its application to resign within one year of their proposed resignation. The approval shall be granted if compliance with prudential requirements pursuant to para. 7 is also guaranteed by the affiliation of credit institutions after the time when the affiliated credit institution resigns. The FMA may request the central body to submit all documentation within a reasonable timeframe which it requires as a basis for its decision as part of the approval procedure. If the central body is notified by an affiliated credit institution of its intention to resign from the affiliation of credit institutions subject to the observance of the normal notice periods pursuant to the contractual arrangements between the central body and the affiliated credit institutions, then the central body shall take all measures assigned to them within the scope of this federal act and Regulation (EU) No. 575/2013, to ensure that prudential requirements are met pursuant to para. 7 by the affiliation of credit institutions at the time of the planned resignation without the affiliated credit institution that is resigning.

(6) The provisions of Article 4 para. 3 nos. 3 and 4, Article 5 para. 1 no. 5, Articles 10, 16, 22 to 23f, 24 to 24d, Article 39 para. 2, Article 39a, Article 69 para. 3 and Article 70 para. 4a and Articles 70b to 70d as well as Parts Two to Four and Parts Five to Eight of Regulation (EU) No 575/2013 shall not apply to the affiliated credit institutions. For purposes of Article 405(2) of Regulation (EU) No 575/2013, the central body shall be regarded as an EEA parent credit institution and the affiliated credit institutions as subordinate institutions. The affiliated credit institutions are exempt from those notification and reporting duties (Articles 73 to 75) that are intended exclusively for the monitoring of these provisions. In deviation from the other provisions of this paragraph, Article 69 para. 3 and the necessary reporting provisions for the monitoring of this provision pursuant to Article 74 shall apply for affiliated credit institutions which are building societies pursuant to Article 1 para. 1 BSpG.

(7) The affiliation of credit institutions shall comply with the provisions of Article 39a of this federal act and Parts Two to Four and Parts Five to Eight of Regulation (EU) No 575/2013 on the basis of the consolidated financial situation. The central body shall prepare consolidated financial statements (Articles 59 and 59a) for this purpose. The notification and reporting duties applicable to responsible undertakings pursuant to para. 6 and groups of credit institutions (Articles 73 to 75) as well as reporting pursuant to Article 4a BaSAG shall be performed by the central body for the affiliation of credit institutions. For the purposes of Articles 38, 39 and 42, Article 69 para. 3 and Article 93a as well as of Article 2 para. 3 of the Act on Substitute Equity (*EKEG; Eigenkapitalersatz-Gesetz*) published in Federal Law Gazette I no. 92/2003 and for the processing pursuant to Article 4 (2) of Regulation (EU) 2016/679, the affiliation of credit institutions shall be considered as one credit institution.

(8) For the purposes of full consolidation, the central body shall be treated as the superordinate institution and every affiliated credit institution as well as every transferring entity pursuant to Article 92 para. 9 of this federal act or Article 8a para. 10 KWG which, pursuant to Article 92 para. 9 of this federal act or Article 8a para. 10 KWG, assumes liability for an affiliated credit institution with its entire assets, which is placed under the same management as the affiliated credit institution, and whose activity is restricted to the holding of shares shall be treated as a subordinate institution. In this process, share rights in the affiliated credit institutions which are not held by the central body or an affiliated credit institution shall be treated neither as minority interests nor as shares of other partners pursuant to Article 259 para. 1 UGB if the affiliated credit institutions directly or indirectly hold the majority of voting shares in the central body. When calculating the majority of the voting shares, measures pursuant to Article 1 FinStaG shall not be considered. The items "funds for general banking risk", subscribed capital" capital reserves", "retained earnings", "liability reserve" and "net profit or loss for the year" to be incorporated into the consolidated financial statements, shall be, irrespective of Article 254 UGB, the aggregated amounts of the respective items for all entities listed in the first sentence of this paragraph.
(9) For purposes of calculating the costs of financial market supervision, the affiliation of credit institutions shall be considered one credit institution; the obligation to pay lies with the central body. The central body shall allocate and invoice the costs of banking supervision to the affiliated credit institutions using the assessment formula of Article 69a para. 2.
(10) The central body is responsible for compliance with the provisions of this federal act and Regulation (EU) No 575/2013 that apply to the affiliation of credit institutions and shall, in the context of this obligation, in particular monitor the solvency and liquidity of the affiliation of credit institutions on the basis of consolidated financial statements and of the affiliated credit institutions. The central body shall ensure that the directors of the affiliated credit institutions fulfil the requirements of Article 4 para. 3 no. 6 and that the conditions set out in Article 5 para. 1 nos. 6 to 13 are met, and also that the affiliation of credit institutions has in place administrative, accounting and control mechanisms for the capture, assessment, management and monitoring of commercial and operational banking risks and remuneration policies and practices (Article 39 para. 2). The necessary powers of the central body to issue instructions under Article 10(1)(c) of Regulation (EU) No 575/2013 shall be established by contract and articles of association. In view of these powers to issue instructions, the affiliated credit institutions shall not be considered, in their relation to the central body, subsidiaries for the purposes of Article 51 para. 2, the last sentence of Article 65 para. 5 and Article 66 AktG. In view of these powers to issue instructions, the central body shall not be considered a parent undertaking of the affiliated credit institutions for the purposes of Article 66a AktG. However, the central body’s power to issue instructions may not be challenged on the basis of Article 70 para. 1 or Article 84 para. 1 AktG. The directors of the affiliated credit institutions shall be obliged to fulfil the tasks set out in instructions which have been assigned to the central body in accordance with this federal act and Regulation (EU) No. 575/2013 without delay. The directors of

the central body are not bound by any instructions in fulfilling the tasks that have been assigned to them in accordance with this federal act and Regulation (EU) No. 575/2013.
(11) The affiliation of credit institutions is entitled to conduct its activities in Member States through a branch or, under the freedom to provide services, through the central body or individual affiliated credit institutions, to the extent that such activities are covered by the licences of the central body or the affiliated institutions concerned. The notifications under Article 10 paras. 2, 5 and 6 are the responsibility of the central body, which must also indicate through which of the credit institutions of the affiliation of credit institutions the activities are carried out. Article 16 is applicable to the affiliation of credit institutions.
(12) The provisions of Article 400(2) of Regulation (EU) No 575/2013 and Article 5 para. 1 no. 9a, Articles 22 to 23f, 24 to 24d, 28a and 29, Article 30 para. 7, the first sentence of para. 8 and para. 10, Article 70 paras. 1 and 4a, Articles 70b to 70d and Article 77c are applicable to an affiliation of credit institutions with the proviso that the central body is considered the superordinate institution and the affiliation of credit institutions is considered a group of credit institutions. Article 77c is applicable to an affiliation of credit institutions with the proviso that the central body is considered the superordinate institution and the affiliation of credit institutions is considered a group of credit institutions where an institution within the meaning of Article 30 paras. 1 and 2 that is established outside Austria is subordinated either to the central body or to an affiliated institution.
(13) Approval pursuant to para. 3 shall be considered granted to credit institutions and affiliations of credit institutions that made use of Article 30a in the version prior to Federal Law Gazette I No. 184/2013.

Exemption from the Application of Own Funds Requirements on an Individual Basis

Article 30b. (1) Exemption at the level of the specific institution pursuant to Article 7 of Regulation (EU) No 575/2013 shall in the case of credit institutions and investment firms belonging to a group be subject to approval by the FMA.
(2) Any application by a credit institution, an investment firm or a superordinate parent undertaking for an exemption pursuant to para. 1 must be accompanied by appropriate documents which provide evidence that the conditions for exemption pursuant to Article 7 of Regulation (EU) No 575/2013 have been met.
(3) In the procedure pursuant to para. 1, the FMA must obtain an expert opinion from the *Oesterreichische Nationalbank* on the fulfilment of the conditions pursuant to Article 7 of Regulation (EU) No 575/2013.
(4) The approval for the exemption under para. 1 shall be granted if sufficient evidence is presented for the fulfilment of the conditions pursuant to Article 7 of Regulation (EU) No 575/2013.
(5) Credit institutions, investment firms pursuant to para. 1 or superordinate parent undertakings shall provide the FMA and the *Oesterreichische Nationalbank* with written notification without delay in the event that one or more of the conditions pursuant to Article 7 of Regulation (EU) No 575/2013

is no longer met or if compliance is no longer given with requirements and conditions imposed by administrative decision for the purpose of ensuring that such conditions are met, and present a plan for a return to compliance within a reasonable period of time. The FMA shall withdraw the approval pursuant to para. 1 in the event that one of the conditions specified in Article 7 of Regulation (EU) No 575/2013 is no longer met.

Exemption from the Application of Liquidity Requirements on an Individual Basis

Article 30c. (1) Approval by the FMA shall be required for exemption, pursuant to Article 8 of Regulation (EU) No 575/2013, of credit institutions and investment firms belonging to a group and of credit institutions and investment firms belonging to institutional protection schemes (Article 113(7) of Regulation (EU) No 575/2013) and for supervising them as a liquidity sub-group.
(2) Any application by a credit institution, an investment firm or a superordinate parent company for an exemption pursuant to para. 1 must be accompanied by appropriate documents which provide evidence that the conditions for exemption pursuant to Article 8 of Regulation (EU) No 575/2013 have been met.
(3) In the procedure pursuant to para. 1, the FMA must obtain an expert opinion from the *Oesterreichische Nationalbank* on the fulfilment of the conditions pursuant to Article 8 of Regulation (EU) No 575/2013.
(4) The approval for the exemption under para. 1 shall be granted if sufficient evidence is presented for the fulfilment of the conditions pursuant to Article 8 of Regulation (EU) No 575/2013.
(5) Credit institutions, investment firms pursuant to para. 1 or superordinate parent companies shall notify the FMA and the *Oesterreichische Nationalbank* in writing without delay in the event that one or more of the conditions pursuant to Article 8 of Regulation (EU) No 575/2013 is no longer met or if compliance is no longer given with requirements and conditions imposed by administrative decision for the purpose of ensuring that such conditions are met, as well as present a plan for a return to compliance within a reasonable period of time. The FMA shall withdraw the approval pursuant to para. 1 in the event that one of the conditions specified in Article 8 of Regulation (EU) No 575/2013 is no longer met.

Supervision of Mixed Financial Holding Companies

Article 30d. (1) Where a mixed financial holding company pursuant to Article 2 no. 15 FKG, Federal Law Gazette I No. 70/2004, is subject to provisions of this federal act or of Regulation (EU) No 575/2013 and of the FKG which are equivalent, in particular with regard to the risk-sensitive supervisory approach, the FMA as the consolidating supervisor may after consultation with the other authorities responsible for supervision rule that at the level of that mixed financial holding company only the corresponding provision of the FKG shall apply.
(2) Where a mixed financial holding company is subject to provisions of this federal act or of Regulation (EU) No 575/2013 and of the Insurance Supervision Act 2016 (VAG 2016;

Versicherungsaufsichtsgesetz), Federal Law Gazette I No. 34/2015, which are equivalent, in particular with regard to the risk-sensitive supervisory approach, the FMA as the consolidating supervisor may in consensus with the authority responsible for group supervision in the insurance sector rule that at the level of that mixed financial holding company only the provision of the VAG 2016, or of this federal act or of Regulation (EU) No 575/2013 shall apply, depending on which financial sector pursuant to Article 2 no. 7 FKG represents the larger average share of holdings.
(3) The FMA as the consolidating supervisor shall provide notification of any rulings pursuant to paras. 1 and 2 to EBA and EIOPA.
(4) If a subsidiary of an institution, a financial holding company pursuant to Article 4(1)(20) of Regulation (EU) No 575/2013 or of a mixed financial holding company is not included in supervision on a consolidated basis, the FMA may request from the competent authorities of the Member State in which the subsidiary is incorporated any and all information that would facilitate effective supervision.

SECTION VII: SAVINGS DEPOSITS

Savings Documents

Article 31. (1) Savings deposits refer to funds which are deposited with credit institutions and are not intended for payment transactions, but for investment, and as such can only be accepted against the delivery of certain documents (savings documents). Savings documents can be issued with a certain designation, in particular in the name of the customer identified pursuant to the provisions of the Financial Markets Anti-Money Laundering Act (*FM-GwG; Finanzmarkt-Geldwäschegesetz*), as published in Federal Law Gazette I No. 118/2016; the use of names other than that of the customer identified pursuant to the provisions of the FM-GwG is not permitted under any circumstances.
(2) Savings documents may only be issued by credit institutions which are authorised to conduct savings deposit business. The designations *Sparbuch* (savings passbook), *Sparbrief* (savings certificate) or any other combination of words containing the fragment spar (savings) may be used only for these documents. The designation *Sparkassenbuch* (savings bank passbook) is reserved exclusively for the savings documents issued by credit institutions which are full members of the Austrian Association of Savings Banks (*Fachverband der Sparkassen*). The issuance of savings documents with a designation containing the elements *Spar* (savings) or *Sparkasse* (savings bank) in combination with the word *Post* (post office / postal) is reserved exclusively for the Austrian Postal Savings Bank (*Österreichische Postsparkasse*).
(3) Savings deposits which amount to less than EUR 15 000 or an equivalent value and which are not registered in the name of the customer identified pursuant to the provisions of the FM-GwG must be subject to the restriction that the customer may only access the savings deposit upon provision of a password defined by the customer. This restriction must be recorded in the savings document and in the credit institution's records. Where the restriction is subject to the provision of a password, the

party presenting the savings document must indicate the password when accessing the savings deposit. If this party is not able to do so, then he/she must present evidence of their right of disposal over the savings deposit. Article 5 para. 3 FM-GwG shall remain unaffected by this provision. Savings deposits acquired by way of succession upon the death of a customer may be accessed without the provision of the password; the same applies to cases where a savings document is presented in the course of judicial or administrative enforcement proceedings.

(4) A credit institution which receives a report on the loss of a savings document along with an indication of the name, address and birth date of the party incurring the loss must enter the alleged loss in the records for the savings deposit in question and must not pay out any funds from the savings deposit within four weeks of receiving such a report.

(5) After 30 June 2002, savings documents for which the customer's identity has not been ascertained pursuant to Article 40 para. 1 must not be transferred or acquired in legal transactions.

Deposits, Withdrawals and Interest

Article 32. (1) Every deposit credited to a savings deposit and every withdrawal from a savings deposit must be recorded in the savings document.

(2) Withdrawals from a savings deposit may only be made upon presentation of the savings document itself. Deposits into a savings deposit may also be accepted in cases where the savings document is not presented simultaneously. Such deposits are to be recorded in the savings document upon the next presentation of the savings document.

(3) Savings deposits must not be accessed by means of funds transfers, except in cases where the person entitled to the savings deposit is deceased, is a minor or otherwise under tutelage, and the competent court for probate, guardianship or tutelage matters orders such a transfer, nor by means of cheques. In contrast, funds transfers to a savings deposit are permissible.

(4) Notwithstanding a restriction on the right of disposal pursuant to Article 31 para. 3 and notwithstanding Article 5 para. 3 FM-GwG, the credit institution is entitled to pay out funds against presentation of the savings document and subject to the requirements indicated under nos. 1 to 3 as follows:

3. in the case of savings deposits which amount to less than EUR 15 000 or the equivalent value in Euro and which are not registered in the name of a customer identified pursuant to the provisions of the FM-GwG, withdrawals may be paid out, upon provision of the password, to the party presenting the savings document and identified pursuant to Article 6 para. 1 no. 1 FM-GwG;
4. in the case of savings deposits which amount to at least EUR 15 000 or an equivalent value and which are registered in the name of the customer identified pursuant to the provisions of the FM-GwG, withdrawals may only be paid out to the customer identified pursuant to the provisions of the FM-GwG;

5. in the case of savings deposits which are not registered in the name of the customer identified pursuant to Article 40 para. 1 and whose balance has reached or exceeded EUR 15 000 or an equivalent value since the last presentation of the savings document exclusively as a result of interest credits, withdrawals may be paid out, upon provision of the password, to the party presenting the savings document and identified pursuant to Article 40 para. 1 at the first presentation of the savings document after the limit is reached or exceeded; in this context, the limit is considered to be reached or exceeded exclusively due to interest credits in cases where no credits from funds transfers have been recorded since the last presentation of the savings document which, in total, cause the above-mentioned limit to be reached or exceeded. Withdrawals may be made subject to the provisions indicated above unless the savings document has been reported lost, withdrawal has been officially prohibited or the accounts have been frozen.

(5) Unless a savings deposit is paid out in full within a calendar year, savings deposits must be balanced at the end of each calendar year (closing date). This does not apply to savings certificates.

(6) The annual interest rate applicable to a savings deposit and any fees charged for services in connection with savings deposits must be indicated in a conspicuous place in the savings document. Each change in the annual interest rate must be recorded in the savings document upon the next presentation of the savings document along with an indication of the date on which the interest rate takes effect. The amended annual interest rate applies from the date on which it takes effect without requiring cancellation by the credit institution.

(7) Interest on deposits into savings deposits is to begin accruing as of the value date (Article 37), with a month counted as 30 days and a year counted as 360 days. Amounts which are withdrawn within 14 days after being deposited are not to accrue interest; in this context, withdrawals from savings deposits must always be debited against the amounts most recently deposited. In the case of withdrawals from savings deposits, the interest on the amount withdrawn must be calculated up to and including the calendar day preceding the date of the withdrawal.

(8) Savings deposits may be committed for a certain term. Payments made prior to the end of the term are to be treated as advances, and interest is to be calculated accordingly. For these advances, 0.1% is to be charged for each full month by which the commitment period is not observed. However, interest on advances must not exceed the total credit interest accrued on the amount accepted; to the extent necessary, charges may be applied retroactively to credit interest paid out in the preceding year in cases where the credit interest for the current year is not sufficient. After 30 June 2002, term commitments may only be agreed upon in cases where the customer's identity has been ascertained pursuant to the provisions of the FM-GwG.

(9) The general provisions of the statute of limitations apply to limitations on claims arising from savings deposits. Interest on savings deposits is subject to the same limitations as deposits. Limitation periods are interrupted by every interest credit recorded in the savings document and by every deposit or withdrawal.

SECTION VIII: CONSUMER PROTECTION PROVISIONS

Special Provisions for Mortgage and Immovable Property Credit Agreements

Article 33. (1) Credit institutions shall ensure that employees, who are involved in the offering and concluding of mortgage and immovable property credit agreements, covered by the scope of Sections 2 and 3 of the Mortgage and Immovable Property Credit Act (*HIKrG; Hypothekar- und Immobilienkreditgesetz*) as published in Federal Law Gazette I No. 135/2015, possess appropriate knowledge and skills in the following fields, which are to be refreshed and updated on a regular basis:

1. appropriate knowledge of credit products as defined in Article 5 para. 1 HIKrG and the ancillary services usually offered in conjunction with such loan products;
2. appropriate knowledge of the legal provisions regarding mortgage and immovable property credit agreements, in particular provisions relating to consumer protection;
3. appropriate knowledge and comprehension of the procedures relating to the acquisition of immovable property;
4. appropriate knowledge in relation to collateral valuation;
5. appropriate knowledge of the organisational structure and functioning of land registers;
6. appropriate knowledge of the market in those Member States in which the credit institution offers credit products as defined in Article 3(1) of Directive 2014/17/EU on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010, OJ L 60 of 28.02.2014 p. 34, last corrected by OJ L 246 of 23.09.2015 p. 11;
7. appropriate knowledge of ethical standards in business dealings;
8. appropriate knowledge of the procedure of assessing the creditworthiness of the consumer or where applicable the appropriate skills for checking the creditworthiness of consumers;
9. appropriate financial and economic competence.

(2) The FMA shall determine by means of a regulation:

1. differences between specific categories of employees with regard to the minimum requirements in terms of knowledge and skills pursuant to para. 1, as well as
2. the type, scope and periodicity of proof of such knowledge and skills.

When issuing such a regulation, the FMA shall observe the conditions set in nos. 2 and 3 of Annex III to Directive 2014/17/EU.

(3) With regard to the credit products listed in para. 1 the credit institutions shall, in determining the remuneration policy and practices, shall in addition to the conditions pursuant to Article 39b also ensure that

1. the remuneration policy for employees responsible for conducting creditworthiness assessments is aligned to the business strategy, the goals, values and long-term interests of the credit institution, and that it contains measures for avoiding conflicts of interest, while it

should in particular be prescribed that remuneration is not dependent on the number or percentage of applications approved, and

2. for employees, who provide advisory services pursuant to Article 14 HIKrG, that the remuneration structure does not jeopardise their ability to act in the best interest of the consumer, and in particular is not linked to sales targets.

(4) In the case of the credit products listed in para. 1 the valuation of residential immovable property shall be conducted in accordance with the generally recognised valuation principles. The credit institution shall conduct the evaluation process using internal or external reviewers, who shall be required to possess an adequate professional competence in the fields of immovable property valuation and appraisal, and who must possess sufficient independence from the process for the granting of credits, in order to ensure an unbiased and objective assessment. The credit institution shall store the documentation relating to the assessment on a durable medium and to keep a record thereof.

(5) The credit institution must determine and document principles for the granting of credit products listed in para. 1, in particular determining the types of assets that are accepted as collateral.

(6) Credit institutions shall develop and apply strategies and procedures in accordance with European customs for arrears for consumer loans pursuant to Article 2 para. 3 HIKrG and pursuant to Article 2 para. 3 of the Consumer Credit Act (VkrG; Verbraucherkreditgesetz) published in Federal Law Gazette I No. 28/2010, before foreclosures are initiated. The strategies and procedures must take into account the consumer's circumstances, and may in particular cover the following:

1. a complete or partial restructuring of debt of a credit agreement;
2. a change to the applicable conditions of a credit agreement, which may inter alia cover the following:
    a. extending the credit agreement's term;
    b. changing the type of credit agreement;
    c. deferring payment of all or part of the instalment repayment for a period;
    d. changing the interest rate;
    e. offering a payment holiday,
    f. partial repayments;
    g. currency conversions;
    h. partial forgiveness and debt consolidation.

(7) The FMA has been named as the point of contact for the purposes of Article 36 of Directive 2014/17/EU. The FMA is authorised to cooperate and exchange information with points of contact in other Member States pursuant to the provisions of Article 77 para. 5.

Consumer Current Account Agreements

Article 34. (1) Consumer current accounts refer to accounts held by consumers as defined in Article 1 para. 1 no. 2 Consumer Protection Act (*KSchG; Konsumentenschutzgesetz*).

(2) In addition to the information required under ZaDiG 2018, consumer current account agreements must at least contain the annual interest rate applicable to credit balances, provided this information was not already provided under Article 48 ZaDiG 2018.
(3) The credit institution must notify the consumer of their account balance by means of an account statement at least on a quarterly basis.

Information about Prices

Article 35. (1) Credit institutions must make the following accessible in business premises that are accessible for consumers or in electronic form in their website:

1. Information on:
   a. the interest paid on savings deposits,
   b. any fees charged for services in connection with savings deposits and for other services provided for the retail segment,

   as well as
2. the credit institution's general terms and conditions of business;
3. the information about deposit protection pursuant to Article 38 para. 2 ESAEG and investor compensation pursuant Article 52 ESAEG

(2) repealed
(3) repealed

Business Relations with Youths

Article 36. In their business relations with youths (persons who have not yet reached the age of 18), credit institutions must observe the following due diligence obligations:

1. debit cards and cheque cards must not be issued to persons who have not reached the age of 18 without the express consent of the youth's legal representative; in cases where the youth has a regular income, such cards must not be issued to persons who have not reached the age of 17 without the express consent of the youth's legal representative;
2. withdrawals from cash dispensers by youths must be limited to EUR 400 per week;
3. nos. 1 and 2 do not apply to cards which only allow withdrawals at the issuing credit institution itself as long as that credit institution is able to authorise withdrawals on a case-by-case basis if such withdrawals would lead to an overdraft;
4. before issuing cheques to youths, the credit institution must review the regularity of the youth's handling of the account to date and in particular the current balance in the account.

Value Dates

Article 37. (1) In money transactions with consumers as defined in Article 1 para. 1 no. 2 KSchG, in connection with savings deposits, credit accounts or current accounts, provided they do not fall within the scope of Articles 77 and 78 ZaDiG 2018, credit institutions must,

1. include amounts in the beneficiary's account at the latest on the same day
   a. they become available on the beneficiary's account at the receiving credit institution or
   b. upon receipt of cash deposits to the consumer account
   if the amount is received in the same currency as the consumer account is held and
2. forward the amounts on the same day, in compliance with Article 72 ZaDiG 2018.

The amount shall be credited to the consumer account without delay and made available upon receipt at the receiving credit institution.

(2) In all other money transactions with consumers which are not provided for under para. 1 or which do not fall within the scope of ZaDiG 2018, credit institutions must credit amounts to the recipient's account on the next business day following availability or forward them on the next banking day following their availability at the latest. The amount shall become available immediately upon receipt or upon receipt of the payment instruction, with due consideration of any instructions regarding value dates.

Deposit Guarantee

Article 37a. (1) Member institutions pursuant to Article 7 para. 1 no. 21 ESAEG must make the information sheet pursuant to the Annex to Article 37a about their membership of a deposit guarantee scheme available to depositors as defined in Article 7 para. 1 no. 6 ESAEG prior to conclusion of an agreement relating to the taking of deposits. The web address of the deposit guarantee scheme, to which the member institution belongs pursuant to Article 7 para. 1 no. 21 ESAEG, must be given on the information sheet. The depositors must confirm receipt of this information sheet, although this confirmation, in the case defined in para. 3, may also be given by electronic means. The information sheet pursuant to the Annex to Article 37a must be made available in the language in which the member institution and the depositor agreed upon when opening the account.

(2) The confirmation that the deposits are considered to be eligible deposits, will be received by depositors on their account statements, including a reference to the information sheet pursuant to the Annex to Article 37a; in the case of savings deposits pursuant to Articles 31 and 32 BWG this confirmation relating to the eligibility for repayment of the deposits including a reference to the information sheet shall be made by means of a remark in the savings document. The information sheet pursuant to the Annex to Article 37a shall be communicated to the depositor at least once a year.

(3) If a depositor uses Internet banking, then the information pursuant to paras. 1 and 2 may be made available or communicated in electronic form. It shall be communicated on paper where the depositor so requests.

(4) The information pursuant to paras. 1 and 2 may only be referred to for advertising purposes in the form of mentioning the deposit guarantee scheme which protects the product mentioned, and

to describe how the deposit guarantee scheme works in a factual manner. It is not permissible to refer to unlimited coverage of deposits.

(5) In the event of a merger, the conversion of subsidiaries into branches or similar operations, depositors must be informed at least one month prior to the merger, the conversion of subsidiaries or a similar operation takes legal effect

1. in the Official Gazette of the *Wiener Zeitung* or otherwise in at least one newspaper with national circulation and
2. in electronic form on the website of the member institution pursuant to Article 7 para. 1 no. 21 ESAEG

unless the FMA approves a shorter interval for reasons relating to business secrecy or the stability of the financial system. Depositors shall be given a three-month period following notification of the merger or conversion or similar operation to withdraw or transfer to another credit institution, without incurring any penalty, their eligible deposits including all accrued interest and benefits in so far as they exceed the coverage level pursuant to Article 7 para. 1 no. 5 ESAEG at the time of the operation. The CRR credit institution shall not be allowed to charge a fee for this withdrawal or transfer.

Section IX: Banking Secrecy

Article 38. (1) Credit institutions, their members, members of their governing bodies, their employees as well as any other persons acting on behalf of credit institutions must not divulge or exploit secrets which are revealed or made accessible to them exclusively on the basis of business relations with customers, or on the basis of Article 75 para. 3 (banking secrecy). If the functionaries of authorities as well as the *Oesterreichische Nationalbank* acquire knowledge subject to banking secrecy requirements in the course of performing their duties, then they must maintain banking secrecy as official secrecy; these functionaries may only be relieved of this obligation in the cases indicated under para. 2. The obligation to maintain secrecy applies for an indefinite period of time.

(2) The obligation to maintain banking secrecy does not apply

1. towards the Public Prosecutor's Offices and Courts in criminal proceedings in accordance with Articles 116 and 210 para. 3 of the Criminal Procedure Code 1975 - (*StPO; Strafprozeßordnung*) as published in Federal Law Gazette No. 631/1975, and in court proceedings towards the financial crime authorities in connection with wilful financial crimes except for breaches of financial regulations in accordance with Article 89, and Article 99 para. 6 of the Financial Crime Act (*FinStrG; Finanzstrafgesetz*) as published in Federal Law Gazette No. 129/1958;
2. in the case of obligations to provide information pursuant to Article 41 paras. 1 and 2, Article 61 para. 1, Article 93 and Article 93a;
3. towards the probate court and the court commissioner in the event of the death of a customer;
4. towards the competent court for guardianship or tutelage matters if the customer is a minor or otherwise under tutelage;

5. if the customer grants their express consent to the disclosure of the secret; the approval given must clearly outline the use cases for which it is given, and either given in writing or electronically in the form of a clearly affirmative act;
6. for general information commonly provided in the banking business on the economic situation of an undertaking, unless the undertaking expressly objects to the provision of such information;
7. where disclosure is necessary in order to resolve legal matters arising from the relationship between the credit institution and customer;
8. with regard to the reporting requirements pursuant to Article 25 para. 1 of the Inheritance and Gift Tax Act (Erbschafts- und Schenkungssteuergesetz);
9. in the case of obligations to provide information to the FMA pursuant to the WAG and the BörseG;
10. for the purposes of the automatic exchange of information about financial accounts pursuant to the Act on Common Reporting Standards (*GMSG; Gemeinsamer Meldestandard-Gesetz*), as published in Federal Law Gazette I No. 116/2015;
11. towards government tax authorities in regard to a request for information pursuant to Article 8 of the Account Register and Account Inspection Act (*KontRegG; Kontenregister- und Konteneinschaugesetz*) as published in Federal Law Gazette I No. 116/2015;
12. with regard to the obligation for submissions pursuant to Article 3 KontRegG and the exchange of information according to Article 4 KontRegG;
13. with regard to reporting obligations defined in Articles 3 and 5 of the Capital Outflows Reporting Act (*Kapitalabfluss-Meldegesetz*), as published in Federal Law Gazette I No. 116/2015;
14. with regard to the provision of information pursuant to Article 16 para. 6 FM-GwG and the exchanging of information pursuant to Article 22 para. 2 and Article 24 para. 6 FM-GwG respectively for the prevention of money laundering and terrorist financing;
15. regarding the obligation to make a submission pursuant to Article 18a para. 8 of the Value Added Tax Act 1994 (*UStG 1994; Umsatzsteuergesetz 1994*), published in Federal Law Gazette no. 663/1994 as amended for the purposes of Article 24b of Regulation (EU) No 904/2010;
16. regarding making information available pursuant to Article 12 paras. 2 and 3 of the Sanctions Act 2024 (SanktG 2024; Sanktionengesetz 2024) published in Federal Law Gazette I, no. 5/2025 and exchanging of information pursuant to Article 12 para. 6, Article 14 para. 2 and Article 19 para. 4 SanktG 2024 (*note: reference to Article 19 para. 4 SanktG 2024 will be repealed on 1 January 2026*) respectively for monitoring compliance with sanction measures.

(3) A credit institution may not invoke its banking secrecy obligations in cases where the disclosure of secrets is necessary in order to determine the credit institution's own tax liabilities.

(4) The provisions of paras. 1 to 3 also apply to financial institutions and contract insurance undertakings with regard to Article 75 para. 3 and to deposit guarantee schemes, with the exception

of cooperation with other deposit guarantee schemes, deposit guarantee schemes and investor compensation schemes as required by Articles 93 to 93b.
(5) (constitutional law provision) Paras. 1 to 4 may only be amended by the National Council with at least one-half of the representatives present and with a two-thirds majority of the votes cast.
(6) If the usage of means of distance communication has been agreed upon with the customer for the provision of banking services, then the requirement for written consent to be given by the customer for releasing them from banking secrecy pursuant to para. 2 no. 5 may also be fulfilled by way of derogation from Article 886 ABGB by means of strong customer authentication (SCA) pursuant to Article 4 no. 28 ZaDiG 2018.

SECTION X: DUE DILIGENCE OBLIGATIONS AND DISCLOSURE OF INFORMATION FOR THE PREVENTION OF MONEY LAUNDERING AND TERRORIST FINANCING

General Due Diligence Obligations

Article 39. (1) In their management activities, the directors of a credit institution or of a responsible undertaking pursuant to Article 30 para. 6 must exercise the diligence of a prudent and conscientious manager as defined in Article 84 para. 1 AktG. In particular, they must obtain information on and control, monitor and limit the risks of banking transactions and banking operations using appropriate strategies and mechanisms, and have in place plans and procedures pursuant to Article 39a. Moreover, they must consider the overall earnings situation of the credit institution.
(2) Credit institutions and responsible undertakings pursuant to Article 30 para. 6 shall be required to have administrative, accounting and control procedures that are appropriate for the nature, scope and complexity for the banking transactions conducted for capturing, assessing, controlling and monitoring of risks arising from banking transactions and banking operations, including also such risks that arise from their macroeconomic environment while also taking into consideration the phase of the respective business cycle, the risk of money laundering and terrorist financing as well as their remuneration policy and practices. These mechanisms must be appropriate to the type, scope and complexity of the banking transactions conducted. The organisational structure as well as the administrative, accounting and control mechanisms must be documented in a written and comprehensible form. Where network and information systems are used, then they shall be established and managed in particular in accordance with the requirements set out in Regulation (EU) 2022/2554. Wherever possible, the administrative, accounting and control mechanisms must also capture risks arising from banking transactions and banking operations, as well as risks arising from remuneration policy and practices which might possibly arise. The organisational structure must prevent conflicts of interest and of competences by establishing delineations in structural and process organisation which are appropriate to the credit institution's

business operations. The adequacy of these procedures and their enforcement must be reviewed by the internal audit unit at least once per year.

(2a) Credit institutions may make use of joint risk classification organisations as service providers for the development and ongoing maintenance of rating methods if the credit institutions report this to the FMA in advance. The participating credit institutions may convey all information necessary for the capture and assessment of risks to the joint risk classification organisation for the exclusive purpose of developing and maintaining risk assessment and mitigation methods and making these methods available to the participating credit institutions by processing the data; the risk classification organisation shall only be permitted to transfer personal data to the credit institution which originally provided the underlying borrower data. The joint risk classification organisation, its governing bodies, employees and other persons working for the organisation shall be subject to the banking secrecy requirements pursuant to Article 38. With regard to the risk classification organisation, the FMA shall have all information, presentation and inspection powers set forth in Article 70 para. 1; Article 71 is applicable in this context.

(2b) In particular, the procedures pursuant to para. 2 must include the following:

1. credit risk and counterparty risk,
2. concentration risk,
3. market risk,
4. risk of excessive leverage,
5. operational risk,
6. securitisation risk,
7. liquidity risk,
8. interest rate risk arising from any transactions not already covered by no. 3,
9. the residual risk from credit risk mitigation techniques,
10. the location of exposures of a credit institution,
11. the risk of money laundering and terrorist financing,
12. the risk arising from the institution’s business model when taking into account the effects of diversification strategies,
13. the results of stress tests in the case of institutions that apply internal approaches, and
14. governance arrangements of credit institutions and responsible undertakings pursuant to Article 30 para. 6, their corporate culture and values, and the ability of the management body to perform their duties.

(2c) In the case of new transactions with which the credit institution has no experience regarding the risks involved, due consideration must be given to the security of third-party funds entrusted to the credit institution and to the preservation of the credit institution's own funds. The procedures pursuant to para. 2 must ensure that the risks arising from new transactions as well as concentration risks are captured and assessed to the fullest possible extent. When verifying the credit risk, the suitability of the approaches applied by a credit institution to capture credit risks must also be

assessed, taking into account the nature, scope and complexity of the transactions conducted by a credit institution.

(2d) Credit institutions must introduce internal systems or to apply the standardised or simplified standardised methodologies, in order to identify, evaluate, manage and address risks, that arise from potential changes in interest rates or changes in credit spreads for transactions in the banking book, and which have an effect on both the economic value of equity as on net interest income for transactions in the banking book. Small and non-complex credit institutions as defined in Article 4 (1) (145) of Regulation (EU) No 575/2013 may apply the simplified standardised methodology for identifying interest rate risk for transactions in the banking book, if this methodology is suitable for the orderly capture, management and limitation of interest rate risk in the banking book (IRRBB). The FMA shall prescribe the use of the standardised methodology for identification of interest rate risk, if the internal systems introduced by a credit institution or the simplified standardised methodologies for the assessment of interest rate risk are not suitable.

(3) Credit institutions must:

1. ensure their capability of honouring their payment obligations at all times;
2. establish company-specific financial and liquidity planning based on banking experience;
3. sufficiently ensure their ability to compensate for any future imbalances of incoming and outgoing payments by constantly maintaining sufficient liquid funds;
4. have in place systems for monitoring and controlling the interest rate risk of all transactions;
5. structure their interest rate reset and call privileges in particular according to the maturity structure of their assets and liabilities in such a way that potential changes in market conditions are taken into account; and
6. have in place documentation on the basis of which the credit institution's financial situation can be calculated with reasonable accuracy at all times; these documents are to be presented to the FMA with appropriate comments on request.

(4) The FMA must issue a regulation defining minimum requirements for the purpose of duly capturing, controlling, monitoring and limiting the types of risk specified in para. 2b. With regard to the following risks, the regulation must conform with the applicable provision as listed:

1. credit risk and counterparty risk – Article 79 of Directive 2013/36/EU,
2. concentration risk – Article 81 of Directive 2013/36/EU,
3. market risk – Article 83 of Directive 2013/36/EU,
4. risk of excessive leverage – Article 87 of Directive 2013/36/EU,
5. operational risk – Article 85 of Directive 2013/36/EU,
6. securitisation risk – Article 82 of Directive 2013/36/EU,
7. liquidity risk – Article 86 of Directive 2013/36/EU and taking into consideration the criteria of Article 39 para. 3,
8. repealed
9. residual risk resulting from credit risk mitigating techniques – Article 80 of Directive 2013/36/EU.

Approval shall be obtained from the Federal Minister of Finance for any aspects of that regulation which derogate from the aforementioned provisions or which define additional requirements.

(5) At credit institutions of any legal form that are of significant relevance as defined in Article 5 para. 4, a risk management department independent from operational business and having direct access to the directors is to be established, the competences and resources of which shall ensure that the following duties are fulfilled:

1. the detection and measurement of the manifestation of the risks specified in para. 2b;
2. notification of the risks specified in para. 2b and of the risk situation to the directors;
3. participation in defining the credit institution's risk strategy and in all important decisions relating to risk management;
4. a complete overview of the manifestation of existing types of risk and of the credit institution's risk situation.

The head of the risk management department shall be appointed solely to this position. The FMA may authorise, at the request of a credit institution, that another manager in the institution performs this function, where the nature, scale and complexity of the activities of the institution would not justify the appointment of a person solely for this purpose, and where no conflict of interest exists. The head of the risk management department cannot be removed from office without prior notification of the supervisory board. The head of the risk management department shall be required to hold the necessary professional qualifications for performing their job and shall meet the requirements set out in Article 5 para. 1 nos. 6 and 7.

(6) Credit institutions shall fulfil the following organisational requirements:

1. they shall define appropriate criteria and procedures in writing taking into consideration the nature, scale and complexity of their business activities, and shall regularly update them and shall comply with them on a continual basis. The principles and procedures shall be designed to avoid the risk of any kind of disregarding of the rules listed in Article 69 para. 1 by its senior management, its supervisory board members and its employees, as well as to reveal the associated risks and to keep such risks to a minimum.
2. credit institutions of a significant relevance pursuant to Article 5 para. 4 shall be required to establish a permanent, effective and independently operating compliance function with direct access to the directors, the task of which is the continuous monitoring and regular assessment of the adequacy and effectiveness of the criteria and procedures pursuant to no. 1, as well as the measures that have been taken to address any deficiencies, as well as advising the management body in this regard.
3. a person shall be entrusted to management the compliance function pursuant to no. 2 that satisfies the requirements set forth in Article 5 para. 1 nos. 6 and 7, and who holds suitable professional qualifications for the performance of their role.

Internal Capital Adequacy Assessment Process

Article 39a. (1) Credit institutions must have in place effective plans and procedures in order to determine on a regular basis the amount, the composition and the distribution of capital available for the quantitative and qualitative coverage of all material risks from banking transactions and banking operations and to hold capital in the amount necessary. These plans and procedures must be based on the nature, scope and complexity of the banking transactions conducted.
(2) Credit institutions must review the suitability and enforcement of the strategies and procedures pursuant to para. 1 at regular intervals, in any case on an annual basis, and to adapt those strategies and procedures as necessary.
(3) The responsible undertaking pursuant to Article 30 para. 6 shall comply with the obligation pursuant to para. 1 on the basis of the consolidated situation of the group of credit institutions taking into account the rules determined in Part 1 Title II Chapter 2 Sections 2 and 3 of Regulation (EU) No 575/2013.
(4) Credit institutions that have a parent undertaking in Austria or a subsidiary shall not be required to apply paras. 1 and 3 on an individual basis unless Articles 15 or 19 of Regulation (EU) No 575/2013 are applied.
(5) By way of derogation from paras. 3 and 4, subordinate credit institutions must comply with paras. 1 and 2 exclusively on a subconsolidated basis if they have as subsidiary undertakings credit institutions, financial institutions or asset management companies incorporated in third countries as defined in Article 2 (5) of Directive 2002/87/EC.

Principles of Remuneration Policy and Practices

Article 39b. (1) When defining and applying the remuneration policy and practices, including the salaries and voluntary pension payments for employee categories whose professional activities have a material effect on the risk profile of the credit institution, credit institutions must apply the principles mentioned in the Annex to Article 39b in such a manner and to such an extent commensurate to their size, their internal organisation, and the nature, scope and complexity of their transactions, as well as their employee categories, the type and amount of their remuneration, as well as the impact their activities have on the risk profile.
(2) the categories of staff, whose professional activities have a material effect on the risk profile of the credit institution pursuant to para. 1, in any case cover the following groups of persons:

1. the directors, the members of the supervisory board and the members of the senior management;
2. staff members with managerial responsibility for the control duties or material business lines of the credit institution;
3. Staff members having a claim to a remuneration of a considerable amount during the previous financial year, provided that the following conditions are met:

a. the remuneration of the respective staff member was at least EUR 500,000 as was equivalent to at least the average remuneration of the management, the supervisory board and the members of the senior management pursuant to no. 1 and
b. the respective staff members pursue their professional activities in a material business line, with it being an activity that has a significant impact on the risk profile of the business line in question.

(3) In addition to the instances listed in Article 30 para. 7 third sentence, paras. 1 and 2 in conjunction with Article 30 para. 7 first and second sentence shall not apply to the following institution in a group of credit institutions:

1. subsidiaries incorporated in Austria that are required to apply specific remuneration requirements outside of this Federal Act.
2. subsidiaries established in another Member State that are required to apply specific remuneration requirements in accordance with other Union legislative acts than Directive 2013/36/EU, and
3. subsidiaries established in a third country that would have been required to apply specific remuneration requirements in accordance with other Union legislative acts than Directive 2013/36/EU, if they had been established in the European Union.

(4) By way of derogation from para. 3 paras. 1 and 2 in conjunction with the first and second sentence of Article 30 para. 7 shall apply to individual staff members from institutions in a group of credit institutions, if the following conditions are met and Article 30 para. 7 third sentence shall not be applicable:

1. the institution is neither subject to the scope of application of this Federal Act nor Directive 2013/36/EU;
2. the institution is either an asset management company pursuant to point 19 of Article 4 (1) of Regulation (EU) No 575/2013 or an undertaking that performs the investment services and activities listed in Annex I Section A nos. 2, 3, 4, 6 and 7 of Directive 2014/65/EU and
3. the staff members of the institution have been commissioned to perform professional activities that directly and materially impact the risk profile of the business activities of the institutions within the group of credit institutions.

Remuneration Committee

Article 39c. (1) At credit institutions of any legal form that are of significant relevance as defined in Article 5 para. 4 the credit institution's supervisory board or other supervisory body competent according to applicable law or the articles of association must appoint a remuneration committee.

(2) The duties of the remuneration committee shall entail the preparation of resolutions on subjects relating to remuneration, including such that affect the particular credit institution's risk and risk management and that must be passed by the supervisory board or other supervisory body competent according to applicable law or the articles of association, as well as the monitoring of the

remuneration policy, the remuneration practices and of the incentive structures relevant to remuneration, in each case in the context of controlling, monitoring and limiting risks as specified in Article 39 para. 2b nos. 1 to 10, and of capital adequacy and liquidity, taking into account the long-term interests of shareholders, investors and credit institution employees, as well as the national economic interest in a functioning banking system and financial market stability.

(3) The composition of the remuneration committee shall allow independent and unbiased assessment of these subjects. The remuneration committee shall consist of at least three members of the supervisory board, and at least one these persons must have expert knowledge and practical experience in the area of remuneration policy (remuneration expert). In the event that, pursuant to Article 110 of the Labour Constitution Act (*ArbVG; Arbeitsverfassungsgesetz*), Federal Law Gazette No. 22/1974, one or more employee representatives are required to participate in the credit institution's supervisory board, at least one member of the group of employee representatives shall be on the remuneration committee. With credit institutions having total assets of less than EUR 5 billion, the remuneration expert function may be exercised by an expert not belonging to the supervisory board. Persons who in the last three years have acted as directors or executives (Article 80 AktG) of the credit institution concerned, or who are not independent and unbiased for other reasons, may not serve as the chairperson of the remuneration committee or as the remuneration expert.

(4) The remuneration committee shall hold at least one meeting a year.

Risk Committee

Article 39d. (1) At credit institutions of any legal form that are of significant relevance as defined in Article 5 para. 4 the credit institution's supervisory board or other supervisory body competent according to applicable law or the articles of association must appoint a risk committee.

(2) The duties of the risk committee include:

1. advising the management on the credit institution's current and future risk appetite and risk strategy;
2. monitoring implementation of that risk strategy in the context of controlling, monitoring and limiting risks as specified in Article 39 para. 2b nos. 1 to 14, and monitoring capital adequacy and liquidity;
3. verifying whether the prices of the services and products offered by the credit institution adequately take into account the credit institution's business model and risk strategy and submitting, if necessary, a plan with remedial measures; and
4. notwithstanding the duties of the remuneration committee, verifying whether the incentives offered by the internal remuneration system take into account risk, capital, liquidity and the probability of realising profits as well as the point in time when realised.

(3) The composition of the risk committee shall allow independent and unbiased assessment of the credit institution's risk strategy. The risk committee shall consist of at least three members of the supervisory board who have the expertise and experience necessary for monitoring the

implementation of the credit institution's risk strategy. Persons who in the last three years have acted as directors or executives (Article 80 AktG) of the credit institution concerned, or who are not independent and unbiased for other reasons, may not serve as the chairperson of the risk committee. A representative of the risk management department (Article 39 para. 5) shall attend the meetings of the risk committee and report on risk types (Article 39 para. 2b) and the risk situation of the credit institution. That representative shall draw attention to any developments entailing risk that will or might affect the credit institution.
(4) The risk committee shall hold at least one meeting a year.
(5) In the case of credit institutions that have been classified as systemically important institutions by the FMA pursuant to Article 23c or Article 23d, the majority of the members and the chairperson of the risk committee shall be required to be independent as defined in Article 28a para. 5b.

Handling of complaints

Article 39e. Credit institutions and financial institutions shall establish transparent and adequate procedures for processing of complaints by customers and business partners, in order to be able to identify, analyse and remedy risks occurring risks, as well as potential legal and operational risks.
Articles 40 to 40d. repealed

Reporting Requirements

Article 41. (1) Credit institutions and financial institutions shall submit reports to the Financial Intelligence Unit (*Geldwäschemeldestelle*), where determined in Article 16 paras. 1 and 3 FM-GwG.
(2) Credit institutions and financial institutions shall submit information to the Financial Intelligence Unit (*Geldwäschemeldestelle*) at the latter's request, where determined in Article 16 para. 2 FM-GwG.

Section XI: Internal Auditing

Article 42. (1) Credit institutions and financial institutions are to set up an internal audit unit which reports directly to the directors and which serves the exclusive purpose of ongoing and comprehensive reviews of the legal compliance, appropriateness and suitability of the entire undertaking. With due consideration of the scope of the institution's business, the internal audit unit must be equipped in such a way that it can perform its duties as intended. The duties of the internal audit unit must not be entrusted to persons with regard to whom reasons for exclusion exist. The head of internal audit unit shall be required to meet the requirements set out in Article 5 para. 1 nos. 6 and 7.
(2) Circumstances which make the proper performance of the duties of the internal audit unit appear improbable are to be regarded as reasons for exclusion. In particular, reasons for exclusion are considered to exist if

1. the persons in question lack the required expertise and experience in banking and

2. the objective performance of this function may be compromised, especially if the persons in question have been appointed as bank auditors at the same credit institution or if one of the reasons for exclusion as bank auditors indicated in Article 62 no. 6, 12 or 13 would apply to these persons due to their activities in the internal audit unit.

(3) Instructions involving the internal audit unit must be made jointly by a minimum of two directors. The internal audit unit must report to all directors. This unit must also report on a quarterly basis on the audit areas and the material results of audits to the chairperson of the credit institution's supervisory board or other supervisory body competent according to applicable law or the articles of association, and to the audit committee. In the next session of the supervisory body, the chairperson must report to the supervisory body on the audit areas and the material results of audits.

(4) The internal audit unit must also review the following:

1. the accuracy and completeness of the content of notifications and reports to the FMA and to the *Oesterreichische Nationalbank*;
2. repealed
3. compliance with Article 41 and the provisions of the FM-GwG;
4. in the case of credit institutions which calculate their own funds requirements for market risk pursuant to Title IV of Part Three of Regulation (EU) No 575/2013:
   a. the criteria for the definition of qualifying assets,
   b. the methods of determining the market price pursuant to Article 105(3) to (5) of Regulation (EU) No 575/2013,
   c. the option pricing model, especially the definition of volatilities and other parameters used to calculate the delta factor pursuant to Article 105(6) and (7) of Regulation (EU) No 575/2013,
   d. the determination of other risks associated with options pursuant to Article 329(2) of Regulation (EU) No 575/2013;
5. the suitability and enforcement of the procedures pursuant to Article 39 para. 2 and Article 39a.
6. repealed

(5) The internal audit unit must draw up an annual auditing plan and carry out audits in accordance with that plan. In addition, the internal audit unit must also carry out unscheduled audits whenever necessary.

(6) The duties of the internal audit unit must be assigned to a separate organisational unit within the credit institution. However, this shall not apply to credit institutions:

1. whose total assets do not exceed EUR 300 million; or
2. whose annual average number of employees does not exceed 50 full-time employees; or
3. whose total assets do not exceed EUR 1 billion, and which are associated with a central institution or belong to a group of credit institutions, where a separate organisational unit for

internal audit exists within the sectoral network or the group, that is equipped and organised with due adherence to para. 2 at all times;

4. whose total assets do not exceed EUR 1 billion, and which are subordinate to an EU parent credit institution or a parent credit institution in a Member State pursuant to Article 30 para. 1 nos. 1 to 6, where a separate organisational unit for internal audit exists within the EU parent credit institution or a parent credit institution in a Member State, that at all times complies with para. 2 with regard to its equipment and organisation, provided that this does not impede the supervisory and control options of the FMA and *Oesterreichische Nationalbank*.

The FMA may authorise, if requested by a credit institution affiliated to a central institution or a group of credit institutions, that the requirements to establish a separate organisational unit may also be waived, even where the thresholds listed in nos. 3 and 4 are exceeded, provided that a separate organisational unit for internal audit exists within the group of credit institutions or the sectoral association, and the requirements set out in paras. 1 and 2 are complied with.

(7) In the case of groups of credit institutions, the parent institution's internal audit unit must also perform the duties of an internal audit unit for the group.

Section XII: Accounting

General Provisions

Article 43. (1) The directors must ensure the legal compliance of the credit institutions' and affiliations of credit institutions' annual financial statements and consolidated financial statements as well as management reports and consolidated management reports. The annual financial statements, consolidated financial statements, management reports and consolidated management reports, as well as their audit and disclosure are subject to Volume 3 UGB, with the exception of Article 223 para. 6, Article 224, Article 226 para. 5, Articles 227 and 231, Article 232 para. 5, Article 237 para. 1 nos. 2 and 5 Article 238 para. 1 no. 13, Articles 240 and 246, Article 249 para. 1, Article 275 para. 2, Articles 278, 279 and 280a UGB.

(1a) For the purposes of para. 1 credit institutions shall be classified, regardless of their legal form, as public interest undertakings pursuant to Article 189a no. 1 UGB.

(2) The balance sheets and income statements of all credit institutions and affiliations of credit institutions except for building societies are to be drawn up in accordance with the layout used in the forms provided in the Annex. Consolidated financial statements must also be prepared in accordance with the structure of those forms. Annual and consolidated financial statements must be prepared in a timely manner so that the submission deadline pursuant to Article 44 para. 1 is observed. Further subdivisions of the forms are only permissible where they necessary in order to avoid confusion or where provided for by other legal provisions. The FMA may issue a regulation amending the forms where this is necessary due to changing accounting standards.

(3) By way of derogation from Article 1 para. 1, the term “credit institution” as used in Articles 51 to 54, Article 59 and in Annex 2 to Article 43 encompasses all credit institutions incorporated in Austria and CRR credit institutions authorised in a Member State or third country.

Article 44. (1) Credit institutions and the branches of foreign credit institutions must submit audited annual financial statements, management reports, consolidated financial statements and consolidated management reports pursuant to Article 59 and Article 59a, as well as the audit reports on the financial statements, management reports, consolidated financial statements and consolidated management reports pursuant to Article 59 and Article 59a, including the annex to the audit report on the annual financial statements (prudential report) indicated in Article 63 para. 5, to the FMA and the *Oesterreichische Nationalbank* at the latest within six months after the close of the business year. In addition, credit institutions must submit the data from annual financial statements and consolidated financial statements pursuant to Article 59 and Article 59a, including the annex to the audit report on the annual financial statements (prudential report) mentioned in Article 63 para. 5 and disclosures regarding hidden reserves, to the FMA and the *Oesterreichische Nationalbank* electronically and in a standardised format at the latest within six months after the close of the business year.

(2) Branches of foreign credit institutions must also submit the annual financial statements of the foreign credit institution to the FMA and the *Oesterreichische Nationalbank* within six months after the close of the business year.

(3) Branches of credit institutions pursuant to Article 9 para. 1 and of financial institutions pursuant to Article 11 para. 1 and Article 13 para. 1 which carry out activities pursuant to Article 1 para. 1 nos. 2 to 8, 11 and 15 to 17 in Austria must submit the annual financial statements, the management report and, where applicable, the consolidated annual financial statements and management report of the credit institution of financial institution to the FMA and the *Oesterreichische Nationalbank* at the latest within six months after the close of the business year.

(4) Branches of credit institutions pursuant to Article 9 para. 1 and of financial institutions pursuant to Article 11 para. 1 and Article 13 para. 1 which carry out activities pursuant to Article 1 para. 1 nos. 2 to 8, 11 and/or 15 to 17 in Austria must have the following information audited by bank auditors and submit the report on this audit, including the annex pursuant to Article 63 para. 7, to the FMA and the *Oesterreichische Nationalbank* at the latest within six months after the close of the business year.

1. Income and expenses of the branch from Items 1, 3, 4, 6, 7, 8 and 18 of Annex 2 to Article 43, Part 2;
2. the average number of employees of the branch;
3. repealed;
4. the total assets attributable to the branch and the total amounts of asset items 2 to 6, liability items 1, 2 and 3 as well as the off-balance sheet items 1 and 2 on the liabilities side of Annex 2 to Article 43, Part 1, as well as a breakdown of securities into financial assets and nonfinancial assets for asset items 2, 5 and 6 in the Annex mentioned above.

(5) In addition, branches of credit institutions and financial institutions from Member States in Austria must submit the audited data pursuant to para. 4 to the FMA and the *Oesterreichische Nationalbank* electronically and in a standardised format at the latest within six months after the close of the business year.
(5a) repealed
(6) The information pursuant to paras. 2, 4 and 5 must be prepared in German language.
(7) After consultation with the *Oesterreichische Nationalbank*, the FMA may issue a Regulation that prescribes that electronic submissions pursuant to paras. 1 and 5 must use specific layouts and meet certain minimum technical requirements. The FMA is empowered to issue a regulation prescribing that electronic reports must be submitted exclusively to the *Oesterreichische Nationalbank* if this is appropriate for reasons of economy, if the availability of the data in electronic form to the FMA is ensured at all times, and if supervisory interests are not compromised.
(8) Paras. 1 to 7 shall apply equally to affiliations of credit institutions.

General Balance Sheet Reporting Requirements

Article 45. (1) The following are to be reported separately as sub-items to the relevant balance sheet items:

1. the securitised and non-securitised exposures to affiliated undertakings included in asset items 2 to 5;
2. the securitised and non-securitised exposures to undertakings with which a company is linked by virtue of participating interests included in asset items 2 to 5;
3. the securitised and non-securitised liabilities to affiliated undertakings included in liability items 1, 2, 3 and 7;
4. the securitised and non-securitised liabilities to undertakings with which a company is linked by virtue of participating interests included in liability items 1, 2, 3 and 7;

(2) Assets of a subordinate nature are to be reported separately as sub-items of the asset items and of the sub-items pursuant to para. 1.
(3) The information pursuant to paras. 1 and 2 may also be reported separately in the order to the items in question in the notes to the financial statements.
(4) Securitised and non-securitised assets are considered subordinate if these claims can only be satisfied after those of other non-subordinated creditors in the case of liquidation or bankruptcy.
Article 46. (1) Assets are to be reported under the corresponding balance sheet items even if the credit institution preparing the balance sheet has pledged or otherwise transferred the assets to third parties as collateral for its own liabilities or for the liabilities of third parties.
(2) Assets pledged or otherwise transferred as collateral to the credit institution preparing the balance sheet are to be reported on the balance sheet only in cases where the assets are cash deposits.

Article 47. (1) In the case of syndicated loans, each participating credit institution must disclose only that part of the total loan which it has itself funded. (2) If, in the case of syndicated loans, the amount guaranteed by the credit institution exceeds the amount provided by that credit institution, then this additional guarantee is to be reported as a contingent liability under item 1 lit. b, off-balance sheet items.

Article 48. (1) Trust assets held by the credit institution in its own name on behalf of others must be reported on the balance sheet by the trustee. The total amounts of such receivables and liabilities must be indicated separately or in the notes to the financial statements and subdivided according to the various asset and liability items. Trustee assets may be disclosed off the balance sheet provided there are special rules whereby such funds can be excluded from the assets available for distribution in the event of the winding-up of a credit institution (or similar proceedings).

(2) Assets acquired in the name of and on behalf of others must not be accounted for on the balance sheet.

Article 49. Only those amounts which can be accessed at any time without prior notice, or for which a term/maturity or notice period of 24 hours or one business day has been agreed upon are considered as repayable on demand.

Article 50. (1) Repurchase agreements are agreements by which a credit institution or a customer of a credit institution (transferor) transfers its own assets to another credit institution or one of its customers (transferee) against payment of a certain amount, and in which it is simultaneously agreed that the assets will be retransferred to the transferor against payment of the amount received or of another amount agreed upon in advance.

(2) If the transferee assumes the obligation to retransfer the assets at a specified time or at a time to be specified by the transferor, then the repurchase agreement is referred to as a "genuine" repurchase agreement.

(3) If the transferee merely has the right to retransfer the assets at a previously specified time or at a time to be specified by the transferee, then the repurchase agreement is referred to as a sale with an option to repurchase.

(4) In the case of genuine repurchase agreements, the transferor must continue to report the assets transferred on the transferor's balance sheet. The transferor must also enter a liability to the transferee in the amount received for the transfer. If a higher or lower amount is agreed upon for the retransfer, then the difference must be distributed over the term of the repurchase agreement. In addition, the transferor must indicate the book value of the assets transferred under the repurchase agreement in the notes to the financial statements. The transferee must not report the assets received under the repurchase agreement on the balance sheet; the transferee must enter a claim on the transferor on his balance sheet in the amount paid for the transfer. If a higher or lower amount is agreed upon for the retransfer, then the difference must be distributed over the term of the repurchase agreement.

(5) In the case of sales with an option to repurchase, the assets transferred must be reported not on the transferor's balance sheet, but on the transferee's balance sheet. The transferor must report under off-balance sheet items the amount agreed upon in case the assets are retransferred.
(6) Foreign exchange forward transactions, futures transactions and similar transactions as well as the issuance of own debt securities for an abbreviated period are not considered to be repurchase agreements.

Provisions regarding Individual Balance Sheet Items

Article 51. (1) Cash in hand refers to domestic and foreign means of payment. Balances with central banks and post office banks in the countries in which the credit institution is established include balances held with those institutions and repayable on demand. Other loans and advances those institutions are to be reported as loans and advances to credit institutions (asset item 3) or as loans and advances to customers (asset item 4).
(2) Federal treasury bills, treasury notes and other similar debt instruments issued by public bodies must be reported under asset item 2, lit. a if they are eligible for refinancing with the central banks of the countries in which the credit institution is established. Debt instruments issued by public bodies which do not fulfil the requirement above must be reported under asset item 5 lit. a. Bills held in portfolio acquired from a credit institution or from a customer must be reported under asset item 2, lit. b if they are eligible for refinancing with the central banks of the countries in which the credit institution is established. Bills which do not meet these requirements are to be reported under asset item 3 or 4.
(3) Loans and advances to credit institutions include all types of receivables arising from banking transactions with domestic and foreign credit institutions, regardless of their individual designation. In this context, only receivables securitised in the form of debt securities or another form are excepted; such receivables are to be reported under asset item 5.
(4) Loans and advances to customers include all types of loans and advances to domestic and foreign non-banks, regardless of their individual designation. In this context, only receivables securitised in the form of debt securities or another form are excepted; such receivables are to be reported under asset item 5.
(5) Debt securities including fixed-income securities only include securities admitted to trading on a recognised exchange. However, debt securities issued by public-sector entities are only to be included where they are not reported under asset item 2. Floating-rate securities are also considered to be fixed-income securities as long as their interest rate is linked to a certain reference value, for example an interbank interest rate or a euro money market rate. Only own debt securities which have been repurchased and are admitted to trading on a recognised exchange may be reported in the sub-item under asset item 5 lit. b.
(6) Liabilities to credit institutions include all types of liabilities arising from banking transactions with domestic and foreign credit institutions, regardless of their individual designation. In this

context, only liabilities securitised in the form of debt securities or another form are excepted; such liabilities are to be reported under liability item 3.

(7) Liabilities to customers include all amounts owed to creditors which are not credit institutions pursuant to para. 6, regardless of their individual designation. In this context, only liabilities securitised in the form of debt securities or another form are excepted; such liabilities are to be reported under liability item 3.

(8) Securitised liabilities refer to debt securities as well as liabilities for which transferable documents/certificates have been issued; in particular, these include certificates of deposit, bons de caisse and liabilities from the credit institution's own acceptances and promissory notes. Own acceptances include only those acceptance facilities which are issued by the credit institution for its own refinancing and in which the credit institution is the first party liable ('drawee').

(9) Subordinated liabilities refer to securitised and non-securitised liabilities which, according to a contractual agreement, are only to be satisfied after the claims of other non-subordinated creditors in the case of liquidation or bankruptcy.

(10) Subscribed capital includes all amounts made available as capital contributions by the members or other owners, depending on the legal form of the credit institution. Subscribed capital must be reported using the nominal amount; in the case of no-par-value shares, the amount of share capital attributable to those shares is to be reported. Unpaid capital which has not been called is to be deducted from this item openly; subscribed capital which has been called but not paid is to be reported under asset item 13.

(11) Capital reserves refer to those amounts which have been allocated to the credit institution by its members or other owners or third parties as equity but are not subscribed capital.

(12) Retained earnings are reserves allocated from annual profits in the current business year or in previous business years.

(13) Contingent liabilities comprise all transactions in which the credit institution has underwritten the obligations of a third party. The notes to the financial statements must indicate the nature and amount of any type of contingent liability which is material in relation to an institution's activities. Liabilities from sureties and assets pledged as collateral security include all guarantee obligations incurred and assets pledged as collateral security on behalf of third parties, especially sureties and irrevocable letters of credit.

(14) Commitments include all irrevocable obligations which could give rise to a risk. The notes the financial statements must indicate the nature and amount of any type of commitment which is material in relation to an institution's activities. Commitments arising from repurchase agreements include repurchase commitments entered into by a credit institution as the transferor in sales with an option to repurchase.

Special Provisions relating to Certain Items in the Income Statement

Article 52. (1) The following values in particular are to be reported under interest receivable and similar income as well as interest payable and similar charges:

1. income from the assets accounted for under asset items 1 to 5 of Annex 2 to Article 43 Part 1, regardless of the form of calculation, as well as the income and reductions of income arising from the temporal distribution of the difference amount pursuant to Article 56 paras. 2 and 3;
2. expenses from the liabilities accounted for under liability items 1, 2, 3, 7 and 8 of Annex 2 to Article 43 Part 1, regardless of the form of calculation, as well as the expenses and reductions of expenses arising from the temporal distribution of the difference amount pursuant to Article 56 paras. 2 and 3;
3. Income and expenses resulting from covered forward contracts, spread over the actual duration of each contract and similar in nature to interest;
4. Fees and commission similar in nature to interest and calculated on a time basis or by reference to the amount of the claim or liability.

(2) Income from shares in investment funds must also be reported under income from securities and participations.

(3) Commission income and commission expenses refer to income and expenses arising in connection with the provision of services, in particular:

1. commissions for sureties, for loan administration on behalf of other lenders, and for securities transactions;
2. commissions and other income and expenses in connection with payment transactions, account management fees and commissions for the safekeeping and administration of securities;
3. commissions for foreign currency transactions and for the sale and purchase of coins and precious metals;
4. commissions for brokerage services in connection with loans, savings contracts and insurance contracts.

(4) The following values are to be reported as the net profit or net loss on financial operations:

1. the net profit or loss on transactions in securities which are not held as financial assets and are included in the trading portfolio, together with value adjustments and value re-adjustments on such securities;
2. the net profit or loss on foreign exchange transactions;
3. the net profit or loss on trading activities involving other assets, especially precious metals, and involving financial instruments.

Article 53. (1) Items 11 and 12 include, on the one hand, expenses for value adjustments in respect of loans and advances to be shown under asset items 3 and 4 and provisions for contingent liabilities and for commitments to be shown under off-balance sheet items 1 and 2, and on the other hand,

credits from the recovery of written-off loans and advances and amounts written back following earlier value adjustments and provisions.
(2) These items also include the net profit or loss on transactions in securities included in asset items 5 and 6 which are neither held as financial assets as defined in Article 55 para. 2 nor included in a trading portfolio, together with value adjustments and value re-adjustments on such securities, taking into account, where Article 56 para. 5 has been applied, the difference resulting from the application of Article 56 para. 5. The designations of the items are to be changed accordingly if the income and expenses in question are included.
(3) Income and expenses pursuant to paras. 1 and 2 may be netted out.
Article 54. (1) Items 13 and 14 include, on the one hand, expenses for value adjustments in respect of assets shown in asset items 5 to 8 and, on the other hand, all the amounts written back following earlier value adjustments, insofar as the charges and income relate to transferable securities held as financial assets as defined in Article 55 para. 2, to participating interests and to shares in affiliated undertakings.
(2) Expenses and income pursuant to para. 1 may be netted out.
Article 54a. Income and expenses are to be listed in items 15 and 16 "Extraordinary income showing separately:" (item 15) and "Extraordinary expenses showing separately" (item 16), which arise outside of the entity's normal business activities.

Valuation Rules

Article 55. (1) Asset items 9 and 10 must be valued as fixed assets. The assets included in other balance sheet items must be valued as fixed assets where they are intended for use on a continuing basis in the normal course of an undertaking's activities.
(2) Credit institutions must consider participating interests, shares in affiliated undertakings and securities intended for use on a continuing basis in the normal course of an undertaking's activities to be fixed assets.
Article 56. (1) Debt securities including fixed-income securities which are held as financial assets must be reported as fixed assets.
(2) In cases where the acquisition costs of such debt securities exceed the amount repayable at maturity, the difference amount must be charged to the income statement. The difference amount may also be written off pro rata temporis. The difference must be reported separately in the balance sheet or in the notes to the financial statements.
(3) In cases where the acquisition costs of such debt securities are lower than the amount repayable at maturity, the difference amount may be released to income in instalments over the period remaining until repayment. The difference must be reported separately in the balance sheet or in the notes to the financial statements.
(4) Where securities admitted to trading on a recognised exchange which are not held as financial assets are reported on the balance sheet at acquisition cost, credit institutions must disclose in the

notes to their financial statements the difference between the acquisition cost and the higher market value as of the balance sheet date.

(5) Securities admitted to trading on a recognised exchange which are not held as financial assets may be recognised at the higher market value as of the balance sheet date. The difference between the acquisition costs and the higher market value must be disclosed in the notes to the financial statements.

Article 57. (1) Claims of credit institutions, securities except for those held as fixed assets or included in the trading portfolio, loans and advances to credit institutions as well as exposures to nonbanks may be recognised at a lower value than that which would result from the application of the provisions of Articles 203, 206 and 207 UGB where necessary for reasons of prudence in light of the particular banking risks. The difference from the values which would be applied in accordance with Articles 203, 206, and 207 UGB must not exceed 4% of the total amount of the assets indicated. Article 201 para. 2 no. 4 UGB is to be applied with due consideration of the particular characteristics of banking transactions.

(2) The value applied pursuant to para. 1 may be maintained until the credit institution decides to adjust this value.

(3) On the liabilities side of their balance sheets, credit institutions may create a special item under 6a entitled "Fund for general banking risks" for the purpose of protection against general banking risks. This fund may include those amounts which the credit institution considers necessary to cover special banking risks for reasons of prudence. Additions to and disposals from this fund must be reported separately on the credit institution's balance sheet. The credit institution must have unrestricted and immediate access to this fund for the purpose of offsetting losses.

(4) The net balance of increases and decreases in the fund for general banking risks must be reported separately in the income statement.

(5) Credit institutions shall allocate a liability reserve. This liability reserve shall be 1% of the assessment base pursuant to Article 92(3)(e) of Regulation (EU) No 575/2013. Credit institutions which calculate own funds requirements for market risk pursuant to Title IV of Part Three of Regulation (EU) No 575/2013 must add 12.5 times the amount of the own funds requirements for position risk (Part Three, Title IV, Chapter 2 of Regulation (EU) No 575/2013) to the assessment base. The liability reserve shall not constitute a reserve as defined in Article 183 AktG. The liability reserve may be reversed only insofar as this is required to meet obligations in the event of a pay-out event (Article 9 ESAEG) or a compensation event (Article 46 ESAEG) or to cover other losses to be reported in the annual financial statements. The liability reserve is to be replenished by the amount reversed within the following five financial years at the latest. Allocations to and reversals of the liability reserve are to be shown separately in the income statement.

Article 58. (1) Assets and liabilities denominated in foreign currency must be translated at the middle rate of exchange prevailing on the balance sheet date.

(2) Forward transactions must be translated at the forward rate of exchange prevailing on the balance sheet date.

(3) The difference between the book values of the assets, liabilities and forward transactions and the amounts resulting from translation pursuant to paras, 1 and 2 must be reported in the income statement.

Consolidated Financial Statements

Article 59. (1) The superordinate credit institution must prepare consolidated financial statements and a consolidated management report for its group of credit institutions. Article 30 as well as paras. 2 to 5 determine the scope of consolidation.
(2) A subordinate credit institution need not be included in the scope of consolidation if the shares in the undertaking are held temporarily for the purpose of a financial reconstruction or rescue operation for that undertaking. In cases where such a credit institution is not included in the consolidated financial statements, the annual financial statements of that credit institution must be attached to the consolidated financial statements. Additional information on the nature and terms of the financial reconstruction must be included in the notes to the financial statements.
(3) Article 249 paras. 2 and 3 UGB are applicable to subordinate institutions which are not credit institutions.
(4) A participating interest need not be included in the group of credit institutions if such inclusion would result only from the application of Article 30 para. 1 no. 7.
(5) Article 30 para. 4 is not to be applied in cases where the supervisory body or a minority of owners whose shares account for no less than 10% of the share capital or nominal capital or the nominal amount of EUR 1.4 million request otherwise.
(6) The fixed assets of leasing undertakings held for the purpose of leasing must be assigned to the individual receivables categories in the consolidated balance sheet at the present value of the discounted leasing receivables.
(7) Where ancillary services undertakings pursuant to point (18) of Article 4(1) of Regulation (EU) No 575/2013 which are maintained on a cost recovery basis are included in the scope of consolidation, the resulting income may be netted out against the proportionate expenses if the income stems from revenues with undertakings which are not included in full consolidation and the reimbursement of the expenses by these undertakings is contractually agreed.
Article 59a. Superordinate credit institutions which prepare consolidated financial statements in accordance with internationally recognised accounting principles pursuant to Article 245a paras. 1 or 2 UGB must fulfil the requirements of Article 245a paras. 1 and 3 UGB and include the disclosures pursuant to Article 64 para. 1 nos. 1 to 19 and para. 2 in the notes to the consolidated financial statements.

Bank Auditors

Article 60. (1) The annual financial statements of each credit institution and each affiliation of credit institutions and the consolidated financial statements of each group of credit institutions pursuant

to Article 59 para. 1 and Article 59a must be audited by bank auditors, including bookkeeping, the management report and the consolidated management report pursuant to Article 59 and Article 59a.
(2) In the case of a credit institution in the legal form of a cooperative society, the auditing body (auditor) of its statutory audit institution appointed in accordance with the rules under cooperative society law shall perform the duties of the bank auditor pursuant to Article 60. This also applies to stock corporations, in which banking operations or the partial operation of banking transactions of a cooperative society have been integrated pursuant to Article 92 para. 7 with the exception of central organisations pursuant to Article 30a. The bank auditor of a central organisation pursuant to the second sentence of this paragraph and the bank auditors of such credit institutions assigned to a central organisation shall cooperate in the performance of their duties as bank auditors and shall exchange information that is necessary for performing their duties as bank auditors with one another.
(3) The rights to information, presentation and inspection (Article 272 UGB) of the bank auditor extend to all documents and data media, even in cases where they are maintained or stored by a third party, including an ICT third-party service providers pursuant to Chapter V of Regulation (EU)2022/2554, or where they are maintained or stored outside of Austria. In cases where the documents to be audited, especially bookkeeping, are maintained or stored outside of Austria, the credit institution must, notwithstanding the bank auditor's rights of inspection mentioned above, ensure that documents for the current business year as well as the three preceding business years are available in Austria at all times. The credit institution must also provide the bank auditor with the auditing plans as well as the audit reports drawn up by the internal audit unit.
(4) The credit institution shall inform the bank auditor at the latter's request about supervisory measures, including the status of ongoing administrative proceedings, and in connection with such measures shall make relevant documentation available.

Exemptions for the Auditing Associations of Credit Cooperatives and the Sparkassenprüfungsverband

Article 60a. (1) For the auditing associations of credit cooperatives and the *Sparkassenprüfungsverband* Article 4, Article 6, Article 8 (5) a), Article 16 and Article 17 (1) to (6) of Regulation (EU) No 537/2014 on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC, published in OJ L 158 of 27.05.2014 p. 77, in the version of the corrigendum OJ L 170 of 11.06.2014 p. 66, do not apply.
(2) Article 5 of Regulation (EU) No 537/2014 is applicable for the legal entities listed in para. 1 subject to the proviso that the rules for “statutory auditors” or “audit firms” apply in the case of cooperative auditing associations for the “auditors” (*Revisoren*) and in the case of the *Sparkassen-Prüfungsverband* for “appointed auditors” (Article 3 of the Annex to Article 24 SpG).
(3) Article 17 of Regulation (EU) No 537/2014 is applicable for the legal entities listed in para. 1 subject to the proviso that the rules for “responsible key audit partners” apply in the case of

cooperative auditing associations for the “auditors” (*Revisoren*) and in the case of the *Sparkassen-Prüfungsverband* for “appointed auditors” (Article 3 of the Annex to Article 24 SpG).

(4) In the event that legal persons are appointed as auditors (*Revisoren*), the exceptions pursuant to this provision shall not apply for these legal persons.

Article 61. (1) Bank auditors are certified external auditors or external auditing companies appointed as external auditors of financial statements as well as auditors (auditors, auditing unit of the Savings Bank Auditing Association) from competent auditing organisations established by law. In connection with the deposit guarantee scheme pursuant to Article 1 para. 1 ESAEG, cooperative auditing associations and the auditing unit of the Savings Bank Auditing Association must perform duties within the framework of an early warning system for the affiliated credit institutions. For credit institutions belonging to the Austrian Association of Banks and Bankers or the Association of State Mortgage Banks, the duties associated with the early warning system of the deposit guarantee scheme must be performed pursuant to Article 1 para. 1 ESAEG by those associations' deposit guarantee schemes; the bank auditors of these credit institutions must cooperate with the relevant deposit guarantee scheme for the purposes of the early warning system. The *Oesterreichische Nationalbank* is empowered to forward data reports from credit institutions to the relevant protection schemes as required by the deposit guarantee schemes mentioned above for the purposes of the early warning system.

(2) Persons in respect of which reasons for exclusion pursuant to Article 62 of this federal act or bias or disqualification pursuant to Articles 271, 271a or 271b UGB exist must not be appointed as bank auditors; in the case of external auditors and external auditing companies, reasons for exclusion pursuant to other provisions of federal law also must not exist; in the case of credit cooperatives and stock companies pursuant to Article 92 para. 7, Article 268 para. 4 UGB is not applicable. Article 271a UGB shall be applied to the Savings Bank Auditing Association with the restriction that the reasons for exclusion indicated therein shall apply to the "appointed auditors" (Article 3 of the Annex to Article 24 SpG).

(3) The FMA shall ensure the application of the provisions of Article 16 and Article 17 of Regulation (EU) No. 537/2014. In addition, the FMA is the competent authority for credit institutions pursuant to Article 12(1) of Regulation (EU) No 537/2014.

Article 62. Circumstances which make proper auditing appear improbable are regarded as reasons for exclusion. In particular, reasons for exclusion are considered to exist if:

1. The bank auditor is not professionally qualified due to a lack of prior education and does not possess the qualities or experience necessary for bank audits. Theoretical and practical qualifications for bank audits must be evidenced by an examination of professional competence of university, final examination level organised or recognised by the State pursuant to Article 4 of Directive 84/253/EEC. The subject examination pursuant to Article 13 GenRevG 1997 (Federal Law Gazette I No. 127/1997) is considered to be such an examination of professional competence. Auditors are considered to fulfil the requirement of practical experience after working for a recognised auditing association, for the Savings Bank Auditing

Association, or for an external auditor or external auditing company for at least three years if these activities specifically include auditing annual financial statements or consolidated financial statements as well as auditing the business activities of cooperative societies, savings banks or joint stock companies;

1a. the bank auditor does not ensure that their knowledge and experience pursuant to no. 1 are up to date through ongoing continuing education and training; to this end, annual confirmations of up-to-date quality assurance must be obtained from a qualified agency within the same external auditing company, legally responsible auditing organisation or another external auditor; in this context, the bank auditor must specifically provide evidence of the required knowledge of the relevant provisions applicable to credit institutions regarding the legal compliance of annual financial statements as well as the other provisions set forth in Article 63a paras. 4 to 6;

1b. repealed

2. repealed

3. the bank auditor owns shares in the credit institution to be audited which equal or exceed 5% of the paid-up capital or the nominal amount of EUR 70 000;

4. the bank auditor, with the exception of legally responsible auditing organisations, has earned at least 15% of their total revenues from professional activities in the last five years by auditing and advising the credit institution to be audited and undertakings in which the credit institution to be audited holds at least 20% of shares, and this is also to be expected in the current business year;

5. the bank auditor's economic independence from the credit institution to be audited is not ensured specifically because the credit institution contributes substantially to financing the auditor by means of a capital investment or loan;

6. the bank auditor's personnel-related independence from the credit institution to be audited is not ensured specifically because he/she performs activities other than advising for the credit institution to be audited or cooperates in the entry of transactions in accounting or in the preparation of financial statements in areas which he/she is meant to audit himself/herself;

6a. a reason for exclusion pursuant to Article 271a UGB exists;

7. the cooperative auditing association appointing the bank auditor conducts banking transactions itself (mixed activity association) unless the auditors and the auditing organisations are independent and autonomous of the management of the credit institution;

8. the bank auditor is – or was at any time in the last three years prior to being appointed – a legal representative, member of the supervisory board or employee of the credit institution to be audited;

9. the bank auditor is a legal representative or member of the supervisory board of a legal person, a member of a partnership or owner of a sole proprietorship, and that legal person,

partnership or sole proprietorship is affiliated with and owns at least 5% of the shares in the credit institution to be audited;

10. the bank auditor is an employee of an undertaking which is associated with or owns at least 5% of the shares in the credit institution to be audited, or is an employee of a natural person who owns at least 5% of the shares in the credit institution to be audited; if the bank auditor is an employee of a cooperative auditing association which also owns shares in the credit institution to be audited, then this share must not exceed 20% if the independence of the bank auditor is ensured in another suitable manner;
11. the bank auditor is a legal representative, member of the supervisory board or member of a legal or natural person or a partnership, an owner or employee of an undertaking if that legal or natural person, partnership or one of its members, or sole proprietorship may not act as the bank auditor for the credit institution to be audited pursuant to no. 6;
12. in carrying out the audit, the bank auditor employs a person who must not act as the bank auditor pursuant to no. 3 to 6, 8 to 11, 14, 15 and 17;
13. the bank auditor carries out their profession together with a person excluded pursuant to nos. 3 to 12 and 14 to 17 or fulfils the criteria under no. 3 or 4 together with that person;
14. the good repute of the bank auditor is not ensured specifically due to the existence of reasons for exclusion pursuant to Article 13 GewO 1994 or circumstances pursuant to Articles 9 and 10 of the Auditing, Tax Advising and Related Professions Act (*WTBG 2017; Wirtschaftstreuhandberufsgesetz 2017*) published in Federal Law Gazette I No. 137/2017;
15. the bank auditor does not carry out their activities with the required professional diligence, especially if their auditing activities have exhibited severe defects in the last five years;
16. the bank auditor does not hold the necessary certification pursuant to Article 15 of the Act on Quality Assurance for External Audits of Financial Statements (*A-QSG; Abschlussprüfungs-Qualitätssicherungsgesetz* – Federal Law Gazette I No. 84/2005) or substantial defects in quality assurance measures are identified by the quality auditor which have led to limitations on the final assessment pursuant to Article 13 para. 3 A-QSG and those defects have not been demonstrably remedied;
17. the bank auditor has breached their reporting requirements pursuant to Article 63 para. 3 of this federal act or pursuant to Article 273 para. 2 UGB in the last five years; this applies to the natural persons named for the audit engagement pursuant to Article 77 para. 9 WTBG 2017 in cases where the audit is carried out by an external auditing company as the bank auditor.

Article 62a. The liability of bank auditors is limited to the following amounts for credit institutions with total assets of

1. up to EUR 200 million EUR 2 million;
2. up to EUR 400 million EUR 3 million;
3. up to EUR 1 billion EUR 4 million;
4. up to EUR 2 billion EUR 6 million;
5. up to EUR 5 billion EUR 9 million;

6. up to EUR 15 billion EUR 12 million;
7. over EUR 15 billion EUR 18 million

per credit institution audited. In cases of intent, the liability obligation is unlimited. Otherwise, Article 275 para. 2 UGB applies to the liability of bank auditors.

Article 63. (1) The appointment of bank auditors, with the exception of those which are auditors for legally competent auditing organisations, must be carried out before the start of the business year to be audited and must be reported to the FMA in writing without delay; in cases where an external auditing company has been appointed as the bank auditor, then the natural persons named for the audit engagement pursuant to Article 77 para. 9 WTBG 2017 must be indicated in this report. Any changes in the persons named must be reported to the FMA without delay. The FMA may raise an objection pursuant to Article 270 para. 3 UGB to the appointment of a bank auditor or to a certain natural person named pursuant to Article 88 para. 7 WTBG if the FMA has a substantiated reason to suspect that a reason for exclusion pursuant to Article 61 para. 2 or another reservation exists; where the appointment is subject to a reporting requirement, this objection must be raised within one month. The court must rule on the objection with due consideration of reasons for exclusion; until a legally effective ruling has been handed down by the court, the bank auditor or the natural person named in accordance with Article 88 para. 7 WTBG may neither perform audit activities nor be provided with information subject to banking secrecy requirements by the credit institution.

(1a) repealed

(1b) repealed

(1c) Within two weeks of being appointed, the bank auditor must provide the FMA with certification that none of the reasons for exclusion exist. At the FMA's request, the bank auditor must also provide all additional certifications and evidence necessary for the purpose of assessment. If such a request is not fulfilled, the FMA may proceed in accordance with para. 1.

(2) The provisions of Articles 268 to 270 UGB regarding audits of annual financial statements (consolidated financial statements) are to be applied to credit institutions with the restriction that the appointment of the bank auditor pursuant to para. 1 must be carried out prior to the start of the business year to be audited. Bank auditors must participate as informed experts in the deliberations of the supervisory bodies competent under applicable law and the articles of association with regard to the annual financial statements.

(3) If, in the course of their auditing activities, the bank auditor identifies facts which:

1. give rise to a reporting obligation pursuant to Article 273 para. 2 UGB; or
2. indicate that the fulfilment of the audited credit institution’s obligations may be endangered; or
3. indicate a substantial deterioration of the risk situation; or
4. indicate major breaches of this federal act, Regulation (EU) No 575/2013 or of other legal or other provisions or administrative decisions of the Federal Minister of Finance or the FMA which govern banking supervision; or
5. indicate that material balance sheet items or off-balance sheet items are impaired,

or if the bank auditor finds reason to doubt the accuracy of documents or the declaration of completeness provided by the management board, or if the audit opinion is refused or contains qualifications, then the bank auditor must report these facts to the FMA and the *Oesterreichische Nationalbank* in writing without delay along with explanations, Article 273 para. 2 UGB notwithstanding. If the bank auditor identifies other defects, changes in the risk situation or economic situation which are not a cause for concern, or only minor breaches of provisions, and if these defects and breaches can be remedied in the short term, then the bank auditor is only required to report to the FMA and the *Oesterreichische Nationalbank* if the credit institution fails to remedy the defects and to provide the bank auditor with evidence of such remedies within a reasonable period of time, at the latest, however, within three months. The reporting requirement also applies in cases where the directors fail to provide information properly as requested by the bank auditor within a reasonable period of time. Bank auditors appointed by an auditing association must submit reports pursuant to this paragraph through the auditing association, which must pass on such reports without delay. In cases where an external auditing company is appointed as the bank auditor, the reporting requirement also applies to the natural persons named pursuant to Article 88 para. 7 WTBG. Notwithstanding the obligations pursuant to Article 273 para. 2 UGB, a report in accordance with this paragraph must also be submitted to the credit institution's supervisory board or other supervisory body competent according to applicable law or the articles of association, at the same time as to the FMA and the *Oesterreichische Nationalbank*.

(3a) Para. 3 is also applicable in cases where the bank auditor acts as the auditor of the financial statements of an affiliated undertaking (Article 228 para. 3 UGB) of the credit institution.

(3b) If the bank auditor files a report pursuant to para. 3 or 3a in good faith, this is not considered a breach of a disclosure restriction governed by a contract or by law, regulations or administrative provisions and will not bring about a liability on the bank auditor's part.

(3c) Where the bank auditor breaches their reporting obligations pursuant to para. 3, the FMA may remove the bank auditor, although in cases where the audit is carried out by an external auditing company as the bank auditor, although only the named natural persons named for the audit engagement pursuant to Article 77 para. 9 WTBG 2017 may be removed. In the event of a removal the FMA shall at the same time:

1. instruct the credit institution without delay to appoint another bank auditor,
2. instruct the external auditing company to name another natural person pursuant to Article 77 para. 9 WTBG 2017 for the audit engagement without delay,
3. instruct the cooperative auditing association to appoint another bank auditor without delay, or
4. instruct the auditing unit of the Savings Bank Auditing Association, to appoint another person as auditor without delay (Article 3 of the Annex to Article 24 SpG).

(4) The bank auditor must audit the legal compliance of the annual financial statements. The audit must also ensure the following:

1. compliance with Articles 18, 19, 92, 395, 412 and 413 of Regulation (EU) No 575/2013;

2. compliance with Articles 27a and 30 to 30c of this federal act;
3. compliance with Articles 25, 39, 39a, 41 and 42 of this Federal Act, and Articles 4 to 17, Article 19 para. 2, Articles 20 to 24, Article 29 and Article 40 para. 1 FM-GwG;
4. compliance with Articles 89 to 91 and 405 of Regulation (EU) No 575/2013;
5. compliance with Article 10 paras. 1, 2 and 4 of the Bank Recovery and Resolution Act (*BaSAG: Sanierungs- und Abwicklungsgesetz*);
6. the assignment of positions to the trading book as well as any transfers in accordance with internal criteria for their inclusion in the trading book;
7. in the case of credit institutions which apply Part Three, Title I, Chapter 3 of Regulation (EU) No 575/2013:
   a. the criteria for the definition of qualifying assets,
   b. the methods of determining market prices under consideration of Article 105 of Regulation (EU) No 575/2013,
   c. the option pricing approach, especially the definition of volatilities and other parameters used to calculate the delta factor pursuant to Article 377 of Regulation (EU) No 575/2013,
   d. the determination of other risks associated with options pursuant to Title IV of Part Three of Regulation (EU) No 575/2013;
8. in the case of credit institutions which calculate the minimum capital requirements for operational risk pursuant to Part Three, Title III, Chapter 3 of Regulation (EU) No 575/2013: compliance with the conditions pursuant to Article 320 of Regulation (EU) No 575/2013;
9. compliance with Sections 3 and 4 of Chapter 1 of BörseG 2018, Chapter 2 WAG 2018, Titles II, III and IV of Regulation (EU) No. 600/2014 and Section 3 of Chapter II and Chapter III of Commission Delegated Regulation (EU) 2017/565;
10. compliance with the requirements pursuant to Article 49(3)(a)(v) of Regulation (EU) No 575/2013 in the case of institutional protection schemes which apply Article 49(3) of Regulation (EU) No 575/2013;
11. the eligibility and accuracy of netting agreements as well as the fulfilment of the requirements pursuant to Article 296(3) of Regulation (EU) No 575/2013;

11a. the quality of payment commitments pursuant to Article 7 para. 1 no. 13 ESAEG;

12. compliance with Articles 8 to 35, 39 to 45, 66 to 92 and 128 to 138 InvFG 2011, compliance with Articles 2 to 9 and 21 to 36 ImmoInvFG as well as compliance with Articles 18 to 45a BMSVG;
13. loans which exhibit special characteristics with regard to amount, nature of the collateral, processing or a deviation from the credit institution's usual core business areas;
14. compliance with the other provisions of this federal act, Regulation (EU) No 575/2013 as well as other legal provisions relevant to credit institutions.

(4a) The audit of a central institution by the bank auditor must, within six months of the close of the central institution's business year, also include:

1. the consolidated balance sheet or the extended aggregated calculation pursuant to Article 49(3)(a)(iv) of Regulation (EU) No 575/2013 in the case of institutional protection schemes which apply Article 49(3) of Regulation (EU) No 575/2013;
2. the report pursuant to Article 113(7)(e) of Regulation (EU) No 575/2013.

(5) The result of the audit pursuant to paras. 4 and 4a must be presented in an annex to the audit report on the annual financial statements (prudential report); the result of the audit pursuant to para. 4a may also be presented in a separate annex to the audit report. The audit pursuant to para. 4 nos. 1 to 12 covers the organisational structure as well as the administrative, accounting and control mechanisms (Article 39 para. 2) which the directors have put in place in view of the provisions set forth in para. 4 nos. 1 to 12. The result of the audit pursuant to para. 4 nos. 1 and 2 as well as para. 4a shall be combined with a high level of assurance, the result of the audit pursuant to para. 4 nos. 3 to 12 at least with a moderate level of assurance. In deviation from the above, the result of the audit pursuant to para. 4 nos. 1 and 2 must at least be combined with a moderate assurance in the case of credit institutions:

1. which are members of an affiliation of credit institutions pursuant to Article 30a of this federal act or of an institutional protection scheme as set forth in Article 113(7) of Regulation (EU) No 575/2013, and
2. whose total assets do not exceed EUR 1 billion, and
3. which have not issued any transferable securities that are admitted to trading on a regulated market pursuant to Article 1 no. 2 BörseG 2018.

With respect to para. 4 nos. 13 and 14, the bank auditor shall report significant details of which he/she becomes aware during his activities, even where they do not lead to a reporting obligation pursuant to para. 3. This annex shall be submitted along with the audit report on the annual financial statements to the directors, the credit institutions' supervisory bodies competent according to applicable law or the articles of association in such a timely manner that the submission deadline pursuant to Article 44 para. 1 can be observed. The FMA shall issue a regulation defining the form and layout of this annex and of the annex indicated in para. 7.

(6) Branches of credit institutions pursuant to Article 9 para. 1 and of financial institutions pursuant to Article 11 para. 1 and Article 13 para. 1 which carry out activities pursuant to Article 1 para. 1 nos. 2 to 8, 11 and 15 to 17 in Austria must also have the information pursuant to Article 44 para. 4 audited. The audit must comprise the following:

1. accuracy and consistency with the annual financial statements (Article 44 para. 3);
2. compliance with the provisions set forth in Article 9 para. 7, Article 11 para. 5 as well as Article 13 para. 4, and compliance with Articles 47 to 67, 69 and 70 WAG 2018 as well as Articles 14 to 26 of Regulation (EU) No 600/2014.

(7) The result of the audit pursuant to para. 6 must be presented in an annex to the audit report on the annual financial statements (prudential report) pursuant to Article 44 para. 4. This audit report including the annex must be submitted to the directors of the branches of credit institutions and

financial institutions from Member States in Austria in such a timely manner that the submission deadlines pursuant to Article 44 paras. 3 to 5 can be observed.

(8) Notifications of the bank auditor pursuant to Article 7 second subparagraph of Regulation (EU) No. 537/2014 shall be addressed to the FMA and should also be notified without delay to the directors as well as the supervisory board or any other supervisory body of the company that has been audited that is competent by law or the articles of association. The notifications shall list facts of which the bank auditor is aware in relation to the irregularities listed in Article 7 first subparagraph.

Article 63a. (1) The supervisory board or other supervisory body of the credit institution competent according to applicable law or the articles of association may instruct external auditors or external auditing companies to carry out audits of the legal compliance and appropriate execution of the undertaking's business or request that legally competent auditing organisations appoint an auditor for this purpose. They must be provided with the corresponding audit engagement. Article 61 para. 2 is applicable to auditors acting on behalf of the supervisory body. The auditor acting on behalf of the supervisory body must report this to the chairperson of the supervisory body in accordance with para. 3. The auditor must inform the chairperson of the supervisory body without delay if the audit reveals severe defects with regard to the appropriateness or legal compliance of the undertaking. Otherwise, auditors appointed by the supervisory body are subject to the obligation to maintain banking secrecy pursuant to Article 38.

(2) Credit institutions are obliged to enable the auditors appointed by the supervisory body to carry out audit activities in accordance with Article 71 para. 2 and para. 3 nos. 1 to 3.

(3) In the course of performing their duties, the bank auditor appointed in accordance with Article 61 is also obliged to inform the chairperson of the supervisory body even without an audit engagement from the supervisory body if, due to the nature and circumstances of the breaches, reporting to the directors would not achieve the purpose of remedying the defects and such defects are severe.

(4) At credit institutions of any legal form, whose total assets exceed EUR 1 billion or which have issued transferable securities that are admitted to trading on a regulated market pursuant to Article 1 no. 2 BörseG 2018, the credit institution's supervisory board or other supervisory body competent according to applicable law or the articles of association must appoint an audit committee consisting of at least three members of the supervisory body. In the case of credit institutions with total assets exceeding EUR 5 billion, the audit committee shall be required to hold at least two meetings per financial year, otherwise at least one meeting is to be held each financial year. The bank auditor shall attend the meetings of the audit committee and shall report in writing on the main findings gained from the annual audit at least once a year and explain the report orally upon request of any committee member. This committee must include one person who possesses expertise and practical experience in the fields of bank finance, accounting and reporting as appropriate for the credit institution in question (financial expert). Furthermore, the auditor shall submit an additional report, at latest when signing the credit institution's audit opinion, to the audit committee in accordance with Article 11 of Regulation (EU) No 537/2014. The members of the audit

committee, especially the chairman of the audit committee or the financial expert, must be an independent majority and must be impartial. Anyone who has served as a director, executive (Article 80 AktG) or the company's bank auditor in the last three years, or who has signed the audit opinion shall not be considered independent. The members of the committee must collectively be familiar with the sector in which the audited entity is active. The duties of the audit committee include the following:

1. monitoring the accounting process as well as issuing recommendations or suggestions to ensure its integrity;
2. monitoring the effectiveness of the internal control system, the internal revision system and the company's risk management system;
3. monitoring of the audit opinion and the consolidated audit opinion taking into consideration the findings and conclusions contained in reports, which have been disclosed by the Austrian Audit Oversight Authority (*APAB; Abschlussprüferaufsichtsbehörde*) in accordance with Article 4 para. 2 no. 12 of the Austrian Audit Oversight Act (*APAG; Abschlussprüfer-Aufsichtsgesetz*);
4. reviewing and monitoring of the independent of the auditor (group auditor), in particular with regard to the additional services performed for the company that is the subject of the audit opinion; Article 5 of Regulation (EU) No 537/2014 and Article 271a para. 6 UGB shall apply;
5. delivery of the report containing the findings of the audit opinion to the supervisory board and a statement about how the audit opinion contributes towards the reliability of the financial reporting, as well as the role of the audit committee in that regard;
6. auditing the annual financial statement and preparing their approval, the proposed appropriation of profits, the management report and, where applicable, the corporate governance report, as well as submitting the report on audit results to the supervisory board;
7. where applicable the auditing of the consolidated report and the consolidated management report, the consolidated corporate governance report as well as submitting the report on the findings of the audit to the supervisory board;
8. the conducting of the procedure for selecting the auditor (group auditor) taking into consideration the appropriateness of the fee as well as the recommendations for the appointment of the auditor (group auditor) to the supervisory board pursuant to Article 16 of Regulation (EU) No 537/2014.

Nos. 4 and 8 shall not apply to institutions whose bank auditors are legally responsible auditing organisations.

Temporary Disqualification from the Practice of an Activity

Article 63b. (1) In companies pursuant to Article 60 para. 1, the bank auditor, the statutory auditor of a significant affiliated company and the external auditor who signed the relevant audit opinion

may not serve in a corporate body or in an executive function (Article 80 AktG) for a period of two years following the signing of the audit opinion.
(2) If any person described in para. 1 becomes a member of a corporate body, that person shall not be considered as having been appointed. Such persons shall not be entitled to any compensation for any services that they nevertheless perform; the same shall apply in the event of taking up an executive function.
(3) Employees and partners of an auditor pursuant to para. 1 as well as all other natural persons, whose services may be made use of or may be controlled by the auditors, may, provided that they themselves are also authorised auditors, neither serve in a corporate body nor hold an executive function within one year of their direct involvement (Article 80 AktG) in a company pursuant to para. 1. Para. 2 shall apply accordingly.

Notes to the Financial Statements

Article 64. (1) In addition to the information required pursuant to Article 203 para. 4, Article 203 para. 5 last sentence, Article 206 para. 3 last sentence, Articles 236 to 241 and 265 UGB, credit institutions must include the following information in the notes to their financial statements:

1. the amounts with which the credit institutions participated in leasing transactions;
2. the total amount of asset items and liability items denominated in foreign currency;
3. a statement of forward transactions not yet settled as of the balance sheet date;
4. a breakdown of loans and advances as well as balances which are not repayable on demand and of liabilities to credit institutions and non-banks by residual maturity as follows:
   a. up to three months;
   b. more than three months and up to one year;
   c. more than one year but up to five years;
   d. more than five years;
5. For each subordinated loan which exceeds 10% of the total amount of subordinated liabilities:
   a. the amount of the loan, the currency in which it is denominated, the interest rate and the maturity date or an indication that it is a perpetual issue;
   b. where applicable, whether there are any circumstances in which early repayment is required;
   c. the terms of the subordination, the existence of any provisions to convert the subordinated liability into capital or some other form of liability, and the terms of any such provisions.
6. an overall indication of the rules governing other subordinated loans;
7. for debt securities including fixed-income securities as well as debt securities in issue, the amount of assets and liabilities which will become due within one year of the balance sheet date.

8. a statement of the assets which credit institutions have pledged as collateral security for their own liabilities or for those of third parties (including contingent liabilities) in sufficient detail to indicate the total amount of the assets pledged as collateral security for each liability item and for each off-balance sheet item;
9. a breakdown of interest income, income from securities and participations, commission income, net profit/loss on financial operations and other operating income by geographical market where such markets differ substantially from one another in light of the organisation of the credit institution;
10. a breakdown of the securities admitted to trading on an exchange included in the asset items: Debt securities including fixed-income securities, Shares and other variable-yield securities, participating interests as well as Shares in affiliated undertakings into listed and unlisted securities;
11. a breakdown of the transferable securities shown under the asset items: Debt securities including fixed-income securities as well as Shares and other variable-yield securities into securities which are and are not held as financial fixed assets pursuant to Article 56 para. 1 and the criterion used to distinguish these two categories of securities;
12. a breakdown of Other assets, Other liabilities, Other operating expenses, Extraordinary expenses, Other operating income and Extraordinary income into their main component amounts where such amounts are important for the purpose of assessing the annual financial statements, as well as explanations of their nature and amount.
13. the total amount of expenses paid for subordinated liabilities by a credit institution in the year under review;
14. the total amount of income from the credit institution's management and agency services to third parties where the scale of such business is material in relation to the institution's activities as a whole;
15. an indication of whether the credit institution maintains a trading book and, if so, the volume of the securities and other financial instruments included in the trading book;
16. a breakdown of Tier 1 items and Tier 2 items; this also applies to equity interests and other own funds issued by a controlling company;
17. a statement on the consolidation of own funds;
18. a list, sorted by branch Member State, of the following data and indicators on a consolidated basis for the financial year:
    a. name of the branch, its areas of business and the name of the country where it is incorporated,
    b. net interest income and operating income,
    c. number of full-time employees,
    d. annual result before taxes,
    e. taxes on income,
    f. any public funding received;

19. return on total assets, calculated as the quotient of the annual result after taxes divided by the total assets as at the balance sheet date.

(2) Credit institutions which have issued participation capital must disclose information on this capital pursuant to Article 243 para. 3 no. 3 UGB in the notes to the financial statements.

(3) The disclosure of interest pursuant to Article 237 para. 1 no. 3 UGB may be omitted in the notes to the financial statements.

(4) In addition to the information required pursuant to Articles 265 and 266 UGB, groups of credit institutions must also include the disclosures pursuant to paras. 1 and 2 in the notes to the consolidated financial statements (Article 59 para. 1).

(5) Repealed.

(6) In the case of credit cooperatives, Article 239 para. 1 no. 4 UGB is to be applied with the restriction that, in addition to the joint remuneration of the members of the management board and the supervisory board, the total remuneration paid to directors pursuant to Article 2 no. 1 lit. b must also be indicated in the notes to the financial statements. In cases where a member of the management board is simultaneously named as a director pursuant to Article 2 no. 1 lit. b, that person's remuneration as a management board member must be reported in the category of directors' remuneration. If the breakdown pursuant to Article 239 para. 1 no. 4 UGB concerns fewer than three persons, then it can be omitted.

Publication

Article 65. (1) Credit institutions must publish their annual financial statements and consolidated financial statements pursuant to Articles 59 and Article 59a without delay after their approval in the Official Gazette of the Wiener Zeitung or in a generally available publication medium. This does not apply to the annex to the audit report on the annual financial statements (prudential report) pursuant to Article 63 para. 5. The annual financial statements and management report as well as the consolidated financial statements and the consolidated management report pursuant to Articles 59 and 59a must be made available for public inspection at the credit institution's registered office until the end of the third calendar year following the business year in question.

(2) The following information from the notes to the financial statements must be published:

1. the information pursuant to Article 237 para. 1 no. 1 and Article 239 UGB;
2. the information pursuant to Article 64 para. 1;
3. the information pursuant to Article 222 para. 2, Article 223 paras. 1 and 2 as well as Article 226 para. 1 UGB;

(2a) The following information from the notes to the consolidated financial statements (Article 59 para. 1 and Article 59a) must be published:

1. the information pursuant to Articles 265 and 266 UGB;
2. the information pursuant to Article 64 para. 1.

(3) Branches of foreign credit institutions must also publish the annual financial statements and consolidated financial statements of the foreign credit institution in the Official Gazette of the Wiener Zeitung or in a generally available publication medium. The management report and the consolidated management report of the foreign credit institution must be made available for public inspection at the branch.
(3a) Branches of credit institutions pursuant to Article 9 para. 1 and of financial institutions pursuant to Article 11 para. 1 and Article 13 para. 1 which carry out activities pursuant to Article 1 para. 1 nos. 2 to 8, 11 and 15 to 17 in Austria are to publish the audited information pursuant to Article 44 para. 4 as well as the annual financial statements and consolidated financial statements of the relevant credit institution (financial institution) in the Official Gazette of the Wiener Zeitung or in a generally available publication medium, and to make these documents available for public inspection at the branch. This does not apply to the annex to the audit report on the annual financial statements (prudential report) pursuant to Article 63 para. 7
(4) The Federal Minister of Finance is empowered, after consultation with the FMA, to conclude agreements on the basis of reciprocity with countries outside of the European Economic Area to relieve the branches of foreign credit institutions of the obligation to publish annual financial statements referring to their own activities.

Disclosure concerning Corporate Governance and Remuneration

Article 65a. Credit institutions must disclose on their websites the manner and means by which they comply with the provisions of Article 5 para. 1 nos. 6 to 9a, Article 28a para. 5 nos. 1 to 5, Articles 29, 39b, 39c, Article 64 para. 1 nos. 18 and 19, and the Annex to Article 39b.

Section XIII: Provisions regarding Cover Reserves pursuant to Article 216 ABGB

Article 66. A credit institution which creates cover reserves as defined in Article 216 ABGB must:

1. hold unencumbered cover reserves in the amount of trustee savings deposits; and
2. enter the values belonging to cover reserves in a separate listing (cover reserves register) which is to be maintained on an ongoing basis.
3. Cash is to be held in separate custody.

Article 67. (1) Cover reserves as defined in Article 216 ABGB are exempt from collection, except in the case of claims arising from trustee savings deposits.
(2) In the event of bankruptcy, cover reserves are regarded as special funds for the satisfaction of claims arising from trustee savings deposits (Articles 11 and 48 Insolvency Code – *IO; Insolvenzordnung*). If cover reserves are not sufficient to satisfy claims arising from trustee savings deposits, then such claims are to be satisfied proportionately.
Article 68. (1) The bank auditor must also review whether cover reserves are administered appropriately.

(2) In consultation with the Federal Minister of Justice, the Federal Minister of Finance must issue a regulation defining the following:

1. For credit institutions which accept savings deposits for the investment of trustee funds with the allocation of cover reserves:
   a. the specific form of
      aa) acceptance of trustee savings deposits;
      bb) allocation of cover reserves, especially with regard to their separation from other assets; and
      cc) termination of this provision upon attainment of full legal capacity; and
   b. the dates, the form and the layout of the reports to be provided by credit institutions;
2. For credit institutions which accept savings deposits for the investment of trustee funds without the allocation of cover reserves:
   a. the specific form of acceptance of trustee savings deposits and
   b. the form of reporting on trustee savings deposits taken.

SECTION XIV: SUPERVISION

Responsibilities of the FMA and Supervisory Review Process

Article 69. (1) Notwithstanding the duties assigned in other federal acts, the FMA must monitor compliance with the provisions of this federal act, the Savings Banks Act (*SpG; Sparkassengesetz*), the Building Society Act (*BSpG; Bausparkassengesetz*), the Regulation Implementing the Mortgage Bank Act and the Mortgage Bond Act (*Einführungsverordnung zum Hypothekenbank- und zum Pfandbriefgesetz*), the Mortgage Bank Act (*HypBG; Hypothekenbankgesetz*), the Mortgage Bond Act (*PfandbriefG; Pfandbriefgesetz*), the Act on Funded Bank Bonds (*FBSchVG; Bankschuldverschreibungsgesetz*), the Investment Fund Act 2011 (*InvFG 2011; Investmentfondsgesetz*), the Securities Deposit Act (*DepotG; Depotgesetz*), the Act on Severance and Retirement Funds for Salaried Employees and Self-Employed Persons (*BMSVG; Betriebliches Mitarbeiter- und Selbständigenvorsorgegesetz*), the Real Estate Investment Fund Act (*ImmoInvFG; Immobilien-Investmentfondsgesetz*), the Financial Conglomerates Act (*FKG; Finanzkonglomerategesetz*), the Deposit Guarantee and Investor Compensation Act (*ESAEG; Einlagensicherungs- und Anlegerentschädigungsgesetz*), Regulation (EU) No 575/2013, Title IV of Regulation (EU) No 909/2014, the Act on the Enforcement of Central Securities Depositories (*ZvVG; Zentralverwahrer-Vollzugsgesetz*) as published in Federal Law Gazette I no. 69/2015, Regulation (EU) 2017/2402 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012, OJ L 347, 28.12.2017, p. 35, the STS Securitisation Enforcement Act (*STS-VVG; STS-Verbriefungsvollzugsgesetz*) published in Federal Law Gazette I No. 76/2018, the *Pfandbriefe* Act (*PfandBG; Pfandbriefgesetz*)

published in Federal Law Gazette I No. 199/2021, of Delegated Regulation (EU)2017/2358, of Delegated Regulation (EU)2017/2359, and the technical standards relevant for banking supervision that are specified in Articles 10 to 15 of Regulation (EU) No 1093/2010 and Articles 10 to 15 of Regulation (EU) No 1095/2010 on the part of:

1. credit institutions pursuant to Article 1 para. 1;
2. credit institutions pursuant to Article 1 para. 1 which take up activities in other Member States on the basis of the freedom of establishment or freedom to provide services, subject to Article 16 para. 1;
3. CRR credit institutions authorised in a Member State, which are incorporated in the Member State in question and take up activities in Austria on the basis of the freedom of establishment or freedom to provide services, subject to Article 15;
4. CRR financial institutions authorised in a Member State, which take up activities in Austria on the basis of the freedom of establishment or freedom to provide services, subject to Article 17; and
5. representative offices of credit institutions incorporated in a Member State or a third country, subject to Article 73; and if applicable
6. financial holding companies pursuant to Article 4(1)(20) of Regulation (EU) No 575/2013; or
7. mixed financial holding companies pursuant to Article 2 no. 15 FKG;
8. using a risk-based supervisory approach, and in this context must consider the national economic interest in maintaining a functioning banking system and financial market stability.

(2) The FMA shall monitor:

1. having regard to the nature, scope and complexity of the banking transactions conducted by credit institutions and groups of credit institutions, the adequacy of the capital and liquidity available for the quantitative and qualitative coverage of all significant risks arising from banking transactions and banking operations, as well as the adequacy of procedures pursuant to Article 39 paras. 1 and 2 and Article 39a, with special regard to the risks indicated in Article 39 para. 2b;
2. the risks identified in digital operational resilience tests pursuant to Chapter IV of Regulation (EU) 2022/2554;
3. having regard to the nature, scope and complexity of the banking transactions conducted by the credit institutions and groups of credit institutions, the risks as determined on the basis of stress tests.

(3) For the purposes of the supervisory review process and the evaluation of the interest rate risk, the FMA shall prescribe in at least the following cases measures pursuant to Article 70 para. 4a or changes in the assumptions regarding models and parameters that credit institutions and groups of credit institutions are required to consider when calculating the economic value of equity pursuant to Article 39 para. 2d:

1. the economic value of equity of a credit institution stated in Article 39 para. 2d has reduced by more than 15 percent of its Tier 1 capital due to a sudden and unexpected change in interest

rates as arises from one of the six supervisory shock scenarios that are applied to interest rates;

2. The net interest income of a credit institution pursuant to Article 39 para. 3a has fallen heavily due to a sudden and unexpected change in interest rates, as arises from one of the two supervisory shock scenarios.

Irrespective of nos. 1 and 2, the FMA is not obliged to take supervisory measures or to prescribe changes in model and parameter assumptions, if it has arrived at the conclusion having conducted its supervisory review process, that the management of the interest rate risk arising from transactions in the banking book by the credit institution or the competent undertaking pursuant to Article 30 para. 6 is appropriate and the credit institution or the group of credit institutions is not excessively exposed to the interest rate risk arising from transactions in the banking book.

(3a) The FMA may adapted the methodologies used in the Supervisory Review Process at credit institutions with a similar risk profile and apply risk-based benchmarks and quantitative indicators, although the applied methodologies must adequately take into account the specific risks to which a credit institution is potentially exposed. The FMA shall ensure that by using such methodologies that the institution-specific nature of the measures added on pursuant to Article 70 para. 4a is not jeopardised. The FMA shall inform the EBA about the adapted methodologies that it applies.

(3b) The FMA shall once a year prepare a meaningful comparison of the quality of the approaches and methods applied by the credit institutions in determining the credit and market risk and analyse these approaches and methods with regard to significant aspects. If the FMA determines that a credit institution has underestimated the own funds requirements, the FMA shall take appropriate measures to restore legal compliance.

(3c) for the purposes of the supervisory review and evaluation process (SREP) under para. 2a no. 8, the FMA shall monitor whether a credit institution or a group of credit institutions has tacitly supported a securitisation. Where the FMA ascertains that a credit institution or a group of credit institutions has offered tacit support on more than one occasion, then the FMA shall take suitable measures pursuant to Article 70 para. 4 or 4a that take into account the increased expectation that the credit institution or group of credit institutions shall make further assistance available for its securitisations in the future thereby ensuring that no significant risk transfer is achieved.

(3d) The FMA shall review whether the valuation adjustments taken for positions of portfolios in the trading book pursuant to Article 105 of Regulation (EU) No 575/2013 enable the credit institution or the group of credit institutions to dispose of or hedge its positions under normal market conditions within a short period without incurring notable losses.

(4) In the exercise of its duties, the FMA shall duly consider the potential impact of its decisions on the stability of the financial system in all other Member States concerned and, in particular, in emergency situations, based on the information available at the relevant time. The general objective of considering the stability of the financial system across the European Union shall not establish a legal obligation of the FMA to achieve a specific result; as a result, no claims can be established based on the achievement of or failure to achieve specific results. In particular, such results shall not be

considered damages within the meaning of the Public Liability Act (*AHG; Amtshaftungsgesetz*), Federal Law Gazette No. 20/1949.

(5) In the enforcement of the provisions of the present federal act and Regulation (EU) No 575/2013, including the issuing and enforcement of national and EU regulations passed on the basis thereof, the FMA shall take into account European convergence in respect of supervisory tools and supervisory practices. To this end the FMA shall participate in the activities of the EBA, cooperate with the ESRB, follow the guidelines and recommendations and other measures passed by the EBA, as well as comply with the warnings and recommendations issued by the ESRB under Article 16 of Regulation (EU) No 1092/2010. The FMA may deviate from those guidelines and recommendations where justified grounds exist, in particular in the event of a conflict with provisions of federal law.

(6) If, in the course of its supervisory activities, in particular the evaluation of the management, the business model or the activities of a credit institution, the FNA has a reasonable suspicion that money laundering or terrorist financing is taking place, has taken place or that such crimes have been attempted in connection with this credit institution, or that an increased risk exists thereof, the FMA shall report this suspicion to EBA without delay. In the event of a potential increased risk of money laundering or terrorist financing the FMA shall establish contact with EBA in order to submit its evaluation without delay. The FMA shall as necessary take appropriate measures in order to remedy this unlawful situation.

Allocation of Costs

Article 69a. (1) For the costs of banking supervision which are not considered as costs pursuant to the Bank Recovery and Resolution Act (BaSAG) or costs for the supervision of deposit guarantee facilities in accordance with ESAEG, a Sub Accounting Group shall be formed in Accounting Group 1 (costs of banking supervision) pursuant to Article 19 para. 1 no. 1 FMABG. The classification of these costs within the Sub Accounting Group to the credit institutions and financial holding companies subject to charges shall be carried out in accordance with paras. 2, 3 and 4a. The following institutions are subject to contribution requirements:

1. credit institutions pursuant to Article 1 para. 1 with the exception of credit institutions pursuant to Article 1 para. 1 nos. 13, 13a and no. 21;
2. credit institutions under Article 9 para. 1 which carry out activities in Austria through a branch.
3. financial holding companies pursuant to Article 4 para. 1 no. 20 of Regulation (EU) No. 575/2013 and mixed financial holding companies pursuant to Article 2 no. 15 FKG if they are part of a group of credit institutions pursuant to Article 30 BWG.

(2) For each institution subject to contribution requirements under para. 1, it is first necessary to determine the cost figure. The cost figure for institutions subject to contribution requirements pursuant to para. 1 no. 1 is the minimum capital requirement shown in the report pursuant to Article 74 para. 1 for the final quarter of the preceding calendar year. For institutions subject to

contribution requirements pursuant to para. 1 no. 2, the cost figure is the result of the following calculation steps:

1. the total of the asset items to be reported in accordance with Article 44 para. 4 no. 4 is assigned a weight of 50%;
2. the notional minimum capital requirement of 8% is calculated for the weighted amount pursuant to no. 1;
3. the cost figure is equal to 5% of the notional minimum capital requirement pursuant to no. 2.

(3) For each credit institution, a ratio is to be calculated for each credit institution on the basis of the ratio of its cost figure in accordance with para. 1 nos. 1 and 2 to the total of all cost figures. The costs to be reimbursed in Accounting Group 1 after the deduction of any income pursuant to para. 5 are to be distributed among the individual institutions subject to contribution requirements accordion to their respective contribution ratios.

(4) If the calculation carried out in accordance with para. 3 results in an amount of less than EUR 2 000 for a credit institution, then that credit institution is to be charged supervisory costs in the amount of EUR 2 000 (minimum amount); the FMA must allocate the difference between the calculated cost share/contribution and the minimum amount to a provision which must be reported in the next annual financial statements.

(4a) In deviation from paras. 2 and 3, financial holding companies and mixed financial holding companies in accordance with para. 1 no. 3 shall be charged EUR 1 000.

(5) The provision allocated pursuant to para. 4 in a business year must be reversed in the next financial statements of the FMA; by way of derogation from Article 19 para. 4 FMABG, the income arising from this reversal must be deducted only from the costs of Accounting Group 1.

(6) If the calculation pursuant to para. 3 results in an amount which is greater than 0.125% of its cost figure (para. 2), then the credit institution to be charged supervisory costs equalling 0.125% of its cost figure.

(7) Where the provisions of para. 4 as well as para. 6 apply to a credit institution, only para. 4 is to be applied.

(8) Credit institutions which are only authorised to conduct one or both of the types of business indicated in Article 1 para. 1 no. 22 and Article 103j para. 2 of the present federal act in conjunction with Article 1 para. 2 no. 6 ZaDiG 2018 as well as the representative offices of credit institutions (Article 73) shall be charged the minimum amount indicated in para. 4. Paras. 1 to 7 are not applicable to the cost calculations of those institutions themselves; however, the FMA is to account for the costs charged to those institutions accordingly in the calculation of costs for the other institutions in Accounting Group 1 in accordance with para. 3. Article 19 paras. 5 and 6 FMABG is to be applied in issuing the administrative decisions regarding costs with the restriction that:

1. each prepayment is to be measured at 100% of the lump sum; and
2. only the determination of the lump sum in accordance with this paragraph is to be defined by the administrative decision regarding costs, unless positive or negative differences are to be

taken into account due to delayed payments or excess payments on the part of the institutions subject to contribution requirements.

Disclosure Obligations of the FMA

Article 69b. (1) The FMA shall publish and regularly update the following general information on its website:

1. the texts of the laws and regulations applicable to the field of banking supervision;
2. the minimum standards and circulars published by the FMA in the field of banking supervision;
3. the exercising of the rights of choice introduced by Regulation (EU) No 575/2013 or by Directive 2013/36/EU;
4. the general criteria and methodologies, that are applied in the Supervisory Review Process; these shall also include general principles regarding the implementation of the principle of proportionality pursuant to Article 69 para. 3; such information shall also be communicated to EBA;
5. while duly adhering to banking secrecy requirements (Article 38) and to professional secrecy requirements under Title VII, Chapter 1, Section II of Directive 2013/36/EU and the provisions pursuant to Title IV Chapter 1 Section 2 of Directive (EU) 2019/2034, aggregate statistical data on central aspects of the implementation of supervisory framework legislation, including the number and type of supervisory measures imposed under Article 70 paras. 4 and 4a and Articles 70b and 70c, as well as the fines imposed;
6. general criteria and methodologies for verifying compliance with securitisation requirements by credit institutions pursuant to Articles 5 to 7 and Article 9 of Regulation (EU) 2017/2402 and Article 270a of Regulation (EU) No 575/2013;
7. while duly adhering to official secrecy requirements a summary description of the results of the supervisory review and a description of the measures imposed in the event of breaches of Articles 5 to 7 and Article 9 of Regulation (EU) 2017/2402 and Article 270a Regulation (EU) No 575/2013 in the form of an annual report by 31 March of the following year at the latest; ongoing regular updates during the course of the year are not required to be made;
8. a list of the global systemically important institutions (G-SIIs) and other systemically important institutions (O-SIIs) domiciled in Austria and stating the sub-category to which every global systemically important institution has been allocated.

(2) If approval is granted for an exemption under Article 7(3) or Article 9(1) of Regulation (EU) No 575/2013, the FMA must publish and regularly update the following general information on the internet:

1. the criteria for determining that no material practical or legal impediment to the prompt transfer of own funds or payment of liabilities exists or is predicted;

2. the number of parent institutions that are benefited by the exercise of discretion under Article 6(3) or Article 8(1) of Regulation (EU) No 575/2013, as well as the number of the institutions having subsidiaries in a third country;
3. the aggregated data:
   a. the total amount of consolidated own funds that the parent institutions hold in subsidiaries in a third country,
   b. with regard to a parent institution for which an exemption was approved, the percentage of the parent institution's consolidated own funds held in subsidiaries in a third country.

(3) The FMA shall collect the information on remuneration policy that credit institutions are required to disclose under Article 450(1) (g), (h), (i) and (k) of Regulation (EU) No 575/2013 as well as the information to be submitted by credit institutions about the gender pay gap and shall use this information to determine trends in this area. The FMA must forward the results of such evaluations to the EBA. In addition, the FMA shall collect information on the number of employees of a credit institution who receive at least EUR 1 million in remuneration each financial year, broken down into pay bands of EUR 1 million and including the individual's responsibilities, the business area concerned and the main salary components, as well as bonus payments, long-term bonuses and pension contributions, and shall forward this information to the EBA.

Supervisory Powers

Article 70. (1) In its area of responsibility as the banking supervisory authority (Article 69 para. 1 nos. 1 and 2), the FMA may, notwithstanding the powers conferred on the basis of other provisions of this federal act, do the following at any time for the purpose of supervising credit institutions, affiliations of credit institutions and groups of credit institutions:

1. demand that credit institutions, affiliations of credit institutions, and responsible undertakings pursuant to Article 30 para. 6, on behalf of undertakings of the group of credit institutions, as well as financial holding companies, mixed financial holding companies, and mixed-activity holding companies, and third parties to which such entities have outsourced operational functions or activities, including IKT third-party service providers pursuant to Chapter V of Regulation (EU) 2022/2554, to submit interim financial statements, reports in specific formats and layouts, and audit reports, and additionally request from the credit institutions, affiliations of credit institutions, responsible undertakings pursuant to Article 30 para. 6, on behalf of undertakings of the group of credit institutions, as well as financial holding companies, mixed financial holding companies, and mixed-activity holding companies, and third parties to which such entities have outsourced operational functions or activities, including IKT third-party service providers pursuant to Chapter V of Regulation (EU) 2022/2554, and their bodies to provide information on all business matters; inspect bookkeeping records, documents and data media; Article 60 para. 3 shall be

applicable regarding the scope of the FMA's information, presentation and inspection rights and the obligation to make documents available in Austria;

2. obtain audit reports and information from the bank auditors of credit institutions, affiliations of credit institutions and groups of credit institutions as well as the competent auditing associations; in addition, the FMA may obtain all necessary information from, and provide all necessary information to, the deposit guarantee schemes and the government commissioner appointed pursuant to para. 2 no. 2;

2a. have the bank auditors of credit institutions, affiliations of credit institutions and groups of credit institutions, other external auditors and external auditing companies, the competent auditing associations and other experts conduct all necessary audits; the reasons for exclusion indicated in Article 62 are applicable in this context; the FMA is permitted to provide information to the auditors it engages where this serves the purpose of fulfilling the audit engagement;

3. instruct the *Oesterreichische Nationalbank* to conduct inspections of affiliations of credit institutions, credit institutions, their branches and representative offices outside of Austria, of credit institutions which are subject to supplementary supervision pursuant to Article 5 para. 1 FKG and of undertakings within the group of credit institutions and from third parties, to which credit institutions other undertakings in groups of credit institutions or groups of affiliated credit institutions have outsourced operational functions or activities, including ICT third-party service providers pursuant to Chapter V of Regulation (EU) 2022/2554. The competence of the *Oesterreichische Nationalbank* to conduct on-site inspections in the field of banking supervision and in credit institutions or groups of credit institutions in financial conglomerates applies comprehensively to inspections of all lines of business and all risk types. The *Oesterreichische Nationalbank* must ensure that it has sufficient personnel and organisational resources at its disposal to conduct the inspections indicated. The FMA is authorised to have its own employees participate in inspections conducted by the *Oesterreichische Nationalbank*;

4. request that the competent authorities in the host Member State also conduct inspections of undertakings in a group of credit institutions and of branches and representative offices in Member States and in third countries pursuant to Article 77 para. 5 nos. 2 and 3 where this simplifies or expedites the process compared to an inspection pursuant to no. 3 or where this is in the interest of expedience, simplicity, speed or cost-effectiveness; under these circumstances, the *Oesterreichische Nationalbank* may also be obliged to participate in such inspections, and FMA employees may participate in such inspections.

(1a) Where the *Oesterreichische Nationalbank* determines in the course of an on-site inspection that the inspection mandate issued in accordance with para. 1 no. 3 or 4 is not sufficient to attain the objective of the inspection, the *Oesterreichische Nationalbank* must request the necessary extensions from the FMA. The FMA must either extend the inspection mandate or reject the extension

with an indication of the reasons for the rejection without delay, at the latest, however, within one week.

(1b) The FMA and the *Oesterreichische Nationalbank* (OeNB) shall draw up an inspection plan together for the respective following calendar year taking into consideration the size, systemic importance, nature, scope and complexity of a credit institution or a group of credit institutions. The inspection plan must take the following into account:

1. inspections of systemically important institutions;
2. An appropriate frequency of inspections for institutions that are not systemically important or responsible undertakings pursuant to Article 30 para. 6,
3. resources for ad-hoc inspections;
4. thematic focuses of inspections;
5. the review of measures taken to remedy the deficiencies identified; in this context, the results of supervision under Article 69 paras. 2 and 3 must be taken into consideration.

The inspection plan must define the respective focuses of inspections and inspection start dates for each specific institution or group. The inspection plan shall also contain a list of those credit institutions or responsible undertakings pursuant to Article 30 para. 6 which are intended to be subject to closer supervision. On the basis of Article 69 paras. 2, 3 and 3a it shall be decided whether an increased number of or increased frequency of on-site inspections at credit institutions or responsible undertakings pursuant to Article 30 para. 6, requiring the credit institution or the responsible undertaking pursuant to Article 30 para. 6 to provide additional or more frequent reporting or conducting additional or more frequent reviews of the operational or strategic plans as well as the business plans of the credit institutions or responsible undertakings pursuant to Article 30 para. 6, are necessary. In conducting the Supervisory Review Process pursuant to para. 2 the FMA and the OeNB shall apply the principle of proportionality in accordance with the criteria to be disclosed pursuant to Article 143 (1) (c) of Regulation (EU) No 575/2013. Where the *Oesterreichische Nationalbank* determines that an on-site inspection is necessary in order to fulfil the criteria pursuant to nos. 1 to 5 and such an on-site inspection is not defined in the joint inspection plan, the OeNB is authorised and obliged to request that the FMA issue an additional inspection engagement. This request must include a proposal for the content of the inspection engagement and indicate the reasons justifying an unscheduled inspection within the meaning of nos. 1 to 5. The FMA must either issue the inspection engagement or reject the request with an indication of the reasons for the rejection without delay, at the latest, however, within one week. The FMA's right to issue inspection engagements pursuant to para. 1 nos. 3 and 4 shall remain unaffected.

(1c) The *Oesterreichische Nationalbank* is authorised to carry out on-site inspections pursuant to para. 1 no. 3 for macroeconomic reasons without an inspection mandate from the FMA if the inspections defined in the inspection plan pursuant to para. 1b or other FMA inspection mandates are not affected. The *Oesterreichische Nationalbank* must inform the FMA of such inspections and indicate the reasons for the inspections by the time they begin.

(1d) The *Oesterreichische Nationalbank* must define the intended scope of the inspection pursuant to para. 1c in writing. The examiners must deliver a copy of this document to the credit institution upon starting the inspection. In cases where the credit institution to be inspected refuses to grant access or to cooperate as necessary for the purpose of carrying out the inspection, the FMA must ensure that the scope of the inspection as defined in writing is enforced in accordance with Article 22 FMABG at the *Oesterreichische Nationalbank*'s request.

(1e) If the FMA detects in the course of an inspection that systemic risk arises from an institution (Article 2 no. 41) it must communicate this immediately to EBA.

(2) In cases of danger to the fulfilment of the credit institution’s obligations to its creditors, in particular to the security of assets entrusted to the credit institution or to ensure the stability of the financial market, the FMA may issue an administrative decision ordering measures for a limited period of time in order to avert that danger; such measures shall cease to be effective no later than 18 months after entering into effect. In particular, the FMA may issue administrative decisions which:

1. completely or partly prohibit withdrawals of capital and earnings as well as distributions of capital and earnings;
2. appoint an expert supervisor (government commissioner) who is an attorney at law or external auditor; in the case of credit cooperatives, it is also possible to appoint auditors from cooperative auditing associations; the supervisor, who has all of the rights pursuant to para. 1 nos. 1 and 2, must
    a. prohibit the credit institution from any transactions which might serve to exacerbate the danger mentioned above, and/or
    b. in cases where the credit institution is completely or partly prohibited from continuing business/transactions, allow individual transactions which do not exacerbate the danger mentioned above;
3. completely or partly prohibit directors of the credit institution from managing the credit institution, with simultaneous notification of the body responsible for appointing the directors; the responsible body must re-appoint the corresponding number of directors within one month; in order to be legally effective, such appointments require the consent of the FMA, which must refuse to grant consent if the newly appointed directors do not appear suitable for the purpose of averting the danger mentioned above;
4. completely or partly prohibit the continuation of business operations.

(2a) At the request of the supervisor appointed pursuant to para. 2 no. 2 or para. 3 (government commissioner), the FMA may appoint a deputy if and as long as this is necessary for important reasons, especially in cases where the supervisor is temporarily prevented from performing their duties. The provisions applicable to the supervisor also apply to the appointment of the deputy as well as their rights and duties. Given the approval of the FMA, the supervisor (government commissioner) may employ persons with suitable professional qualifications where necessary in light of the scope and difficulty of the duties to be performed. The FMA's approval must name these persons specifically and must also be delivered to the relevant credit institution. These persons are

to act upon the instructions of and on behalf of the supervisor (government commissioner) or their deputy.

(2b) The procedure pursuant to para. 2 is a reorganisation measure as defined in Article 2 of Directive 2001/24/EC. Articles 81 to 81m are applicable; in this context, the receivership procedure is considered a procedure pursuant to para. 2, and the FMA must issue a decree of appointment to the government commissioner. Article 83 paras. 4 to 9 are applicable; in this context, the receivership procedure is considered a procedure pursuant to para. 2, and the FMA is to act in lieu of the court.

(3) The FMA must obtain reports on suitable government commissioners from the Austrian Bar Association (*Österreichischer Rechtsanwaltskammertag*), from the Chamber of Professional Accountants and Tax Advisors (*Kammer der Wirtschaftstreuhänder*), and from the cooperative auditing associations. Where a government commissioner pursuant to para. 2 no. 2 or a deputy pursuant to para. 2a is to be appointed and such an appointment is not possible on the basis of those reports, the FMA must notify the bar association or chamber of professional accountants and tax advisors which is responsible for the credit institution's place of incorporation or the relevant cooperative auditing association so that the relevant organisation may name an attorney or external auditor with suitable professional qualifications for the position of government commissioner. In cases of imminent danger, the FMA may appoint

1. an attorney or
2. an external auditor

as a temporary government commissioner. This appointment will be abrogated once an attorney or external auditor has been appointed in accordance with the first sentence.

(4) In cases where a licensing requirement pursuant to Article 5 para. 1 nos. 1 to 15 is no longer fulfilled after the licence has been issued, or where a credit institution, a financial holding company, a mixed financial holding company or a mixed activity holding company breaches the provisions of this federal act, the SpG, the BSpG, the Regulation Implementing the Mortgage Bank Act and Mortgage Bond Act, the HypBG, the PfandbriefG, the FBSchVG, the InvFG 2011, the DepotG, the E-GeldG, the BMSVG, the ImmoInvFG, the FKG, the Bank Recovery and Resolution Act (BaSAG), the Deposit Guarantee and Investor Compensation Act (ESAEG), the Pfandbrief Act (PfandBG), a regulation issued on the basis of these federal acts or an administrative decision, the provisions of Regulation (EU) No 575/2013 or of an administrative decision issued on the basis of that Regulation or of the technical standards relevant for banking supervision as specified in Articles 10 to 15 of Regulation (EU) No 1093/2010 and Articles 10 to 15 of Regulation (EU) No 1095/2010, the FMA must:

1. instruct the credit institution, the financial holding company, the mixed financial holding company or the mixed activity holding company, under threat of a coercive penalty, to restore legal compliance within a period of time which is appropriate in light of the circumstances;
2. in cases of repeated or continued breaches, completely or partly prohibit the directors from managing the institution or company, unless this would be inappropriate based on the nature and severity of the breach and the restoration of legal compliance can be expected through repetition of the procedure pursuant to no. 1; in such cases, the initial coercive penalty

imposed must be enforced and the instruction repeated threatening a higher coercive penalty;

3. revoke the licence of the credit institution in cases where other measures pursuant to this federal act cannot ensure the functioning of the credit institution.

The FMA may also impose measures pursuant to para. 4a nos. 1 to 12 where a credit institution or responsible undertaking pursuant to Article 30 para. 6 breaches the requirements of the legal acts specified in the first sentence, or where in the FMA's view there is substantiated evidence to assume that a credit institution or responsible undertaking pursuant to Article 30 para. 6 will breach these requirements within the next twelve months.

(4a) Without prejudice to the first sentence of para. 4, where necessary due to the results of the FMA's supervisory activities within the scope of supervision of internal models and Article 69 para. 2, or in a case as specified in the last sentence of para. 4, or where necessary to enforce compliance with the provisions of Regulation (EU) No 575/2013, the FMA may:

1. impose holding additional own funds that extend beyond the own funds requirement specified in Article 92 of Regulation (EU) No 575/2013 (additional own funds requirement) taking into consideration the conditions stated in Article 70b;
2. require the reinforcement of the rules, procedures, mechanisms and strategies introduced in order to comply with Articles 39 and 39a;
3. require the submission of a plan to restore legal compliance and set a deadline for its implementation, including improvements to that plan regarding scope and deadline as appropriate;
4. impose the application of specific provisioning principles or for credit institutions or groups of credit institutions to treat their assets in a specific manner;
5. restrict or limit the business, operations or network of credit institutions or groups of credit institutions or to request the divestment of activities that pose excessive risks to the soundness of a credit institution;
6. require credit institutions or groups of credit institutions to reduce the risk associated with their activities products and systems, including the risk associated with outsourced activities;
7. require the limitation of variable remuneration to a percentage of net revenues, where such remuneration would otherwise be incompatible with maintaining a sound capital base;
8. require net profits to be used to strengthen own funds;
9. restrict or prohibit distributions of capital or profits and interest payments by an institution to shareholders, members or holders of Additional Tier 1 instruments, provided that prohibiting doing so does not constitute a default event for the credit institution;
10. impose additional reporting obligations or shorter reporting intervals also for the own funds, liquidity and leverage situation, in the event that the requested information is not already available from the joint database for banking supervision analysis pursuant to Article 79 para. 3;

11. impose specific liquidity requirements, including restrictions on maturity mismatches between assets and liabilities;
12. require additional disclosure, deadlines for disclosure or using specific disclosure channels.

(4b) Where a credit institution, a financial holding company or mixed-financial holding company breaches the provisions of Article 5 para. 1 nos. 6 to 9a, Article 28 para. 3, Article 28a para. 5 or Article 30 para. 7a, then the FMA shall, by way of derogation from para. 4:

1. instruct the credit institution, the financial holding company or the mixed financial holding company, under threat of a coercive penalty, to restore legal compliance within a time frame commensurate to the circumstances;
2. in the case of repeated or continued breaches
   a. in the case of a breach against Article 5 para. 1 nos. 6 to 9a or Article 30 para. 7 partially or fully prohibit the director in question from managing the entity and request the removal of the director in question without delay as well as, where necessary request a fresh appointment of another director by the competent body for the appointment of the director in question, or
   b. in the case of a breach against Article 28a para. 3, Article 28a para. 5 or Article 30 para. 7a prohibit the supervisory board member in question from performing the activity as a supervisory board member and to request the removal without of the supervisory board member in question as well as, where necessary, to request a fresh appointment by the competent body for the appointment of the member of the supervisory board in question or the authorised delegate for the appointment of the member of the supervisory board in question,

unless doing so would be inappropriate based on the nature and severity of the breach and where it may be reasonably expected that the restoration is possible by repeating the procedure pursuant to no. 1; in that case, the initial coercive penalty imposed must be enforced and the instruction repeated with the threat of a larger coercive penalty;

3. revoke the licence of a credit institution, a financial holding company or a mixed financial holding company in cases where other measures under this federal act are unable to ensure the functioning of the credit institution.

The FMA shall in particular review the compliance with Article 5 para. 1 nos. 6 to 9a, Article 28a para. 3 and Article 28a para. 5 where reasonable suspicion exists in relation to the credit institution that money laundering or terrorist financing is taking place, has taken place or that such crimes have been attempted, or that an increased risk exists thereof. Where due to measures taken pursuant to no. 2 lit. a the representation of the credit institution, the financial holding company or the mixed financial holding company is no longer possible, then in urgent cases the competent court of first instance called upon to exercise jurisdiction in commercial matters in the location of the registered office of the credit institution, the financial holding company or the mixed financial holding company shall upon the FMA's request appoint new directors for the period of time required until shortcomings have been addressed. The decision about the appointment of the director shall be

effective with his consent as well as, unless otherwise instructed in the decision, upon delivery to the director.

(5) Any and all measures ordered by the FMA pursuant to paras. 2 and 2a are to be suspended for the duration of a receivership procedure (Section XVII).

(6) The government commissioner is to be remunerated by the FMA with a fee (function fee) which is commensurate to the work involved in supervision and the expenses incurred for this purpose. The government commissioner is entitled to submit invoices for each previous quarter and after the termination of their activities. The FMA must pay the remuneration without delay after reviewing the invoice.

(7) The FMA is entitled to inform the public of measures taken by the FMA pursuant to paras. 2, 3 and 4 by placing an announcement in the Official Gazette of the Wiener Zeitung, in a newspaper distributed throughout Austria, on the internet, or by posting a bulletin at a suitable location on the business premises of the credit institution. However, measures pursuant to para. 4 no. 1 are only to be published where this is necessary for the purpose of informing the public in light of the nature and severity of the breach. These publication measures may be taken in full or in part. The party concerned by the publication can file a request to the FMA to verify the lawfulness of such publication by way of a procedure concluded with an administrative decision. In this case, the FMA shall notify the public of the initiation of such a procedure in the same way. If the investigation concludes that the publication was unlawful, the FMA shall correct the publication, or, at the request of the concerned party, revoke it or remove it from the internet. If a complaint against an administrative decision pursuant to paras. 2, 3 or 4 is granted suspensive effect in a supreme court procedure, the FMA shall make this known in the same way. The publication shall be corrected, or, upon request of the concerned party, revoked or removed from the internet if the ruling is reversed.

(8) Credit institutions must inform the chairperson of the supervisory body without delay of all administrative decisions issued by the FMA on the basis of the provisions set forth in Article 69.

(9) The FMA must convey administrative decisions with which directors are completely or partly prohibited from managing the credit institution (para. 2 no. 3 and para. 4 no. 2) as well as any reversals of such measures to the Commercial Register Court for entry in the Commercial Register.

(10) In the case of representative offices of credit institutions incorporated in a Member State or in a third country, the FMA may obtain the information indicated in para. 1 nos. 1 to 3 as well as other information and have audit inspection activities conducted in order to monitor compliance with Article 1 para. 1 and Article 73; para. 7 is applicable in this context. In cases where these provisions are breached, the FMA must, Article 98 para. 1 notwithstanding,

1. take the measures indicated in Article 15 in the case of credit institutions pursuant to Article 9;
2. take the measures indicated in Article 70 para. 4 nos. 1 and 2 in the case of credit institutions from third countries and inform the competent authority in the relevant credit institution's country of incorporation accordingly.

(11) repealed

Superordinate Mixed Activity Holding Companies

Article 70a. (1) In cases where the parent undertaking of a credit institution is a mixed financial holding company, a parent mixed financial holding company or a mixed activity holding company, then the FMA is entitled, notwithstanding the powers conferred to the FMA on the basis of other provisions of this federal act or of Regulation (EU) No 575/2013, to request from the credit institution all information necessary for the purpose of supervision on the mixed activity holding company as the parent undertaking and on its subsidiary undertakings at any time for the sake of ongoing supervision of credit institutions. Those undertakings must make all documents available to the credit institution and provide all information necessary in order for the credit institution to fulfil its obligation to provide information to the FMA.
(2) Notwithstanding the powers existing on the basis of other provisions in this federal act, the FMA may, in accordance with Article 70 para. 1 no. 3, instruct the Oesterreichische Nationalbank to obtain all information to be provided by the credit institution pursuant to para. 1 on site and to review the information provided; Article 70 para. 1 no. 3 (third sentence) and Article 71 are applicable in this context. It is also possible to commission the bank auditors, the competent auditing associations, external auditors or other experts independent of the mixed financial holding company, parent mixed financial holding company or the mixed activity holding company to conduct the inspection.
(3) repealed
(4) In cases where the mixed financial holding company, the parent mixed financial holding company, the mixed activity holding company or one of its subsidiary undertakings is incorporated in another Member State, the FMA must request that the competent authorities in the other Member State conduct the inspection pursuant to para. 2.
(5) In cases where the parent undertaking of a credit institution is a mixed financial holding company, parent mixed financial holding company or a mixed activity holding company, then the FMA is entitled, notwithstanding the powers conferred to the FMA on the basis of other provisions of this federal act or of Regulation (EU) No 575/2013, to supervise the transactions between the credit institution, the superordinate holding company and its subsidiary undertakings. For this purpose, the credit institution must have in place adequate risk management processes and internal control mechanisms, including sound reporting and accounting procedures, so that the credit institution's transactions with the parent undertaking and its subsidiaries can be identified, measured, monitored and controlled appropriately. In this context, the credit institution must – beyond reports to the Central Credit Register pursuant to Article 75 – report material intra-group transactions, especially loans, guarantees, off-balance sheet transactions, cost-sharing agreements, reinsurance transactions, capital investment transactions and transactions concerning own funds, to the FMA on at least a quarterly basis. Where these intra-group transactions pose a threat to a credit institution's financial position, the FMA will take appropriate measures.

Additional own funds requirement

Article 70b. (1) The FMA shall impose the additional own funds requirement stated in Article 70 para. 4a no. 1 upon credit institutions or responsible undertakings pursuant to Article 30 para. 6, where it has identified in supervisory reviews and evaluations of internal approaches or pursuant to Article 69 para. 2 that one of the following circumstances applies:

1. credit institutions or groups of credit institutions are exposed to risk components that are not covered or not adequately covered by the own funds requirements stated in Parts 3, 4 and 7 of Regulation (EU) No 575/2013 and in Chapter 2 of Regulation (EU) 2017/2402, as mentioned in greater detail in para. 2;
2. the requirements stated in Articles 39 and 39a or in Article 393 of Regulation (EU) No 575/2013 are not met by the credit institution or group of credit institutions and it is unlikely that other supervisory measures would suffice in order to ensure that these requirements are able to be met within an appropriate time frame;
3. the valuation adjustments for positions or portfolios in the trading book that a credit institution or a group of credit institutions has taken pursuant to Article 105 (4) of Regulation (EU) No 575/2013 are considered to be insufficient by the FMA in order to allow the credit institution or group of credit institutions to dispose of or to hedge its positions within a short period without incurring material losses under normal market conditions;
4. the supervisory evaluation of internal approaches reveals that that the non-compliance with the requirements for the application of the approved internal approach will lead to inadequate own funds requirements;
5. the credit institution or group of credit institutions has repeatedly failed to fulfil a supervisory expectation pursuant to Article 70c para. 3;
6. other institution-specific situations exist, which would lead to material supervisory concerns.

The FMA shall only impose the additional own funds requirement stated in Article 70 para. 4a no. 1 for the purpose of covering of risks to which the credit institutions or groups of credit institutions are exposed to due to their activities, including the risks that reflect the impact of specific economic and market developments on the risk profile of the credit institution or groups of credit institutions in question.

(2) for the purposes of para. 1 no. 1 the risks or risk components shall only be considered to not be covered or not adequately covered by the own funds requirements stated in Parts 3, 4 and 7 of Regulation (EU) No 575/2013 and in Chapter 2 of Regulation (EU) 2017/2402, where the amounts, types and breakdown of the capital that the FMA considered to be adequate taking into consideration the supervisory review of the valuation conducted pursuant to Article 39a by the credit institutions or the responsible undertakings pursuant to Article 30 para. 6 exceed the own funds requirements set in Parts 3, 4 and 7 of Regulation (EU) No 575/2013 and in Chapter 2 of Regulation (EU) 2017/2402.

(3) For the purposes of para. 2 the FMA shall evaluate the risks that the credit institution or undertaking is exposed to, taking into consideration the risk profile of every individual credit institution or responsible undertaking pursuant to Article 30 para. 6, including

1. the credit institution-specific risks or components of such risks that are explicitly excluded from the own funds requirements defined in Parts 3, 4 and 7 of Regulation (EU) No 575/2013 and in Chapter 2 of Regulation (EU) 2017/2402, or are not explicitly treated therein, and
2. the credit institution-specific risks or components of such risks that are probably underestimated despite fulfilling the applicable requirements defined in Parts 3, 4 and 7 of Regulation (EU) No 575/2013 and in Chapter 2 of Regulation (EU) 2017/2402.

Where risks or components of such risks are subject to the transitional rules in accordance with this Federal Act or Regulation (EU) No 575/2013, they are not considered as risks or components of such risks that are underestimated despite fulfilling the applicable requirements defined in Parts 3, 4 and 7 of Regulation (EU) No 575/2013 and in Chapter 2 of Regulation (EU) 2017/2402.

(4) For the purposes of para. 2 the capital that is considered to be adequate for covering all risks or risk components identified as being material pursuant to para. 3, which are not covered or not adequately covered by the own funds requirements determined in Parts 3, 4 and 7 of Regulation (EU) No 575/2013 and in Chapter 2 of Regulation (EU) 2017/2402. Interest rate risks arising from transactions in the banking book may be considered material at least in the cases pursuant to Article 69 para. 3 unless in conducting the review and evaluation the FMA arrives at the conclusion that the management of the interest rate risk arising from transactions in the banking book by the credit institution or the competent undertaking pursuant to Article 30 para. 6 is appropriate and the credit institution or the group of credit institutions is not excessively exposed to the interest rate risk arising from transactions in the banking book.

(5) Where an additional own funds requirement is imposed in order to cover other risks that the risk of excessive leverage that are not adequately covered by Article 92 (1) (d) of Regulation (EU) No 575/2013 then the FMA shall determine the amount of additional own funds requirement required pursuant to para. 1 no. 1 as the difference between the capital that is considered to be adequate pursuant to para. 2 and the relevant own funds requirements in Parts 3 and 4 of Regulation (EU) No 575/2013 and in Chapter 2 of Regulation (EU) 2017/2402.

(6) Where an additional own funds requirement is imposed to cover the risk of excessive leverage that is not adequately covered by Article 92 (1) (d) of Regulation (EU) No 575/2013 then the FMA shall determine the amount of additional own funds requirement required pursuant to para. 1 no. 1 as the difference between the capital that is considered to be adequate pursuant to para. 2 and the relevant own funds requirements in Parts 3 and 7 of Regulation (EU) No 575/2013.

(7) In order to cover other risks that the risk of excessive leverage, the credit institution or the responsible undertaking pursuant to Article 30 para. 6 must meet at least three quarters of the additional own funds requirement imposed pursuant to Article 70 para. 4a no. 1 with Tier 1 capital, with the necessary Tier 1 capital having to consist at least three quarters of Common Equity Tier 1 capital. In order to cover the risk of excessive leverage, the credit institution or the responsible

undertaking pursuant to Article 30 para. 6 shall be required to meet the additional own funds requirement imposed pursuant to Article 70 para. 4a no. 1 with Tier 1 capital. By way of derogation from this, the FMA may request that the credit institution or the responsible undertaking pursuant to Article 30 para. 6 that they, provided it is necessary to do so and taking into consideration the specific situation of the credit institution or group of credit institutions, meet the additional own funds requirement with a higher proportion of Tier 1 capital or Common Equity Tier 1 capital.

(8) The own funds that are used to meet the additional own funds requirement pursuant to Article 70 para. 4a no. 1 and imposed by the FMA, in order to cover other risks than the risk of excessive leverage, one of the following requirements shall not be allowed to be used to meet them:

1. the own funds requirements determined pursuant to points (a) to (c) of Article 92 (1) of Regulation (EU) No 575/2013,
2. the combined buffer requirement pursuant to Article 22a, or
3. the supervisory expectation pursuant to Article 70c provided that this expectation relates to other risks than the risk of excessive leverage.

(9) The own funds that are used to meet the additional own funds requirement pursuant to Article 70 para. 4a no. 1 and imposed by the FMA, in order to cover other risks than the risk of excessive leverage, one of the following requirements shall not be allowed to be used to meet them:

1. the own funds requirements determined pursuant to point (d) of Article 92 (1) of Regulation (EU) No 575/2013,
2. the leverage ratio buffer requirement determined in Article 92 (1a) of Regulation (EU) No 575/2013, or
3. the supervisory expectation for additional own funds pursuant to Article 70c para. 3, provided that this expectation relates to the risk of excessive leverage.

(10) In imposing the additional own funds requirement pursuant to Article 70 para. 4a no. 1 the FMA shall state to what extent paras. 1 to 9 were taken into consideration in its decision. In the case listed in para. 1 no. 5 the FMA shall state why the setting of a supervisory expectation for additional own funds is no longer considered to be sufficient.

(11) The FMA shall inform the resolution authority about the additional own funds requirement that has been imposed pursuant to Article 70 para. 4a no. 1 on credit institutions or responsible undertakings pursuant to Article 30 para. 6 without delay.

Supervisory expectation

Article 70c. (1) Credit institutions and responsible undertakings pursuant to Article 30 para. 6 shall be required to hold internal capital of an amount based on an Internal Capital Adequacy Assessment Process (ICAAP) pursuant to Article 39a that is sufficient to cover all risks that a credit institution or group of credit institutions is exposed to and to guarantee that the own funds of the credit institution or the group of credit institutions is able to absorb potential losses arising from stress scenarios

including those identified on the basis of supervisory stress testing pursuant to Article 69 para. 2 no. 2.

(2) During the course of the reviews and evaluations conducted pursuant to Articles 69 para. 2 and Article 21a para. 3 including the results of the stress tests pursuant to Article 69 para. 2 no. 2, the FMA shall check the amount of internal capital determined by every credit institution or responsible undertaking pursuant to Article 30 para. 6 and shall identify appropriate total own funds.

(3) The FMA shall inform credit institutions and responsible undertakings pursuant to Article 30 para. 6 of its supervisory expectation. The additional own funds requirement to be held to meet a supervisory guidance for additional own funds, shall be own funds that exceed the relevant amount of own funds imposed pursuant to Parts 3, 4 and 7 of Regulation (EU) No 575/2013, Chapter 2 of Regulation (EU) 2017/2402, Article 70 para. 4a no. 1 and to meet the combined buffer requirement pursuant to Article 22a or Article 92 (1a) of Regulation (EU) No 575/2013 and which are required to reach the appropriate level of total own funds determined by the FMA pursuant to para. 2.

(4) The FMA's supervisory expectation pursuant to para. 3 must be defined on an institution-specific basis. The supervisory expectation shall only be required to cover risks that are addressed by the additional own funds requirement prescribed in Article 70 para. 4a no. 1 to the extent that they refer to aspects of such risks, that have not already been covered by this requirement.

(5) Own funds that are used to comply with the supervisory expectation pursuant to para. 3 regarding additional own funds, in order to cover risks other than the risk of excessive leverage, shall not be allowed to used to be meet the own funds requirements defined in Article 92 (1) points a, b and c of Regulation (EU) No 575/2013, the additional own funds requirement determined pursuant to Article 70b prescribed by the FMA, to cover risks other than the risk of excessive leverage and the combined capital buffer requirement pursuant to Article 22a.

(6) Own funds that are used to meet the supervisory expectation pursuant to para. 3 for additional own funds to cover the risk of excessive leverage shall not be allowed to be used to meet the own funds requirements set out in Article 92 (1) point d of Regulation (EU) No. 575/2013, the requirement set forth in Article 70b prescribed by the FMA, to cover the risk of excessive leverage and the leverage ratio buffer requirement defined in Article 92 (1a) of Regulation (EU) No. 575/2013.

(7) Where a credit institution or as applicable a group of credit institutions meets

1. the applicable requirements defined in Parts 3, 4 and 7 of Regulation (EU) No 575/2013 and in Chapter 2 of Regulation (EU) 2017/2402,
2. the applicable additional own funds requirement pursuant to Article 70 para. 4a no. 1 and
3. the combined buffer requirement pursuant to Article 22a as well as the leverage ratio buffer requirement in accordance with Article 92 (1a) of Regulation (EU) No 575/2013,

non-compliance with the supervisory norm pursuant to para. 3 does not trigger the restrictions pursuant to Articles 24 or 24c.

Additional liquidity requirement

Article 70d. On the basis of the supervisory review and evaluation process (SREP) pursuant to Article 69 para. 2 for the purposes of determining the appropriate liquidity coverage requirements the FMA shall assess whether it is necessary to impose additional liquidity requirements upon credit institutions or groups of credit institutions in order to cover liquidity risks to which a credit institution or a group of credit institutions is exposed or might be exposed. When reviewing and evaluating appropriate liquidity requirements, the FMA must especially take into account:

1. the nature, scope and complexity of the banking transactions conducted by the credit institution or the group of credit institutions;
2. the rules, strategies and procedures pursuant to Articles 39 and 39a or to a regulation issued on the basis of Article 39 para. 4 no. 7 BWG;
3. the result of the review and evaluation process pursuant to Article 69 para. 2; and
4. the requirements pursuant to Part Six of Regulation (EU) No 575/2013

On-site Inspections

Article 71. (1) Credit institutions must be informed of inspections pursuant to Article 70 para. 1 nos. 3 and 4 upon the commencement of inspection activities. Where advance notice is not expected to frustrate the objective of the inspection and advance notice is conducive to the simpler and faster performance of the inspection due to organisational preparations on the part of the credit institutions, then the inspection may also be announced in advance. In cases where branches, representative offices and undertakings in a group of credit institutions outside of Austria are inspected, the competent authority in the host country is to be informed simultaneously at the latest of the intended inspection unless individual consent has already been granted pursuant to para. 7. The inspectors are to be provided with a written inspection mandate and must voluntarily present proof of their identity as well as the inspection mandate before beginning the inspection.

(2) Credit institutions are to make the documents required for the inspection available to the inspectors, to allow them to inspect the bookkeeping records, documents, and data media, and to provide information as requested. Credit institutions must grant the inspectors access to the business premises at any time during usual business and working times. Article 60 para. 3 is applicable to the scope of information, presentation and inspection rights of the inspectors and the obligation to make documents available in Austria.

(3) The inspectors may request the information and business documents required for the inspection from

1. the directors;
2. employees named by the directors;
3. any person employed by the undertaking if the circumstances to be inspected fall into that person's assigned area of responsibility; and
4. the bank auditors.

(4) The credit institution provide the inspectors with suitable spaces and tools for the purpose of carrying out the inspection. Where data is entered or stored using data media, the credit institution must at its own expense provide the tools necessary to render the documents readable within a reasonable period of time and, where necessary, provide the required number of lasting copies which can be read without auxiliary tools.
(5) In the case of inspectors pursuant to Article 70 para. 1 no. 3, the inspectors must consider the fact that every disturbance or hindrance of operations which is not absolutely necessary is to be avoided.
(6) The observations found during the course of the inspection shall be recorded in writing (inspection report) and shall be submitted to the credit institution. The credit institution shall submit the inspection report to the bank auditor, the supervisory board, the state commissioner and the deputy state commissioner as well as the deposit guarantee scheme without delay following its receipt. The inspection bodies shall provide the credit institution with an opportunity to submit an opinion about the inspection report. Where this is expedient from a risk perspective this may be conducted by the FMA in the form of a official procedure. The credit institution shall draw up a plan without delay for addressing the findings identified in the inspection report including a timeframe with appropriate deadlines and shall submit this report to the FMA, with the addressing of the findings identified in the inspection report being required to occur without undue delay. The credit institution shall also inform the supervisory board about the content of the plan for addressing the identified findings at latest at the next meeting of the supervisory board following the completion of the plan. The FMA shall assess the content of the plan following its submission with regard to the plan's general suitability for addressing the identified findings, and shall inform the credit institution about the non-binding outcome of this assessment within a reasonable timeframe. The credit institution shall constantly update the plan for address the findings identified in the inspection report, and shall upon request report to the FMA without delay about how it is complying with the plan. The credit institution shall inform the FMA about its implementation of the plan. The credit institution shall inform the bank auditor, the supervisory board, the deposit guarantee scheme as well as the state commissioner and their deputy about the outcome of administrative proceedings conducted by the FMA initiated on the basis of identified findings.
(7) Inspections of branches, representative offices and undertakings in the group of credit institutions not situated in Member States (Article 70 para. 1 no. 3) may only be carried out with the consent of the government in question. In the case of inspections within the framework of cooperation with third countries pursuant to Article 77 para. 5 nos. 2 and 3, the consent of the competent authority in the third country in question is sufficient; this consent may also be granted in the form of agreements on cooperation between supervisory authorities pursuant to Article 77a.
(8) The provisions of paras. 1 to 7 above regarding the performance of inspections of credit institutions apply in the same way to inspections of undertakings within a group of credit institutions and of third parties, to which credit institutions other undertakings in groups of credit institutions or groups of affiliated credit institutions have outsourced operational functions or activities, including ICT third-party service providers pursuant to Chapter V of Regulation (EU) 2022/2554.

Cooperation between Authorities

Article 72. (1) All authorities must assist the Federal Minister of Finance as well as the Oesterreichische Nationalbank in fulfilling their legal obligations pursuant to this federal act.
(2) Bundesrechenzentrum GmbH must cooperate in the conduct of business for which the Federal Ministry of Finance is responsible pursuant to this federal act where such cooperation is in the interest of simplicity, expedience or cost-effectiveness.
(3) In cases where Bundesrechenzentrum GmbH cooperates pursuant to para. 2, the Federal Minister of Finance must issue a regulation defining which areas are covered by this cooperation.

Notification

Article 73. (1) Credit institutions must notify the FMA of the following immediately and in writing, without waiting, in the case of a resolution being taken, for the subject of the resolution to take effect:

1. any changes in the articles of association or resolutions to dissolve the undertaking;
2. any changes in the conditions pursuant to Article 5 para. 1 nos. 6, 7, 9a, 10 and 13 with regard to existing directors;
3. any changes in the persons appointed as directors as well as compliance with Article 5 para. 1 nos. 6 to 11 and 13 and, in the case of a custodian bank pursuant to Article 41 InvFG 2011, compliance with Article 41 para. 2 InvFG 2011;
4. the opening, relocation, closure or temporary discontinuation of the business operations of the head office;
5. circumstances which make it clear to a prudent director that the ability to fulfil obligations is endangered;
6. the occurrence of insolvency or overindebtedness;
7. any expansion of the institution's business purpose;
8. any changes in the person appointed as supervisory board member, giving details on fulfilment of the conditions pursuant to Article 28a para. 5, as well as any changes in the conditions pursuant to Article 28a paras. 3 and 5 with regard to existing supervisory board members;
9. any failure to meet regulatory provisions or non-compliance with requirements specified in Regulation (EU) No 575/2013 and in administrative decisions issued on the basis of that legal act, for a period of more than one month;
10. any withdrawal from the deposit guarantee scheme;
11. the person(s) responsible for internal auditing as well as any changes in that (those) person(s);
12. the notifications due when the limits specified in Article 89(3) of Regulation (EU) No 575/2013 are exceeded;
13. its withdrawal from the auditing association pursuant to Section 3 of the Act amending the Law on Cooperative Auditing Associations 1997 (GenRevRÄG 1997

Genossenschaftsrevisionsrechtsänderungsgesetz – Federal Law Gazette I No. 127/1997) in cases where the credit institution is organised as a cooperative society or belongs to a cooperative auditing association on the basis of a submission pursuant to Article 92 (Article 8a Banking Act – KWG; Kreditwesengesetz, Federal Law Gazette No. 63/1979);

14. any change in the identity, address or place of incorporation of the agents indicated in Article 4 para. 3 no. 7;
15. the intention to use a risk classification organisation; this notification must include the participating credit institutions and the risk classification organisation's company name, place of incorporation, legal form, qualifying owners and directors as well as the methods to be developed by the organisation; likewise, the FMA must be notified immediately of any changes in this information; this notification may also be submitted by the risk classification organisation itself on behalf of the participating credit institutions;
16. the intention to use the Standardised Method pursuant to Article 276 of Regulation (EU) No 575/2013;
17. the intention to issue capital instruments which are to be included in Tier 1 capital;
18. the intention to use contractual netting agreements pursuant to Article 295 of Regulation (EU) No 575/2013.

(1a) Financial holding companies and mixed financial holding companies must notify the FMA of the following immediately and in writing, without waiting, in the case of a resolution being taken, for the subject of the resolution to take effect:

1. any changes in the conditions pursuant to Article 30 para. 7a with regard to Article 5 para. 1 nos. 6 and 7 concerning existing directors and any changes in the persons appointed as directors, as well as compliance with Article 30 para. 7a with regard to Article 5 para. 1 nos. 6 to 9;
2. any changes in the person appointed as supervisory board member, giving details on fulfilment of the conditions pursuant to Article 30 para. 7a with regard to Article 28a para. 5 nos. 1 to 4, as well as any changes in the conditions pursuant to Article 30 para. 7a with regard to Article 28a para. 5 nos. 1 to 4 concerning existing supervisory board members.

(1b) Credit institutions on significant relevance pursuant to Article 5 para. 4 shall notify the FMA in writing without undue delay, although in the case of a resolution being taken, it should not wait until the subject matter of the resolution enters into force, about:

1. the head of the risk management function pursuant to Article 39 para. 5, stating details about the satisfying the conditions set out in Article 39 para. 5 as well as any change in their person, and any changes in the conditions set out in Article 39 para. 5 in the case of existing heads of the risk management function;
2. the head of the compliance function pursuant to Article 39 para. 6 no. 3, stating details about the satisfying the conditions set out in Article 39 para. 6 no. 3 as well as any change in their person, and any changes in the conditions set out in Article 39 para. 6 no. 3 in the case of existing heads of the compliance function;

3. the special officer pursuant to Article 23 para. 3 of the Financial Markets Anti-Money Laundering Act (FM-GwG), stating details about the satisfying the conditions set out in Article 23 para. 3 final sentence FM-GwG as well as any change in their person, and any changes in the conditions set out in Article 23 para. 3 last sentence FM-GwG in the case of existing special officers pursuant to Article 23 para. 3 FM-GwG;
4. the compliance officer pursuant to Article 22 (3) point (b) of 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, 31.03.2017 p. 1, as well as any change in their person.

All documentation should be submitted with the notifications to the FMA that are necessary so that the professional qualification and personal suitability is able to be reviewed.

(2) Representative offices must report the following to the FMA:

1. the planned time of opening;
2. the actual opening;
3. the head of the representative office;
4. the location;
5. any changes in the information pursuant to nos. 1 to 4; and
6. the closure of the representative office.

Before opening, representative offices of credit institutions from third countries must also provide the FMA with a notification from the competent authority in the relevant country of incorporation stating that the authority has no objections to the establishment or operation of the representative office. In addition, representative offices of credit institutions from third countries must notify the FMA of what banking transactions the credit institution conducts in its country of incorporation, who holds a qualifying holding in the credit institution and what activities are planned in Austria. Notwithstanding Article 98 para. 1 and Article 99 no. 11, the FMA must prohibit the operation of the representative office in cases where the declaration of no objection from the competent authority in the credit institution's country of incorporation is not presented, or where a declaration stating the contrary is issued at a later point in time, or where there is a substantiated reason to suspect that activities subject to licensing requirements are carried out in contravention of Article 1 para. 1, or where justified objections exist that a danger pursuant to Article 20 para. 4 arises from the owners or that the credit institution objectively participates in transactions which serve the purpose of money laundering or terrorist financing. In cases where the FMA prohibits the operation of the representative office, the competent authority in the credit institution's country of incorporation must be informed simultaneously at the latest.

(3) The superordinate credit institution must notify the FMA immediately in writing of the name, legal form, place and country of incorporation of a superordinate financial holding company, superordinate mixed financial holding company or superordinate mixed activity holding company, as well as any changes in this information. The FMA must submit a list of financial holding companies

and mixed financial holding companies as defined in Article 11 of Regulation (EU) No 575/2013 to the European Commission, the EBA and to the competent authorities of the other Member States.

(4) Credit institutions must notify the FMA of the following immediately and in writing:

1. the criteria and procedures for including positions in the trading book pursuant to Part Three, Title I, Chapter 3 of Regulation (EU) No 575/2013, as well as any changes in those criteria and procedures;
2. the approach or approaches used to price options and to determine sensitivities (delta, gamma and vega factors) for the calculation of minimum own funds requirements for commodities risk and foreign exchange risk pursuant to Title IV of Part Three of Regulation (EU) No 575/2013; in particular, the procedures used to determine volatilities and other parameters must also be notified.

(4a) Credit institutions must notify the FMA of the following immediately and in writing:

1. the criteria applied in the determination of qualifying assets; the FMA must report regularly to the Council of the European Union and the European Commission on the methods of valuing qualifying assets, in particular on the methods of assessing the liquidity of issues and the credit quality of issuers;
2. the methods of determining market prices;
3. the approach or approaches used to price options and to determine sensitivities (delta, gamma and vega factors) for the calculation of general and specific position risks and the other risks associated with options pursuant to Title IV of Part Three of Regulation (EU) No 575/2013; in particular, the procedures used to determine volatilities and other parameters must also be notified.

(5) Credit institutions must notify the FMA immediately in writing of any case in which a counterparty does not fulfil its obligations in repurchase agreements, reverse repurchase agreements, or securities lending or borrowing transactions in the trading book; the FMA must process these notifications by automated means, entering at least the reporting credit institution, nature of the transaction, counterparty, reporting date and reason for the report; the FMA may submit a report in anonymised form on these notifications to the European Commission.

(6) Austrian branches of foreign credit institutions shall notify the following information to the FMA on an annual basis:

1. the regulations about the deposit guarantee scheme that protects the depositors of the Austrian branch;
2. the risk management regulations;
3. the governance arrangements and the key function holders for the Austrian branch’s activity and
4. where available the recovery plans for the branch or the recovery plans for the undertaking’s headquarters.

(7) repealed

Electronic Transmission

Article 73a. After consultation with the Oesterreichische Nationalbank, the FMA may stipulate by regulation that any notification, communication, information, apprising of and submission pursuant to Article 9 para. 5, Article 10 paras. 2, 5 and 6, last sentence of Article 11 para. 3, Article 13 para. 3, Article 20 para. 3, Article 25 para. 5, Article 28a para. 4, Article 63 para. 1, Article 70a para. 5, Article 73 para. 1 nos. 1 to 18, para. 1a, para. 1b, para. 2, para. 3, para. 4, para. 4a, para. 5 and para. 6 of this federal act, pursuant to Article 12 para. 1 and Article 21 para. 1 of the Bank Recovery and Resolution Act - (BaSAG; Bundesgesetz über die Sanierung und Abwicklung von Banken), as published in Federal Law Gazette I No. 98/2014, pursuant to Article 13 para. 2, Article 29 paras. 1 and 2 and Article 30 of the Pfandbrief Act (PfandBG; Pfandbriefgesetz) published in Federal Law Gazette I No. 199/2021, pursuant to Article 2 para. 2 of the Regulation on the Protection of Money Held in Trust (Mündelsicherheitsverordnung), Federal Law Gazette No. 650/1993 as amended by the version of the regulation in Federal Law Gazette II No. 219/2003, as well as pursuant to Article 143(4), Article 312(1) and (3), Article 363(3), Article 366(5) and Article 396(1) of Regulation (EU) No 575/2013 shall be made or provided only electronically and in compliance with specific formats, technical minimum requirements and procedures for transmission. In this context, the FMA shall be guided by the principles of economy and expediency, ensuring that the data is electronically available to the FMA and the OeNB at all times and supervisory interests are not compromised. Moreover, in this regulation, the FMA may enable bank auditors to participate in the electronic data transmission system pursuant to the first sentence for the purpose of certificates and reports pursuant to Article 63 para. 1c and Article 63 para. 3. The FMA shall adopt appropriate arrangements to allow individuals subject to reporting requirements or, where applicable, individuals they have charged with submitting the reports on their behalf, to verify over an appropriate period of time whether the reporting data submitted by them or by the person charged with submitting the reports is correct and complete.

Reporting

Article 74. (1) Irrespective of the reporting obligations pursuant to Part 7a of Regulation (EU) No 575/2013 credit institutions and responsible undertakings pursuant to Article 30 para. 6 shall submit reports without delay after the end of each calendar quarter in accordance with the regulation pursuant to para. 6. Responsible undertakings pursuant to Article 30 para. 6 must additionally prepare the reports set forth in this paragraph for the foreign credit institutions that are fully consolidated in the audited consolidated financial statements pursuant to Article 59 and Article 59a. (2) Credit institutions must submit reports in accordance with the regulation pursuant to para. 6 to the FMA on company-related master data as well as the master data of the foreign credit institutions that are fully consolidated in the audited consolidated financial statements pursuant to Article 59 and Article 59a immediately after the end of each calendar half-year. Regardless of this requirement, credit institutions must notify any changes in master data immediately. The institution’s number of

employees need only be reported as of the end of each year by no later than 31 January of the following year.

(3) Credit institutions must submit reports on the basis of paras. 1 and 2 or Regulation (EU) No 575/2013 in aggregate form to the FMA. Responsible undertakings pursuant to Article 30 para. 6 must prepare these reports on behalf of the group of credit institutions (Article 30).

(4) The Oesterreichische Nationalbank shall provide expert opinions on the reports pursuant to Article 430 (1) (a), (c) and (d) of Regulation (EU) No 575/2013.

(5) The reports pursuant to paras. 1 and 2 must be submitted in a standardised format by electronic means. The submissions must meet certain minimum requirements to be announced by the FMA after consultation with the Oesterreichische Nationalbank.

(6) The FMA:

1. shall, with the consent of the Federal Minister of Finance, issue a regulation defining the reporting dates, layout and content of the reports, as well as the reporting frequencies pursuant to paras. 1 and 2 and in this context observe the following points:
    a. the reporting contents, frequencies and dates of the implementing technical standards harmonised across the European Union (Regulation (EU) No 575/2013) including their scope of application,
    b. the need for meaningful reporting for the purpose of ongoing monitoring of credit institutions and groups of credit institutions,
    c. the national economic interest in a functioning banking system, and
    d. the type, extent and complexity of a credit institution's transactions;
2. may stipulate in this context:
    a. a frequency for reporting individual items other than that set forth in para. 1,
    b. the submission of reports pursuant to paras. 1 and 2 exclusively to the Oesterreichische Nationalbank, provided that this does not interfere with the performance of its duties in accordance with this Act or other federal acts;
3. may stipulate in this context that credit institutions are also required to disclose in their reports pursuant to para. 1:
    a. Information pursuant to Article 22h para. 2 nos. 1 to 4 about newly agreed real estate financing arrangements using debt instruments, in anonymised form,
    b. information on the balance sheet, off-balance sheet items, on the income statement and compulsory disclosures in the notes, and
    c. information that enables compliance with risk-specific due diligence obligations to be assessed and monitored pursuant to Articles 39, 39a and 39e.

Article 74a. Repealed

Valuation of Assets and Off-Balance Sheet Items

Article 74b. (1) Credit institutions and groups of credit institutions shall value assets and off-balance sheet items or reporting purposes as well as for calculating the total risk exposure amount (Article 92(3) of Regulation (EU) No 575/2013) in accordance with Articles 55 to 58 and Articles 201 to 211 UGB, unless para. 2 applies.
(2) The FMA may, pursuant to Article 24(2) in conjunction with Article 466 of Regulation (EU) No 575/2013, stipulate by administrative decision that credit institutions and groups of credit institutions that affect the valuation of assets and off-balance sheet items also in accordance with International Accounting Standards as applicable under Regulation (EC) No 1606/2002 or that are included in a consolidation in accordance with International Accounting Standards as applicable under Regulation (EC) No 1606/2002 apply International Accounting Standards as defined in Regulation (EC) No 1606/2002 for reporting purposes as well as for calculating the total risk exposure amount (Article 92(3) of Regulation (EU) No 575/2013) and for determining own funds, provided that this ensures an appropriate quality of data.
(3) Credit institutions and groups of credit institutions that effect the valuation of assets and off-balance sheet items in accordance with International Accounting Standards as applicable under Regulation (EC) No 1606/2002 shall be required to apply Article 64 para. 1 nos. 16 and 17.

Collection of Credit Data and Credit Risk Data

Article 75. (1) CRR credit institutions and CRR financial institutions, with the exception of financial holding companies and mixed financial holding companies shall submit the following information monthly on an individual basis to the Oesterreichische Nationalbank about:

1. instruments pursuant to point (23) of Article 1 of Regulation (EU) 2016/867 on the collection of granular credit and credit risk data (ECB/2016/13), OJ L 144, 01.06.2016, p. 44;
2. non-securitised equity shares;
3. securities;
4. off-balance sheet transactions pursuant to Annex I of Regulation (EU) No 575/2013,
5. derivatives pursuant to Annex II of Regulation (EU) No 575/2013;
6. other kinds of transactions listed in Article 271(2) of Regulation (EU) No 575/2013, and
7. the risk information related to such exposures.

The risk information to be reported should permit an assessment of the credit risk including credit risk mitigation in connection with the transactions to be reported. Where all obligors of an instrument are natural persons, or if the individual subject to reporting requirements does not belong to the reporting population pursuant to Article 3 of Regulation (EU) 2016/867, this information must be reported from a total amount of the exposure of Euro 350 000 or equivalent value in Euro. In all other instances such information must be reported from a total amount of Euro 25 000 or equivalent value in Euro. The report on equity shares and derivatives pursuant to Annex II

of Regulation (EU) No 575/2013 as well as the report pursuant to para. 2 no. 2 shall not apply in the case of CRR financial institutions.

(1a) Every group of credit institutions shall report securitisations (Article 4 (1) point 61 of Regulation (EU) No 575/2013) as well as related risk information on an individual basis on a quarterly basis. This report must include any fully or proportionately consolidated companies where the book or market value of the respective total of exposures resulting from securitisations reaches the amount of EUR 10 million or an equivalent value, or the ratio of the book or market values of the total of said exposures and the respective total assets is greater than 5%.

(2) In addition to the reports pursuant to para. 1 CRR credit institutions and CRR financial institutions, with the exception of financial holding companies and mixed financial holding companies, shall report the following master data and any amendments thereto without delay:

1. the name, address and other information necessary to reliably identify the counterparty, and
2. the group of connected clients, to which the counterparty belongs.

(3) The Oesterreichische Nationalbank shall ensure that the FMA has access at all times to the reported data pursuant to paras. 1 to 2 and in relation to the reciprocal application or data reports by other reporting Member States pursuant to Regulation (EU) 2016/867. At the request of

1. an individual subject to reporting requirements pursuant to para. 1,
2. the auditing unit of the Savings Bank Auditing Association;
3. the cooperative auditing associations;
4. the appointed bank auditors; and
5. the deposit guarantee schemes,

the Oesterreichische Nationalbank shall, in accordance with Article 11 of Regulation (EU) 2016/867, make data collected pursuant to paras. 1 and 2 relevant for the purposes of the risk assessment available to them about an obligor or a group of connected clients, as well as, where reciprocity exists, from reporting Member States submitted in relation to Regulation (EU) 2016/867. Relevant data shall in particular be the total amount of the reported credit instruments, pursuant to para. 1 no. 1, securities, excluding equity shares, and off-balance sheet transactions pursuant to Annex I of Regulation (EU) No 575/2013, excluding credit derivatives pursuant to Annex I of Regulation (EU) No 575/2013, and the number of creditors of the obligor. Enquiries from parties entitled to submit queries pursuant to no. 1 must be submitted exclusively by electronic means, and to be responded to using secure electronic data transmission. The Oesterreichische Nationalbank may, in the event that reciprocity exists, make available information about instruments pursuant to para. 1 no. 1 of an obligor as well as the number of creditors reported to other reporting Member States pursuant to Regulation (EU) 2016/867.

(4) The FMA:

1. shall determine the prescribed format for reports pursuant to paras. 1 to 2 by means of a regulation for the exposure types, collateral and risk information, time, scope and form of the reports as well as the information to be made available by the Oesterreichische Nationalbank

for such reports; it shall take the national economic interest in maintaining an functioning banking system into consideration when issuing the regulation;

2. may prescribe a longer interval than that prescribed in para. 1 for reports for individual reporting areas by means of a Regulation;
3. shall determine the scope of the group of connected clients pursuant to para. 2 no. 2 for the purpose of collecting credit and credit risk data.by means of a Regulation. The scope of the group of connected clients may in particular be restricted in particular to customers who are borrowers of the credit institution making the report; furthermore, it is also possible to differentiate by the respective country of incorporation of the group member.

(5) The reports pursuant to paras. 1 and 2 shall be submitted in a standardised format by electronic means.

State Commissioner

Article 76. (1) Unless otherwise specified by law, the Federal Minister of Finance must appoint a state commissioner and a deputy state commissioner for a maximum term of five years in the case of credit institutions whose total assets exceed EUR 1 billion; re-appointments are permissible in this context. The state commissioners and their deputies are to act as functionaries of the FMA and, in this capacity, are exclusively subject to the instructions of the FMA.

(2) The persons appointed to the position of state commissioner and deputy state commissioner must be legally competent natural persons with their principal place of residence in the EEA who

1. neither belong to a governing body of the credit institution or an undertaking in the group of credit institutions in question, nor have a relationship of dependence on or competition with the credit institution or one of those undertakings;
2. possess the required expertise at all times on the basis of their education, their professional background and the professional or commercial activities carried out during their term of office; and
3. who have not yet reached the respective pensionable age as defined by federal law and actively carry out professional or commercial activities insofar as they do not receive pension benefits from other activities previously carried out as their main profession.

(3) The state commissioner or deputy state commissioner must be dismissed from these positions by the Federal Minister of Finance in cases where the requirements for appointment pursuant to para. 2 are no longer met or it can be assumed that they will no longer fulfil their duties properly. The FMA must communicate facts relevant to the appointment and dismissal of state commissioners, especially information pursuant to para. 1 and pursuant to Articles 6, 7, 21 and 92 to the Federal Minister of Finance immediately.

(4) The state commissioner and deputy state commissioner must be invited by the credit institution in a timely manner to the general meetings and any other meetings of the members, to the meetings of the supervisory board, of the audit committees and of executive committees of the supervisory

board. Upon request, they must be allowed to speak at any time. All written records of the meetings of the bodies indicated above must be conveyed to the state commissioner and deputy state commissioner.

(5) The state commissioner, or in cases where the state commissioner cannot do so, the deputy state commissioner, must immediately raise objections to resolutions of the bodies indicated in para. 4 which they consider to breach legal or other provisions or administrative decisions of the Federal Minister of Finance or the FMA, and report to the FMA accordingly. In such objections, they must indicate the provisions which, in their opinion, are breached by the resolution. Such objections postpone the effectiveness of the resolution until a decision is issued by the supervisory authority. Within one week from the time at which the objection is raised, the credit institution may request a decision on the part of the FMA. If no decision is made within one week of receipt of this request, the objection is to be rendered ineffective. If the objection is confirmed, then the execution of the resolution is not permissible.

(6) Resolutions of a body indicated in para. 4 which are made outside of a meeting or outside of Austria must be communicated to the state commissioner and the deputy state commissioner immediately. In such cases, the state commissioner, or in cases where the state commissioner cannot do so, the deputy state commissioner, may only raise an objection in writing within two banking days after the delivery of the resolution.

(7) The state commissioner and deputy state commissioner have the right to inspect the documents and data media of the credit institution to the extent necessary in order to fulfil the duties set forth in para. 5. Documents made available to participants in meetings of the bodies indicated in para. 4 must be conveyed to the participants at the latest two banking days before the meeting.

(8) The state commissioner and deputy state commissioner shall be required to report facts about which they have been made aware, on the basis of which the credit institution's fulfilment of its obligations towards its creditors and especially the security of the assets entrusted to it are no longer ensured, to the FMA without delay. The state commissioner and their deputy shall submit a written report about their activities to the FMA at the end of every quarter of the financial year as well as on an annual basis for the entire financial year.

(9) The state commissioner and deputy state commissioner are to be remunerated by the Federal Minister of Finance with a fee (function fee) which is commensurate to the work involved in supervision and the expenses incurred for this purpose. An annual lump sum (supervision fee) to be determined by and paid to the Federal Ministry of Finance must be charged to each credit institution in which a state commissioner and deputy state commissioner have been appointed. The supervision fee must be in reasonable proportion to the expenses associated with supervision.

(10) If the state commissioner or the deputy state commissioner is prevented from being able to perform their function due to an accident (except for a work-related accident) or due to illness, then the state commissioner or deputy state commissioner shall receive an allowance of 50% of the amount that the state commissioner or the deputy state commissioner would have received had this incapacitation not occurred from a duration of incapacitation of 182 calendar days. In the event that

within six months of resumption of their function they are subsequently incapacitated as a result of illness or as a consequence of the same accident, then this incapacitation shall be considered as a continuous of the previous incapacitation. The reduction of the allowance shall begin on the day on which the respective incapacitation occurs, at earliest, however, on the day following the expiry of the timeframe of 182 calendar days, and shall be effective until the day that immediately precedes the resumption of their function. If consequently there are days within the same calendar month where different claims to an allowance exist, then for every day that the reduction applies, the pro rata amount of the reduction shall be taken into account for the calculation of the allowance. For the period of time, during which the reduction in the allowance for the state commissioner is effective, the deputy state commissioner shall receive an allowance equal to the amount of the full functional allowance of the state commissioner.

(11) During their appointment period, the state commissioner and their deputy shall be required to prove that they have completed the necessary training for the expert performance of their supervisory activities.

Cooperation and Data Processing

Article 77. (1) The FMA may provide competent authorities outside of Austria with official information if

1. public order, other essential interests of the Republic of Austria, banking secrecy or confidentiality obligations under tax law (Article 48 Federal BAO) are not breached by such provision of information;
2. it is ensured that the government requesting information would fulfil a request of the same nature from Austria; and
3. an FMA request for information of a similar nature would be in line with the objectives of this federal act.

(2) The FMA may obtain information on the activities of Austrian credit institutions outside of Austria and the situation of foreign credit institutions whose activities may have an effect on the Austrian banking system at any time if this is necessary in the national economic interest in maintaining a functioning banking system or in the interest of creditor protection. If a competent authority in a Member State does not submit significant information or declines a request for cooperation, particularly for exchange of significant information, or does not fulfil such a request within an appropriate period of time, the FMA may consult the EBA.

(2a) The FMA shall cooperate closely

1. in the monitoring of Austrian branches of foreign credit institutions with the competent authorities for credit institutions that belong to the same third-country group, and
2. in the monitoring of credit institutions with the competent authorities that monitor the branches of foreign credit institutions that belong to the same third-country group

in order to ensure that all activities of this third-country group is subject to comprehensive supervision, and in order to prevent the circumventing of the applicable requirements for third-country groups pursuant to Directive 2013/36/EU and Regulation (EU) No 575/2013 as well as a negative impact on the financial stability of the European Union.

(3) The provisions of paras. 1 and 2 are only applicable where not stipulated otherwise in paras. 5 to 7 or in intergovernmental agreements.

(4) The FMA is authorised to process personal data as defined in Regulation (EU) 2016/679, provided that this is necessary for the performance of its duties in accordance with this federal act; this includes:

1. permits and licences and the circumstances required for them to be granted or withdrawn;
2. management, administrative and accounting-related organisation as well as internal controls and audits;
3. branches and the exercise of the freedom to provide services;
4. asset and liability items as well as income statement items;
5. off-balance sheet transactions;
6. derivatives;
7. positions included in the consolidation of price risk, liquidity risk, interest rate risk or securities risk;
8. solvency and own funds;
9. liquidity;
10. foreign exchange positions;
11. large exposures;
12. qualifying holdings;
13. consolidation;
14. annual financial statements, including the notes to the financial statements and the management report;
15. reports pursuant to Articles 74 and 74a;
16. Central Credit Register and comparable registers abroad;
17. deposit guarantee and investor compensation;
18. measures pursuant to Article 70 para. 2, the occurrence of overindebtedness or insolvency, receivership, bankruptcy and composition;
19. reports received from competent authorities in Member States and from those third countries with which the Council of the European Union has concluded an agreement in application of Article 48 of Directive 2013/36/EU within the framework of cooperation according to the provisions of directives or the agreements indicated in para. 5;
20. information provided pursuant to para. 2 or in accordance with an intergovernmental agreement pursuant to Article 77a.

(5) The provision of information and submission of documents, including the communication of data pursuant to para. 4, as well as data which the FMA may request in accordance with its powers, is permissible in the context of administrative assistance and to:

1. members of the European System of Financial Supervisors (ESFS) pursuant to Article 2(2) of Regulation (EU) No 1093/2010;
2. competent authorities in third countries with which the Council of the European Union has concluded an agreement in application of Article 48 of Regulation 2013/36/EU;
3. authorities entrusted with supervision of the financial market in other third countries where cooperation is also necessary in the interest of Austrian banking supervision or other financial market supervision and is in line with international standards;
4. central banks of the European System of Central Banks and other bodies in the Member States with a similar function in their capacity as monetary authorities if this information is relevant for the exercise of their respective statutory tasks, including the conduct of monetary policy and related liquidity provision, oversight of payment, clearing and settlement systems, and maintaining the stability of the financial system;
5. finance ministries of the Member States;
6. authorities or bodies entrusted with the maintenance of financial market stability in the Member States by means of applying provisions pertaining to banking supervision for macroprudential supervision;
7. authorities or bodies in a Member State that are responsible for the implementation of reorganisations, or that are involved in the winding-up or insolvency proceedings of institutions;

7a. authorities that are responsible in the Member States for the supervision of the authorities or bodies listed in no. 7;

8. parliamentary enquiry committees pursuant to Article 53 para. 1 Federal Constitutional Act (B-VG; Bundesverfassungsgesetz) owing to a decision on a request pursuant to Article 53 para. 3 B-VG;
9. the Austrian Court of Audit, provided its mandate to investigate is based on decisions and other activities of the FMA in accordance with this Act or Regulation (EU) No 575/2013;
10. authorities, that are competent in Member States for the monitoring of compliance with Directive (EU) 2015/849 by the obliged entities listed in Article 2 (1) points 1 and 2 of Directive (EU) 2015/849, and Financial Intelligence Units in the Member States;

10a. competent authorities or public bodies that are responsible for the application of the rules on structural separation of activities within a banking group;

11. the persons charged with carrying out statutory audits of the accounts of CRR-institutions, insurance undertakings and CRR-financial institutions in Member States.

11a. the authorities that are responsible in the Member States for the supervision of the persons listed in no. 11;

12. deposit guarantee schemes pursuant to Directive 2014/49/EU or investor compensation schemes pursuant to Directive 97/9/EC.

The provision and transmission of information pursuant to nos. 1 to 3 shall be admissible if required for the purpose of fulfilling the duties of the authorities in accordance with Article 53(2), Articles 112, 113, 117, 118 and Articles 124 to 126 of Directive 2013/36/EU, Article 11(1) of Directive 2002/87/EC, Regulation (EU) No 575/2013, or for other statutory duties of the requesting authority or institution within the scope of financial market supervision; the provision and transmission of information pursuant to no. 10 shall occur provided that the information are relevant for the duties of the authorities under the FM-GwG, Article 117 (5) of Directive 2013/36/EU or Directive 2015/849/EU and provided that this provision and exchange of information would not affect any ongoing investigations, enquiries or procedures under Austrian criminal or administrative law. The provision and transmission of information pursuant to nos. 4 and 5 shall only be permissible where required in crisis situations pursuant to Article 114 of Directive 2013/36/EU, and pursuant to no. 5 only to the extent that the information is relevant for the purposes of Article 140 of the aforementioned Directive. The exchange of information pursuant to nos. 2 and 3 must serve the purpose of fulfilling the supervisory duties of the requesting authorities and institutions in accordance with Article 55 of Directive 2013/36/EU, subject to professional secrecy requirements equivalent to those defined in Article 53 of Directive 2013/36/EU and Article 15 of Directive (EU) 2019/2034 and which are consistent with Chapter V of Regulation (EU) 2016/679. The exchange of information with ESFS authorities and institutions that do not fall under Article 2(2)(f) of Regulation (EU) No 1093/2010 may only be conducted subject to Articles 53 and 54 of Directive 2013/36/EU and Article 35 of Regulation (EU) No 1093/2010, as well as for the purpose of fulfilling the duties of the ESFS authorities and institutions and for fulfilling supervisory duties pursuant to Article 77b para. 5. The FMA may only pass on information pursuant to para. 4 no. 19 with the explicit permission of the authority that communicated the information in question.

(5a) Provided that the conditions pursuant to para. 5b or 5c are met, the FMA may provide information and submit documentation to the following public bodies in the form stipulated in para. 5b or 5c:

1. to the International Monetary Fund (IMF) and the World Bank for the purposes of evaluations within the Financial Sector Assessment Program (FSAP);
2. to the Bank for International Settlements (BIS) for the purposes of quantitative impact assessments;
3. to the Financial Stability Board (FSB) for the purposes of its monitoring duties.

(5b) The FMA shall only be allowed to provide information or submit documentation to the bodies mentioned in para. 5a no. 1 to 3 in aggregated or anonymised form, where the following conditions are met:

1. an explicit enquiry exists from one of the bodies listed in para. 5a nos. 1 to 3;
2. the enquiry is adequately justified taken into account of the specific duties that the body making the enquiry performs in accordance with its statutory mandate;

3. the enquiry is sufficiently precise with regard to the nature, scope and format of the requested information and the medium for their disclosure or submission;
4. the requested information is essential to allow the enquiring body to perform specific duties and do not exceed the duties statutorily conferred upon it;
5. the information is only submitted or disclosed to those people who are directly involved with the performance of the specific duty;
6. Persons having access to the information are subject to professional secrecy that shall be at least comparable to that listed in Article 53 (1) of Directive 2013/36/EU.

(5c) The FMA shall only be allowed to provide information to the bodies listed in para. 5a nos. 1 to 3 that contains personal data pursuant to para. 4, if

1. the conditions of para. 5b nos. 1 to 6 are met,
2. the provision of the information takes place at the premises of the FMA, and
3. the enquiring body observes the requirements pursuant to Regulation (EU) 2016/679 when processing personal data.

(6) If the FMA is requested by a competent authority in a Member State of a third country pursuant to para. 5 no. 2 or 3 to verify information available to that authority on:

1. a credit institution;
2. a financial holding company;
3. a financial institution;
4. an investment firm;
5. an ancillary services undertaking;
6. a mixed holding company;
7. a subsidiary of one of the undertakings listed in nos. 1 to 6; or
8. a mixed financial holding company

incorporated in Austria, then the FMA is empowered to have the verification conducted by the competent authority in the Member State or the third country, to request that other authorities conduct the verification in the context of administrative assistance in application of Article 72 para. 1, or to delegate the review to the Oesterreichische Nationalbank if the requirements pursuant to Article 70 para. 1 no. 3 are fulfilled. Article 71 is applicable in this context. It is also possible to instruct external auditors, the bank auditor, the competent auditing associations or other experts who are independent of the undertaking in question to carry out the verification. The performance of the verification by the competent authority in a third country may only be permitted for the purpose of fulfilling the supervisory duties indicated in para. 5 and with due adherence to professional secrecy requirements. If the authority which made the request does not carry out the verification itself, it may participate in the verification if it so wishes.

(6a) In crisis situations which have an effect on financial stability or the stability of a credit institution or group of credit institutions, and in cases of imminent danger, the FMA may omit consultation with the other competent authorities; in such cases, the FMA must immediately inform the other competent authorities of the decision made.

(7) If the competent authorities

1. of the Member State or
2. of the third country pursuant to para. 5 nos. 2 or 3

in which the parent undertaking is incorporated do not exercise supervision on a consolidated basis themselves, official information may still be provided if information is passed on to the authorities which exercise supervision on a consolidated basis themselves. However, the communication of such information is only permissible if this serves the exclusive purposes of consolidated supervision and professional secrecy requirements equivalent to those defined in Article 54(1) of Directive 2013/36/EU and Article 15 of Directive (EU) 2019/2034 apply.

(8) Where a crisis situation, including a situation within the meaning of Article 18 of Regulation (EU) No 1093/2010 or adverse developments in financial markets, arises, which may endanger market liquidity and the stability of the financial system in any of the Member States where entities of a group have been authorised or significant branches (Article 18) established, the FMA shall, as consolidating supervisor, immediately alert the authorities referred to in para. 5 nos. 1, 4 to 6, and shall communicate all information that is essential for the pursuance of their tasks.

(9) If the Oesterreichische Nationalbank becomes aware of an emergency situation or a threatening economic development pursuant to Article 77 para. 8, it shall inform the FMA thereof immediately.

International Agreements

Article 77a. (1) Upon joint proposal of the FMA and the Oesterreichische Nationalbank, the Federal Minister of Finance may conclude agreements regarding the procedure in the event of cooperation with the FMA and the Oesterreichische Nationalbank in the performance of their duties of monitoring and supervising credit institutions pursuant to Articles 69 to 71 with the competent authorities of other Member States and with the competent authorities of third countries pursuant to Article 77 para. 5 nos. 2 and 3, where the exchange of information with these competent authorities serves the purpose of fulfilling the supervisory duties of these competent authorities, in accordance with Article 55 of Directive 2013/36/EU, subject to requirements of professional secrecy equivalent to those defined in Article 53(1) of Directive 2013/36/EU, provided the Federal Minister of Finance is authorised to conclude agreements pursuant to Article 66 para. 2 B-VG.

(2) repealed

(3) The agreements pursuant to para. 1 are to govern the following in particular:

1. the receipt by the FMA of the information which is necessary for the supervision, on the basis of their consolidated financial situations, of credit institutions or financial holding companies which are situated in Austria, and which have as a subsidiary a credit institution or financial institution situated in a third country or hold participations in such institutions;
2. the information from the competent authorities of third countries which is necessary for the supervision of parent undertakings which are incorporated in those third countries and which

have as a subsidiary a credit institution or subsidiary financial institution situated in Austria or hold participations in such institutions; and

3. the requirements and the permissibility of inspections of undertakings supervised on a consolidated basis in a signatory country which are affiliated with a credit institution or a financial holding company incorporated in another signatory country by the competent authority of the latter signatory country.

(4) Where the Council of the European Union has concluded a framework agreement with third countries in application of Article 48 of Directive 2013/36/EU, the principles contained in such an agreement must be taken into account in the conclusion of agreements pursuant to para. 3.

Supervisory Colleges and Cooperation Agreements

Article 77b. (1) As the consolidating supervisor (Article 4 (1) (41) of Regulation (EU) No 575/2013), the FMA shall establish and chair colleges of supervisors to fulfil the duties set forth in Articles 112, 113 and 114(1) of Directive 2013/36/EU; this shall also apply, however restricted to the fulfilling the duties pursuant to Articles 112 (1), 114 (1) and 115 (1) of Directive 2013/36/EU in such cases in which all subsidiaries active on a cross-border basis of an EU parent institution, an EU parent financial holding company or an EU parent mixed financial holding company are domiciled in third countries. In this context, the FMA shall ensure appropriate coordination of and cooperation with the respective competent authorities of third countries, where required. The modalities for establishment and operation of the Colleges of Supervisors shall be determined after consultation with the competent authorities concerned. In connection with Colleges of Supervisors, the FMA may conclude cooperation agreements with competent authorities of other Member States and with competent authorities as defined in Article 55 of Directive 2013/36/EU. Such cooperation agreements may govern in particular the transfer of additional duties to the consolidating supervisor as defined in Article 115 of Directive 2013/36/EU and in accordance with Article 28 of Regulation (EU) No 1093/2010, and procedures for cooperation, in particular pursuant to Articles 7b and 77c, as well as the cooperation of the FMA with the competent authorities of the Member States with regard to the exchange of information as mentioned in Articles 21a and 50, Article 53 (2), Articles 116, 117, 118 and 124 to 126 of Directive 2013/36/EU or Article 11(1) of Directive 2002/87/EC, and the exchange of information with competent authorities as defined in Article 55 (1) of Directive 2013/36/EU under the conditions mentioned therein. The EBA shall be informed of the existence and contents of such cooperation agreements where they concern the Supervisory Colleges.

(2) As the consolidating supervisory authority, the FMA shall decide which other competent authorities and institutions pursuant to para. 3 shall participate in a meeting or an activity of the College of Supervisors. In this decision, the FMA must take into account the relevance of the supervisory activity to be planned or coordinated for the authorities concerned, in particular the possible effects on the financial stability of the Member States concerned pursuant to Article 69

para. 4 and the duties pursuant to Article 51(2) of Directive 2013/36/EU. The FMA shall provide all the members of the College of Supervisors with timely, constant and full information on the following:

1. the organisation of the meetings of the College of Supervisors,
2. the main issues to be discussed and the intended activities,
3. the procedure determined in these meetings and the measures implemented.

(3) The following parties may participate in a College of Supervisors, subject to the FMA's decision as the consolidating supervisory authority:

1. competent authorities of the Member States that are responsible for the supervision of credit institutions subordinate to an EEA parent credit institution or an EEA parent financial holding company;

1a. competent authorities of the Member States, in which the financial holding companies licensed pursuant to Article 7b or mixed financial holding companies are established;

2. competent authorities of a hosting Member State, in which significant subsidiaries have been established;
3. the Oesterreichische Nationalbank and other central banks of the Member States pursuant to nos. 1 and 2;
4. competent authorities of third countries, provided that they are subject to professional secrecy requirements equivalent to those defined in Article 53(1) of Directive 2013/36/EU or Article 15 of Directive (EU) 2019/2034, where applicable, and that such cooperation serves the purpose of fulfilling their supervisory duties.
5. the EBA.

(4) The FMA shall cooperate within the Colleges of Supervisors with the competent authorities and the EBA. The scope of the following duties shall be determined within the Colleges of Supervisors in cooperation with the other competent authorities:

1. exchanging information among each other and with the EBA pursuant to Article 21 of Regulation (EU) No 1093/2010;
2. agreeing on the voluntary transfer of tasks and responsibilities;
3. determining supervisory review programmes pursuant to Article 98 of Directive 2013/36/EU on the basis of a risk assessment of the group of credit institutions pursuant to Article 97 of Directive 2013/36/EU;
4. avoiding unnecessary duplication of prudential requirements, in particular in relation to the information requests referred to in Article 114(2) and Article 117(2) of Directive 2013/36/EU in order to increase the efficiency of supervision;
5. consistently applying the prudential requirements under Directive 2013/36/EU and Regulation (EU) No 575/2013 to all companies of a group of credit institutions without prejudice to the rights of choice and discretionary powers granted in said legal acts;
6. applying Article 112(1)(c) of Directive 2013/36/EU taking into account international standards in the area of cooperation with the competent authorities and the preparation for situations of crisis.

(5) The FMA shall keep the EBA informed of the activities of the Colleges of Supervisors over which it presides, both in normal situations and in situations of crisis and communicate all information to the EBA that is of particular relevance for the convergence of supervisory activities, subject to Article 77 para. 5.
(6) Where the consolidating supervisory authority from another Member State does not properly fulfil the tasks set forth in para. 4 or where the other competent authorities do not cooperate with the FMA in its capacity as consolidating supervisor to the extent required for fulfilling said tasks, the FMA may refer the matter to the EBA.

Cross-Border Decision-Making Procedure

Article 77c. (1) The FMA shall assess the appropriateness of the capital requirement of a group of credit institutions annually in cooperation with the other competent authorities responsible for supervising subordinate credit institutions incorporated in other Member States and to decide, in coordination with these authorities, on the application of measures based on the assessment pursuant to Article 69 paras. 2 and 3 at the consolidated level and pursuant to Article 70 para. 4a no. 1, Article 70b and Article 70c.
(1a) On the basis of the supervisory review process pursuant to Article 69 paras. 2 and 3, the FMA shall decide, together with the other competent authorities responsible for the supervision of subordinate credit institutions established in other Member States, on the application of measures within the scope of liquidity risk supervision, in particular with regard to the appropriateness of procedures for capturing liquidity risk pursuant to Article 39 para. 2, para. 2b no. 7 and para. 3 and the need for specific liquidity requirements pursuant to Article 70d.
(2) On the basis of its supervisory activities pursuant to Article 69 paras. 2 and 3 with regard to Articles 70b and 70c, the FMA, in the capacity of consolidating supervisor, shall provide the other competent authorities with a report including a risk assessment of the group of credit institutions and shall, together with these authorities, decide on the measures mentioned in para. 1 within a period of four months. Such joint decisions shall adequately take into account the risk assessment of the subordinate institutions established in other Member States carried out by the other competent authorities pursuant to Articles 73, 97, 104a and 104b of Directive 2013/36/EU. On the basis of its supervisory activities pursuant to Article 69 paras. 2 and 3 with regard to the adequacy of procedures for capturing liquidity risk pursuant to Article 39 para. 2, para. 2b no. 7 and para. 3 as well as of the necessity of specific liquidity requirements pursuant to Article 70d, the FMA, in the capacity of consolidating supervisor, shall provide the other competent authorities with a report including an assessment of the liquidity risk profile of the group of credit institutions and shall, together with these authorities, decide on the measures mentioned in para. 1a within a period of four months.
(2a) Joint decisions pursuant to para. 2 shall be presented in a document with a full statement of the underlying reasons and shall be served on the responsible undertaking pursuant to Article 30 para. 6

by the FMA in the capacity of consolidating supervisor. In accordance with the joint decision, the FMA, in the capacity of consolidating supervisor, shall issue an administrative decision and serve it on the responsible undertaking pursuant to Article 30 para. 6.

(3) A joint decision sent to the EEA parent credit institution pursuant to Article 113 (2) of Directive 2013/36/EU by a consolidating supervisory authority of another Member State is to be considered effective for subordinate institutions in Austria as soon as the joint decision has been delivered to the EEA parent credit institution and the latter has informed its subordinate institutions, but not before the administrative decision becomes effective in the country of establishment of the EEA parent credit institution.

(4) In case of disagreement between the competent authorities within the time period set out in para. 2, the FMA may:

1. as consolidating supervisor consult the EBA. At the request of one of the other competent authorities during the same time period, the FMA as consolidating supervisor shall consult the EBA. If the EBA was consulted, the FMA shall accommodate the EBA's opinion in its decisions in the cases pursuant to paras. 2, 5 and 6 and provide reasons for any significant deviation therefrom in the decision;
2. request the consolidating supervisor of another Member State to consult the EBA;
3. refer the matter to the EBA, pursuant to Article 19 of Regulation (EU) No 1093/2010; if the supervisory authorities reach a joint decision, the EBA can no longer be consulted in the matter.

(5) If no joint decision is arrived at within the time period given in para. 2, the FMA as consolidating supervisory authority shall decide on the application of measures to the group of credit institutions at the consolidated level pursuant to Article 69 paras. 2 and 3, Article 70 para. 4a no. 1, and Articles 70b to 70d taking into account the views and reservations expressed by the competent authorities and the risk assessments with regard to the subordinate institutions incorporated in other Member States performed during the time of the coordination process pursuant to para. 2; where necessary the opinion pursuant to para. 4 shall be taken account of. The decisions of the FMA as consolidating supervisory authority and the decisions of the other competent authorities shall be presented in a document containing a full justification and shall take into account the risk assessments, views and reservations performed and expressed by the other competent authorities during the time period referred to in para. 2. The FMA shall transmit this document to all the competent authorities concerned and shall serve the administrative decision on the responsible undertaking pursuant to Article 30 para. 6. With its delivery to the responsible undertaking pursuant to Article 30 para. 6 incorporated in Austria, the administrative decision shall be considered delivered to all members of the group of credit institutions concerned. The responsible undertaking pursuant to Article 30 para. 6 incorporated in Austria shall notify all its subordinate institutions of the ruling immediately. The decision shall apply directly to subordinated institutions based in Austria.

(6) If a decision pursuant to the first subparagraph of Article 113(3) of Directive 2013/36/EU is taken by another competent authority (consolidating supervisor), the FMA shall decide on an individual or partially consolidated level on the application of measures pursuant to Article 69 paras. 2 and 3 and Article 70 para. 4a no. 1, and Articles 70b to 70d to institutions subordinate to the EEA parent credit institution and incorporated in Austria, appropriately taking into account the views and reservations of the consolidating supervisor. The FMA shall send a copy of the administrative decision to the consolidating supervisor for the purposes of the third subparagraph of Article 113(3) of Directive 2013/36/EU.
(7) A decision taken by a consolidating supervisory authority under the laws of another Member State pursuant to the first subparagraph of Article 113(3) of Directive 2013/36/EU is to be considered effective for subordinate institutions incorporated in Austria as soon as the decision of the consolidating supervisory authority incorporated in another Member State has been delivered to the EEA parent credit institution and it has informed its subordinate institutions thereof, but not before the administrative decision takes effect in the country of establishment of the EEA parent credit institution.
(8) The FMA as the consolidating supervisor shall update joint decisions pursuant to para. 1 or decisions pursuant to paras. 5 or 9 annually, as well as in those exceptional cases, in which another competent authority has requested the FMA as the consolidating supervisor in writing and stating all reasons to update the decision about the application of Article 104 (1) point a, Article 104b or Article 105 of Directive 2013/36/EU; in the latter extraordinary cases, the FMA may conduct the procedure alone with the competent authorities requesting the update.
(9) Where no joint decision is reached within the periods referred to in para. 2 or Article 113(2) of Directive 2013/36/EU and one of the other competent authorities refers the matter to EBA pursuant to Article 19 of Regulation (EU) No 1093/2010, the FMA shall defer its decision as consolidating supervisor pursuant to para. 5 or as competent authority pursuant to para. 6 until EBA has taken the decision pursuant to Article 19(3) of that Regulation. In that case, the FMA shall take its decision in accordance with the EBA decision, or in the event that no EBA decision has been made once one month has passed following the referral of the issue to EBA pursuant to Article 19 of Regulation (EU) No 1093/2010, in accordance with paras. 5 or 6.

Supervision by the European Central Bank – Single Supervisory Mechanism

Article 77d. (1) The FMA and the Oesterreichische Nationalbank shall perform the tasks, powers and obligations conferred upon them by this federal act only to the extent that exercising these is not reserved to the European Central Bank under provisions set forth in Regulation (EU) No 1024/2013.
(2) Inasmuch as the FMA has been entrusted by this federal act, implementing relevant Union law as defined in Article 4(3) of Regulation (EU) No 1024/2013 to exercise powers assigned to it by regulation and these powers are exercised by the European Central Bank pursuant to Article 4 of Regulation (EU) No 1024/2013 on the basis of national legislation, the procedures set forth in this

federal act for the FMA with regard to exercising these powers shall not apply to the European Central Bank.

(3) For the purpose of effectively carrying out the tasks and powers conferred upon them by this federal act within the scope of the Single Supervisory Mechanism pursuant to Article 6 of Regulation (EU) No 1024/2013, the FMA and the Oesterreichische Nationalbank must coordinate their activities within the Single Supervisory Mechanism and exchange any and all information, enquiries and requests without delay.(4) The provisions stipulated in this federal act obliging the FMA and the Oesterreichische Nationalbank to enter data into the joint database of banking supervision analyses to be maintained by the Oesterreichische Nationalbank pursuant to Article 79 para. 3 shall not apply, provided this data is to be entered into a database set up by the European Central Bank within the scope of the Single Supervisory Mechanism and the data is accessible to both the FMA and the Oesterreichische Nationalbank at all times.

Section XV: Moratorium

Article 78. (1) In cases where multiple credit institutions experience distress due to events which can be attributed to general political or economic developments, and where this endangers the overall economy, especially with regard to Article 69 para. 1 (last half sentence) or the maintenance of a functioning payments system, the federal government may issue a regulation stipulating that all credit institutions

1. throughout Austria or
2. in a certain region of Austria

must be closed temporarily for payment transactions with their customers and must not carry out or accept any payments or funds transfers.

(2) Restrictions pursuant to para. 1 may also be decreed for banking transactions of a specific type or of a certain scope.

(3) Regulations pursuant to para. 1 are to expire no later than six months after entry into force.

(4) Where the federal government has resolved to issue a regulation pursuant to para. 1, in cases of imminent danger the FMA may order the credit institutions concerned not to carry out or accept payments or funds transfers until the regulation enters into force. This order must be published immediately in the Official Gazette of the Wiener Zeitung and will expire at the latest on the third banking day after its publication.

(5) During the validity period of regulations pursuant to para. 1 and of orders pursuant to para. 4, Article 86 paras. 1, 3, 4 and 5 as well as Article 87 para. 1 are applicable to the credit institutions concerned.

(6) The provisions of paras. 1 to 5 do not affect the applicability of the Insolvency Code (IO; Insolvenzordnung) and of the provisions governing receivership set forth in this federal act.

SECTION XVI: OESTERREICHISCHE NATIONALBANK

Article 79. (1) The Oesterreichische Nationalbank is required to report observations and findings of a fundamental nature or of special significance in the field of banking to the Federal Minister of Finance and to the FMA, and to provide upon request any factual explanations, documents and opinions which appear necessary.

(2) Where submission does not occur pursuant to Article 73a, all notifications pursuant to Articles 20 and 73, documentation pursuant to Article 44 paras. 1 and 5, reports pursuant to Articles 74 and Article 73 para. 6, as well as reports pursuant to Part 7a of Regulation (EU) No 575/2013 must also be submitted to the Oesterreichische Nationalbank within the time periods set forth in the relevant provisions.

(2a) The Oesterreichische Nationalbank shall perform the standardised onward transmission of the reporting stipulated under national law or under Union law listed in para. 2 and in Article 4a BaSAG.

(3) The Oesterreichische Nationalbank must maintain a joint database of banking supervision analyses and provide the FMA with automated access to the following data at all times:

1. data pursuant to para. 2;
2. data relevant to banking supervision on the basis of reports pursuant to Articles 44 to 44b Nationalbank Act (NBG; *Nationalbankgesetz* – Federal Law Gazette No. 50/1984);
3. data relevant to banking supervision in anonymised form on the basis of reports pursuant to the Foreign Exchange Act (DevG; *Devisengesetz*);
4. analysis data and results pursuant to para. 4a;
5. institution-related data obtained and processed pursuant to Article 12 para. 3 of the Sanctions Act 2024;
6. reports pursuant to Article 4a BaSAG;
7. reports pursuant to Article 15 of the Credit Servicers and Credit Purchasers Act (KKG; *Kreditdienstleister- und Kreditkäufergesetz*), published in Federal Law Gazette I No. 6/2025.

The Oesterreichische Nationalbank and the FMA shall be the joint controllers pursuant to Article 26 of Regulation (EU) 2016/679 regarding this database. Furthermore, the Oesterreichische Nationalbank shall act as contact point for data subjects pursuant to the final sentence of Article 26 (1) of Regulation (EU) 2016/679.

(4) The Oesterreichische Nationalbank must conduct inspections commissioned pursuant to Article 70 para. 1 no. 3 and Article 70a para. 2, prepare opinions in the context of banking supervision, and conduct analyses pursuant to para. 4a on its own responsibility and on its own behalf. The FMA must rely to the greatest possible extent on the inspections, opinions and analyses of the Oesterreichische Nationalbank as well as the data stored in the database pursuant to para. 3, and may rely on the accuracy and completeness of such data unless the FMA has reason to doubt their accuracy or completeness. The Oesterreichische Nationalbank must communicate the results of these inspections to the FMA immediately; in addition, the Oesterreichische Nationalbank must forward to the FMA the comments of the credit institutions concerned immediately. In procedures,

the inspection findings of the Oesterreichische Nationalbank are to be regarded as expert opinions; however, instructions to the Oesterreichische Nationalbank pursuant to Article 70 para. 1 no. 3 and Article 70a para. 2 do not preclude any necessary collection of supplementary evidence through inspections conducted by the FMA, by external auditors or by other experts. The Oesterreichische Nationalbank is empowered to provide the bank auditor of the credit institution concerned with necessary information on the results of inspections conducted by the Oesterreichische Nationalbank.

(4a) The FMA must store all relevant information arising from its banking supervision activities in the joint database. For the purposes of this provision, relevant information includes data pursuant to Article 77 para. 4, banking supervision data pursuant to Article 14 FKG, reports from State Commissioners, information related to specific institutions arising from banking supervision activities in accordance with the FM-GwG, the results of investigations and other observations regarding specific institutions which are within the FMA's area of responsibility. (**From 01.01.2026 the previous two sentences shall read:** *The FMA must store all relevant information arising from its banking supervision activities in the joint database. Relevant information in this context consists of data pursuant to Article 77 para. 4, data in relation to banking supervision pursuant to Article 14 of the Financial Conglomerates Act (FKG; Finanzkonglomerategesetz), reports by state commissioners, institutional information arising from the FMA's supervisory activities under the FM-GwG and in accordance with the Sanctions Act 2024, the findings of investigations and other observations related to institutions, provided that they relate to the FMA's scope of competence.*) Information which is available to both institutions is to be stored in the joint database by the Oesterreichische Nationalbank. The Oesterreichische Nationalbank must subject the data pursuant to para. 3 and the other supervisory information stored in the database by the Oesterreichische Nationalbank or the FMA to ongoing comprehensive evaluation for the purposes of banking supervision and for the purpose of preparing supervisory investigations (individual bank analysis). The Oesterreichische Nationalbank must make all analysis results and relevant information available to the FMA; these analysis results and relevant information must contain clear statements on whether the risk situation has changed materially or whether a breach of supervisory provisions is suspected. Cases in which the risk situation has changed materially or a breach of supervisory provisions is suspected must be communicated to the FMA immediately. At the FMA's request, the Oesterreichische Nationalbank must also prepare and submit specified individual bank analyses and provide additional explanations on the results of analyses. The Oesterreichische Nationalbank is authorised to evaluate individual bank analysis data in light of the individual and overall economic situation, especially for the purpose of performing its duties in connection with financial stability. In any case, all of the individual bank analyses conducted by the Oesterreichische Nationalbank are to be made available to the FMA. The Oesterreichische Nationalbank is permitted to perform statistical evaluations of these data with the objective of generating results which are not related to specific persons.

(4b) The Oesterreichische Nationalbank shall

1. draw up a statement about the costs arising from the duties and activities in accordance with this Federal Act as well as Regulation (EU) No 1024/2013 and allow this statement to be reviewed by the auditor pursuant to Article 37 NBG;
2. convey the audited statement to the Federal Minister of Finance and the FMA by 30 April of the respective following financial year;
3. publish the audited statement following submission pursuant to no. 2 on its website;
4. submit the estimated costs arising from its duties and activities in accordance with this Federal Act as well as Regulation (EU) No 1024/2013, as well as the estimated annual average number of employees employed in performing duties and activities in accordance with this Federal Act as well as Regulation (EU) No 1024/2013, for the following financial year to the Federal Minister of Finance and the FMA by 30 September every year;
5. inform the Federal Minister of Finance and the FMA once a year about the annual average number of employees occupied with the tasks and activities in accordance with this Federal Act as well as Regulation (EU) No 1024/2013; such information may also be provided by means of a publication.

(5) (constitutional law provision) In carrying out inspections pursuant to Article 70 para. 1c and exercising payment systems oversight pursuant to Article 44a NBG 1984, the Oesterreichische Nationalbank is not bound by any instructions.

(6) The Oesterreichische Nationalbank must provide the FMA with expert opinions on the eligibility and accuracy of netting agreements upon request. The Oesterreichische Nationalbank is authorised to obtain information and documents required for this purpose from the competent authorities abroad. If, based on expert opinions, the information obtained or other circumstances, the FMA has doubts as to the legal effectiveness of the netting agreement, it must notify the credit institution accordingly. The credit institution must make a copy of this notification available to the counterparty.

(7) A claim for damages as stipulated in provisions of federal law for actions taken by the Oesterreichische Nationalbank, its employees or its bodies within the scope of Regulation (EU) No 1024/2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions, OJ L 287, 29.10.2013, p. 63, shall be ruled out in the following cases:

1. actions taken to execute an instruction issued by or to fulfil a task assigned by the European Central Bank;
2. actions taken to prepare or carry out decisions by the European Central Bank;
3. cooperation, exchange of information or other support provided to the European Central Bank.

(8) A claim for damages resulting from actions taken by the Oesterreichische Nationalbank, its bodies or its employees under Regulation (EU) No 806/2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No

1093/2010, published in OJ L 225 of 30.07.2014, p. 1, on the basis of a provision contained within a federal act shall be ruled out in the following cases:

1. Acts conducted on the basis of an instruction from the Board pursuant to Article 2 no. 18a BaSAG;
2. Acts conducted during the preparation, or the execution, of decisions of the Board pursuant to Article 2 no. 18a BaSAG;
3. Acts relating to cooperation, the exchange of information or other assistance provided to the Board pursuant to Article 2 no. 18a BaSAG;

Article 80. (1) (repealed).

(2) Prior to issuing Regulations on the basis of this federal act, the FMA and the Federal Minister of Finance shall first consult the Oesterreichische Nationalbank.

SECTION XVII: RECEIVERSHIP AND INSOLVENCY PROVISIONS

Article 81. (1) Unless specified otherwise in the paragraphs below or in Articles 81a to 81m, receivership procedures initiated in Austria, the conditions for their initiation, and their effects are subject to Austrian law throughout the European Economic Area. The effects of such procedures also extend to the assets of the credit institution throughout the European Economic Area, especially those of the credit institution's branches.

(2) The receivership procedure pursuant to Article 82 para. 2 is a reorganisation measure as defined in Article 2 of Directive 2001/24/EC. The receiver pursuant to Article 82 para. 3 must be issued a decree of appointment by the court.

(3) A decision issued in a Member State other than Austria to carry out a measure to reorganise a credit institution which is authorised in that Member State pursuant to Article 9 et seq. of Directive 2013/36/EU is to be considered effective in Austria without further formalities as soon as the decision becomes effective in the Member State in which the proceedings were initiated. The same applies to measures taken due to receivership proceedings pursuant to Article 82 para. 2 within the EEA and outside of Austria.

(4) The administrators as defined in Article 2 of Directive 2001/24/EC who are named in the original or certified copy of the decree of appointment from the competent authority in the home Member State as well as their representatives and the receiver pursuant to Article 82 para. 3 may, without further formalities in the respective host Member States, exercise the powers vested in them for the execution of reorganisation measures pursuant to para. 3 in the territory of the home Member State. Where the text of a decree of appointment for an administrator performing duties in Austria is not in German or English language, then a translation into German must be attached to the decree of appointment. In exercising their powers, receivers pursuant to Article 82 para. 3 must observe the laws of the Member States in which they plan to carry out their activities, especially with regard to

the manner in which assets are realised and in which employees are notified. These powers do not include the application of coercive measures or the right to rule on legal disputes or other disagreements. In exercising their powers in Austria, the administrators must comply with Austrian law; the reorganisation measures of the competent authorities in the home Member States constitute writs of execution as defined in the Enforcement Act (EO; Exekutionsordnung). Where reorganisation measures of the competent authority in the home Member State involve matters related to employees and an Austrian authority would be required to inform employees of such a measure under Austrian law, the administrator must inform the employees in the same way.

(5) At the request of the administrator or of any authority or court in the home Member State, the initiation of reorganisation measures must be entered in the Property Register and the Commercial Register. The costs of such entries are to be counted as costs and expenses related to the reorganisation measure.

(6) In the case of receivership proceedings initiated in Austria against the Austrian branches of a foreign credit institution, the effects pursuant to para. 1 do not extend to assets located outside of Austria, Article 83 para. 5 notwithstanding.

Article 81a. The effects of a reorganisation measure as defined in Article 2 of Directive 2001/24/EC on employment contracts and employment relationships are governed exclusively by the law of the Member State applicable to the contract of employment (contract of employment).

Article 81b. (1) The initiation of reorganisation measures as defined in Article 2 of Directive 2001/24/EC is not to affect the rights in rem of creditors or third parties to tangible or intangible, moveable or immoveable assets – both specific assets and collections of indefinite assets as a whole which change from time to time – belonging to the credit institution which are situated within the territory of another Member State at the time when reorganisation measures as defined in Article 2 of Directive 2001/24/EC are initiated (third parties' rights in rem).

(2) The rights referred to in para. 1 are, in particular:

1. the right to dispose of the assets or have them disposed of and to obtain satisfaction from the proceeds of or income from those assets, in particular by virtue of a lien or a mortgage;
2. the exclusive right to have a claim met, in particular a right guaranteed by a lien in respect of the claim or by assignment of the claim by way of a guarantee;
3. the right to demand the assets from, and/or require restitution by, anyone having possession or use of them contrary to the wishes of the entitled party;
4. the right in rem to the beneficial use of assets.

(3) A right which is recorded in a public register and enforceable against third parties and under which a right in rem within the meaning of para. 1 may be obtained is considered equivalent to a right in rem as indicated in para. 1.

(4) Para. 1 does not preclude actions for voidness, voidability or unenforceability pursuant to Article 10 (2)(l) of Directive 2001/24/EC.

Article 81c. (1) The initiation of reorganisation measures as defined in Article 2 of Directive 2001/24/EC does not affect the right of creditors to offset their claims against those of the credit

institution in cases where such offsetting is permitted by the law applicable to the credit institution's claims (set-off).

(2) Para. 1 does not preclude actions for voidness, voidability or unenforceability pursuant to Article 10 (2)(l) of Directive 2001/24/EC.

Article 81d. (1) The initiation of reorganisation measures as defined in Article 2 of Directive 2001/24/EC against a credit institution does not affect the rights of the seller of an asset based on a reservation of title where, at the time when reorganisation measures as defined in Article 2 of Directive 2001/24/EC are initiated, the asset is situated in the territory of a Member State other than the one in which such measures are initiated (reservation of title).

(2) The initiation of reorganisation measures as defined in Article 2 of Directive 2001/24/EC against a credit institution does not constitute grounds for rescinding or terminating the contract of sale after the delivery of an asset sold by the credit institution and does not prevent the purchaser from acquiring title where, at the time when reorganisation measures are initiated, the asset is situated in the territory of a Member State other than the one in which such measures are initiated.

(3) Paras. 1 and 2 do not preclude actions for voidness, voidability or unenforceability pursuant to Article 10 (2)(l) of Directive 2001/24/EC.

Article 81e. The effects of reorganisation measures as defined in Article 2 of Directive 2001/24/EC on a contract conferring the right to acquire or make use of immoveable property are governed exclusively by the law of the Member State within the territory of which the immoveable property is situated. The law of that Member State will also determine whether the asset is considered moveable or immoveable property (contracts relating to immoveable property).

Article 81f. Notwithstanding Article 81k (lex rei sitae), transactions conducted within the framework of a regulated market are governed exclusively by the law applicable to such transactions (regulated markets).

Article 81g. The effects of reorganisation measures as defined in Article 2 of Directive 2001/24/EC on the rights of the debtor to immoveable property, a ship or an aircraft subject to registration in a public register are determined by the law of the Member State under the authority of which the register is kept (effects on rights subject to registration).

Article 81h. Where a court-ordered reorganisation measure as defined in Article 2 of Directive 2001/24/EC provides for rules regarding the voidness, voidability or unenforceability of legal acts which are detrimental to all creditors and were performed before the measure was initiated, Article 81 paras. 1 and 3 do not apply where the person who benefited from an act detrimental to all creditors provides evidence that

1. that act is subject to the law of a Member State other than the home Member State, and
2. that law does not allow any means of challenging that act in the relevant case (detrimental acts).

Article 81i. If, by an act concluded after the initiation of reorganisation measures as defined in Article 2 of Directive 2001/24/EC, the credit institution disposes of

1. an immoveable asset, or

2. a ship or an aircraft subject to registration in a public register, or
3. instruments or rights to instruments whose existence or transfer presupposes registration in a register or account maintained in a Member State, or with a central custodian of a Member State, for a consideration,

then the validity of that act will be governed by the law of the Member State within the territory of which the immoveable object is situated or under the authority of which the register, account or custodian is maintained (protection of third-party purchasers).

Article 81j. The effects of a reorganisation measure as defined in Article 2 of Directive 2001/24/EC on a pending lawsuit concerning an asset are governed exclusively by the law of the Member State in which the lawsuit is pending (effects on pending lawsuits).

Article 81k. The exercise of property rights or other rights to instruments whose existence or transfer presupposes registration in a register or account maintained in a Member State or with a central custodian of a Member State is governed by the law of the Member State in which the register, account or custodian recording the rights in question is located (lex rei sitae).

Article 81l. Netting agreements are governed exclusively by the law applicable to such agreements (netting agreements).

Article 81m. Article 81k notwithstanding, repurchase agreements are governed exclusively by the law applicable to such agreements (repurchase agreements).

Article 82. (1) Recapitalisation proceedings cannot be initiated over the assets of a credit institution. In the case of the bankruptcy of a credit institution, no petition to institute a reorganisation plan shall be filed.

(2) In receivership and bankruptcy proceedings concerning credit institutions, the FMA is to have the status of a party to the proceedings.

(3) In general, only the FMA may submit a petition for the initiation of bankruptcy proceedings; during active receivership, only the receiver may file such a petition. Otherwise, Article 70 IO is applicable.

(4) A legal person may also be appointed to the position of receiver.

(5) The court must consult the FMA before appointing or dismissing a receiver or a bankruptcy trustee.

(6) The court must immediately inform the FMA and the Oesterreichische Nationalbank of orders of receivership proceedings by forwarding the respective decree.

(7) If bankruptcy proceedings are initiated over the assets of a credit institution or an entity pursuant to Article 1 of the Bank Recovery and Resolution Act (BaSAG) as published in Federal Law Gazette I No. 98/2014, it shall continue to provide services or assistance, if a measure has been issued by the resolution authority pursuant to Article 61 BaSAG. The bankruptcy trustee shall be obliged to comply with this measure.

Article 83. (1) In cases where it appears likely that their overindebtedness or insolvency can be remedied, credit institutions which are overindebted or insolvent may request an order for

receivership from the court competent for initiating bankruptcy proceedings. This request may also be submitted by the FMA.

(2) Along with the request, the credit institution must submit a structured list of its claims and liabilities as well as its annual financial statements, including the notes to the financial statements, and management reports from the last three years.

(3) In preparing its decision, the court may hear informants and expert witnesses, as well as conducting other investigations.

(4) By way of the FMA, the court must immediately communicate its decision to order receivership as well as the specific effects of receivership to the authorities responsible for carrying out reorganisation measures pursuant to Article 2 of Directive 2001/24/EC in any host Member States.

(5) Likewise, in cases where the court imposes receivership on an Austrian branch of a foreign credit institution, the court must immediately communicate by way of the FMA its decision to order receivership as well as the specific effects of receivership to the authorities responsible for carrying out reorganisation measures pursuant to Article 2 of Directive 2001/24/EC in any other Member States in which those branches conduct business transactions included in the list published annually in the Official Journal of the European Communities pursuant to Article 20 of Directive 2013/36/EU. In order to avoid redundant decisions, the competent authorities in the other Member States must be informed of the intended decision in advance and the procedure must be coordinated wherever possible.

(6) Should the FMA consider one or more reorganisation measures as defined in Article 2 of Directive 2001/24/EC to be necessary in the case of credit institutions which operate through a branch in Austria in accordance with Article 9, then the FMA must inform the competent authorities in the credit institution's home Member State accordingly.

(7) Where receivership is liable to affect the rights of third parties in a host Member State or in a Member State pursuant to para. 5, the court must immediately publish the decision to order receivership proceedings in the Official Journal of the European Communities and in two supraregional newspapers in each of those Member States in order to enable those parties to seek legal remedies in a timely manner. For the purposes of publication, the decision mentioned above must be communicated immediately and by the most suitable means to the Office for Official Publications of the European Communities and to the two supraregional newspapers in each of the Member States concerned.

(8) In addition to the decision to be published, the court must indicate in particular the object and legal basis of the decision and the deadlines for appeals, including in particular an easily understandable indication of the time at which these periods end, as well as the precise address of the court to which appeals are to be submitted and of the court which is to rule on the appeals. These indications are to be made in the official language or official languages of the Member States concerned.

(9) Any appeals against the imposition of receivership do not have suspensory effect.

Article 84. (1) In cases where receivership is ordered, the court must appoint a physical or legal person as receiver. This person is responsible for supervising the management of the credit institution and is liable to all parties involved for any damage caused by the negligent performance of their function.
(2) The receiver has the right to inspect the business documents of the credit institution; the receiver must be invited to meetings of the executive and supervisory bodies and may also convene such meetings. The receiver has the right to prohibit the execution of resolutions taken by the bodies of the credit institution.
(3) The court may revoke the appointment of the receiver at any time.
(4) The receiver has the right to remuneration for their activities; the amount of this remuneration is to be determined by the court.
(5) The imposition of receivership and the name of the appointed receiver must be announced publicly. The court must arrange for the entry of the receivership order and the appointed receiver in the Commercial Register.
Article 85. Receivership is to take effect at the beginning of the day following the public announcement of the decree imposing receivership.
Article 86. (1) Once receivership takes effect, all claims on the credit institution which were incurred previously, including claims arising from bills of exchange and cheques which would have to be satisfied in bankruptcy proceedings by means of the joint bankruptcy estate (Article 50 IO) as well as their interest and other ancillary fees, are to be deferred, even in cases where they only became due or accrued during the period of receivership.
(2) After ordering receivership, the court must have the credit institution's financial situation assessed by experts at the credit institution's expense. The receiver must report to the court in writing on the result of this assessment. The report must also indicate whether the credit institution is able to pay a certain fraction of the liabilities it incurred before receivership took legal effect. Based on the report, the court may order that only a fraction of the prior claims be subject to cancellation; the court may also allow the receiver to satisfy in their entirety prior claims to be determined according to their type or amount.
(3) During receivership, prior claims must not be secured nor, unless partial payment is permitted (para. 2) paid out or satisfied in any way.
(4) During receivership, it is not possible to initiate bankruptcy proceedings over the assets of the credit institution or to obtain a court-ordered lien or right to satisfaction on assets belonging to the credit institution due to prior claims where a deferment of payment has been granted for such claims.
(5) The period of time by which payment is delayed as a result of deferment is not to be included in the calculation of the limitation period or statutory periods for the filing of suits.
(6) In the case of bankruptcy on the part of the credit institution, depositors are entitled to offset their claims against those of the credit institution.

Article 87. (1) In cases where the credit institution on which receivership is imposed is a cooperative society, then shares in the undertaking may not be legally cancelled, nor may the shares and the balances otherwise due to the retired shareholder on the basis of the cooperative relationship be paid out; notice and liability periods which are already in progress are to be suspended.

(2) Unless the court orders otherwise at the receiver's request, the credit institution may continue its business activities. However, the credit institution must obtain the consent of the receiver in order to conduct transactions which are not part of normal business operations. The credit institution must also refrain from activities which are part of normal business operations where the receiver objects to such activities. Legal acts carried out without the consent or against the objection of the receiver are ineffective vis-à-vis the creditors if the third party involved knew or should have known that such acts were beyond the scope of normal business operations and the receiver did not grant their consent or objected to those acts.

(3) Funds received by the credit institution from transactions concluded after receivership takes effect (new claims) are to be accounted for and administered separately; even after the expiration of receivership, these funds constitute special funds which serve the preferential satisfaction of new claims.

Article 88. Once two years have elapsed after the termination of receivership, the credit institution may request exemption from the obligation to account for and administer the funds received on the basis of new claims unless bankruptcy proceedings have been initiated over the assets of the credit institution during that period of time. In cases where such a request is submitted, the court must review the applicant's financial situation. In cases where this review reveals that the security of the new claims will not be jeopardised by such an exemption, the request is to be approved; from that point in time onward, the special funds are to be considered dissolved.

Article 89. In cases of dispute arising from the orders of the receiver, the court is to decide by means of a ruling. The court may also obtain the required information without the involvement of the parties and, by virtue of office, carry out all suitable investigations in order to make the necessary determinations.

Article 90. (1) Receivership is to be terminated by way of a court ruling and upon the initiation of bankruptcy proceedings.

(2) The court must terminate receivership in cases where:

1. the conditions which prompted the receivership order have been remedied, or
2. one year has elapsed since receivership was ordered.

(3) The termination of receivership must be announced publicly once the termination ruling takes legal effect. The court must also arrange for the termination of receivership to be entered in and the receiver deleted from the Commercial Register.

(4) In cases where receivership is terminated due to the initiation of bankruptcy proceedings, or where bankruptcy proceedings are initiated on the basis of a petition submitted within 14 days after the termination of receivership, then the periods to be calculated retroactively from the date of the

petition for the initiation of such proceedings or from the date of initiation of such proceedings according to the IO are to be calculated from the date on which receivership went into effect.
(5) The credit institution as well as the FMA may take recourse against the rejection of a request for the imposition of receivership and against the termination of receivership; however, only the credit institution may take recourse against decisions which define the amount of remuneration and the cash expenses to be reimbursed to the receiver. Other decisions may not be contested. Appeals beyond rulings of the provincial superior court will not be permitted.
Article 91. (1) Public announcements are subject to the provisions of the IO.
(2) Inspection of the insolvency database is to be denied once three years have elapsed since the termination of receivership. In cases where receivership was terminated due to the initiation of bankruptcy proceedings, then inspection is to be permitted until the period for inspection in bankruptcy proceedings has also expired (Article 256 of the Insolvency Code (IO; Insolvenzordnung).

SECTION XVIII: STRUCTURAL PROVISIONS

Transfer of Assets into Stock Corporations

Article 92. (1) Credit institutions organised as partnerships under commercial law with total assets exceeding EUR 730 million must re-register the undertaking or its banking operations as a stock corporation in accordance with the provisions of the Reorganisation Tax Act (UmgrStG; Umgründungssteuergesetz). Other credit institutions have the option to do so.
(2) Savings banks, state mortgage banks, the Mortgage Bond Division of the Austrian State Mortgage Banks, and cooperative societies may only re-register their undertaking or its banking operations as a stock corporation pursuant to the UmgrStG only with due adherence to the provisions set forth below.
(3) According to these provisions, the transfer of assets is only permitted

1. into a newly established stock corporation where the transferring credit institution is the sole shareholder;
2. into a stock corporation which conducts banking transactions and belongs to the same trade association as the transferring credit institution;
3. into a newly established stock corporation into which multiple credit institutions belonging to the same trade association simultaneously transfer their undertakings or their banking operations.

(4) The transfer brings about a legal transition in the form of universal succession which encompasses the operations transferred and becomes effective upon the entry of the stock corporation or of the capital increase in the Commercial Register. The universal succession must also be entered in the Commercial Register. In addition, Article 226 AktG applies to creditor protection.
(5) The resolution on the transfer of assets must be taken

1. by the management board and supervisory board of the savings banks carrying out the transfer;
2. by the management board and supervisory board of the state mortgage banks;
3. by the management board and administrative board of the Mortgage Bond Division of the Austrian State Mortgage Banks;
4. by the general assembly of cooperative societies.

The resolution must be adopted with the majority vote required for mergers.

(6) Through the transfer, the licences and authorisations of the transferring credit institutions are transferred to the stock corporation. References to transferring credit institutions in laws or regulations are to be considered references to the corresponding stock corporation.

(7) The stock corporation is to belong to the sector network (in particular the trade association, legal auditing association, central institution, sectoral deposit guarantee scheme) to which the transferring credit institution belongs.

(8) With regard to the banking operations transferred, the business object of the transferring institutions is restricted to management. The activities of their management bodies are not to be considered a full-time profession. The stock corporation's articles of association must be based on the articles of association of the transferring institutions. The corporate and organisational provisions continue to apply to the transferring credit institutions with due consideration of the spinoff of banking operations. Where laws or regulations make reference to savings banks, cooperative societies, state mortgage banks or the Mortgage Bond Division of the Austrian State Mortgage Banks, these references will continue to apply to the transferring credit institutions.

(9) Where they remain in existence, the transferring savings banks, state mortgage banks, the Mortgage Bond Division of the Austrian State Mortgage Banks and cooperative societies are liable with all of their assets for all present and future liabilities of the stock corporation in the case of its insolvency; multiple transferring credit institutions will bear joint and several liability.

(10) Where a State Commissioner and Deputy State Commissioner have been appointed for the transferring credit institution, those persons are to be appointed to the same positions in the stock corporation upon its entry in the Commercial Register. In the case of multiple transferring credit institutions in which a State Commissioner and Deputy State Commissioner have been appointed, the State Commissioner and Deputy State Commissioner of the acquiring company are to be appointed to the same positions in the stock corporation upon its entry in the Commercial Register. The State Commissioners and Deputy State Commissioners appointed at the other transferring credit institutions are to be discharged by the Federal Minister of Finance at the time of the entry of the transfer in the Commercial Register.

SECTION XIX: DEPOSIT GUARANTEE SCHEMES AND INVESTOR COMPENSATION

Information sharing for deposit guarantee and investor compensation purposes

Article 93. (1) Credit institutions shall submit all information to their deposit guarantee facility, their deposit guarantee scheme and their investor compensation scheme at all times and without delay, which the deposit guarantee facility, the deposit guarantee scheme or the investor compensation scheme requires for the performance of tasks pursuant to ESAEG, Directive 2014/49/EU, Directive 97/9/EC or the legal provisions on deposit protection or investor compensation of a third country; this information shall in particular include details about the amount of eligible deposits pursuant to Article 7 para. 1 no. 4 ESAEG of every individual depositor of a credit institution, as well as details that the investor compensation scheme requires to perform tasks relating to the early warning system pursuant to Article 1 para. 4 ESAEG. The protection schemes are authorised to prescribe regular reporting when collecting such information.
(2) Investment firms pursuant to Article 48 para. 3 ESAEG are obliged to submit all information to their deposit guarantee facility, which the deposit guarantee scheme requires for the fulfilment of their obligation pursuant to Article 49 para. 4 ESAEG; furthermore, investment firm pursuant to Article 48 para. 3 ESAEG shall provide the competent investor compensation scheme of the home Member State with all the information it requires to ensure that investors are compensated without delay and in an orderly manner.
(3) The deposit guarantee facilities shall cooperate with one another and with deposit guarantee and investor compensation schemes in other Member States, and shall exchange information with one another insofar as this is necessary for the performance of their tasks in accordance with the provisions set out in ESAEG.

Conditions for non-recognised systems as part of the deposit guarantee scheme

Article 93a. Contractual deposit guarantee schemes, including the systems providing additional protection, extending over and over the coverage level determined in Article 13 ESAEG, which are not recognised as a deposit guarantee scheme, and institutional protection schemes, which are not recognised as a deposit guarantee scheme, must have adequate financial means or financing mechanisms to ensure that they are able to fulfil their obligations. Article 38 para. 2 and Article 39 para. 4 ESAEG shall apply.

SECTION XX: PROTECTION OF DESIGNATIONS

Article 94. (1) Unless otherwise provided for by law, the designations "Geldinstitut" (money institution), "Kreditinstitut" (credit institution), "Kreditunternehmung", "Kreditunternehmen" (credit undertaking), "Bank" (bank), "Bankier" (banker) or any designation containing one of those

words may only be used by undertakings which are authorised to conduct banking transactions. However, undertakings which are authorised exclusively to provide remittance services must not use the designations indicated in the first sentence. Undertakings which are authorised exclusively to conduct exchange bureau business may only refer to themselves as "Wechselstuben" (exchange bureaus).

(2) The designation "Sparkasse" (savings bank) or any designation containing the word "Sparkasse" is reserved exclusively for credit institutions which are subject to the SpG and for the Österreichische Postsparkasse Aktiengesellschaft (Austrian Postal Savings Bank); savings banks which have transferred their undertakings or their banking operations into a stock corporation pursuant to Article 92 may use the designation "Sparkasse" only in combination with an additional indication of the spinoff of banking operations. Savings banks may also use the designation "Sparkasse" with an additional indication of the type of savings bank, its guarantee organisation, its place of incorporation or its business territory and in any case the time or special circumstances of their establishment.

(3) The designations "Finanzinstitut" (financial institution), "Finanz-Holdinggesellschaft" (financial holding company), "Wertpapierfirma" (investment firm) or any designation containing one of those words are reserved exclusively for financial institutions, financial holding companies and investment firms, respectively, as defined in this federal act.

(4) The designation "Volksbank" (people's bank) or any designation containing that word is reserved exclusively for institutions belonging to that sector.

(5) The designation “Bausparkasse” (building society) or any designation containing that word is reserved exclusively for credit institutions which are authorised to conduct building savings and loan business. Designations containing the root “Bauspar” may only be used by credit institutions which:

1. are authorised to conduct building savings and loan business or
2. are authorised as trustees to accept building savings deposits for a building and loan association.

Credit institutions pursuant to no. 2 may use designations containing the root "Bauspar" only where this rules out the impression that they conduct building savings and loan business.

(6) The designation "Raiffeisen" or any designation containing that word is reserved exclusively for institutions belonging to that sector.

(7) The designation "Landes-Hypothekenbank" (state mortgage bank) or any designation containing that word is reserved exclusively for state mortgage banks and the Mortgage Bond Division of the Austrian State Mortgage Banks.

(8) The designations protected under paras. 1 to 7 may also be used by facilities of credit institutions and financial institutions, and by undertakings in cases where they were authorised to carry out such activities when this federal act entered into force or where the designations are used in a way which rules out the impression that they conduct banking transactions or the transactions of a financial institution.

(9) Para. 2 is not applicable in cases where building societies use the word "Bausparkasse" (building society) or credit cooperatives use the designation "Spar- und Vorschusskasse" or “Spar- und Darlehenskasse" (savings and loan association) in their business names.
(10) Credit institutions and financial institutions pursuant to Articles 9 para. 1, 11 or 13 which operate in Austria through a branch or under the freedom to provide services may use their business names regardless of paras. 1 to 9; in cases where a German translation of the business name is used, the business name must be added in the original language.

SECTION XXI: SAVINGS ASSOCIATIONS AND EMPLOYEE SAVINGS PLANS

Article 95. (1) Associations pursuant to the VerG 2002, Federal Law Gazette I No. 66/2002, and the Associations Code 1852 (Vereinspatent 1852) must not conduct banking transactions, the provisions of para. 2 notwithstanding. Savings associations may only accept funds from their members if those funds are immediately deposited with a credit institution on behalf of the savings association members. Savings association members may be identified pursuant to Article 6 para. 3 FM-GwG by a body of the association.
(1a) By way of derogation from para. 1, the FMA may stipulate by means of a regulation, that lesser measures than the obligations stipulated in Article 40 para. 2 with regard to ascertaining and verifying the identity of members of savings associations may be applied if the FMA comes to the conclusion on the basis of a risk analysis that it has carried out that savings associations as customers of credit institutions present a low risk of money laundering and terrorist financing; the FMA shall ensure in such a regulation that the lesser measures shall only be allowed to apply subject to an assessment by the credit institution that there is a low risk of money laundering and terrorist financing and may only be applied to those members of savings associations whose annual amount saved does not exceed EUR 1 500.
(2) By way of derogation from para. 1, associations which were founded on the basis of the Associations Code 1852 and which were already allowed to conduct banking transactions under the previous legal provisions and their articles of association upon this federal act's entry into force may continue to conduct those transactions. The provisions governing credit cooperatives in this federal act are applicable to such associations.
(3) Special savings facilities created within an undertaking which accept deposits from the undertaking's own employees and from which the employer is obliged as such (employee savings plans) are prohibited. Employers may only accept funds from their employees if those funds are immediately deposited with a credit institution in the name of and on behalf of the individual employees.

(4) Conducting deposit business is prohibited in cases where a majority of depositors are legally entitled to receive loans or procure goods on credit using those deposits (special-purpose savings enterprises); this does not apply to building societies with regard to their building and loan business.

SECTION XXII: PROCEDURAL AND PENAL PROVISIONS

Article 96. The enforcement of administrative decisions in accordance with this Federal Act by means of fines as coercive penalties shall also be permitted against statutory bodies under public law.

Article 97. (1) The FMA shall impose interest on the credit institutions, responsible undertakings pursuant to Article 30 para. 6 and the central body of an affiliation of credit institutions in accordance with Article 30a for the following amounts:

1. 2% on the amount by which the credit institution falls below the own funds requirements pursuant to Article 92 of Regulation (EU) No 575/2013, Article 70 para. 4a no. 1 of this federal act and Article 16 (2) lit. a) of Regulation (EU) No 1024/2013, calculated on an annual basis, for 30 days, except in the case where there is a threat to creditors pursuant to Article 70 para. 2 or in cases where the credit institution is overindebted;
2. 2% on the amount by which the credit institution exceeds the limits to large exposures pursuant to Article 395 (1) of Regulation (EU) No 575/2013, calculated on an annual basis, for 30 days, except in the case of the upper limit being permitted to be exceeded pursuant to Article 395 (5) of Regulation (EU) No 575/2013 in the case where there is a threat to creditors pursuant to Article 70 para. 2 or in cases where the credit institution is overindebted.

(2) The interest amounts required pursuant to para. 1 are to be paid to the federal government.

Article 98. (1) Any person who

1. conducts banking transactions pursuant to lit. a of Article 4 (1) point 1 of Regulation (EU) No 575/2013 without the necessary authorisation to do so, or
2. conducts at least one of the activities pursuant to lit. b of Article 4 (1) point 1 of Regulation (EU) No 575/2013, with the threshold listed in lit. b of Article 4 (1) point 1 of Regulation (EU) No 575/2013 having been reached, without holding a licence as a credit institution,

commits an administrative offence and shall be punished by the FMA with a fine of up to EUR 5 000 000 or up to double the amount of the gain arising from the breach, where this amount is able to be determined.

(1a) Any person who conducts banking transactions other than those referred to in para. 1 without the required authorisation commits an administrative offence and shall be punished by the FMA with a fine of up to EUR 100 000.

(1b) Any person who, as the person responsible (Article 9 VStG) of a financial holding company or a mixed financial holding company, omits to submit an application for a licence or for exemption from the obligation to hold a licence pursuant to Article 7b paras. 1 and 2 or who breaches other obligations pursuant to Article 7b, commits an administrative offence and shall be punished by the

FMA with a fine of up to EUR 5 000 000 or up to double the amount of the gain arising from the breach, where this amount is able to be determined..

(1c) Any person who, as the person responsible (Article 9 VStG) of a responsible undertaking pursuant to Article 30 para. 6, omits to take measures that might be necessary in order to ensure the observance of the supervisory requirements determined in Parts 3, 4, 6 or 7 of Regulation (EU) No 575/2013, or those prescribed pursuant to Article 70 para. 4a no. 1 or § 70d on a consolidated or partially consolidated basis, commits an administrative offence and shall be punished by the FMA with a fine of up to EUR 5 000 000 or up to double the amount of the gain arising from the breach, where this amount is able to be determined.

(2) Any person who, as person responsible (Article 9 VStG) for a credit institution or, at an affiliation of credit institutions in cases nos. 1, 2, 4b, 7, 7a, 8 and 11 as the person responsible (Article 9 VStG) for the central body,

1. fails to notify the FMA in writing in accordance with Article 10 para. 5 regarding changes in the conditions of information pursuant to Article 10 para. 2 nos. 2 to 4 and para. 4 nos. 2 to 6;
2. fails to notify the FMA regarding the activities indicated in points 1 to 15 of Annex I to Directive 2013/36/EU in accordance with Article 10 para. 6;
3. repealed
4. repealed

4a. fails to notify the FMA in writing of the result of the election of the chairman of the supervisory board pursuant to Article 28a para. 4;

4b. repealed

5. fails to provide the responsible undertaking pursuant to Article 30 para. 6 with all information required for consolidation in accordance with Article 30 para. 7;

5a. fails to provide the central body with all the information necessary for the consolidation pursuant to Article 30a para. 8;

6. repealed;
7. fails to notify the FMA immediately in writing of the circumstances indicated in Article 73 paras. 1 and 1b or in Regulation (EU) No 575/2013;

7a. fails to provide the written notice of any changes in the composition of the members of the affiliation of credit institutions, or of the fact that the conditions set forth in para. 1 are no longer met, or that the affiliation of credit institutions is no longer able to meet the prudential requirements under para. 7, in accordance with Article 30a para. 5;

8. repeatedly fails to report the information specified in Articles 74, 74a and 75 to the FMA or the Oesterreichische Nationalbank within the defined periods, or in accordance with the form requirements set forth by law or regulation, or repeatedly submits inaccurate or incomplete information;
9. repealed
10. repealed

11. breaches the notification obligations set forth in Article 73 paras. 4 and 4a or those stipulated in a regulation by the FMA pursuant to Article 21a, or the presentation and reporting requirements set forth in Article 44 paras. 1 to 6;
12. breaches the provisions of the Regulation pursuant to Article 23h;

commits an administrative offence and shall be punished by the FMA with a fine of up to EUR 60 000.

(3) Any person who, as person responsible (Article 9 VStG) for a credit institution,

1. fails to indicate the annual interest rate applicable to a savings deposit in a conspicuous place in the savings document in accordance with Article 32 para. 6;
2. fails to record changes in the annual interest rate in the savings document upon the next presentation of the document, including an indication of the date on which the interest rate takes effect;
3. fails to provide immediate written notification pursuant to Article 73 para. 3;
4. fails to provide the written notification pursuant to Article 25 para. 5;
5. repealed
6. repealed
7. repealed
8. concludes consumer current account agreements which do not contain the information required pursuant to Article 34 para. 2;
9. fails to inform the customer of their account balance on a quarterly basis in accordance with Article 34 para. 3;
10. fails to make the information required pursuant to Article 35 para. 1 accessible in businesss premises that are accessible for the consumers or in electronic form on its website;
11. repealed

11a. fails to comply with the price display requirement pursuant to Article 35 para. 3 in its entirety;

12. breaches the due diligence of Article 36,

commits an administrative offence and shall be punished by the FMA with a fine of up to EUR 10 000.

(4) Any person who, as the person responsible (Article 9 VStG) for a credit institution, breaches the prohibition to dispose over accounts pursuant to Article 78 para. 7, even through mere negligence, commits an administrative offence and shall be punished by the FMA with a term of imprisonment of up to six weeks or a fine of up to EUR 100 000.

(5) Any person who, as persons responsible (Article 9 VStG) for a credit institution,

1. permits a situation in which the credit institution fails to hold liquid assets as defined in Article 412 of Regulation (EU) No 575/2013 repeatedly or continuously;
2. incurs exposures that exceed the limits as referred to in Article 395 of Regulation (EU) No 575/2013;
3. in breach of Article 24, makes payments to holders of instruments included in the credit institution’s own funds, or if such payments to owners of own funds instruments are not admissible pursuant to Articles 28, 52 or 63 of Regulation (EU) No 575/2013;

4. breaches the obligations of Article 39 or of an FMA Regulation issued pursuant to Article 39 para. 4;
5. has obtained the licence pursuant to Article 4 para. 1 or pursuant to Article 7b by providing false information or taking deceptive action, or by other fraudulent means

commits an administrative offence and shall be punished by the FMA with a fine of up to EUR 5 million or up to twice the amount of the benefit derived from the breach, to the extent that this can be quantified.

(5a) Any person who, as person responsible (Article 9 VStG) for a credit institution,

1. fails to notify the FMA in writing of any acquisition and any disposal pursuant to Article 20 paras. 1 and 2 in accordance with Article 20 para. 3;
2. fails to notify the FMA in writing in accordance with Article 20 para. 3 of the identity of shareholders or other members with qualifying holdings, as well as the amounts of such holdings as shown in particular in the information received on the occasion of the annual general meeting of shareholders or other members, or in the information received on the basis of Articles 130 to 136, 138 and 139 BörseG 2018;
3. (repealed)
4. omits reporting to the FMA pursuant to Part 7a of Regulation (EU) No 575/2013, or who submits only incomplete or incorrect information;
5. fails to submit data on losses from immovable residential property as collateral pursuant to Article 101 of Regulation (EU) No 575/2013 to the FMA, or submits only incomplete or incorrect data;
6. fails to report information on large exposures pursuant to Article 394(1) of Regulation (EU) No 575/2013, or submits only incomplete or incorrect information;
7. fails to report information on liquidity pursuant to Article 415(1) and (2) of Regulation (EU) No 575/2013 to the FMA, or submits only incomplete or incorrect information;
8. fails to submit the information on the leverage ratio as referred to in Article 430(1) of Regulation (EU) No 575/2013 to the FMA, or submits only incomplete or incorrect information;
9. (repealed)
10. (repealed)
11. breaches the obligations for the sharing of information with deposit guarantee facilities pursuant to Article 93;

commits an administrative offence and shall be punished by the FMA with a fine of up to EUR 150 000, in the case of an administrative offence pursuant to no. 3 with imprisonment of up to six weeks or a fine of up to EUR 150 000.

(5b) Any person who, as person responsible (Article 9 VStG) for a branch of a credit institution pursuant to Article 9 para. 1

1. repeatedly fails to report the information specified in Articles 74, 74a and 75 to the FMA or the Oesterreichische Nationalbank within the defined periods, or in accordance with the form

requirements set forth by law or regulation, or repeatedly submits inaccurate or incomplete information;
2. breaches the presentation and reporting requirements prescribed in Article 44 paras. 3 to 6;
3. fails to indicate the annual interest rate applicable to a savings deposit in a conspicuous place in the savings document in accordance with Article 32 para. 6;
4. fails to record changes in the annual interest rate in the savings document upon the next presentation of the document pursuant to Article 32 para. 6, including an indication of the date on which the interest rate takes effect;
5. concludes consumer current account agreements which do not contain the information required pursuant to Article 34 para. 2;
6. fails to inform the customer of their account balance on a quarterly basis in accordance with Article 34 para. 3;
7. fails to make the information required pursuant to Article 35 para. 1 and Article 103 no. 32 accessible in business premises accessible for consumers or in electronic form on its website, post it in the lobby or fails to inform depositors;
8. fails to comply either partly or in entirety with the obligations for displaying prices pursuant to Article 35 para. 3;
9. breaches the due diligence obligations of Article 36,
10. breaches the obligations set out in Article 39,
11. breaches the provisions on cover reserves pursuant to Article 216 ABGB (Articles 66 to 68);
12. breaches the provisions of the Regulation issued pursuant to Article 23h of this federal act;

commits, an administrative offence and shall be punished by the FMA with regard to nos. 1, 2 and 11 with a fine of up to EUR 60 000, with regard to nos. 3 to 9 with a fine of up to EUR 10 000, and with regard to no. 10 with a fine of up to EUR 5 million or up to twice the amount of the benefit derived from the breach, to the extent that this can be quantified.

(5c) Any person who, as person responsible (Article 9 VStG) for a branch of a financial institution pursuant to Article 11 or Article 13

1. repeatedly fails to report the information specified in Articles 74, 74a and 75 to the FMA or the Oesterreichische Nationalbank within the defined periods, or in accordance with the form requirements set forth by law or regulation, or repeatedly submits inaccurate or incomplete information;
2. breaches the presentation and reporting requirements prescribed in Article 44 paras. 3 to 6;
3. concludes consumer current account agreements which do not contain the information required pursuant to Article 34 para. 2;
4. fails to inform the customer of their account balance on a quarterly basis in accordance with Article 34 para. 3;
5. fails to post the information required pursuant to Article 35 para. 1 and Article 103 no. 32 in the lobby or fails to inform depositors;

6. fails to comply either partly or in entirety with the obligations for displaying prices pursuant to Article 35 para. 3;
7. breaches the due diligence obligations of Article 36,
8. breaches the obligations set out in Article 39,

commits an administrative offence and shall be punished by the FMA with regard to nos. 1 and 2 with a fine of up to EUR 60 000, with regard to nos. 3 to 7 with a fine of up to EUR 10 000, and with regard to no. 8 with a fine of up to EUR 5 million or up to twice the amount of the benefit derived from the breach, to the extent that this can be quantified, where the provisions listed pursuant to Article 11 para. 5 or Article 13 para. 4 are required to be complied with by the financial institution for the activities that it conducts.

(5d) Any person who, as person responsible (Article 9 VStG) of a credit institution, breaches the provisions of Articles 137 to 138 GewO 1994, of a Regulation issued on the basis of Article 69 para. 2 GewO 1994 with regard to the performance of trade of insurance mediation pursuant to Articles 137 to 138 GewO 1994 (Professional Rules of Conduct for Insurance Mediation), of Delegated Regulation (EU)2017/2358 or of Delegated Regulation (EU)2017/2359 commits an administrative offence and shall be punished by the FMA with a fine of up to EUR 700 000 or up to twice the amount of the benefit derived from the breach, to the extent that this can be quantified.

(6) In the event of a breach of an obligation as defined in Article 10 para. 5 regarding the notification of changes in the conditions of information pursuant to Article 10 para. 2 nos. 2 to 4 and para. 4 no. 2, Article 10 para. 6, Article 20 para. 3, Article 25 para. 5, Article 73 para. 1 no. 1 regarding changes to the articles of association, Article 73 para. 1 nos. 4 and 7, Article 73 para. 1 nos. 11 and 14, Article 73 para. 1b, as well as Article 73 para. 2, the FMA shall refrain from initiating and conducting administrative penal proceedings if the notification not duly submitted was subsequently made before the FMA or the Oesterreichische Nationalbank gained knowledge of said breach. This shall also apply to procedures pursuant to Article 99d paras. 1 and 2.

Article 99. (1) Any person who

1. as the person responsible (Article 9 VStG) for a financial holding company or a mixed financial holding company, fails to provide written notification pursuant to Article 73 para. 1a;
2. repealed
3. fails to notify the FMA in writing of any acquisition and any disposal pursuant to Article 20 paras. 1 or 2;
4. carries out an acquisition or a disposal pursuant to Article 20 paras. 1 or 2 during the assessment period pursuant to Article 20a para. 1 or despite an objection pursuant to Article 20a para. 2;
5. repealed
6. as the person responsible (Article 9 VStG) for a subordinate institution or a superordinate financial holding company, fails to provide the responsible undertaking pursuant to Article 30 para. 6 with all of the information required for consolidation in accordance with Article 30 para. 7;

6a. as the person responsible (Article 9 VStG) for a superordinate financial holding company, mixed financial holding company or mixed holding company, or a subsidiary of such companies, fails to provide the credit institution with all of the information required pursuant to Article 70a para. 1;

6b. as the person responsible (Article 9 VStG) for an institution that is subordinate to a central body or to a credit institution associated with the central body, fails to provide the central body with all information necessary for consolidation pursuant to Article 30a, para. 8;

7. uses the designation "Sparbuch" (savings passbook), "Sparbrief" (savings certificate) or "Sparkassenbuch" (savings bank passbook) without being entitled to do so in breach of Article 31 para. 2;

8. repealed;

9. repealed;

10. as bank auditor, breaches Article 63 para. 3 by failing to notify the FMA and the Oesterreichische Nationalbank in writing of facts or justified doubts identified by the bank auditors pursuant to Article 63 para. 3 along with explanations immediately, or in the case of slight defects which can be remedied in the short term only once the bank fails to remedy the defects within a period of no more than three months as stipulated by the bank auditor, or fails to submit notification when the directors fail to provide information requested by the bank auditor within the period defined by the bank auditor; this also applies to the persons named in accordance with Article 88 para. 7 WTBG in cases where an external auditing company is appointed as the bank auditor;

11. as the person responsible (Article 9 VStG) for a representative office, fails to comply with the reporting requirements set forth in Article 73 para. 2 within one month;

12. as the person responsible (Article 9 VStG) for a financial institution or an insurance undertaking, fails to comply with the reporting obligation pursuant to Article 75;

13. repealed;

14. repealed;

15. uses the designation "*Geldinstitut*" (money institution), "*Kreditinstitut*" (credit institution), "*Finanzinstitut*" (financial institution), "*Finanz-Holdinggesellschaft*" (financial holding company), "*Wertpapierfirma*" (investment firm), "*Kreditunternehmung*", "*Kreditunternehmen*" (credit undertaking), "*Bank*" (bank), "*Bankier*" (banker), "*Sparkasse*" (savings bank), "*Bausparkasse*" (building society), "*Volksbank*" (people's bank), "*Landes-Hypothekenbank*" (state mortgage bank), "*Raiffeisen*" or any designation containing one of those words without being entitled to do so in breach of Article 94;

16. as the person responsible (Article 9 VStG) for a credit institution or as the auditor pursuant to Article 216 ABGB, breaches the provisions governing cover reserves pursuant to Article 216 ABGB (Articles 66 to 68);

17. disposes over accounts or provides other financial services in breach of directly applicable provisions of EU law, without such disposals constituting an administrative offence pursuant to the DevG;
18. contractually transfers or acquires savings documents for which the customer's identity has not been ascertained pursuant to the provisions of the FM-GwG in breach of Article 31 para. 5,
19. repealed

commits an administrative offence and shall be punished by the FMA with a fine of up to EUR 60 000, in the case of no. 10 up to EUR 100 000.

(2) Any person who, as person responsible (Article 9 VStG) for a financial institution, breaches obligations pursuant to Articles 40, 40a, 40b, 40d, and 41 para. 1 through 4, even through mere negligence, commits an administrative offence and shall be punished by the FMA with a term of imprisonment of up to six weeks of prison or a fine of up to EUR 150 000.

Article 99a. (1) If, as the superordinate institution, a financial holding company fails to provide the responsible undertaking pursuant to Article 30 para. 6 with all of the information required for consolidation pursuant to Article 30 paras. 7 and 8 despite measures pursuant to Article 99 para. 1 no. 6 in conjunction with Article 96, and if this objective cannot be attained through other measures, then the FMA may request the suspension of voting rights for the shares held by group institutions in these subordinate institutions from the competent first-instance commercial courts at the domestic subordinate institutions' place of incorporation.

(2) If a court orders the suspension of voting rights in accordance with para. 1, then the court must simultaneously appoint and transfer the exercise of the voting rights to a trustee who fulfils the requirements of Article 5 para. 1 no. 3. The voting rights of the shareholders are to be suspended until the court has established that the conditions pursuant to para. 1 are no longer fulfilled. This must be communicated to the FMA.

(3) The trustee has the right to reimbursement of their expenses and to remuneration for their activities in an amount to be determined by the court. The financial holding company and the subordinate institution concerned are to bear joint and several liability for those expenses and remuneration. The obliged parties may appeal decisions determining the amount of remuneration for the trustee and the expenses to be reimbursed to him/her. Appeals beyond rulings of the provincial superior court will not be permitted.

Article 99b. (repealed)

Article 99c. (1) The FMA may publish the name of the relevant person, credit institution, financial holding company or mixed financial holding company in the event of a breach pursuant to Article 98 para. 1, para. 1b, para. 1c, para. 2 nos. 7 and 11, para. 5, para. 5a or Article 99 para. 1 nos. 3 or 4 or a breach of the provisions of Article 5 para. 1 nos. 6 to 9a or Article 28a para. 5 nos. 1 to 5, detailing the breach committed, provided that such disclosure does not seriously jeopardise the stability of the financial markets or cause a disproportionately high level of damage to the parties concerned.

(2) Non-appealable fines imposed due to breaches pursuant to Articles 98 para. 1, para. 1b, para. 1c, para. 2 nos. 7 and 11, para. 5, para. 5a or Article 99 para. 1 nos. 3 or 4 and Article 99d shall be

published on the internet immediately by the FMA, including details of the identity of the sanctioned person and information on the type and nature of the underlying breach.

(3) Publication pursuant to para. 2 shall be carried out on an anonymous basis if the disclosure of names:

1. of a sanctioned natural person would be disproportionate, or
2. would jeopardise the stability of the financial markets or a Member State or several Member States of the European Union, or
3. would jeopardise implementation of current criminal law investigations, or
4. the parties concerned would suffer a disproportionately high level of damage, insofar as it can be determined.

If there are grounds for anonymous publication pursuant to nos. 1 to 4, but it can be assumed that these grounds will cease to exist in the foreseeable future, the FMA may refrain from an anonymous publication and publish the sanction also pursuant to para. 1 once the grounds pursuant to nos. 1 to 4 have ceased to apply.

(4) The person subject to this publication may request that the FMA review the lawfulness of the publication pursuant to paras. 1, 2 or 3 in a procedure resulting in an administrative decision. In this case, the FMA shall notify the public of the initiation of such a procedure in the same way. If the review concludes that the publication was unlawful, the FMA shall correct the publication, or, at the request of the concerned party, revoke it or remove it from the internet. If a complaint brought against an administrative decision that was made public in accordance with paras. 1, 2 or 3 is suspended in proceedings before courts of public law, the FMA shall make this known in the same manner. The publication shall be corrected, or, at the request of the concerned party, revoked or removed from the internet if the administrative decision is reversed.

(5) If a publication pursuant to paras. 2 or 3 is not to be revoked or removed from the internet pursuant to a decision in accordance with para. 4, it shall be maintained for a period of at least five years. Publication of the personal data shall however only be maintained for as long as none of the criteria pursuant to para. 3 nos. 1 to 4 are fulfilled.

(6) Article 256a VAG 2016 shall apply to breaches pursuant to Article 98 para. 5d.

Article 99d. (1) The FMA may impose fines on legal persons if persons who acted individually or as part of a body of a legal person and who have a leading position within the legal person on the basis of:

1. a power of representation of the legal person,
2. an authority to take decisions on behalf of the legal person, or
3. an authority to exercise control within the legal person

have acted in breach of the obligations listed in Article 98 para. 1, para. 1b, para. 1c, para. 2 nos. 7 and 11, paras. 5, 5a or 5d, Article 99 para. 1 nos. 3 or 4 unless the act constitutes a criminal offence falling under the jurisdiction of the courts.

(2) Legal persons may also be held responsible for breaches of the obligations listed in Article 98 para. 1, para. 1b, para. 1c, para. 2 nos. 7 and 11, paras. 5, 5a or 5d or Article 99 para. 1 nos. 3 or 4 if

such breaches by a person acting for the legal person were made possible by a lack of supervision or control by one of the persons referred to in para. 1, unless the act constitutes a criminal offence falling under the jurisdiction of the courts.

(3) The fine pursuant to para. 1 or 2 shall amount to up to 10% of the total annual turnover pursuant to para. 4 or up to twice the amount of the benefit derived from the breach, to the extent that this can be quantified, however, in the case of a breach of Article 98 para. 5d up to EUR 5 000 000 or up to 5% of the total annual net turnover or up to twice the amount of the benefit derived from the breach, to the extent that this can be quantified.

(4) The annual total net sales pursuant to para. 3 in the case of credit institutions is the total amount of all income listed in nos. 1 to 7 of Annex 2 to Article 43 minus the listed expenses; if the company is a subsidiary, the relevant amount for annual total net sales shall result from the consolidated account of the ultimate parent undertaking in the preceding business year. With regard to other legal persons, the relevant figure shall be annual total sales. If the FMA cannot determine or calculate the basis for total sales figures, it shall make an estimate, taking into account all relevant circumstances.

(5) (repealed)

Article 99e. When determining the type of sanction or measure in response to breaches of the provisions of the federal acts listed in Article 70 para. 4, to breaches of regulations or administrative decisions enacted on the basis of these federal acts, or to breaches of the terms of Regulation (EU) No 575/2013, and when setting the amount of a fine, the FMA shall, as far as appropriate, take account of the following circumstances in particular:

1. the gravity and duration of the breach;
2. the degree of responsibility of the natural or legal person responsible;
3. the financial strength of the responsible natural or legal person as indicated, for example, by the total sales of the responsible legal person or the annual income of the responsible natural person;
4. the amount of the gains made or losses avoided by the responsible natural or legal person, insofar as they can be determined;
5. the losses caused to third parties by the breach, insofar as they can be determined;
6. the level of cooperation of the responsible natural or legal person with the competent authority;
7. previous breaches by the responsible natural or legal person; and
8. any potential systemic consequences of the breach.

The provisions of the VStG shall be unaffected by this paragraph.

Article 99f. (1) The FMA shall report all sanctions imposed in response to breaches of Article 98 para. 1, para. 1b, para. 1c, para. 2 nos. 7 and 11, para. 5, para. 5a or Article 99 para. 1 nos. 3 or 4 and Article 99d to the EBA. If a sanction imposed by the FMA is subject to a review of legality, both this fact and the outcome of the appeal proceedings must also be reported to the EBA.

(2) If the FMA has published legally final fines and measures pursuant to Article 99c para. 6 for breaches of Article 98 para. 5d, then it shall at the same time notify EIOPA about this.

(3) Furthermore, the FMA shall also notify EIOPA about all fines and measures imposed for breaches pursuant to Article 98 para. 5d that were not published pursuant to Article 99c para. 6. If an appeal procedure was initiated, then the FMA shall also report this fact as well as the outcome of the appeal proceedings to the EIOPA.

Article 99g. (1) Credit institutions must have appropriate procedures in place to enable their employees, whilst keeping their identity confidential, to report to an appropriate body any internal breaches of the provisions of the federal acts listed in Article 70 para. 4, of the regulations or administrative decisions enacted on the basis of these federal acts, of the terms of Regulation (EU) No 575/2013, or of an administrative decision enacted on the basis of this Regulation. The procedures pursuant to this paragraph must comply with the requirements of para. 3 nos. 2 to 4.

(2) The FMA shall establish effective mechanisms to encourage the reporting of breaches or suspected breaches of the provisions of the federal acts listed in Article 70 para. 4, of the regulations or administrative decisions enacted on the basis of these federal acts, of the terms of Regulation (EU) No 575/2013, or of an administrative decision enacted on the basis of this Regulation.

(3) The mechanisms listed in para. 2 shall at least include:

1. specific procedures for the receipt of reports on breaches and their follow-up;
2. appropriate protection for employees of credit institutions who report breaches committed within the institution, against retaliation, discrimination or other forms of harassment at a minimum;
3. protection of personal data in accordance with the principles of Regulation (EU) 2016/679, concerning both the person who reports the brreaches and the natural person who is allegedly responsible for a breach;
4. clear rules to guarantee that the identity of the person who reported the breach is not disclosed, unless such disclosure of identity is obligatory in relation to public prosecution, court or administrative proceedings.

Article 100. (1) Parties who conduct banking transactions without the required authorisation are not entitled to any remuneration, especially interest and commissions, associated with those transactions. The legal invalidity of agreements associated with those transactions does not render the overall banking transaction legally invalid. Agreements to the contrary as well as suretyships and guarantees associated with those transactions are legally invalid.

(2) Parties who conduct banking transactions without the required authorisation cannot invoke Article 1 para. 5.

Article 101. (1) Parties who disclose or exploit facts subject to banking secrecy in order to create an economic advantage for themselves or others, or in order to place others at a disadvantage, are to be punished by the court with a term of imprisonment of up to one year or with a fine of up to 360 per diem rates.

(2) In the case of para. 1, the offender is to be prosecuted only with the authorisation of the person whose interest in secrecy was breached.

Article 101a. Fines imposed by the FMA pursuant to Article 98 para. 1, para. 1b, para. 1c, Article 98 para. 3 no. 3, Article 98 para. 5, Article 98 para. 5a nos. 4 to 11, Article 99 para. 1 no. 1 and Article 99d shall be received by the federal government.

SECTION XXIII: REPEALED

Article 102. repealed

Article 102a. repealed

SECTION XXIV: TRANSITIONAL AND FINAL PROVISIONS

Transitional Provisions

Article 103. The following transitional provisions will apply once this federal act enters into force:

1. (regarding Article 1 para. 1 nos. 22 and 23) Authorisations to conduct exchange bureau business and remittance services business on the basis of the GewO 1994 which existed at the time Article 1 para. 1 no. 22 as amended by Federal Law Gazette I No. 35/2003 entered into effect are to expire as of 30 June 2004.
2. (regarding Article 3 para. 1 no. 12) The exception contained in Article 3 para. 1 no. 12 of this federal act in the version of Federal Law Gazette I No. 69/2015 shall also apply to the central securities depository that has been entrusted by regulation by the Federal Ministry of Justice of 9 April 1965, as published in Federal Law Gazette No. 95/1965; a central securities depository pursuant to Article 1 para. 3 of the Securities Deposit Act; or a subsidiary of the central securities depository that continues to perform this function, until a final decision has been taken with regard to the application for authorisation as a central securities depository pursuant to Regulation (EU) No 909/2014.
3. repealed.
4. repealed.
5. (regarding Article 4 para. 1) In cases where a credit institution was permitted to conduct banking transactions under the previous legal provisions prior to the entry into force of this federal act, a licence pursuant to Article 4 para. 1 is not required.
6. (regarding Article 5 para. 1 no. 9) A confirmation from the home country is not required for directors who are not Austrian nationals and who have already been appointed at the time when this federal act enters into force.
7. (regarding Article 9) Branches of credit institutions from Member States which are authorised to conduct banking transactions in Austria at the time when this federal act enters into force are assumed to have undergone the procedure pursuant to Article 9 paras. 1 to 4. Article 9 paras. 5 and 7 as well as Article 15 are applicable in this context.

8. (regarding Articles 11 and 13) Branches of financial institutions from Member States which are authorised to carry out the activities listed in points 2 to 14 of the Annex to Directive 89/646/EEC in Austria at the time when this federal act enters into force are assumed to have undergone the procedure pursuant to Article 11 paras. 1 to 3 or Article 13 paras. 1 to 3. Article 11 para. 5, Article 13 para. 4 and Article 17 are applicable in this context.
9. (regarding Article 22 para. 1)
   a. In cases where the own funds of a credit institution or group of credit institutions are below 8% of the assessment base on 1 January 1994, they must be increased to that level by 1 January 1995. As long as this target has not been attained, the following provisions apply:
      aa) during the year, the credit institution must not allow the coefficient to fall below the level attained;
      bb) during the year, the superordinate credit institution must not allow the coefficient to fall below the level attained;
      cc) the credit institution and institutions in the group of credit institutions may not make use of the freedom to provide services and the freedom of establishment pursuant to Articles 10, 12 and 14;
   b. repealed
   c. repealed
   d. In cases where the own funds of a building society are below 8% of the assessment base on 1 January 1994, they must be increased from the percentage as of that date in equal annual percentage increments to 8% of the assessment base from 31 December 1994 to 1 January 1999. Lit. a sublit. aa to cc are to be applied analogously.

9a. repealed.

10. (regarding Article 22 para. 3)
   a. Monetary claims which are refinanced by mortgage bonds and municipal bonds pursuant to the provisions of the PfandbriefG 1927, German Imperial Law Gazette I p. 492 and of the HypBG in the version of German Imperial Law Gazette I p. 1574/1938 and which serve the purpose of covering the securities may be assigned a weight of 50%.
   b. Mortgage bonds, municipal bonds and funded bank bonds issued pursuant to the provisions of the PfandbriefG 1927, German Imperial Law Gazette I p. 492, the PfandbriefG in the version of German Imperial Law Gazette I p. 1574/1938 and the Act of 27 December 1905 on Funded Bank Bonds (Imperial Law Gazette No. 213) are to be assigned a weight of 10%.
   c. Asset items arising from real estate leasing transactions are to be assigned a weight of 50% if the leased asset is located in Austria and used for commercial purposes, and if the lessor retains unrestricted ownership of the leased asset until the lessee exercises their option to purchase the asset.

d. Credit institutions pursuant to Article 3 para. 1 no. 4 may assign a weight of 0% to exposures to legally recognised religious communities and closely related institutions where the exposures are refinanced by debt securities issued prior to 1 January 1993.

e. Credit institutions pursuant to Article 3 para. 2 no. 6 may assign a weight of 0% to exposures to credit institutions belonging to the same sector where the exposures are refinanced by debt securities issued prior to 1 January 1993.

f. Loans which are completely secured by mortgages on offices or multi-purpose commercial premises located in the territory of a Member State which permits the assignment of a weight of 50% may be assigned a weight of 50% subject to the provisions set forth below. In this context, a risk weight of 50% is assigned to that portion of the loan which does not exceed the upper limit calculated in accordance with sublit. aa or bb. The portion of the loan which exceeds that upper limit is assigned a risk weight of 100%. The real estate property must be either occupied or let by the owner.

   aa) Upper limit: 50% of the market value of the property in question: The market value of the property must be calculated by two independent valuers who carry out independent assessments at the time when the loan is granted. The loan is to be based on the lower of the two valuations. The property must be revalued by one valuer at least once per year. In the case of loans which do not exceed EUR 1 million and 5% of the credit institution's own funds, the property must be revalued by one valuer at least once every three years.

   bb) Upper limit: 50% of the market value of the property or 60% of the mortgage lending value, whichever is lower, in Member States whose laws, regulations and administrative provisions include rigorous criteria for the assessment of mortgage lending values: The mortgage lending value refers to the value of the property as determined by a valuer in a prudent assessment of the future marketability of the property, taking into account long-term sustainable aspects of the property, the normal and local market conditions, the current use and alternative appropriate uses of the property. No speculative elements may be taken into account in the assessment of the mortgage lending value. The mortgage lending value must be documented in a transparent and clear manner.

The mortgage lending value and in particular the underlying assumptions regarding the development of the relevant market must be reassessed at least every three years or whenever the market value decreases by more than 10%.

In the cases of sublit. aa and bb, the market value refers to the price at which the property could be sold under a private contract between a willing seller and an arm's-length buyer on the date of the valuation, based on the underlying assumptions that the property is publicly exposed to the market, that market conditions permit orderly disposal and that a normal period of time is available for the negotiation of the sale in light of the nature of the property. Loans outstanding as of 1 January 1999,

may be assigned a weight of 50% if the requirements set forth in this paragraph are fulfilled. In such cases, the value of the property must be assessed according to the valuation criteria defined above at the latest three years after the time at which the directive is transposed.

11. (regarding Article 22 para. 4) In the case of joint and several guarantees for instruments issued by credit institutions prior to 1 January 1993, the internal portion is to be considered an off-balance sheet transaction involving high credit risk, while joint and several guarantees beyond that portion are considered to involve low risk.

11a. (regarding Article 22b para. 4) Credit institutions which exceed one of the limits pursuant to Article 22b para. 2 no. 3 or 4 as of 31 December 1997, must calculate the capital requirement for the trading book in accordance with Article 22b para. 1 from 1 January 1998 onward and notify the Federal Minister of Finance and the Oesterreichische Nationalbank of these circumstances immediately.

11b. repealed.

11c. (regarding Article 22g) The following maturity-based percentage rates apply to the specific position risk of mortgage bonds, municipal bonds and funded bank bonds issued prior to 1 January 1998 pursuant to the provisions of the PfandbriefG 1927, German Imperial Law Gazette I p. 492, the HypBG in the version of German Imperial Law Gazette I p. 1574/1938 and the Act of 27 December 1905 on Funded Bank Bonds (Imperial Law Gazette No. 213):

0 to 6 months	6 months to 24 months	Over 24 months
0.125%	0.5%	0.8%

11d. (regarding Article 22p paras. 8 and 12) Credit institutions may use the minimum spread, carry and outright rates set out in the table below instead of those indicated in Article 22p paras.8 and 12 provided that the institutions:

a. undertake significant commodities business;
b. have a diversified commodities portfolio; and
c. are not yet in a position to use internal models for the purpose of calculating the capital requirement for commodities risk in accordance with Article 26b.

	Precious Metals (except gold)	Base metals	Agricultural products (softs)	Other, including energy products
Spread rate (%)	1.0	1.2	1.5	1.5
Carry rate (%)	0.3	0.5	0.6	0.6
Outright rate (%)	8	10	12	15

12. (regarding Article 23 para. 6) The liability reserve allocated in the annual financial statements up to 31 December 2000, pursuant to Article 23 para. 6 in the version of Federal Law Gazette I No. 123/1999 must be maintained as such in the books, and the provisions governing usage according to designation pursuant to Article 23 para. 6 in the version of Federal Law Gazette I No. 123/1999 are still applicable. The percentage indicated in Article 23 para. 6 in the version of Federal Law Gazette I No. 33/2000 is to be applied to the increase in the assessment base from 1 January 2001 onward.
13. (regarding Article 23 para. 8 no. 4) Article 23 para. 8 no. 4 is to be applied to subordinate capital issued after 31 December 1993.
14. (regarding Article 23 para. 13 no. 1) Goodwill entered as an asset item in the last annual financial statements prior to 1 January 1994 is to be deducted in ten equal annual increments starting on the first balance sheet date after 1 January 1994.
15. (regarding Article 23 para. 13 no. 6) As an alternative to the provisions of Article 23 para. 13 no. 6, credit institutions associated with a central institution may deduct their direct or indirect shares in the central institution pursuant to Article 23 para. 13 no. 3 or 4 according to the following schedule:
    a. January 1994 to 31 December 1994: 15%
    b. January 1995 to 31 December 1995: 30%
    c. January 1996 to 31 December 1996: 45%
    d. January 1997 to 31 December 1997: 60%
    e. January 1998 to 31 December 1998: 80%
    f. from 1 January 1999: 100%
16. (regarding Article 24 para. 2 no. 2) The difference arising on the asset side from the aggregation of equity capital and participations as specified in Article 254 UGB is to be treated as a participation in an institution external to the group in the case of credit institutions and financial institutions which were not part of the banking group pursuant to Article 12 a para. 1 KWG in the version of Federal Law Gazette No. 325/1986, for a maximum period of ten years starting with the first balance sheet date after 1 January 1994, with an amount which is reduced by one tenth each year; Article 23 para. 13 is not applicable in this context.
17. (regarding Article 25) Original maturities are to be applied until 31 December 1996.
18. (regarding Article 26 para. 1) In applying exchange rates pursuant to Article 26 para. 1 no. 2, fluctuations against the respective Austrian currency are to be used as a basis for a period of three or five years from the time the schilling is replaced by the euro. In this context, the exchange rate irrevocably defined by the Council pursuant to Article 109 (1) (4) (first sentence) of the Treaty establishing the European Community is to be used for conversion from schillings to euros.

18a. (regarding Article 26 para. 1) Until 31 December 2004, credit institutions (groups of credit institutions) may calculate their own funds requirements by multiplying by 8% the amount by which the overall foreign exchange position exceeds 2% of their eligible capital (allowance).

19. (regarding Article 26 para. 5 and Article 26a) For credit institutions pursuant to no. 21 lit. a, the assessment base is to be increased by the funding deposits where these are eligible pursuant to no. 21 lit. a until 31 December 1998.

20. (regarding Article 26a para. 6) Approval is not required in cases where a credit institution has already obtained approval of a similar nature pursuant to Article 14a para. 7 KWG 1979, No. 63/1979, in the version of Federal Law Gazette No. 325/1986 or pursuant to Article 26 para. 7 of this federal act as amended by Federal Law Gazette No. 532/1993.

20a. (regarding Article 26b) Credit institutions which submit a request to the Federal Minister of Finance prior to 1 January 1998 for special approval to calculate capital requirements according to a model chosen by the credit institution may also employ this model with the consent of the Federal Minister of Finance without a special approval pursuant to Article 26b para. 3 until 31 December 1999 at the latest; consent is to be granted in cases where all of the following requirements are fulfilled:

   a. the model is in use at the credit institution at the time the request is submitted;
   b. the credit institution demonstrates that the model was created in accordance with the requirements of Article 26b para. 3 nos. 1 to 3;
   c. the credit institution has obtained an opinion from an independent expert regarding market requirements, their depiction in the model structure and the fulfilment of requirements pursuant to Article 26b para. 5 nos. 2 and 3;
   d. an affirmative short expert opinion has been obtained from the Oesterreichische Nationalbank; the Oesterreichische Nationalbank must review the fulfilment of individual requirements set forth in Article 26b para. 3 nos. 1 to 3 and in Article 26b para. 5 no. 1 by means of random samples and submit a statement on the likelihood that the model will be suitable on the basis of the review results; the Oesterreichische Nationalbank must also review whether any doubts exist regarding the independence of the expert appointed by the credit institution. The consent of the Federal Minister of Finance will expire once a decision has been made on the request for special approval pursuant to Article 26b para. 3 with a legally effective administrative decision.

21. (regarding Article 27)

   a. repealed.
   b. until 31 December 1998, those asset items, off-balance sheet transactions and special offbalance-sheet financial transactions whose value as determined pursuant to Article 27 para. 2 in the version of Federal Law Gazette No. 445/1996 is equal to 15% of the eligible capital of the credit institution or group of credit institution and amounts to at least ATS 7 million are considered to be large exposures.

c. Until 31 December 1998, 40% and 30% are to be applied as the upper limits for individual large exposures pursuant to Article 27 para. 7 in the version of Federal Law Gazette No. 445/1996 instead of the 25% and 20% limits specified in that act, respectively.

d. Large exposures which are contractually granted as of 1 January 1995, in an amount which exceeds the 40% limit may be maintained by the credit institution in order to fulfil the terms of the contact until the end of the agreed period subject to the conditions indicated under sublit. aa to dd below:

aa) Their amount must not be increased after 1 January 1997;

bb) The amount of the exposure as of 1 January 1997, must have already been agreed upon as of 1 January 1995;

cc) The term of the exposure must have already been agreed upon as of 1 January 1995;

dd) If no term is agreed upon or the exposure is incurred until further notice, then it must be terminated by 31 December 1998, at the latest.

Large exposures which exceeded the level of 30% as of 1 January 1995, and in which this limit is also exceeded as of 31 December 1998, may be maintained contractually subject to the conditions under sublits. aa to dd.

e. Large exposures which exceed the percentages of 25% or 20% as of 31 December 1998, must be reduced to those percentage levels by 31 December 2001, lit. d notwithstanding. However, an increase in the amount of the exposure is not permitted during the period between 1 January 1999 and 31 December 2001.

f. The following applies to credit institutions whose eligible capital does not exceed the amount of ATS 95 million as of 31 December 1998: The periods pursuant to lit. c and e are to be extended to 31 December 2003 and 31 December 2006, respectively.

g. Large exposures entered into prior to 1 January 2002, which are refinanced by mortgage bonds and municipal bonds pursuant to the provisions of the PfandbriefG and of the HypBG and which serve the purpose of covering the securities may be assigned a weight of 50%.

22. (regarding Article 29 paras. 1 and 2) Participations which exist at the time when this federal act enters into force and which exceed the specified limits must not be increased in size unless the increase is covered by own funds pursuant to Article 29 para. 4; these participations must be adjusted to the limits specified in Article 29 paras. 1 and 2 by 31 December 2002, at the latest.

22a. (regarding Article 30 para. 1) Only credit institutions will be considered superordinate institutions until 31 December 1999.

22b. (regarding Article 33 para. 6) The indication of the effective or notional annual interest rate and the amount of changes may be omitted in written consumer information if the credit agreement was concluded prior to 1 January 1994 and its term ends by 31 December 2002, at

the latest. If the written consumer information does not contain indications of the effective or notional interest rate, then the credit institution must

aa) indicate that other interest rates shown do not enable an accurate comparison with cost indications on the basis of the effective or notional interest rate, and

bb) communicate the effective or notional annual interest rate as well as the amount of any changes in writing at the express request of the consumer.

23. (regarding Article 33 para. 8) Article 33 para. 8 is not applicable to credit facilities granted prior to 1 January 1994.

24. (regarding Article 40 para. 2) Customers who maintain existing accounts on behalf of others must disclose this fact and provide evidence of the identity of the trustor to the credit institution or financial institution by 31 December 1994. Once this period has elapsed, credit institutions and financial institutions must proceed in accordance with Article 41 para. 1 (first sentence) in cases where they have reason to suspect that this disclosure obligation has been breached.

25. (regarding Article 42 para. 7) Article 42 para. 7 will enter into force as of 1 January 1995.

25a. (regarding Article 43 para. 3) This provision will no longer be applicable from the business year which begins after 31 December 2001.

25b. (regarding Article 44 paras. 3 to 6) Article 44 paras. 3 to 6 are to be applied for the first time to business years starting after 31 December 1995.

26. repealed.

27. (regarding Article 43 Annex 2) Annex 2 to Article 43 is to be applied for the first time to business years ending after 31 December 1994.

28. (regarding Articles 45 to 56, 58 and 59) Articles 45 to 56, 58 and 59 will enter into force as of 1 January 1995.

28a. (regarding Article 59 para. 1) Until 31 December 1999, the superordinate credit institution must also prepare consolidated financial statements and a consolidated management report for parent undertakings whose sole purpose is to acquire participations in subsidiary undertakings and to manage such subsidiaries and turn them to profit in cases where those subsidiaries are exclusively or mainly credit institutions.

28b. (regarding Article 62 no. 1) Auditors who were authorised to audit banks according to the regulations applicable prior to this provision's entry into force and who actually performed those obligatory auditing activities are to be considered authorised auditors as specified in Article 13 GenRevG 1997. Auditors must report this authorisation as a bank auditor to the Federal Ministry of Justice along with evidence of their previous activities by 30 September 1999; the Federal Ministry of Justice must make this authorisation visible in the list of authorised auditors (Article 13 para. 2 GenRevG 1997). Auditors who are authorised to audit banks are to be registered in the list of authorised auditors along with additional proof that they are authorised to audit banks on the basis of Article 61 BWG.

28c. Article 43 para. 1, Article 44 para. 1, Article 59a and Article 65 para. 1 of this federal act in the version of Federal Law Gazette I No. 161/2004 are to be applied for the first time to business years starting after 31 December 2004.

28d. Superordinate credit institutions which only have debt instruments admitted to trading on a regulated market as specified in Article 2 no. 37 or whose securities are admitted to public trading in a non-Member State and which have applied internationally recognised standards for this purpose since a business year which began prior to 11 September 2002, need only apply Article 59a of this federal act in the version of Federal Law Gazette I No. 161/2004 to business years starting after 31 December 2006. In such cases, Article 59a of this federal act in the version of Federal Law Gazette I. No. 97/2001 is still applicable.

28e. (regarding Article 61 para. 2, Article 62 nos. 4 and 6a) Article 61 para. 2 as well as Article 62 nos. 4 and 6a of this federal act in the version of Federal Law Gazette I No. 59/2005 are to be applied to business years starting after 31 December 2005, even in cases where the bank auditor was already appointed before that time in accordance with the previously applicable legal provisions.

28f. (regarding the removal of Article 62 no. 2) Article 62 no. 2 is no longer to be applied to audits of business years starting after 31 December 2005, even in cases where the bank auditor was already appointed before that time in accordance with the previously applicable legal provisions.

28g. (regarding Article 62a and the removal of Article 63 para. 8) Article 62a of this federal act in the version of Federal Law Gazette I No. 59/2005 is to be applied to audits of business years starting after 31 December 2005, even in cases where the bank auditor was already appointed before that time in accordance with the previously applicable legal provisions. Article 63 para. 8 is no longer to be applied to audits of business years starting after 31 December 2005, even in cases where the bank auditor was already appointed before that time in accordance with the previously applicable legal provisions.

29. (Article 63 para. 1) Article 63 para. 1 is to be applied for the first time to business years starting after 31 December 1994.

29a. Article 23 para. 13, Article 23 para. 14 no. 8, Article 24 para. 1, Article 30 para. 7a, Article 30 para. 9a, Article 63 para. 4 no. 2b, Article 69, Article 70 para. 4, Article 70a para. 5 and Article 73 para. 3 are to be applied for the first time to business years starting after 31 December 2004.

30. (regarding Article 64 para. 1 no. 4) Article 64 para. 1 no. 4 is to be applied for the first time to business years starting after 31 December 1995. The following applies to business years which end before 31 December 1996: The classification of claims and liabilities specified in Article 64 para. 1 no. 4 must be performed on the basis of the originally agreed maturity or notice period.

30a. (regarding Article 64 paras. 4 and 5) Article 64 paras. 4 and 5 are to be applied for the first time to business years starting after 31 December 1995.

30b. (regarding Article 64 para. 6) Article 64 para. 6 is to be applied for the first time to business years starting after 31 December 1998.

30c. (regarding Article 75 para. 3) Until 31 December 1996 the scope of the query will be based on Article 75 para. 3 in the version of Federal Law Gazette No. 383/1995.

30d. (regarding Article 77 paras. 4 and 5) The provision and communication of information pursuant to Article 77 paras. 4 and 5 in the version of Federal Law Gazette No. 445/1996 is permissible from 1 August 1996 onward

31. (regarding Article 74 para. 4 no. 3) Until 31 December 1996, calculations regarding adherence to liquidity requirements must (also) be based on original maturities.

31a. (regarding Articles 93 to 93b) Claims arising from investment services subject to guarantee obligations pursuant to Article 93 para. 3c in the version of Federal Law Gazette I No. 63/1999 may be lodged after the announcement of Federal Law Gazette I No. 63/1999 for all guaranteed events which occurred after 26 September 1998. For claims lodged prior to 1 May 1999, the period indicated in Article 93 para. 3c will begin on that date.

32. (regarding Article 93 para. 8) Credit institutions from Member States (Article 9 para. 1) which accept deposits subject to guarantee obligations in Austria and do not belong to a comparable deposit guarantee scheme must make that fact clearly visible in their advertising and in contract documents and, where applicable, post that information in the lobby of the branch.

32a. (regarding Article 93 paras. 8 and 8a) In the case of business relationships which already exist at the time when this federal act in the version of Federal Law Gazette I No. 63/1999 enters into force, depositors and investors are to be informed about the possibility of receiving information on the deposit guarantee scheme in the account statement regarding annual settlement following the entry into force. In cases where communication with the depositor or investor is handled only by means of independent queries of account data, the depositor or investor is to be informed of the possibility of receiving information on the deposit guarantee scheme as far as is technically possible.

33. (regarding Article 94 para. 3) Companies which exist at the time when this federal act enters into force and which use the designation "*Finanz-Holding*" (financial holding company) or any designation containing that word in their business names must change those names by 1 January 1998.

Article 103a. In cases where rounding differences remain after a funds transfer pursuant to Article 8 para. 3 of Council Regulation (EC) No 974/98 of 3 May 1998 on the introduction of the euro, OJ L 139/1, 11.5.1998 is credited, the liability underlying the funds transfer is still to be considered paid. In such cases, the beneficiary of the transfer is obliged to accept the payment. The originator of the funds transfer will have no claim to reimbursement of any amount exceeding the underlying liability.

Article 103b. (1) (regarding Article 31 paras. 1 and 3, Article 32 para. 4) The provisions of Article 31 paras. 1 and 3 as well as Article 32 para. 4 of this federal act in the version of Federal Law Gazette I No. 33/2000 apply to new savings agreements concluded from 1 November 2000 onward. In the case of savings passbooks which exist at that point in time and are not issued in the name of the customer, especially bearer savings passbooks, deposits and withdrawals may only be carried out after 30 June 2002 if the requirements set forth in Article 31 para. 1 in the version of Federal Law Gazette I No.

33/2000 are fulfilled, Article 40 para. 1 no. 4 in the version of Federal Law Gazette I No. 33/2000 notwithstanding.

(2) After Article 32 para. 4 nos. 1 and 3 as amended by Federal Law Gazette I No. 37/2010 enters into force, the credit institutions shall immediately initiate all the organisational and technical precautionary measures required in order to achieve compliance with the requirements set out in nos. 1 and 3 of the relevant provision by 1 November 2010 at the latest.

Article 103c. The following transitional provisions will apply after the entry into force of this federal act in the version of Federal Law Gazette I No. 97/2001:

1. The punishability of administrative offences pursuant to Articles 98 and 99 in the version of this federal act which was applicable until 31 March 2002 will remain unaffected by the entry into force of Federal Law Gazette I No. 97/2001; such offences will remain punishable pursuant to Articles 98 and 99 in the version prior to Federal Law Gazette I No. 97/2001.
2. Administrative penal proceedings which are pending as of 31 March 2002 due to administrative offences indicated in no. 1 are to be continued by the authorities competent as of 31 March 2002.
3. Administrative penal proceedings which are initiated after 1 April 2002 due to administrative offences indicated in no. 1 are to be carried out by the FMA.
4. Proceedings which are pending as of 31 March 2002 for the enforcement of the federal acts listed in Article 69 are to be continued by the authorities competent as of 31 March 2002.
5. Administrative proceedings which are pending with the Federal Minister of Finance as of 31 March 2002, based on the federal acts listed in Article 69 are to be continued by the FMA after 1 April 2002.
6. Inspections by the Oesterreichische Nationalbank pursuant to Article 79 para. 4 in the version of Federal Law Gazette I No. 2/2001 which are still pending as of 31 March 2002 are to be continued by the Oesterreichische Nationalbank in accordance with that provision and must be completed by 30 June 2002 at the latest. The Oesterreichische Nationalbank will also be entitled and obliged after 30 June 2002, to make the inspection results available to the FMA and to provide the FMA with the necessary information. Where the FMA requires more specific information, the FMA may obtain information directly from the employees of the Oesterreichische Nationalbank who are responsible for carrying out inspections and preparing reports without requiring an express release from official secrecy obligations for this purpose. The Oesterreichische Nationalbank is also empowered to provide the bank auditor of the credit institution concerned with necessary information on the result of inspections conducted by the Oesterreichische Nationalbank.
7. The effectiveness of the administrative decisions and regulations issued by the Federal Minister of Finance in enforcement of the federal acts indicated in Article 69 until 31 March 2002 will remain unaffected by the transition to banking supervision by the FMA as effected by Federal Law Gazette I No. 97/2001.

8. The costs incurred up to 31 March 2002 but not yet collected up to that date for the measures indicated in Article 70 para. 7 in the version of Federal Law Gazette I No. 2/2001 must be charged to the relevant legal entities for reimbursement and paid to the federal government.
9. Bundesrechenzentrum GmbH must also provide the services set forth in Article 72 para. 2 in support of the Federal Minister of Finance for the FMA at its request to the extent that and as long as this is necessary for the fulfilment of the FMA's duties in banking supervision; Bundesrechenzentrum GmbH is entitled to charge an appropriate fee for those services.
10. The report pursuant to Article 73 para. 6, including the annex, must be submitted for the first time for the accounting date of the last business year ending prior to 1 January 2001; in this context, the period indicated in Article 73 para. 6 is not applicable.
11. The reports pursuant to Article 74 paras. 7 and 8 must be submitted for the first time for the first calendar quarter in the year 2002.
12. The provisions of Article 75 para. 1 no. 4 are to be applied for the first time to business years ending after 31 December 2002.
13. The reason for exclusion pursuant to Article 62 no. 6a in the version of Federal Law Gazette I No. 13/2004 is not applicable to bank auditors who are appointed by 31 December 2005, for the first business year starting after 31 December 2005.
14. References to the FMA in the provisions set forth in Article 107 para. 25 are to be considered references to the Federal Minister of Finance instead of the FMA until 31 March 2002.

Article 103d. (1) Article 24 para. 2 no. 1 in the version of Federal Law Gazette I No. 97/2001 is applicable to hybrid capital issued up to 1 May 2001, the terms and conditions of which complied with the international standard prevailing at the time, and the issue and terms of which were communicated to the Federal Minister of Finance by that time; eligibility pursuant to Article 24 para. 2 no. 1 subject to these requirements is also fulfilled after the entry into force of Federal Law Gazette I No. 97/2001 in cases where the terms and conditions indicated in Article 24 para. 2 nos. 5 and 6 in the version of Federal Law Gazette I No. 97/2001 are not completely fulfilled.

(2) Asset items pursuant to Article 25 para. 11 no. 4 may be included in the Liquidity 2 funds of a credit institution from 31 August to 31 December 2001, in cases where the credit institution deposited securities as collateral with the Oesterreichische Nationalbank to secure its euro bank notes position in that period.

Article 103e. The following transitional provisions will apply after the announcement of this federal act in the version of Federal Law Gazette I No. 141/2006:

1. (regarding Article 21a and Articles 21c to 21g) From the time at which this federal act in the version of Federal Law Gazette I No. 141/2006 is announced, applications for approval pursuant to Article 21a and Articles 21c to 21f may be submitted and approvals may be granted; the procedure pursuant to Article 21g may also be applied from that time onward.
2. (regarding Article 21a para. 1): In cases where a credit institution or a superordinate credit institution acting on behalf of its group of credit institutions submits an application for approval of the Internal Ratings Based Approach pursuant to Article 21a in the period between

the announcement of this federal act in the version of Federal Law Gazette I No. 141/2006 and 31 December 2007, the model may be applied with the consent of the FMA even without the special approval pursuant to Article 21a if the following requirements are fulfilled:

a. The credit institution confirms by means of a self-assessment that the requirements of Article 21a para. 1 nos. 1 to 9 are fulfilled;

b. An affirmative short opinion has been obtained from the Oesterreichische Nationalbank to confirm that the requirements pursuant to Article 21a para. 1 no. 2 are fulfilled;

c. Where necessary, an affirmative short opinion has been obtained from the Oesterreichische Nationalbank to confirm that the requirements pursuant to Article 21a para. 8 are fulfilled; Preliminary consent is to expire with the legally effective granting of an approval pursuant to Article 21a, at the latest after 31 December 2011.

3. (regarding Article 21a para. 1 no. 3): In the case of credit institutions or groups of credit institutions which use the Internal Ratings Based Approach and submit a request to apply this approach pursuant to Article 21a by 31 December 2009, evidence that the credit institutions have been using their own rating systems for one year will be considered sufficient. In this context, the essential requirements pursuant to Article 21a para. 1 must be fulfilled.

4. (regarding Article 21a para. 1 no. 4): In the case of credit institutions or groups of credit institutions which apply Article 22b para. 8 and submit a request to use their own estimates of loss given default and conversion factors by 31 December 2008, evidence that the credit institutions have been using their own estimates for two years will be considered sufficient. In this context, the essential requirements pursuant to Article 21a para. 1 must be fulfilled.

5. (regarding Article 21b): From the announcement of this federal act in the version of Federal Law Gazette I No. 141/2006, the FMA may carry out the approval procedure for external credit assessment institutions pursuant to Article 21b, issue regulations in this regard and recognise external credit assessment institutions which have already been recognised by the competent authorities of other Member States for these purposes without further review.

6. (regarding Article 22 para. 1):

a. In cases where a credit institution or a group of credit institutions applies the Internal Ratings Based Approach pursuant to Article 22b, the minimum capital requirement pursuant to Article 22 para. 1 must equal the following percentages of the amount which the credit institution or group of credit institutions would have to hold as a minimum capital requirement pursuant to Article 22 para. 1 as amended by Federal Law Gazette I No. 48/2006:

aa) at least 95% from 1 January 2007 to 31 December 2007;

bb) at least 90% from 1 January 2008 to 31 December 2008;

cc) at least 80% from 1 January 2009 to 31 December 2011;

in this context, the calculation must be performed using the assessment base pursuant to Article 22 para. 2 as amended by Federal Law Gazette I No. 48/2006 as of 31 December 2007, 31 December 2008, 31 December 2009, 31 December 2010 and 31 December 2011;

b. In cases where a credit institution or a group of credit institutions applies the Advanced Measurement Approach pursuant to Article 22l, the minimum capital requirement pursuant to Article 22 para. 1 must equal the following percentages of the amount which the credit institution or group of credit institutions would have to hold as a minimum capital requirement pursuant to Article 22 para. 1 as amended by Federal Law Gazette I No. 48/2006:

aa) at least 90% from 1 January 2008 to 31 December 2008;

bb) at least 80% from 1 January 2009 to 31 December 2011;

in this context, the calculation must be performed using the assessment base pursuant to Article 22 para. 2 as amended by Federal Law Gazette I No. 48/2006 as of 31 December 2007, 31 December 2008, 31 December 2009, 31 December 2010 and 31 December 2011;

c. For the purposes of lit. a, credit institutions or groups of credit institutions which first apply the approach referred to in Article 22b after 31 December 2009, may, until 31 December 2011 and subject to the approval of the FMA, apply the amount for the calculation of the minimum capital requirement pursuant to Article 22 para. 1 that equals at least 80% of the amount the credit institution or group of credit institutions would have to hold as a minimum capital requirement pursuant to Article 22 para. 1 without approval of the approach pursuant to Article 22b, in which case the calculation must be carried out using the assessment base pursuant to Article 22 para. 2 on 31 December 2010 and 31 December 2011;

d. For the purposes of lit. b, credit institutions or groups of credit institutions which first apply the approach referred to in Article 22l after 31 December 2009, may, until 31 December 2011 and subject to the approval of the FMA, apply the amount for the calculation of the minimum capital requirement pursuant to Article 22 para. 1 that equals at least 80% of the amount the credit institution or group of credit institutions would have to hold as a minimum capital requirement pursuant to Article 22 para. 1 without approval of the approach pursuant to Article 22l, in which case the calculation must be carried out using the assessment base pursuant to Article 22i on 31 December 2010 and 31 December 2011.

7. (regarding Article 22 para. 2) Credit institutions and groups of credit institutions may continue to apply Article 22 paras. 2 to 6 and Articles 22a to 22p of this federal act in the version of Federal Law Gazette I No. 48/2006 until 31 December 2007, where

a. the minimum capital requirement for operational risk pursuant to Article 22 para. 1 no. 4 of this federal act in the version of Federal Law Gazette I No. 141/2006 is to be reduced by that percentage which equals the ratio between the value of the exposures for which weighted exposure values are calculated pursuant to Article 22 paras. 2 to 6 of this federal act in the version of Federal Law Gazette I No. 48/2006 and the overall value of the exposures;

b. Annexes 1 and 2 to Article 22 of this federal act in the version of Federal Law Gazette I No. 48/2006 are to be applied subject to the condition that credit derivatives are to be classified as high-risk off-balance sheet transactions;

c. Article 22c to Article 22f of this federal act in the version of Federal Law Gazette I No.141/2006 are not applied;

d. Article 22g and Article 22h of this federal act in the version of Federal Law Gazette I No.141/2006 are not applied;

e. Articles 22n to 22q of this federal act in the version of Federal Law Gazette I No. 141/2006 are not applied;

f. Article 26 and Article 26a of this federal act in the version of Federal Law Gazette I No. 141/2006 are not applied;

g. Article 27 of this federal act in the version of Federal Law Gazette I No. 48/2006 is not applied;

h. Article 39 and Article 39a of this federal act in the version of Federal Law Gazette I No. 141/2006 are not applied;

i. References to Article 22a of this federal act in the version of Federal Law Gazette I No. 141/2006 are to be considered references to Article 22 paras. 2 to 6 of this federal act in the version of Federal Law Gazette I No. 48/2006;

j. Articles 23, 24, 69 para. 2 and 3, and Article 70 para. 4a of this federal act in the version of Federal Law Gazette I No. 141/2006 are not applied. Credit institutions which no longer apply Article 22 paras. 2 to 6 and Articles 22a to 22p of this federal act in the version of Federal Law Gazette I No. 48/2006 in the period from 1 January 2007 to 31 December 2007 must first notify the FMA and the Oesterreichische Nationalbank accordingly in writing. For the purposes of applying Article 22 paras. 2 to 6 and Articles 22a to 22p of this federal act in the version of Federal Law Gazette I No. 48/2006, the definitions of terms pursuant to Article 2 nos. 18 to 21 and Article 2 no. 35 of this federal act in the version of Federal Law Gazette I No. 48/2006 are still applicable. The references contained in Article 22 paras. 2 to 6 and Articles 22a to 22p of this federal act in the version of Federal Law Gazette I No. 48/2006 are to be considered references to the corresponding provisions of this federal act in the version of Federal Law Gazette I No. 48/2006.

8. (regarding Article 22 para. 3) Valuation may be performed according to international accounting standards for the calculation of regulatory standards from 1 January 2008 onward if the option pursuant to Article 29a is exercised and the FMA has been notified accordingly in due time pursuant to no. 15.

9. (regarding Article 22a para. 4 no. 10): Until 31 December 2010, the FMA may also recognise collateral which does not fulfil the requirements of Article 22 para. 7 as risk mitigation in the calculation of the collateralised portion of a past due exposure if the collateral is commonly used in banking, if it has value, and if its value can be determined.

10. (regarding Article 22b para. 8) From 1 January 2007, applications for approval pursuant to Article 22b para. 8 may be submitted and approvals may be granted; in this regard, the procedure pursuant to Article 21g may also be applied from that time onward.
11. (regarding Article 22b para. 9) Until 31 December 2017, credit institutions or groups of credit institutions which apply the Internal Ratings Based Approach pursuant to Article 22b may calculate the assessment base for credit risk using the Standardised Approach to Credit Risk pursuant to Article 22a for those participating interests which they held on 31 December 2007. The position is to be based on the number of shares held as of 31 December 2007 and any additional share arising directly as a result of owning those participations, as long as they do not increase the proportional share of ownership in a portfolio company. Participating interests are not included in cases where
    a. the share of ownership in a certain undertaking has increased through the purchase of shares, or
    b. the shares were held on 31 December 2007, but then sold and repurchased at a later point in time.
12. (regarding Article 22p) Credit institutions which use an internal model (value at risk model) pursuant to Article 22p which was approved prior to 1 January 2007 and which does not capture event risk and default risk in the modelling of specific position risk in interest rate-based financial instruments and equities may use an add-on to their minimum capital requirements for specific position risk pursuant to Article 22p para. 1 until 30 December 2011.
13. (regarding Article 23 para. 14 no. 8) Until 31 December 2012, participations in insurance undertakings, reinsurance undertakings and insurance holding companies are to be deducted from total own funds pursuant to Article 23 para. 14 nos. 1 to 7.
14. repealed
15. (regarding Article 29a): The option of applying international accounting standards may be applied for the first time to business years starting after 31 December 2007 if the FMA is notified accordingly at least three months prior to the beginning of that business year.

15a. (regarding Article 62 no. 16): The lack of a certification pursuant to Article 15 A-QSG as a reason for exclusion is to be applied for the first time to the appointment of bank auditors for business years starting after 31 December 2008. Article 62 no. 16 is to be applied for the first time to the appointment of bank auditors who must undergo an external quality review at six-year intervals pursuant to Article 4 para. 2 A-QSG for business years starting after 31 December 2011.

16. (regarding Article 74): Credit institutions which exercise the option pursuant to no. 7 must apply Article 74 para. 1 and para. 4 of this federal act in the version of Federal Law Gazette I Nr. 48/2006 instead of Article 74 para. 2 and para. 3 of this federal act in the version of Federal Law Gazette I No. 141/2006 for the duration of the period in which this option is exercised, subject to the condition that only reports pertaining to compliance with the provisions of Articles 22 to 27 and 29 of this federal act in the version of Federal Law Gazette I No. 48/2006

and any regulations issued in that regard are to be conveyed. In these cases, Article 74 para. 3 of this federal act in the version of Federal Law Gazette I No. 48/2006 is to be applied in lieu of Article 74 para. 6 of this federal act in the version of Federal Law Gazette I No. 141/2006;

17. (regarding Article 74 paras. 3 and 4): Reports pursuant to Article 74 para. 4 are to be submitted for the first time for the 2007 calendar year. The separate reporting of individual obliged parties pursuant to Article 74 para. 3 no. 1 is to be applied for the first time to reports to be submitted after 31 December 2007.

Article 103f. The following transitional provisions will apply after the announcement of this federal act in the version of Federal Law Gazette I No. 60/2007:

1. (regarding Article 1 para. 1 no. 7a): Authorisations issued on the basis of the GewO 1994 to trade in financial instruments for one's own account or on behalf of others pursuant to Article 1 para. 1 no. 6 lit. e to g and j WAG 2007 existing at the time this federal act goes into effect will lapse as of 30 June 2008. In cases where an application for a licence pursuant to Article 1 para. 1 no. 7a is submitted to the FMA by that date, the institution may continue to carry out these activities until 31 December 2008. However, authorisations for trading by persons pursuant to Article 2 para. 1 nos. 11 and 13 WAG 2007 will not lapse on the basis of this transitional provision.
2. (regarding Article 1 para. 1 no. 7a): Credit institutions whose exclusive main activity is the conduct of banking transactions pursuant to Article 1 para. 1 no. 7a and which are not authorised to conduct other banking transactions and do not belong to a group of credit institutions whose main activities also include transactions other than those indicated in Article 1 para. 1 no. 7a are exempt from Articles 22 to 26 until 31 December 2014. In addition, Articles 27 and 75 will not be applied, and Article 74 will only be applied with regard to para. 1 no. 1 to those credit institutions until 31 December 2014 in cases where those credit institutions
    a. do not trade in financial instruments pursuant to Article 1 para. 1 no. 6 lit. e to g and j WAG 2007 on behalf of retail customers;
    b. have a documented strategy for managing and, in particular, for controlling and limiting risks arising from the concentration of asset items and off-balance sheet transactions;
    c. notify the FMA immediately of that strategy as well as any essential changes in the strategy;
    d. make the necessary arrangements in order to ensure continuous monitoring of the credit quality of borrowers according to their significance with regard to concentration risk and are able to respond appropriately and in a timely manner to a deterioration in credit quality on the basis of those arrangements; and
    e. notify the FMA as well as the counterparty immediately of the nature and degree of the overrun in cases where the internal upper limits defined in the strategy indicated in lit. b are exceeded.

3. (regarding Article 10): After this federal act in the version of Federal Law Gazette I No. 60/2007 enters into force, notification and the forwarding of such notification will only be required for those investment services pursuant to Article 1 no. 2 WAG 2007 which were not already notified to the FMA prior to the entry into force of this federal act in the version of Federal Law Gazette I No. 60/2007.

Article 103g. The following transitional provisions will apply after the announcement of this federal act in the version of Federal Law Gazette I No. 108/2007:

1. (regarding Article 3 para. 4 no. 1, para. 4a no. 1 and para. 7 lit. c) Article 3 para. 4 no. 1, para. 4a no. 1 and para. 7 lit. c of this federal act in the version of Federal Law Gazette I No. 108/2007 are to be applied for the first time to the business year starting after 31 December 2007.
2. (regarding Article 25 para. 13) Where necessary, credit institutions and central institutions must adapt their statutory arrangements to Article 25 para. 13 of this federal act in the version of Federal Law Gazette I No. 108/2007 by 30 June 2008.
3. (regarding Article 28a para. 3) Article 28a para. 3 of this federal act in the version of Federal Law Gazette I No. 108/2007 will not apply to supervisory board chairpersons who were already appointed when this federal act in the version of Federal Law Gazette I No. 108/2007 went into effect until the expiration of their term of office, at the latest, however, until 31 December 2010.
4. (regarding Article 70 para. 1 no. 3) AuditInspections by the FMA pursuant to Article 70 para. 1 no. 3 of this federal act in the version of Federal Law Gazette I No. 60/2007 which are still pending as of 1 January 2008 are to be continued by the FMA and completed by 31 March 2008 at the latest. After 31 December 2007, the FMA will also be entitled and obliged at all times to make the audit inspection results available to the Oesterreichische Nationalbank and to provide the Oesterreichische Nationalbank with the necessary information. Where the Oesterreichische Nationalbank requires more specific information, it may obtain information directly from the employees of the FMA who are responsible for carrying out inspections and preparing reports without requiring an express release from official secrecy obligations for this purpose.
5. (regarding Article 76 para. 1) State commissioners and deputy state commissioners appointed at credit institutions whose total assets do not exceed EUR 1 billion at the time when this federal act in the version of Federal Law Gazette I No. 108/2007 goes into effect, must be dismissed from their offices by 31 December 2010 if the total assets of the credit institution concerned in the Asset, Income and Risk Statement pursuant to Article 74 para. 1 do not exceed EUR 1 billion as of 30 September 2010. Where a state commissioner's or deputy state commissioner's term of office as defined by way of an administrative decision ends before that time, the term of office is to be extended to 31 December 2010.

Article 103h. repealed

Article 103i. Articles 20 to 20b as amended by Federal Law Gazette I No. 22/2009 shall first be applicable to reports on participating interests pursuant to Article 20 that were communicated to the FMA on 1 April 2009, pursuant to Article 20 para. 1 of the present federal act.

Article 103j. (1) Authorisations for the provision of the services of issuing and managing means of payment such as credit cards and traveller's cheques pursuant to Article 1 para. 1 no. 6 BWG, Federal Law Gazette No. 532/1993 as amended by Federal Law Gazette I No. 136/2008, which were already in place at the time when the federal act of Federal Law Gazette I No. 66/2009 [amendment] entered into force, shall remain valid and include authorisation for the provision of the payment services referred to in Article 1 para. 2 no. 5 ZaDiG 2018.

(2) At the time of entry into force of Federal Law Gazette I No. 66/2009 (amendment) pursuant to the BWG, Federal Law Gazette No. 532/1993, as amended by Federal Law Gazette I No. 136/2008, existing authorisations for the provision of money transmission services shall be carried over so that Article 1 para. 1 no. 23 as amended by Federal Law Gazette I No. 136/2008 shall correspond to the authorisation pursuant to Article 1 para. 2 no. 6 ZaDiG 2018.

Article 103k. repealed

Article 103l. Article 23 para. 7 no. 2 as amended by Federal Law Gazette I No. 152/2009 shall apply to the supplementary capital issued as of 1 January 2010 or contractually adapted to this provision. Supplementary capital that was issued and not contractually adapted in compliance with the requirements of Article 23 para. 7 no. 2 as amended by Federal Law Gazette I No. 66/2009 shall be eligible until 31 December 2024 at the latest. Reporting duties pursuant to Article 73a as amended by Federal Law Gazette I No. 152/2009 can be legally complied with until 30 June 2010 also pursuant to the BWG as amended by Federal Law Gazette I No. 66/2009.

Article 103m. Article 33 in the version prior to Federal Law Gazette I No. 28/2010 shall continue to apply to credit agreements and credit transactions concluded and/or granted before 11 June 2010, unless Article 29 para. 3 first sentence Consumer Finance Act (VKrG; Verbraucherkreditgesetz), Federal Law Gazette I No. 28/2010 prescribes the application of relevant provisions of the VKrG for such credit agreements and credit transactions.

Article 103n. (1) After entry into force of the federal act in the version of Federal Law Gazette I No. 72/2010, the following transitional provisions shall apply:

1. (regarding Article 22d paras. 10 and 11): Article 22d paras. 10 and 11 shall apply to securitisations issued after 30 December 2010. After 31 December 2014, Article 22d paras. 10 and 11 shall also apply to securitisations that existed prior to 31 December 2010 and to which new underlying exposures shall be added or with which existing underlying exposures shall be substituted after 31 December 2014.
2. (regarding Article 22f paras. 3 to 9): Article 22f paras. 3 to 9 shall apply to securitisations issued after 30 December 2010. After 31 December 2014, Article 22f paras. 3 to 9 shall apply to securitisations issued before 31 December 2010 and to which new underlying exposures shall be added or with which existing underlying exposures shall be substituted after 31 December 2014.

3. (regarding Article 23 para. 14 no. 3a): for hybrid capital that is recognised on 31 December 2010 at a consolidated level pursuant to Article 24 para. 2 no. 1 or Article 103d as amended by Federal Law Gazette I No. 152/2009 but that does not fulfil the requirements of Article 23 para. 4a, the following eligibility limits shall apply within the eligibility limits for hybrid capital pursuant to Article 23 para. 1 no. 3a:
   a. from 31 December 2010 to 31 December 2020: 50% of Tier 1 capital,
   b. from 1 January 2021 to 31 December 2030: 20% of Tier 1 capital,
   c. from 1 January 2031 to 31 December 2040: 10% of Tier 1 capital.

   If this temporary provision is made avail of, the credit institutions shall develop appropriate strategies and procedures to ensure that the capital components concerned comply with Article 23 para. 4a as soon as possible. Article 24 para. 2 no. 5 lit. g and h as amended by Federal Law Gazette I No. 152/2009 shall continue to apply until 31 December 2040; replacement capital shall at least comply with the requirements pursuant to Article 23 para. 4a.
4. (regarding Article 27 para. 6): For the purposes of Article 27 para. 6, the same weighting provided in Article 27 para. 3 no. 2 lit. b and no. 3 as amended by Federal Law Gazette I No. 152/2009 applicable until the end of the contractually agreed maturity can continue to apply for exposures to institutions pursuant to Article 27 para. 3 no. 2 lit. b and no. 3 as amended by Federal Law Gazette I No. 152/2009, to the extent that they were already granted or existed prior to 31 December 2010, at the longest however until the end of 31 December 2012.
5. (regarding Article 27 para. 10 no. 2): After entry into force of Article 27 para. 10 no. 2 as amended by Federal Law Gazette I No. 72/2010, credit institutions shall, for exposures contractually agreed by 30 June 2010, immediately initiate all the organisational and technical precautionary measures required in order to achieve compliance with this provision by 31 December 2011 at the latest.
6. (regarding Article 69b no. 9): Article 69b no. 9 shall first apply to business years beginning after 30 December 2010.
7. (regarding Article 79 para. 4b no. 3): The Oesterreichische Nationalbank shall communicate the cost assessment pursuant to Article 79 para. 4b no. 3 for the FMA business year 2011 taking into account Article 3 para. 8 as amended by Federal Law Gazette I No. 72/2010 by 30 November 2010.

(2) After entry into force of the federal act in Federal Law Gazette I No. 20/2012 the following transitional provision applies: Article 23 para. 4b no. 3, para. 7 no. 5 and para. 8 no. 1 as amended by the federal act in Federal Law Gazette I No. 20/2012 also applies to instruments that were issued before the date of entry into force this federal act.

Article 103o. The following transitional provisions shall apply with the entry into force of Federal Law Gazette I No. 118/2010:

1. (regarding Article 39b): The credit institutions and the bodies responsible for the conclusion of contracts and operating agreements must ensure that any contractual agreements

concluded by 31 December 2010 which do not comply with the requirements set forth in the Annex to Article 39b are adjusted, provided this is legally admissible, on the basis of an objectively comprehensible assessment of the legal situation by a legally qualified expert and under consideration of the concrete chances of success.

2. (regarding Article 75): Regulations of the FMA regarding Article 75 in the version of Federal Law Gazette I No. 118/2010 may be issued from the day following the announcement of the federal act in Federal Law Gazette I No. 118/2010. With regard to Article 75 para. 1a they shall enter into force no earlier than 30 June 2011, with regard to the other paragraphs no earlier than 30 April 2011.

Article 103p. After entry into force of the federal act in Federal Law Gazette I No. 20/2012 the following transitional provision applies until 31 December 2013:

1. (regarding Article 30a): Credit institutions may, in the course of establishing an affiliation of credit institutions, transfer the central organisational operational unit to a corporation or cooperative. The transferors remain liable, as long as they continue to exist, with their total assets for all transferred obligations incurred up to the time of the transfer, including basically pre-existing contractual obligations relating to prospective entitlements. Article 92 paras. 4 to 7 and 10 shall be applied with the proviso that joint-stock companies too can transfer, and that the legal person to which the transfer is made (central body) may have the legal form of a corporation or cooperative.

Article 103q. Following the announcement of the federal act in Federal Law Gazette I No. 184/2013 the following transitional provisions shall apply:

1. Following publication of Regulation (EU) No 575/2013, applications for approval may be submitted and approvals granted pursuant to the rules set out in Regulation (EU) No 575/2013.
2. Procedures for the use and modification of internal approaches that have already been approved and for the revocation of approvals of internal approaches pursuant to Articles 21a to 21h in the version prior to Federal Law Gazette I No. 184/2013 shall not be repeated. Administrative decisions adopted on the basis of Articles 21a to 21h in the version prior to Federal Law Gazette I No. 184/2013 shall be deemed to be administrative decisions on the basis of the respective legal basis in Regulation (EU) No 575/2013. The FMA must be notified immediately of any changes to approved internal models that arise in relation to Regulation (EU) No 575/2013. In such cases the FMA shall approve the changes or revoke the approval.
3. With regard to approval procedures pursuant to Article 19(2), Article 49(1) and (3) or Article 113(6) and (7) of Regulation (EU) No 575/2013, a credit institution, an affiliation of credit institutions or a group of credit institutions may, with the FMA's provisional consent, exercise the rights being granted under the approval for the duration of the approval procedure. The FMA shall grant this provisional consent by means of a procedural order if the application is accompanied by a justified and clearly documented self-assessment on fulfilment of the respective approval conditions according to Regulation (EU) No 575/2013. In this

self-assessment, the central body in the case of an affiliation of credit institutions or the superordinate credit institution in the case of a group of credit institutions must confirm fulfilment of the requirements for the respective approval pursuant to Regulation (EU) No 575/2013. Prior to granting provisional consent, the FMA must consult the Oesterreichische Nationalbank. Legal entitlement to final approval may not be derived from the granting of provisional consent by the FMA. The provisional consent shall cease to apply upon the final decision on the application and by no later than twelve months after the entry into force of Regulation (EU) No 575/2013. A withdrawal of the application shall result in the provisional consent expiring.

4. (regarding Article 1a): Until such time as any legislative proposal enters into force pursuant to Article 507 of Regulation (EU) No 575/2013, and up to 31 December 2028 at the latest, the following exposures shall be excluded in full or in part from application of Article 395(1) of Regulation (EU) No 575/2013:
   a. By being given a weighting of zero:
      aa) covered bonds pursuant to Article 129(1), (3) and (6) of Regulation (EU) No 575/2013;
      bb) asset items constituting claims on and other exposures, including participations or other kinds of holdings, to the EEA parent undertaking pursuant to point (15) of Article 4(1) of Regulation (EU) No 575/2013, to other subsidiaries pursuant to point (16) of Article 4(1) of Regulation (EU) No 575/2013 of that parent undertaking or to its own subsidiaries and qualifying holdings, insofar as those undertakings are covered by the supervision on a consolidated basis to which the institution itself is subject in accordance with Regulation (EU) No 575/2013 or Article 6 para. 1 FKG;
      cc) asset items constituting claims on and other exposures, including participations or other kinds of holdings, to central institutions with which the credit institution is associated in a network in accordance with legal or statutory provisions and which are responsible, under those provisions, for cash-clearing operations within the network;
      dd) assets constituting claims on and other exposures to credit institutions, if the institution operates on a non-competitive basis and provides or guarantees loans under legislative programmes or its articles of association in order to promote specified sectors of the economy under some form of government oversight and with restrictions on the use of the loans, provided that the respective exposures arise from such loans that are passed on to the beneficiaries via credit institutions or from the guarantees of these loans; guarantees in this case shall also encompass the credit derivatives recognised in accordance with Part Three, Title II, Chapter 4 of Regulation (EU) No 575/2013, with the exception of Credit Linked Notes (CLN);

ee) asset items constituting claims on and other exposures to institutions, provided that those exposures do not constitute such institutions' own funds pursuant to Part Two of Regulation (EU) No 575/2013, they do not last longer than the following business day and are not denominated in a major trading currency;

ff) asset items constituting claims on central governments in the form of statutory liquidity requirements held in government securities which are denominated and funded in their national currencies provided that the credit assessment of those central governments assigned by a nominated ECAI pursuant to point (98) of Article 4(1) of Regulation (EU) No 575/2013 is investment grade;

gg) legally required guarantees used when a mortgage loan financed by issuing mortgage bonds is paid to the mortgage borrower before the final registration of the mortgage in the land register, provided that the guarantee is not used to reduce the risk in calculating the risk-weighted exposure amounts; guarantees in this case shall also encompass the credit derivatives recognised in accordance with Part Three, Title II, Chapter 4 of Regulation (EU) No 575/2013, with the exception of Credit Linked Notes (CLN);

hh) asset items constituting claims on and other exposures to recognised exchanges; and

ii) fiduciary loans and transmitted loans where the credit institution bears only the management risk; and

jj) asset items constituting claims on regional governments or local authorities of Member States where those claims would be assigned a 20% risk weight under Part Three, Title II, Chapter 2 of Regulation (EU) No 575/2013 and other exposures to or guaranteed by those regional governments or local authorities, which would be assigned a 20% risk weight under Part Three, Title II, Chapter 2 of Regulation (EU) No 575/2013;

b. By being given a weighting of 20%:

aa) repealed;

bb) asset items constituting claims on central banks in the form of required minimum reserves held at those central banks which are denominated in their national currencies and provided they are not excluded pursuant to Article 400(1)(a) of Regulation (EU) No 575/2013 from the application of Article 395(1) of Regulation (EU) No 575/2013; and

cc) guarantees other than loan guarantees which have a legal or regulatory basis and are provided for their members by mutual guarantee schemes possessing the status of credit institutions; guarantees in this case shall also encompass the credit derivatives recognised in accordance with Part Three, Title II, Chapter 4 of Regulation (EU) No 575/2013, with the exception of Credit Linked Notes (CLN).

c. The following exposures shall be partly excluded from application of Article 395(1) of Regulation (EU) No 575/2013 by being given a weighting of 50%:
   aa) medium/low risk off-balance sheet documentary credits in which underlying shipment acts as collateral; and
   bb) medium/low risk off-balance sheet undrawn credit facilities referred to in point 3(b)(i) of Annex I of Regulation (EU) No 575/2013.

5. (regarding Article 1a): Until such time as the implementing standards enacted in accordance with Article 136(3) of Regulation (EU) No 575/2013 are enacted, the FMA shall determine how the relative degrees of risk expressed by different recognised external credit assessment institutions (ECAI) differ and, by means of a regulation, allocate the assessments provided by the recognised ECAIs to credit rating levels within the exposure classes pursuant to Articles 112 and 109 of Regulation (EU) No 575/2013. In order to differentiate between the relative degrees of risk expressed by the credit assessments of different recognised ECAIs, the FMA must consider the following factors:
   a. the long-term default rate for all exposures with the same rating; for newly recognised ECAIs or for recognised ECAIs which have compiled only a short record of default data, the FMA must ask the recognised ECAI what it believes to be the long-term default rate associated with all exposures assigned the same credit assessment;
   b. the pool of issuers covered by the recognised ECAI;
   c. the range of credit assessments assigned by the recognised ECAI;
   d. the meaning of each credit assessment;
   e. the definition of default used by the recognised ECAI;
   f. significant deviations in the degree of risk calculated by a recognised ECAI from a meaningful benchmark.

   If the competent authorities of a Member State have already carried out a similar allocation to that described in this paragraph, the FMA may make use of such allocation until such time as the implementing standards pursuant to Article 136(3) of Regulation (EU) No 575/2013 have been enacted.

6. (regarding Article 2 no. 42): The procedure used for classification as a significant subsidiary, carried out on the basis of Article 26a para. 5 in the version prior to Federal Law Gazette I No. 184/2013, shall not be repeated. Administrative decisions enacted on the basis of Article 26a para. 5 in the version prior to Federal Law Gazette I No. 184/2013 shall be deemed to be administrative decisions adopted on the legal basis of Article 2 no. 42 in the version of Federal Law Gazette I No. 184/2013. Any new discussions relating to this ruling shall be subject to the criteria defined in Article 2 no. 42.

7. (regarding Article 3 para. 1 no. 7): With regard to legal transactions in the context of export promotion pursuant to the AusfFG 1981 and the AFFG 1981, the Oesterreichische Kontrollbank Aktiengesellschaft shall also, in addition to the exceptions listed in Article 3 para. 1 no. 7, be excluded from the application of the terms of Article 25 until 31 December 2014.

8. (regarding Article 3 para. 1 no. 9): In addition to the exceptions listed in Article 3 para. 1 no. 9, exchange bureau business (Article 1 para. 1 no. 22) shall also be excluded from the application of the terms of Article 25 until 31 December 2014.
9. (regarding Article 3 para. 2): Credit institutions pursuant to Article 3 para. 2 shall also be excluded from application of the terms of Article 25 until 31 December 2014.
10. (regarding Article 5 para. 1 no. 9a): Article 5 para. 1 no. 9a (third sentence) shall not apply to activities as a member of a supervisory board already held by a director on 31 December 2013. This shall not apply to directors of credit institutions that, on the basis of an FMA assessment pursuant to Article 22 para. 3, could pose a systemic risk as defined in Article 22 para. 2.

10a. (regarding Article 5 para. 1 no. 9a): Activities in a managerial function at organisations whose entire or majority of shares or voting rights are held directly or indirectly by the Republic of Austria and for whom the European Commission has approved a resolution or restructuring plan in accordance with the EU rules and decisions on government aid pursuant to Articles 107 to 109 of the Treaty on the Functioning of the European Union (TFEU) shall not be included in the calculation pursuant to the third sentence of Article 5 para. 1 no. 9a.

11. (regarding Articles 23 and 23a): From 1 January until 31 December 2016, in deviation from the provisions of Articles 23 and 23a, the applicable buffer requirements shall be a buffer of 0.625% in the case of the capital conservation buffer and a maximum buffer of 0.625% in the case of the countercyclical buffer, with the result that the combined buffer requirement pursuant to Article 2 no. 45 shall be a maximum of 1.25% of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013. From 1 January 2017 until 31 December 2017, in deviation from the provisions of Articles 23 and 23a, the applicable buffer requirements shall be a buffer of 1.25% in the case of the capital conservation buffer and a maximum buffer of 1.25% in the case of the countercyclical buffer, with the result that the combined buffer requirement pursuant to Article 2 no. 45 shall be a maximum of 2.5% of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013. From 1 January until 31 December 2018, in deviation from the provisions of Articles 23 and 23a, the applicable buffer requirements shall be a buffer of 1.875% in the case of the capital conservation buffer and a maximum buffer of 1.875% in the case of the countercyclical buffer, with the result that the total of both capital buffers shall be a maximum of 3.75% of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013.
12. (regarding Article 23b): In deviation from Article 23b, global systemically important institutions shall apply the following percentages to their buffer requirement for systemically important institutions (Article 2 no. 43):
    a. at least 25% from 1 January 2016 to 31 December 2016;
    b. at least 50% from 1 January 2017 to 31 December 2017;
    c. at least 75% from 1 January 2018 to 31 December 2018; and
    d. at least 100% from 1 January 2019.

13. (regarding Articles 24 and 24a): From 1 January 2016 until 31 December 2018, the buffer requirement as stipulated in no. 11 shall form the calculation basis for the purposes of Articles 24 and 24a.
14. (regarding Article 26b): During the period from 1 January 2014 to 31 December 2021, Article 26 shall apply to participation capital (Article 23 para. 4 in the version prior to Federal Law Gazette I No. 184/2013) that was issued before 31 December 2011.
15. (regarding Article 28a para. 5 no. 5): Article 28a para. 5 no. 5 (third sentence) shall not apply to activities as a member of a credit institution's supervisory board already held by a member of a supervisory board on 31 December 2013. This shall not apply to members of a supervisory board of credit institutions that, on the basis of an FMA assessment pursuant to Article 22 para. 3, could pose a systemic risk as defined in Article 22 para. 2.
16. (regarding Articles 30a to 30c): From the announcement of the federal act in Federal Law Gazette I No. 184/2013 and of Regulation (EU) No 575/2013, applications for approval may be submitted and granted pursuant to Articles 30a, 30b and 30c; from this date the procedures defined in Articles 30a to 30c may be applied in this regard.
17. (regarding Article 64 para. 1 no. 18): Data pursuant to Article 64 para. 1 no. 18 lit. a to c shall only be included in annual financial statements to be published after 1 July 2014. Data pursuant to Article 64 para. 1 no. 18 lit. d to f shall only be included in annual financial statements to be published after 1 January 2015. Global systemically important institutions must report data pursuant to Article 64 para. 1 no. 18 lit. d to f to the European Commission by 30 June 2014 at the latest.
18. (regarding Article 74b): If a credit institution or group of credit institutions is obliged by the FMA by means of an administrative decision pursuant to Article 74b para. 2 to apply international accounting standards as defined in Regulation (EC) No 1606/2002 for reporting purposes and for the calculation of the total risk exposure amount (Article 92(3) of Regulation (EU) No 575/2013) and if Article 466 of the same Regulation does not apply, the FMA shall grant a lead time of 24 months. This period may be shortened upon application from the credit institution or superordinate credit institution.

    Procedures for the use of IFRS for reporting purposes pursuant to Article 29a in the version prior to Federal Law Gazette I No. 184/2013 shall not be repeated. Administrative decisions adopted on the basis of Article 29a in the version prior to Federal Law Gazette I No. 184/2013 shall be deemed to be administrative decisions on the basis of Article 74b para. 2.
19. (regarding nos. 8a and 8b of the Annex to Article 39b): Nos. 8a and 8b of the Annex to Article 39b in the version of Federal Law Gazette I No. 184/2013 shall be applied for the first time to remuneration paid for services rendered after 31 December 2013.

Article 103r. (1) The costs incurred by the FMA for carrying out the assessment pursuant to Article 33(4) of Regulation (EU) No 1024/2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions, OJ L 287, 29.10.2013,

p. 63, shall be reimbursed by the credit institutions included in the assessment; Article 69a para. 6 shall not be applicable to these costs.

(2) The licence of undertakings pursuant to Article 3 para. 1 no. 6 shall expire at the end of 30 June 2014, inasmuch as they did not submit an application pursuant to the final part of Article 3 para. 1 no. 6 before the end of 30 June 2014. The FMA shall declare the lapsing of a licence by way of an administrative decision.

Article 103s. Following the announcement of the federal act in Federal Law Gazette I No. 59/2014 the following transitional provisions shall apply:

1. (regarding Article 30 para. 1 no. 1): Groups of credit institutions which existed prior to the entry into force of Article 30 para. 1 no. 1 in the version of Federal Law Gazette I No. 59/2014 based on Article 30 para. 1 no. 1 in the version of Federal Law Gazette I No 59/2014 may continue to apply the provisions of this federal act pertaining to groups of credit institutions until 31 December 2019, provided they notify the FMA thereof by 31 December 2014 in writing. Such notification may only be revoked as per the end of a calendar year, becoming effective as at the following calendar year. The FMA shall be informed of the revocation in writing.
2. (regarding Article 63 paras. 4, 4a and 5): Article 63 paras. 4, 4a and 5 in the version of Federal Law Gazette I No. 59/2014 shall be applied for the first time to annual financial statements for the business year 2014.
3. (regarding Article 73 para. 1 no. 18): Credit institutions shall inform the FMA of any contractual netting agreements that had already been used prior to the entry into force of Article 73 para. 1 no. 18 in the version of Federal Law Gazette I No. 59/2014, doing so within three months of Article 73 para. 1 no. 18 in the version of Federal Law Gazette I No. 59/2014 having entered into effect.
4. (regarding Article 73 para. 1a): Article 73 para. 1a no. 2 in the version of Federal Law Gazette I No. 59/2014 shall only be applied from 1 January 2015.

Article 103t. (1) The credit institutions and their respective responsible bodies for the conclusion of contracts and operating agreements must ensure that any collective agreements concluded up until the entry into force of Federal Law Gazette I No. 117/2015, which do not conform to the requirements set in no. 11 lit. b of the Annex to Article 39b, provided this is legally admissible, are adapted based on an objectively comprehensible assessment of the legal situation and taking into account the concrete prospects of success.

(2) Article 37a in the version of Federal Law Gazette I No. 117/2015 is to be applied by member institutions pursuant to Article 7 para. 1 no. 21 ESAEG as soon as possible, however, from 1 January 2016 at the latest.

Article 103u. Following the publication of the Federal Act in Federal Law Gazette I No. 107/2017 the following transitional provisions shall apply:

(regarding Article 1 para. 1 no. 7a): where, without the requirement to hold a licence pursuant to Article 4, trading on one's own account or on behalf of others in financial instruments pursuant to Article 1 para. 1 no. 6 lits. e to g and j WAG 2007, published in Federal Law Gazette I No. 60/2007, was

conducted prior to the entry into force of this present Federal Act by persons pursuant to Article 2 para. 1 nos. 11 and 13 WAG 2007, for such persons the licence to trade on one's own account or on behalf of others in financial instruments pursuant to Article 1 no. 7 lits. e to g and j WAG 2018 shall be deemed as having been provisionally granted, provided that they have submitted a complete application that is able to be approved by 2.7.2018 for a licence to conduct the transactions that they conduct, and the licence is thereafter also granted. Applications pursuant to Article 4 shall be permissible in accordance following the publication of this federal act in Federal Law Gazette I No. 107/2017.

Article 103v. The appointment period of state commissioners and their deputies, who at the time of the publication of this Federal Act in Federal Law Gazette I No. 149/2017 had been appointed to their functions at credit institutions on a permanent basis, shall end upon expiry of 31 December 2019; a temporary reappointment of the affected persons shall be permissible in accordance with the provisions set out in Article 76 para. 1.

Article 103w. (1) In the case of supervisory boards or other competent supervisory bodies of credit institutions authorised by law or the articles of association, for which their personal composition has remained unchanged since the day in which the amendment of the Federal Act was announced in Federal Law Gazette I No. 36/2018, Article 28a para. 5a shall first apply from 1 July 2019 or from the time where there is a change in the personal composition of the supervisory body, in the event that such a change already takes place prior to 1 July 2019.

(2) In the case of risk committees of credit institutions, for which their personal composition has remained unchanged since the day in which the amendment of the Federal Act was announced in Federal Law Gazette I No. 36/2018, Article 39d para. 5a shall first apply from 1 July 2019 or from the time where there is a change in the personal composition of the risk committee, in the event that such a change already takes place prior to 1 July 2019.

Article 103x. Credit institutions that have observed the notification obligation pursuant to Article 21 para. 5 BWG in the version amended in Federal Law Gazette I No. 131/2004 prior to the entry into force of this Federal Act in the version of the amendment published in Federal Law Gazette I No. 112/2018, may conduct the activity of insurance mediation without a special authorisation to do so pursuant to Article 21 para. 1 no. 8.

Article 103y. Following the publication of the Federal Act in Federal Law Gazette I No. 98/2021 the following transitional rules shall apply:

1. (regarding Article 5a): For an applicant belonging to a third country group, the entire total assets within the European Europe of which reached or exceeded EUR 40 billion as of 27 June 2019, and which is active within the European Union through more than one CRR institution, Article 5a shall apply subject to the proviso that the relevant third country group, shall have an intermediate EU parent undertaking by 30 December 2023 at the latest, or where Article 5a para. 2 is applicable, shall have two intermediate EU parent undertakings.
2. (regarding Article 7b): Parent financial holding companies and parent mixed financial holding companies, which already existed as of 27 June 2019, shall have to apply for a licence or an

exemption from the obligation to hold a licence by 28 June 2021, provided that they are obliged to do so pursuant to Article 7b or Article 21a of Directive 2013/36/EU. Where a parent financial holding company or a parent mixed financial holding company fails to comply with this obligation to submit an application by 28 June 2021, then the FMA as the consolidating supervisor shall apply appropriate measures pursuant to Article 7b para. 8.

3. Undertakings, which as of 24 December 2019
   a. did not hold an authorisation pursuant to Article 4 for the performance of activities pursuant to Article 4 (1) a) of Regulation (EU) No 575/2013 in the version amended by Regulation (EU) 2019/2033, OJ L 314, 05.12.2019, p. 1, but which however
   b. have fulfilled the conditions pursuant to Article 4 (1) b) of Regulation (EU) No 575/2013 in the version amended by Regulation (EU) 2019/2033, OJ L 314, 05.12.2019, p. 1, and
   c. were authorised as credit institutions pursuant to Article 4,

shall notify the FMA about this within four weeks. In such cases, the FMA shall draw up a draft decision pursuant to Article 14 (2) of Regulation (EU) No 1024/2013 on the basis of the information that is already available. The undertakings in question may continue to conduct their activities on the basis of their existing licence until the new authorisation procedure pursuant to Article 4 of this Federal Act in conjunction with Article 14 of Regulation (EU) No. 1024/2013 have been concluded.

Article 103z. Where a data reporting service that is operated pursuant to Article 1 para. 3 that is no longer of limited significance in accordance with the legal act that is issued on the basis of a delegated act issued on the basis of Article 2 (3) of Regulation (EU) No 600/2014, so that competence is transferred to ESMA, then the FMA may issue an administrative decision towards the credit institution at the latter's request or on its own initiative about the credit institution's authorisation to provider data reporting services pursuant to points 34 and 36 of Article 2 (1) of Regulation (EU) No 600/2014.

Article 103z1. The FMA shall withdraw the licence by means of an administrative decision of credit institutions that were licensed pursuant to Article 4 para. 1 BWG in the version amended by federal act in Federal Law Gazette I No. 237/2022 up until the point of time of the entry into force of Article 4 para. 1 in the version amended by federal act in Federal Law Gazette I No. 237/2022, and the business purpose of which was covered fully by Article 3 para. 2 WAG 2018 in the version amended by federal act in Federal Law Gazette I No. 237/2022 and where the conditions pursuant to Article 3 para. 5 WAG 2018 are duly met convert it into a licence in accordance with WAG 2018, in the event that such credit institutions no longer require a licence pursuant to Article 4 para. 1 in the version amended by federal act in Federal Law Gazette I No. 237/2022.

Changes in Designations

Article 104. The words "*Bank*" (bank) and "*öffentlich-rechtliche Kreditanstalt*" (public-law credit institution) shall be replaced with the words "*Kreditinstitut*" (credit institution) and "*öffentlich-rechtliches Kreditinstitut*" (public-law credit institution) in all federal legal regulations.

References and Regulations

Article 105. (1) Where references to other federal acts are made in this federal act, those acts are to be applied in their respective current versions unless specified otherwise.
(2) Where references are made to provisions of the KWG in other federal acts, such references are to be replaced by the corresponding provisions of the BWG.
(3) Any regulation based on this federal act as amended may be issued from the day following announcement of the federal act to be implemented; however, they may not take effect before the statutory provisions to be implemented have themselves taken effect.
(4) In issuing regulations in which options pursuant to Directive 2013/36/EU or Regulation (EU) No 575/2013 are exercised, the FMA must take into account the national economic interest in maintaining a stable banking system.
(5) Where references are made in this federal act to Directive 2013/36/EU or Regulation (EU) No 575/2013, the following version shall apply in each case, unless otherwise specified:

1. Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, OJ L 176, 27.06.2013, p. 338, in the version of Directive (EU) 2021/338, OJ L 068, 26.02.2021, p. 14 in the version of the corrigendum in OJ L 214, 17.06.2021, p. 74;
2. Regulation (EU) No 575/2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012, OJ L 176, 27.6.2013, p. 1, as amended by the Regulation (EU) 2024/2987, OJ L 2024/2987, 04.12.2024, p. 1.

(6) Where references are made in this federal act to Directive 2004/39/EC, then, unless specified otherwise, Directive 2004/39/EC on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC, OJ L 145, 30.04.2002, p. 1, repealed by Directive 2014/65/EU on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, OJ L 173, 12.06.2014, p. 349, in the version of Directive (EU) 2021/338 amending Directive 2014/65/EU as regards information requirements, product governance and position limits, and Directives 2013/36/EU and (EU) 2019/878 as regards their application to investment firms, to help the recovery from the COVID-19 crisis, OJ L 68, 26.02.2021, p. 14, shall apply.
(7) Where this federal act refers to Directive (EU) 2015/849, then, unless specified otherwise, Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 and repealing Directive 2005/60/EC and Directive 2006/70/EC, OJ L 141, 05.06.2015, p. 73, amended in Directive (EU) 2019/2177, OJ L 334, 27.12.2019, p. 155 shall apply.
(8) Where this federal act refers to Regulation (EU) No. 1031/2010, then, unless specified otherwise, Regulation (EU) No 1031/2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the European Parliament

and of the Council establishing a system for greenhouse gas emission allowances trading within the Union, OJ L 302, 18.11.2010, p. 1, in the version of Delegated Regulation (EU) No. 2019/1868, OJ L 289, 08.11.2019, p. 9 shall apply.

(9) Where references are made in this federal act to Directive 2011/61/EU, then, unless specified otherwise, Directive 2011/61/EU on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010, OJ L 174, 1.7.2011, p. 1, as amended by Directive (EU) 2019/2034, OJ L 314, 05.12.2019, p. 64, shall apply.

(10) Where reference is made in this federal act to Regulation (EU) No 648/2012, then, unless otherwise specified, Regulation (EU) No. 648/2012 on OTC derivatives, central counterparties and trade repositories, OJ L 201, 27.07.2012 p. 1, in the version of the corrigendum, OJ L 321, 30.11.2013, p. 6, and Regulation (EU) 2021/168, OJ L 49, 12.02.2021, p. 1, shall apply.

(11) Where references are made in this federal act to Regulation (EU) No 1024/2013, then, unless specified otherwise, Regulation (EU) No 1024/2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions, OJ L 287, 29.10.2013, p. 63, in the version of the corrigendum in OJ L 218, 19.08.2015, p. 82 shall apply.

(12) Where references are made in this Federal Act to Directive 2002/87/EC, then, unless specified otherwise, Directive 2002/87/EC on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC, OJ L 35, 11.02.2003, p. 1, amended by Directive (EU) 2019/2034, OJ L 314, 05.12.2019, p. 64, shall apply.

(13) Where references are made in this federal act to Directive 2009/110/EC, then, unless specified otherwise, Directive 2009/110/EC on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC, OJ L 267, 10.10.2009, p. 7, amended by Directive (EU) 2015/2366, OJ L 337, 23.12.2015, p. 35, shall apply.

(14) Where references are made in this federal act to Regulation (EU) No 468/2014, then, unless specified otherwise, Regulation (EU) No 468/2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (SSM Framework Regulation), OJ L 141, 14.5.2014, p. 1, as amended by the corrigendum OJ L 065, 08.03.2018, p. 49 shall apply.

(15) Where references are made in this federal act to Regulation (EU) 2016/867, unless otherwise specified, Regulation (EU) No 2016/867 on the collection of granular credit and credit risk data, OJ L 144, 01.06.2016, p. 44, shall apply.

(16) Where references are made in this federal act to Regulation (EU) 2016/679, then, unless specified otherwise, Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119, 04.05.2016. p. 1, as amended by the corrigendum in OJ L 074, 04.03.2021, p. 35, shall apply."

(17) Where reference is made in this Federal Act to Directive 2013/34/EU, then, unless specified otherwise, Directive 2013/34/EU on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC and repealing Directives 78/660/EEC and 83/349/EEC, OJ L 182, 29.06.2013, p. 19, in the version amended in Directive (EU) 2021/2101, OJ L 429, 01.12.2021, p. 86, shall apply.
(18) Where reference is made in this Federal Act to Regulation (EU) 2017/2402, then, unless specified otherwise, Regulation (EU) 2017/2402 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012, OJ L 347, 28.12.2017, p. 35, in the version amended in Regulation (EU) 2017/2402, OJ L 116, 06.04.2021, p. 1, shall apply.
(19) Where reference is made in this federal act to Regulation (EU) No 600/2014, then, unless otherwise specified, 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, in the version amended by Regulation (EU) 2022/858, OJ L 151, 02.06.2022, p. 1, shall apply.
(20) Where references are made in this federal act to Directive (EU) 2019/2034 or Regulation (EU) 2019/2033, unless specified otherwise, the following version shall apply:

1. Directive (EU) 2019/2034 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU, OJ L 314, 05.12.2019, p. 64, as amended by the corrigendum, OJ L 214, 17.06.2021, p. 74;
2. Regulation (EU) No 2019/2033 on prudential requirements for investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No. 806/2014, OJ L 314, 05.12.2019, p. 1, in the version of the corrigendum in OJ L 261, 22.07.2021, p. 60.

(21) Where reference is made in this federal act to Regulation (EU) No 904/2010, then, unless otherwise specified, Regulation (EU) No 904/2010 on administrative cooperation and combating fraud in the field of value added tax, OJ L 268, 12.10.2010 p. 1, in the version amended by Regulation (EU) 2020/283, OJ L 62, 02.03.2020, p. 1, shall apply.
(22) Where reference is made in this federal act to Regulation (EU) No 2023/1114, then, unless otherwise specified, Regulation (EU) No 2023/1114 on markets in crypto-assets, and amending Regulations (EU) 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937, OJ L 150, 09.06.2023, p. 40, in the version amended by Regulation (EU) 2023/2869, OJ L 2023/2869, 20.12.2023, shall apply.
(23) Where reference is made in this federal act to Regulation (EU) 2022/2554, then, unless instructed otherwise, Regulation (EU) 2022/2554 on digital operational resilience for the financial sector and amending Regulations (EC) No 1060/2009, (EU) No 648/2012, (EU) No 600/2014, (EU) No 909/2014 and (EU) 2016/1011, OJ L 333, 27.12.2022, p. 1 shall apply.
(24) Where reference is made in this Federal Act to Regulation (EU) No 2017/2358, then, unless otherwise specified, Delegated Regulation (EU) No 2017/2358 supplementing Directive (EU) 2016/97 with regard to product oversight and governance requirements for insurance undertakings and

insurance distributors, OJ L 341, 20.12.2017 p. 1, in the version amended by Delegated Regulation (EU) 2021/1257, OJ L 277, 02.08.2021, p. 18, shall apply.
(25) Where reference is made in this Federal Act to Regulation (EU) No 2017/2359, then, unless otherwise specified, Delegated Regulation (EU) No 2017/2359 supplementing Directive (EU) 2016/97 with regard to information requirements and conduct of business rules applicable to the distribution of insurance-based investment products, OJ L 341, 20.12.2017, p. 8, most recently amended by Delegated Regulation (EU) 2021/1257, OJ L 277, 02.08.2021, p. 18 shall apply.

Repeals

Article 106. (1) The following will be repealed once this federal act enters into force:

1. The *Kreditwesengesetz* (KWG) most recently amended by Federal Law Gazette No. 407/1993, with the exception of Article 35a;
2. repealed
3. Articles II and III of Federal Law Gazette No. 325/1986;
4. Bank Agents Act (*Bankagentengesetz*), Federal Law Gazette No. 251/1932;
5. Central Monetary Institutions Act (*Geldinstitutezentralegesetz*) as last amended by Federal Law Gazette No. 10/1991;
6. Receivership Act (*Bundesgesetz über die Geschäftsaufsicht*), Federal Law Gazette No. 204/1934;
7. Reconstruction Act (*Rekonstruktionsgesetz*) as last amended by Federal Law Gazette No. 325/1986;
8. Federal Act on the Sale of Shares in Nationalised Banks (*Bundesgesetz betreffend den Verkauf von Aktien verstaatlichter Banken*) as last amended by Federal Law Gazette No. 323/1987, with the exception of Article 3;
9. repealed
10. Article XVII and Article XVIII, Article 1 para. 1, Article 6 and Article 9 para. 2 no. 6 of the Federal Act on the Reorganisation of Pupils' Law *(Bundesgesetz über die Neuordnung des Kindschaftsrechts*), Federal Law Gazette No. 403/1977.
11. Regulation on Contingent Liabilities (*Eventualverpflichtungsverordnung*), Federal Law Gazette No. 676/1986;
12. Liquidity Regulation (*Liquiditätsverordnung*), Federal Law Gazette No. 677/1986;
13. Second Liquidity Regulation (*2. Liquiditätsverordnung*), Federal Law Gazette No. 450/1988;
14. Large Exposures Regulation (*Großveranlagungsverordnung*), No. 676/1986;
15. Quarterly Reporting Regulation (*Quartalsberichtsverordnung*), Federal Law Gazette No. 451/1988;
16. Major Loan Reporting Regulation (*Großkreditmeldungs-Verordnung*) as last amended by Federal Law Gazette No. 652/1990;

17. Monthly Reporting Regulation (*Monatsausweisverordnung*) as last amended by Federal Law Gazette No. 707/1988;
18. Reserves Reporting Regulation (*Reservenmeldungsverordnung*), Federal Law Gazette No. 449/1989;
19. Regulation on Prudential Reports (*Verordnung über den bankaufsichtlichen Prüfungsbericht*) as last amended by Federal Law Gazette No. 450/1989;
20. Regulation on Contributions to Reconstruction (*Rekonstruktionsbeitragsverordnung*), Federal Law Gazette No. 254/1955;
21. Regulation on Cumulative Value Adjustments (*Sammelwertberichtigungsverordnung*), Federal Law Gazette No. 565/1986;
22. Regulation on the Protection of Money Held in Trust (*Mündelsicherheitsverordnung*), Federal Law Gazette No. 685/1977;

(2) Annex 1 to Article 43 of this federal act in the version of Federal Law Gazette No. 532/1993, Article I, will expire as of 31 December 1996.
(3) Article 99b, Article 99d para. 5 and Article 103 no. 9a in the version of the Federal Act amended by Federal Law Gazette I No. 107/2017, shall expire at the end of 2 January 2018.

Entry into Force and Enforcement

Article 107. (1) Unless specified otherwise below, this federal act will enter into force as of 1 January 1994.
(2) Article 1 para. 4, Article 2 nos. 6, 7 and 9, Article 8 paras. 1 to 4, 6 and 7, Article 9 to Article 19, Article 20 para. 8, Article 22 para. 3 no. 1 lit. b (last half sentence), no. 2 lit. g (last half sentence), no. 6 (second and third half sentences), no. 7 (last half sentence), paras. 9 and 10, Article 23 para. 9 no. 3 lit. a and b, Article 77 para. 4, Article 93 para. 7, Article 94 para. 10, Article 98 para. 2 nos. 1 and 2, Article 99 nos. 1 and 2, and Article 103 nos. 7, 8 and 9 lit. a sublit. cc will enter into force once the EEA Agreement enters into force, at the earliest on 1 January 1994.
(3) repealed
(3a) Article 97 para. 1 no. 1 of this federal act in the version of Federal Law Gazette 445/1996 will enter into force as of 1 January 1994.
(4) Article 76 para. 2 no. 1 of this federal act in the version of Federal Law Gazette No. 22/1995 will enter into force as of 31 December 1994.
(5) Article 2 no. 5, Article 8, Article 10 para. 8, Article 12 para. 7, Article 14 para. 7, Article 15 paras. 2 and 3, Article 17 para. 2, Article 22 para. 3 no. 1 lit. b, no. 2 lit. g, nos. 6 and 7, para. 9 no. 2 and para. 10 of this federal act in the version of Federal Law Gazette No. 22/1995 will enter into force once Austria's accession to the European Union enters into force.
(5a) The table of contents will enter into force as of 23 August 1996, with regard to the following provisions: Article 1 para. 1 no. 4, Article 2 nos. 2 and 3, 12, no. 23 lit. a and d as well as lit. i to lit. m, no. 24, Article 3 para. 1 nos. 4 to 7, Article 3 para. 3 no. 1, Article 4 para. 6, Article 5 para. 1 no. 9 and

para. 2, Article 6 para. 1, Article 9 para. 7 and para. 8, Article 11 para. 1 no. 5 and para. 5 and para. 6, the removal of Article 12, Article 13 para. 2 no. 5 and paras. 4 and 5, the removal of Article 14, Article 15 para. 1 and para. 5, Article 17 para. 1 and para. 4, the removal of Article 18, Article 20 para. 5 and para. 7a, Article 21 para. 1 no. 2, Article 22 para. 3 no. 2 lit. i and lit. k, Article 23 para. 1 no. 2, para. 4 no. 5, the removal of para. 4 no. 6, para. 7 no. 1 and no. 5, the removal of para. 7 no. 6, para. 8 no. 1, para. 13 no. 3 and the removal of para. 17, Article 25 para. 6 no. 6 and no. 7, Article 29 para. 4, Article 33 para. 7 no. 1, Article 35 para. 1 no. 2 and no. 3, Article 38 para. 2 no. 2 and para. 4, Article 39, Article 43 para. 1, Article 44 para. 3 to para. 6, Article 61, Article 63 para. 6 and para. 7, Article 64 para. 1 no. 13 and no. 14, Article 64 para. 4 and para. 5, Article 65 para. 2a and para. 3a, Article 70 para. 1, para. 5 and para. 7, Article 71 para. 1 and para. 7, Article 75 para. 3 and para. 5, Article 77 para. 4 to para. 8, Article 77a, Article 79 para. 2, Article 82 para. 1, Article 86 para. 6, Article 93, Article 93a, Article 98 para. 2 no. 8 and no. 10, and para. 3 no. 10, Article 99 no. 13, no. 14 and no. 17, Article 99b, Article 103 no. 10 lit. a, no. 22b, no. 25a, no. 30, no. 30a, no. 30b, no. 30c and no. 32 and Annex 1 to Article 22 no. 1 lit. c and no. 2 lit. a and b in the version of Federal Law Gazette No. 445/1996.

(5b) The table of contents, Article 2 nos. 25 to 27, Article 24 para. 1 and para. 3 no. 2, Article 28, Article 30, Article 33 para. 2 nos. 5 and 6 and para. 9, Article 37, Article 59, Article 70a, Article 73 para. 3, Article 94 para. 3, Article 98 para. 2 nos. 5 and 7, Article 99 nos. 6 and 15, Article 99a, Article 103 nos. 19, 22a, 28a and 33 in the version of Federal Law Gazette No. 445/1996 will enter into force as of 1 January 1997.

(5c) Article 2 no. 23 lit. g, Article 27, Article 74 para. 4 no. 1, Article 75 para. 1, Article 97 para. 1 no. 6 and Article 103 no. 21 in the version of Federal Law Gazette No. 445/1996 will enter into force as of 1 July 1997.

(6) Article 40 para. 1 no. 1 and no. 3, paras. 2 and 5 in the version of Federal Law Gazette 446/1996 will enter into force as of 1 August 1996. However, where the credit institution or financial institution has existing asset management and/or reinvestment obligations under civil law, Article 40 para. 5 will not enter into force until 1 November 1996.

(6a) Article 3 para. 1 no. 2 will expire once the transfer of the Österreichische Postsparkasse as an undertaking is entered in the Commercial Register pursuant to Article I Section 1 of Federal Law Gazette No. 742/1996. This point in time is to be announced in the Federal Law Gazette by the Federal Minister of Finance.

(7) The table of contents will enter into force on 1 January 1997 with regard to the following provisions: Article 1 para. 1 no. 7, no. 11, no. 13, no. 14 and no. 19, the removal of Article 1 para. 2 no. 4, Article 1 para. 3 (first sentence), Article 2 no. 6, no. 7, no. 9, no. 16, no. 18, no. 23 lit. a, no. 25, no. 26 and no. 28 to no. 52, Article 3 para. 5, Article 4 para. 5, Article 5 para. 1 no. 4, no. 4a and no. 14, Article 5 para. 2, Article 8 para. 2, para. 3, para. 4 and para. 5, Article 9a, Article 20 para. 8, Article 22 para. 3 no. 1 lit. d, no. 2 lit. h and j, Article 38 para. 2 no. 9, Article 44 para. 1, Article 63 para. 3a and para. 3b as well as para. 4 no. 2a, Article 93 para. 5 no. 12, Article 94 para. 3, Article 99 no. 15,

Article 103 no. 9a, no. 11b and no. 20a, Article 105 para. 1, Article 106, Article 108 and Annex 2 to Article 43, Part 2, no. 15 and 16 in the version of Federal Law Gazette No. 753/1996.
(8) The table of contents will enter into force on 1 July 1997 with regard to the following provisions: Article 27 para. 3 no. 2 and para. 8, Article 75 para. 1 nos. 1 and 2, Article 77 para. 5 and para. 6 nos. 4 to 7, the removal of Article 103 no. 26 in the version of Federal Law Gazette No. 753/1996.
(9) The table of contents will enter into force on 1 January 1998 with regard to the following provisions: Article 22 para. 1 and para. 2 (first sentence), para. 5, paras. 6 to 6f and para. 10 no. 1, Articles 22a to 22o including the headings, Article 23 para. 1 no. 9, para. 6 (second sentence), para. 8a, para. 14 no. 4, no. 7 and no. 8, paras. 15 and 16, Article 24 para. 1, Article 25 para. 1, Articles 26 to 26b including the headings, Article 27 para. 1, para. 2, para. 2a, para. 2b, Article 29 para. 4, Article 30 para. 1 and para. 9, Article 39 para. 4, Article 42 para. 4, Article 63 para. 4 no. 5 and no. 6, Article 64 para. 1 no. 15, Article 73 para. 1 no. 12 as well as para. 4 and para. 5, Article 97 para. 1 nos. 4 to 6, the removal of Article 97 para. 1 no. 7, Article 98 para. 2 no. 7, Article 103 no. 11a, no. 11c, no. 18, no. 19 and no. 20, Annex 1 to Article 22 no. 1 lit. h to j, no. 2 lit. e and no. 4 lit. a, the heading in Annex 2 to Article 22 no. 2, Annex 2 to Article 22 no. 2 lit. e and nos. 3 to 6, Annex 2 to Article 43, Part 1, Liabilities, off-balance sheet items nos. 4 and 5 in the version of Federal Law Gazette No. 753/1996.
(10) Article 3 para. 3 no. 6, Article 22l para. 1 no. 2, Article 40 para. 1 no. 3, Article 41 paras. 3, 3a and para. 4, Article 44 para. 1 (last sentence), para. 3 and para. 6, Article 61 para. 1, Article 75 para. 1 no. 1 and para. 5, and Article 103 no. 9 lit. b in the version of Federal Law Gazette I No. 11/1998 will enter into force as of 1 January 1998. Article 97 para. 1 no. 1 and no. 4 to no. 6 in the version of Federal Law Gazette I No. 11/1998 will enter into force as of 1 January 1994.
(11) Article 1 para. 5 and Article 100 para. 2 in the version of Federal Law Gazette I No. 126/1998 will enter into force as of 1 August 1998.
(12) Article 40 para. 1 no. 3 and Article 41 para. 6 in the version of Federal Law Gazette I No. 153/1998 will enter into force as of 1 October 1998.
(13) Article 1 para. 1 no. 18 lit. c, Article 1 para. 2 no. 2, Article 2 no. 10, Article 2 no. 23 lit. a, Article 3 para. 1 no. 8, Article 3 para. 4, Article 4 para. 4 no. 3, Article 5 para. 1 no. 5, Article 9 para. 3 no. 2, Article 9 para. 7 and para. 8, Article 15 para. 1, Article 22 para. 3 no. 3 lit. c, Article 22d para. 3, Article 23 para. 1 no. 9, Article 23 para. 3 no. 2, Article 23 para. 11, Article 24 para. 3 nos. 2 to 4, Article 25 para. 4, Article 25 para. 5, Article 25 para. 6 nos. 4a to 6, Article 25 para. 7 no. 2, Article 25 para. 8, Article 25 para. 9, Article 25 para. 10, Article 25 para. 11 nos. 3 and 4, Article 25 para. 12, Article 25 para. 13, Article 26 para. 1, Article 26 para. 2, Article 26 para. 3, Article 26 para. 5, Article 27 para. 3, Article 27 para. 4a, Article 43 para. 3, the removal of Article 44 para. 4 no. 3, Article 44 para. 4 no. 4, Article 51 para. 10, Article 59 para. 5, Article 62 no. 3, Article 63 para. 6 no. 2, Article 63 para. 6a, Article 63 para. 7, Article 70 para. 1 no. 4, Article 70 para. 4 no. 2, Article 70a para. 1, Article 71 para. 3 no. 4, Article 73 para. 1 no. 13, Article 75 para. 1 no. 3, Article 77 para. 4 no. 19, Article 77 para. 5, Article 77 para. 6 and para. 7, Article 77a para. 2, Article 79 para. 4, Article 93 para. 3, Article 93 para. 5 no. 11, Article 99 no. 6a, Article 102 para. 1 no. 1 and para. 6, Article 103 no. 10 lit. a to c and

lit. f, Article 103 no. 18, Article 103 nos. 25a and 25b and Annex 2 to Article 43, Part 2, Item 20 in the version of Federal Law Gazette I No. 126/1998 will enter into force as of 1 January 1999.
(14) The table of contents with regard to Article 103a1 and Article 103a in the version of Federal Law Gazette I No. 63/1999 will enter into force as of 1 January 1999.
(15) The table of contents with regard to Section XIX, Article 4 para. 6, Article 10 para. 4 no. 2, Article 25 para. 6 no. 7, Article 35 para. 1 no. 3, Article 38 para. 4, Article 61 para. 1, Article 62 nos. 1, 14 and 15, Article 64 para. 6, Article 73 para. 1 no. 10, Article 75 para. 3 no. 6, Article 77 para. 4 no. 17, Article 92 para. 7, Section XIX including the heading, Article 98 para. 2 no. 10 and Article 99 nos. 13 and 14, Article 103 no. 28b, nos. 30b to 30d and no. 32a as well as Annex 2 to Article 43, Part 1, Liabilities, off-balance sheet items nos. 4 and 5 in the version of Federal Law Gazette I No. 63/1999 will enter into force on 1 May 1999.
(16) The table of contents with regard to Section XXIII, Article 3 para. 3 no. 6, Article 23 para. 4 no. 2, Article 30 para. 7, Article 82 paras. 1 and 6 and Article 102a in the version of Federal Law Gazette I No. 123/1999 will enter into force on 1 July 1999. 1 Editorial error; correct version: "Article 103 and Article 103a".
(17) Article 21 para. 1 no. 6 and para. 2, Article 30 para. 8a, Article 33 para. 4, Article 63 para. 4 no. 2, Article 70 para. 1 no. 4, Article 71 paras. 1, 7 and 8, Article 77 paras. 3 and 5 to 7, Article 77a and Article 93 para. 6 in the version of Federal Law Gazette I No. 33/2000 will enter into force as of 21 April 2000.
(18) The table of contents with regard to Section V, Article 2 no. 26, no. 34 lit. a and b, the removal of no. 34 lit. c, no. 35 lit. a, b and e, nos. 42 to 45, no. 46 (first sentence), no. 46 lit. b, no. 47 and nos. 53 to 56, Article 5 para. 1 no. 7, Article 22 para. 1 no. 2, Article 22a, Article 22b paras. 1 to 3, Article 22d paras. 1, 3 and 4, Article 22e including the heading, Article 22f, Article 22g including the heading, Article 22h including the heading, Article 22i, Article 22l para. 1 (first sentence) and para. 1 no. 1 (first half-sentence), Article 22m para. 1, Article 22n including the heading, Article 22p including the heading, Article 23 para. 6, Article 24 para. 1, Article 26 including the heading, Article 26b paras. 1 to 5, Article 26b para. 7 no. 3, Article 42 para. 4 no. 4 lit. b to d, Article 60, Article 63 para. 4 no. 6 lit. b to d, Article 73 para. 4 no. 2 lit. b and c, Article 93a para. 1, the removal of Article 97 para. 1 no. 4 and of Article 103 no. 11b, Article 103 no. 11d, no. 12 and no. 18a as well as Annex 2 to Article 22, no. 1 lit. e in the version of Federal Law Gazette I No. 33/2000 will enter into force as of 23 July 2000.
(19) Article 31 paras. 1 and 3, Article 32 paras. 4 and 8, Article 40 para. 1 nos. 1 and 4, paras. 2, 6 and 7 and Article 103b in the version of Federal Law Gazette I No. 33/2000 will enter into force as of 1 November 2000.
(20) Article 31 para. 5, Article 40 para. 5, Article 41 paras. 1a and 6, and Article 99 no. 18 in the version of Federal Law Gazette I No. 33/2000 will enter into force as of 1 July 2002.
(21) Article 25 para. 10 no. 9 lit. a and Article 103 no. 9 lit. b in the version of Federal Law Gazette I No. 2/2001 will enter into force as of 1 January 2001.
(22) Article 3 para. 2 no. 5, Article 22 para. 3 no. 1 lit. a, Article 25 para. 10 no. 4, Article 27 paras. 2 and 8, Article 28 para. 2 no. 2, Article 31 para. 3, Article 32 para. 4 nos. 1 to 3, Article 35 para. 1 no. 1 lit. d,

Article 36 no. 2, Article 40 para. 1 nos. 2 and 4, Article 42 para. 6, Article 59 para. 5, Article 62 no. 3, Article 75 para. 1 no. 1, Article 76 para. 1, Article 92 para. 1, Article 96, Article 98 paras. 1 to 4 and Article 99 in the version of Federal Law Gazette I No. 2/2001 will enter into force as of 1 January 2002.
(23) Article 41 para. 1a no. 3 in the version of Federal Law Gazette I No. 2/2001 will enter into force on 1 July 2002.
(24) Article 36 (first sentence) in the version of Federal Law Gazette I No. 135/2000, Article 25 para. 10 no. 4, Article 43 para. 1 in the version of Federal Law Gazette I No. 97/2001 will enter into force as of 1 July 2001.
(25) Article 24 para. 2 nos. 1, 5 and 6 in the version of Federal Law Gazette I No. 97/2001 will enter into force as of 1 August 2001.
(26) The table of contents will enter into force on 1 January 2002 with regard to the following provisions: Article 62 nos. 1a, 1b, 2, 4, 6a, 9, 10, 14 and 15, Article 62a, Article 63 paras. 1 to 1c, paras. 3, 6a, 7 and 8, Article 103c no. 13 and 14 in the version of Federal Law Gazette I No. 97/2001.
(27) The table of contents will enter into force as of 1 April 2002, with regard to the following provisions: Article 2 no. 57, Article 4 paras. 1, 3 and 5 to 7, Article 5, Article 6, Article 7 paras. 1 and 2, Article 8 paras. 1, 2, 3 and 5, Article 9 paras. 2, 3 and 5 to 8, Article 9a paras. 3 and 4, Article 10 paras. 2 to 8, Article 11 paras. 1, 3 and 4, Article 13 paras. 2 and 3, Article 15, Article 16, Article 17, Article 20 paras. 1 to 3 and 5 to 8, Article 21 paras. 1 and 3, Article 22 paras. 3, 6b, 6c, 7, 9 and 10, Article 22b para. 4, Article 22e paras. 3 to 5, Article 25 para. 1 no. 5, para. 7 nos. 1 and 2, para. 10 no. 9, paras. 12 and 14, Article 26 para. 3 nos. 1 and 5, Article 26a paras. 4 and 6, Article 26b para. 2 no. 2 and paras. 3 to 7, Article 27 para. 3 no. 1, paras. 10 and 11, Article 30 paras. 8 and 8a, Article 41 paras. 5 and 8, Article 42 para. 3 and para. 4 no. 1, Article 43 para. 2, Article 44, Article 59a para. 2, Article 60 para. 3, Article 61 para. 2, Article 63a, Article 65 para. 4, Article 69, Article 69a, Article 70, Article 70a, Article 71 paras. 1 and 2, Article 73, Article 74 paras. 1 to 3 and 5 to 8, Article 75 paras. 1 and 3 to 6, Article 76, Article 77 paras. 1, 2, 4 to 6 and the removal of para. 8, Article 77a paras. 1, 2 and para. 3 no. 1, Article 78 para. 4, Article 79, Article 80, the removal of Article 81, Article 82 paras. 2, 3, 5 and 6, Article 83 para. 1, Article 90 para. 2 no. 2 and para. 5, Article 91, Article 92 para. 10, Article 93 paras. 3, 9 and 10, Article 93a para. 8, Article 93b para. 5, Article 93c, Article 94 paras. 1 and 2, Article 97 para. 1, Article 98, Article 99, Article 99a paras. 1 and 2, and Article 103c nos. 1 to 12, Annex 2 to Article 43 Part 1 no. 7 of off-balance sheet liability items as well as the Annex to Article 73 para. 6 in the version of Federal Law Gazette I No. 97/2001.
(28) Article 26b para. 3 and para. 4, Article 70 para. 1 no. 3 and no. 4 (last half-sentence), Article 70a para. 2, Article 77a para. 1 (first sentence) and Article 79 para. 4 in the version of Federal Law Gazette I No. 97/2001 will not enter into force.
(29) Article 26b para. 3 and para. 4, Article 70 para. 1 no. 3 and no. 4 (last half-sentence), Article 70a para. 2, Article 77a para. 1 (first sentence), Article 78 paras. 8 and 9, and Article 79 para. 4 in the version of Federal Law Gazette I No. 45/2002 will enter into force as of 1 April 2002.
(30) (constitutional law provision) Article 79 para. 5 in the version of Federal Law Gazette I No. 45/2002 will enter into force as of 1 April 2002.

(31) Article 1 para. 1 no. 20, Article 2 no. 58, Article 3 para. 6, Article 5 para. 4, Article 9 para. 1, Article 69 and Article 70 para. 4 in the version of Federal Law Gazette I No. 45/2002 will enter into force as of 1 April 2002, and Article 103 no. 21 lit. a in the version of Federal Law Gazette I No. 45/2002 will expire as of 2 April 2002.
(32) Article 1 para. 1 no. 21, Article 2 no. 59, Article 3 paras. 6 and 7, Article 5 para. 5, Article 69, Article 70 para. 4, Article 93 para. 2a nos. 3 and 4, and Article 93 para. 3d nos. 2 and 3 in the version of Federal Law Gazette I No. 100/2002 will enter into force as of 1 July 2002.
(33) The pro visions of Article 30 paras. 2a and 5 as well as Article 73 para. 7 in the version of Federal Law Gazette I No. 131/2002 will enter into force as of 1 September 2002.
(35) The table of contents will enter into force on 15 June 2003 with regard to the following provisions: Article 4 para. 6, the heading of Section X, the heading of Article 39, Article 39 para. 3, the heading of Article 40, Article 40 paras. 1, 8 and 9, Article 41 para. 1 nos. 2 and 3, Article 44 para. 1 and Article 99 no. 17 in the version of Federal Law Gazette I No. 35/2003.
(36) Article 40 paras. 2 and 2a in the version of Federal Law Gazette I No. 35/2003 will enter into force as of 1 October 2003.
(37) The table of contents will enter into force as of 1 January 2004, with regard to the following provisions: Article 1 para. 1 nos. 22 and 23, the removal of Article 1 para. 2 no. 2, Article 1 para. 3, Article 3 para. 1 nos. 8 and 9 and para. 5 no. 2, Article 4 para. 3 nos. 6 and 7, Article 35 para. 3, Article 69 nos. 3 to 5, Article 69a para. 8, Article 70 para. 10, Article 73 para. 1 nos. 13 and 14 and para. 2, Article 94 para. 1, Article 98 para. 3 no. 11a, Article 103 no. 1 and the removal of Article 103 nos. 2 to 4 in the version of Federal Law Gazette I No. 35/2003.
(38) The designations of Sections XVI and XVII as well as the provisions of Article 6 para. 2, Article 7a, Article 70 para. 2b, Article 73 para. 1 no. 1, Articles 81, 81a to 81m and Article 83 para. 4 to para. 9 in the version of Federal Law Gazette I No. 36/2003 will enter into force as of 5 May 2004; Article 7 para. 1 nos. 4 and 5, and the heading of Section before Article 82 expire on 5 May 2004.
(39) Article 1 para. 1 no. 13a, Article 3 para. 2 no. 4, Article 69 and Article 70 para. 4 in the version of Federal Law Gazette I No. 80/2003 will enter into force as of 1 September 2003.
(40) Article 3 para. 4 in the version of Federal Law Gazette I No. 80/2003 will enter into force as of 13 February 2004.
(41) Article 76 para. 2 nos. 1 to 3 in the version of Federal Law Gazette I No. 70/2004 will enter into force as of 1 August 2004. 2 Editorial error: No para. 34 was passed.
(42) Article 3 para. 1 no. 8 in the version of Federal Law Gazette I No. 70/2004 will enter into force as of 1 September 2004.
(43) Article 2 no. 25 lit. c to e, Article 2 no. 26, Article 4 para. 5, Article 20 para. 2a, Article 23 para. 13, Article 23 para. 14, Article 24 para. 1, Article 30 para. 7a, Article 30 para. 9a, Article 63 para. 4 no. 2b, Article 69, Article 70 para. 1 no. 3, Article 70 para. 4, Article 70a para. 5, Article 73 para. 3, Article 74 para. 3 and Article 77 para. 1 in the version of Federal Law Gazette I No. 70/2004 will enter into force as of 1 January 2005.

(44) Article 43 para. 1, 44 para. 1, 59a and 65 para. 1 in the version of Federal Law Gazette I No. 161/2004 will enter into force as of 1 January 2005.
(45) Article 1 para. 3, Article 21 para. 1 no. 8 and paras. 4 to 6 in the version of Federal Law Gazette I No. 131/2004 will enter into force as of 15 January 2005.
(46) Article 2 nos. 59 and 60, Article 66, Article 69 and Article 70 para. 4 in the version of Federal Law Gazette I No. 32/2005 will enter into force as of 1 June 2005.
(47) Article 22 para. 6c, Article 22c para. 4, Article 23 para. 1 no. 2, para. 7 no. 5, para. 8 no. 1 and para. 8a no. 1, Article 30 para. 7, para. 8, para. 9 and para. 10, Article 39 para. 2a, Article 42 para. 2 no. 2 and para. 6, the removal of Article 43 para. 3, Article 44 paras. 1, 4 and 5a, the removal of Article 63 para. 1a and para. 1b, Article 63 para. 1c, para. 2, para. 3, para. 4 nos. 2 to 4, para. 5, para. 6, para. 6a and para. 7, Article 65 para. 1 and para. 3a, Article 68 para. 1, Article 70 para. 1, Article 73 para. 1 no. 15, Article 75 para. 3 and para. 5a, Article 93a paras. 4 and 5, Article 98 para. 2 no. 7 in the version of Federal Law Gazette I No. 33/2005 will enter into force as of 1 July 2005. Article 102a para. 8 will expire as of 1 July 2005.
(48) Article 61 para. 2, Article 62 nos. 4 and 6a, and Article 62a in the version of Federal Law Gazette I No. 59/2005 will enter into force as of 1 January 2006. Article 62 no. 2 and Article 63 para. 8 will expire as of 1 January 2006.
(49) Article 21 para. 1 no. 3 and Article 23 para. 5 (fifth sentence) in the version of Federal Law Gazette I No. 124/2005 will enter into force as of 1 January 2007. Article 21 para. 1 no. 4 and Article 23 para. 3 no. 1 will expire as of 1 January 2007.
(50) Article 1 para. 6 in the version of Federal Law Gazette I No. 48/2006 will enter into force as of 1 January 2007.
(51) The outline, Article 2 no. 3, Article 2 nos. 5, 5a and 5b, Article 2 no. 6 lit. a, Article 2 no. 7 lit. b, Article 2 nos. 9a and 9b, Article 2 nos. 11a and 11b, Article 2 nos. 15 and 16, Article 2 nos. 22 to 24, Article 2 no. 25 lit. b, Article 2 nos. 25a and 25b, Article 2 no. 27, Article 2 no. 34 and 35, Article 2 no. 36, Article 2 no. 37, Article 2 no. 44 and 45, Article 2 no. 57a to 57e, Article 2 no. 58, Article 2 no. 60 to 71, Article 3 para. 1 nos. 7, 9 and 10, Article 3 para. 2, Article 3 para. 3 no. 6, Article 3 para. 4 nos. 1 and 2, Article 3 para. 4a, Article 3 para. 6, Article 3 para. 7 lit. c and d, Article 4 para. 3 no. 3, Article 4 para. 5 nos. 1 to 3, Article 9 paras. 1 and 6, Article 10 para. 2 no. 4, Article 10 para. 6, Article 11 para. 1 and para. 2 no. 1, Article 11 para. 4, Article 13 para. 1, Article 13 para. 2 nos. 3 and 5, Article 15 para. 5, Article 17 para. 4, Article 20 para. 2a, Article 20 para. 8 nos. 1, 3 and 5, Article 21 para. 2, Article 21a to Article 21g, Article 22, Article 22a, Article 22b paras. 1 to 7 and 9 to 11, Article 22c to Article 22k, Article 22m to Article 22q, Article 23 para. 1, Article 23 para. 3 no. 6, Article 23 para. 6, Article 23 para. 7 no. 5, Article 23 para. 8 no. 1, Article 23 para. 8a nos. 1 and 3, Article 23 para. 13 no. 1, nos. 4a to 4d and no. 6 lit. a, Article 23 para. 14 nos. 2, 4, 7 and 8, Article 24 paras. 1 and 3a, Article 24a and Article 24b, Article 26 and Article 26a, Article 27 paras. 1, 2 and 2a, Article 27 para. 2c, Article 27 paras. 3 to 3d, Article 27 para. 4a, Article 27 para. 5, Article 27 para. 8, Article 27 paras. 9a and 9b, Article 27 para. 11, Article 29 paras. 1 to 3, Article 29 paras. 5 to 8, Article 30 paras. 1 and 2, Article 30 para. 4, Article 30 para. 7, Article 30 para. 9a, Article 30 para. 10, Article 39 paras. 1 to 2c and para. 4,

Article 39a, Article 42 para. 4 no. 2, Article 42 para. 4 nos. 4 to 6, Article 44 paras. 1, 2, 4, 5 and 7, Article 60 para. 3, Article 61 para. 2, Article 62 nos. 12, 13, 16 and 17, Article 63 para. 1, Article 63 para. 3, Article 63 para. 4, Article 63a para. 3, Article 64 para. 1 no. 15, Article 65 para. 3 and 4, Article 69, Article 69a para. 2, Article 69b, Article 70 para. 1, Article 70 para. 4a, Article 73 para. 1 no. 12, Article 73 para. 1 nos. 16 to 19, Article 73 paras. 4, 4a and 5, Article 74, Article 77 para. 4, Article 77 para. 5, Article 77 para. 6a, Article 77 para. 7, Article 77 para. 8, Article 77a para. 1 nos. 1 and 2, Article 77a paras. 2 and 4, Article 78 para. 1, Article 79 para. 2, Article 81 para. 3, Article 83 para. 5, Article 93a para. 1, Article 98 para. 2 no. 2 and no. 11, Article 99 no. 10 and the final part, Article 105 paras. 4 and 5, the headings of each of the provisions mentioned above, Annex 1 to Article 22 no. 1 lit. j to l, Annex 1 to Article 22 no. 3 lit. b and c and no. 4 lit. a, the heading of Annex 2 to Article 22 and Annex 2 to Article 22 nos. 1, 2 and 6 in the version of Federal Law Gazette I No. 141/2006 will enter into force as of 1 January 2007.

(52) Article 2 nos. 18 to 21, Article 2 nos. 38 and 39, Article 2 nos. 46 and 47, Article 2 nos. 50 to 52, Article 8, the headings of the former Articles 12 and 14, Article 25 para. 2, Article 26b, Article 27 para. 10, Article 73 para. 6, Article 103 no. 9 lit. a and d, 11a, 11d, 14, 15, 16, 17, 18, 18a, 19, 20a, 22, 22a, 25a, 28a, 30c, 31, 33, Annex 1 to Article 22 no. 2 lit. c, Annex 3 to Article 22 and the Annex to Article 73 para. 6 will expire as of 31 December 2006.

(53) Article 22b para. 8, Article 22l, Article 29a, Article 75 and the headings of the provisions mentioned above in the version of Federal Law Gazette I No. 141/2006 will enter into force as of 1 January 2008.

(54) Article 1 para. 1 nos. 7 and 7a and para. 3, Article 2 nos. 7, 29 to 32 and 37, Article 3 para. 1 no. 9, para. 4 no. 2, para. 4a no. 2 and para. 7 lit. d, Article 9 paras. 1, 6, 7 and 8, Article 10 para. 6, Article 23 para. 9 no. 2, Article 25 para. 10 no. 4, Article 44 para. 6, Article 51 para. 5, Article 56 paras. 4 and 5, Article 63 para. 4 no. 2a, paras. 6 and 7, Article 93 paras. 2a and 3b, para. 5 nos. 6 and 8 to 11, and para. 7a, Article 93a para. 9, Article 93c, Article 94 para. 1 and Article 105 para. 6 in the version of Federal Law Gazette I No. 60/2007 will enter into force as of 1 November 2007. Article 101 para. 2 of this federal act in the version of Federal Law Gazette I No. 60/2007 will enter into force as of 1 January 2008. Article 1 para. 1 no. 19, Article 3 para. 5, Article 9a including the heading, Article 44 para. 5a and Article 63 para. 6a will expire as of 31 October 2007.

(55) The table of contents with regard to Articles 28a and 40 to 41, Article 1 para. 1 no. 21, Article 2 nos. 59, 59a and 71 to 75, Article 3 para. 1 no. 3, para. 4 no. 1, para. 4a no. 1 and para. 7, Article 21 para. 1a, Article 21d para. 1a and 3, Article 23 para. 4 no. 5, Article 25 para. 13, Article 28a including the headings, the heading preceding Article 40, Article 40 paras. 1 to 6 and 8, Article 40a, Article 40b, Article 40c, Article 40d including the headings, the heading preceding Article 41, Article 41 paras. 1 to 7, Article 42 para. 3 and para. 4 no. 3, Article 63a para. 4, Article 69 paras. 1, 2 and 3, Article 70 paras. 1 to 1d, 4 and 10, Article 70a paras. 1 and 2, Article 73 para. 1 no. 17a, Article 76 para. 1, Article 77 para. 6, Article 77a para. 1, Article 79 paras. 2, 3, 4, 4a and 4b, Article 93 para. 2a no. 4 and para. 3d no. 3, Article 93b para. 1, Article 98 para. 2 nos. 4a and 6, Article 99 no. 8 and nos. 17 to 19,

Article 103g and Article 108 no. 3a of this federal act in the version of Federal Law Gazette I No. 108/2007 will enter into force as of 1 January 2008.
(56) Article 38 para. 2 no. 1 of this federal act in the version of Federal Law Gazette I No. 108/2007 will enter into force as of 1 January 2008.
(57) (constitutional law provision) Article 79 para. 5 of this federal act in the version of Federal Law Gazette I No. 108/2007 will enter into force as of 1 January 2008.
(58) Article 39 para. 3, Article 40 para. 9 and Article 41 para. 8 will expire as of 31 December 2007.
(59) Articles 61 paras. 2 and 63b as amended by Federal Law Gazette I No. 70/2008 shall enter into force on 1 June 2008. Article 63b shall apply to contracts finalised after 31 May 2008. The provisions previously in effect shall apply to contracts finalised before this date.
(60) Article 93 paras. 3 and 4 and Article 93a paras. 1, 2 and 3 as amended by Federal Law Gazette I No. 136/2008 shall enter into force on 1 October 2008.
(61) The changes to the index, Article 2 no. 3, Article 2 no. 59 and no. 59a, Article 20 including the heading, Article 20a including the heading, Article 20b including the heading, Article 21 para. 1 no. 2, Article 21 para. 4 no. 3, Article 22b para. 2 no. 2 lit. c, Article 23 para. 14 no. 7, Article 40c, Article 61 para. 2, Article 63a para. 4, Article 73 paras. 1 and 2, Article 76 para. 4, Article 78 para. 9 no. 3, Article 93b, Article 98 para. 2 no. 3, Article 98 para. 2 no. 4, Article 99 nos. 4 and 5, Article 103h, Article 105 paras. 3, 5, and 6, and Article 108 no. 4 as amended by Federal Law Gazette I No. 22/2009 shall enter into force on 1 April 2009.
(62) Annex 2 I Article 43, Section 2 as amended by Federal Law Gazette I No. 39/2009 shall enter into force on 1 May 2009.
(63) Article 93 para. 3d, Article 93 paras. 4, 4a, 5, and 8 and Article 93a para. 9 as amended by Federal Law Gazette I No. 66/2009 shall enter into force on 1 July 2009. Article 93 para. 3, Article 93a para. 10 and Article 103k as amended by Federal Law Gazette I No. 66/2009 shall enter into force on 1 January 2011.
(64) Article 1 para. 1 no. 6, Article 1 para. 2 no. 7, Article 1 para. 3, Article 3 para. 1 no. 9, Article 9 paras. 7 and 8, Article 23 para. 13 nos. 3 and 4, Article 34, Article 37 para. 3, Article 40 para. 8 (introductory part), Article 40 para. 8 nos. 1 and 2, Article 69a para. 8, Article 94 para. 1, Article 98 para. 3, Article 103e, Article 103j, Article 105 para. 5 no. 1 and para. 7 as amended by Federal Law Gazette I No. 66/2009 shall enter into force on 1 November 2009; Article 1 para. 1 no. 23 shall expire at the end of 31 October 2009. Article 2 no. 3, Article 4 paras. 7 and 8, Article 70 para. 7 and Article 73 paras. 1 no. 4 as amended by Federal Law Gazette I No. 66/2009 shall enter into force on the day following their announcement.
(65) Article 21h including its heading, Article 23 para. 7 no. 2, Article 25 para. 11 no. 6, Article 73a, Article 79 para. 2, Article 102a para. 1, Article 102a para. 2, Article 102a para. 7, Article 103e no. 6 and Article 103l as amended by Federal Law Gazette I No. 152/2009 shall enter into force on 1 January 2010. Annex 2 I Article 43, Part 2, Position III. as amended by Federal Law Gazette I No. 152/2009 shall enter into force on 31 December 2009."

(66) Article 3 para. 1 no. 9 as amended by Federal Law Gazette I No. 28/2010 with regard to the change of date, shall enter into force one day after its announcement. Article 3 para. 1 no. 9 with regard to the change of reference, Article 3 para. 3 no. 1, Article 11 para. 5 no. 1, Article 13 para. 4 no. 1 and para. 5 no. 1, Article 17 para. 1, Article 34 paras. 2 and 3, the heading over Article 35, Article 98 para. 3 nos. 3 and 9 and Article 103m as amended by Federal Law Gazette I No. 28/2010 shall enter into force on 11 June 2010. Article 37 as amended by Federal Law Gazette I No. 28/2010 shall enter into force on 1 January 2011. Article 33, Article 35 para. 1 no. 1 lit. c and d and para. 2, Article 98 para. 3 nos. 4 to 7 and 11 shall enter into force at the end of 10 June 2010.
(67) Article 2 no. 72, Article 3 para. 1 no. 3, Article 32 para. 4 nos. 1 and 3, Article 39 para. 2b, Article 40 para. 2, Article 40 para. 2d and para. 3, para. 4 no. 1 and para. 8, the heading over Article 40a and Article 40a, Article 40b para. 1, Article 41 para. 1, para. 2, para. 3b, para. 4 and para. 8, Article 42 para. 1 and para. 4 no. 3, Article 77 para. 5, Article 78 para. 9, Article 93 para. 3 no. 4, Article 98 para. 5, Article 99 paras. 1 and 2 and Article 108 Z3 as amended by Federal Law Gazette I No. 37/2010 shall enter into force on 1 July 2010. Article 98 para. 2 no. 6 and Article 99 no. 8 shall expire at the end of 30 June 2010.
(68) Article 5 para. 1 no. 6, Article 28a para. 3 no. 1, Article 82 para. 1 and Article 93a para. 6 as amended by Federal Law Gazette I No. 58/2010 shall enter into force on 1 August 2010.
(69) Sections III, XIV and XXIV, Article 2 no. 9c, no. 23 lit. h and no. 57c, Article 3 para. 8, Article 18 including the heading, Article 21b para. 3 no. 5, Article 21b para. 4a, Article 21g paras. 1 and 5, Article 22b para. 9 no. 3 and para. 10, Article 22d paras. 1, 2, 10, and 11, Article 22f paras. 3 to 9, Article 22l para. 3, Article 23 para. 1 nos. 2 and 3a, paras. 4a and 4b, 14 and 17, Article 24 para. 2, Article 25 para. 2, Article 27, Article 29a para. 3, Annex 2 regarding Article 43, Article 69 paras. 4 and 5, Article 69b nos. 7 to 9, Article 70 paras. 2, 4b, 4c, and 11, Article 73 para. 1 no. 19, Article 74 para. 3 no. 1, Article 75 para. 1 no. 5, Article 77 paras. 5, 8, and 9, Article 77a, Articles 77b and 77c including headings, Article 97 para. 1 no. 6, Article 98 para. 2 nos. 4b and 7, Article 103e no. 12, Article 103f no. 2, Article 103n nos. 1 to 6, and Article 105 para. 5 as amended by Federal Law Gazette I No. 72/2010 shall enter into force on 31 December 2010. Article 103e no. 14 shall expire at the end of 30 December 2010.
(70) The table of contents with regard to Articles 39b and 39c, 102a and 103o, Article 2 nos. 75 and 76, Article 22g para. 3, Article 22h para. 2, Article 26 paras. 4, 7 no. 1 and para. 9, Article 39 para. 2, Articles 39b and 39c including the headings, Article 70 para. 4c, Article 77c para. 2 last sentence, Article 103o, Article 105 para. 5 and the Annex to Article 39b of this federal act in the version of Federal Law Gazette I No. 118/2010 shall enter into force as of 1 January 2011. Article 75 paras. 1, 2, 3, 5 and 6 of this federal act in the version of Federal Law Gazette I No. 118/2010 shall enter into force as of 30 April 2011. Article 75 para. 1a of this federal act in the version of Federal Law Gazette I No. 118/2010 shall enter into force as of 30 June 2011. Article 70 para. 4a of this federal act in the version of Federal Law Gazette I No. 118/2010 shall enter into force as of 31 December 2011.
(71) Article 41 para. 6 of this federal act in the version of Federal Law Gazette I No. 104/2010 shall enter into force as of 1 January 2011.

(72) Article 1 para. 2 no. 8 and para. 3, Article 4 para. 5 nos. 1, 2 and 3, Article 5 para. 1 no. 13, Article 20b para. 1 no. 4, Article 23 para. 13 nos. 3 and 4, Article 40a para. 2 no. 1, Article 69 para. 1, Article 93 para. 2 no. 2, Article 105 para. 7 of this federal act in the version of Federal Law Gazette I No. 107/2010 shall enter into force as of 30 April 2011; Article 3 para. 1 no. 9 of this federal act in the version of Federal Law Gazette I No. 107/2010 shall enter into force as of 1 May 2011; Article 30 para. 5 of this federal act in the version of Federal Law Gazette I No. 107/2010 shall enter into force on the day following announcement; Article 1 para. 1 no. 20, Article 2 no. 58, Article 3 para. 6 and Article 9 para. 1 penultimate and last sentence shall expire at the end of 29 April 2011; Article 30 para. 2a and Article 73 para. 7 shall expire at the end of the day of the announcement.
(73) Article 1 para. 1 no. 13, Article 2 no. 35, Article 3 para. 4 and 8, Article 22a para. 5 no. 5, Article 23 para. 9 no. 3, Article 25 para. 10 no. 9 lit. a, Article 73 para. 1 no. 3 and Article 93 para. 5 no. 5 in the version of Federal Law Gazette I No. 77/2011 shall enter into force on 1 September 2011.
(74) The table of contents with reference to Articles 8, 39c and 77b, Article 2 nos. 31, 61a and 65a, Article 3 para. 3 no. 6, Article 8 including the heading, Article 10 para. 8, Article 15 paras. 2 and 3, Article 20 para. 3 (Note: correctly Article 20b para. 3), Article 22 para. 1, Article 22d para. 6, Article 22p paras. 2, 5 no. 7 and 8, Article 23 para. 13 nos. 4c to 4e, Article 23 para. 14 no. 8, Article 24 para. 3a, Article 26 para. 9, Article 27 para. 16a and Article 23, Article 30 para. 9a, Article 39c including the heading, Article 40 paras. 4 and 8, Article 40a para. 7, Article 41 paras. 3b and 9, Article 69 paras. 5 and 6, Article 73 paras. 1 no. 9 and para. 3, Article 74 paras. 2 and 7, Article 77 paras. 2, 5, 7 and 8, Article 77a paras. 1 to 3, Article 77b paras. 1, 3 nos. 4 and 5 and paras. 4 to 6 including the heading, Article 77c paras. 4 and 9, Article 105 paras. 5 and 7 and no. 13 of the Annex to Article 39b as amended by the federal act in Federal Law Gazette I No. 145/2011 shall enter into force on 31 December 2011.
(75) Article 98 paras. 1 to 5 and Article 99 paras. 1 and 2 as amended by the Second Stability Act 2012 (2. StabG 2012; 2. Stabilitätsgesetz 2012), Federal Law Gazette I No. 35/2012 shall enter into force on 1 May 2012.
(76) Article 21 para. 1 nos. 8 and 9, Article 21 para. 7, Article 77 para. 4 no. 1, Article 105 para. 8 as amended by federal act in Federal Law Gazette I No. 119/2012 shall enter into force on 1 January 2013.
(77) Article 41 para. 3 and Article 99b as amended by the federal act in Federal Law Gazette I No. 70/2013 shall enter into force on 1 January 2014.
(78) Articles 71a and 71b as amended by the federal act in Federal Law Gazette I No. 160/2013 shall enter into force on 1 January 2014.
(79) Article 3 para. 3 no. 7, Article 69 para. 1, Article 70 para. 4 and Article 105 para. 9 as amended by the federal act in Federal Law Gazette I No. 135/2013 shall enter into force on 22 July 2013. Article 69a para. 1 no. 1 as amended by the federal act in Federal Law Gazette I No. 135/2013 shall enter into force on 1 January 2014. Article 1 para. 1 no. 14 shall expire on 21 July 2013.
(80)

1. The table of contents for Sections V, VI and XIV including the headings and Articles 1a, 21a, 21b and 103 to 103q including the headings, as well as Article 1a, Article 2 nos. 1, 1a, 1b, 22, 26, 27, 28, 41, 42, 43, 44, 44a, 44b and 45, Article 3 para. 1, Article 3 paras. 2, 3, 4a, 5 and 6, Article 3 para. 7, Article 3 para. 10, Article 4 para. 3 no. 5a, Article 4 para. 5 nos. 1 to 3, Article 5 para. 1 no. 7, Article 6 para. 2 no. 2, Article 8, Article 9 paras. 1 and 2, Article 9 para. 3 no. 1, Article 9 paras. 6, 7, 7a and 8, Article 10 paras. 4 to 6, Article 11 para. 1, para. 2 no. 1, para. 4, para. 5 no. 1 and para. 6, Article 13 para. 1, para. 2 nos. 3 and 5, para. 4 and para. 5, Article 15 paras. 1, 1a, 3, 5, 6, 7 and 8, Article 16 para. 1, Article 17 paras. 1, 1a, 4 and 5, Article 18 paras. 1, 5 and 6, Article 20 paras. 4 and 7, Article 20a para. 2, para. 4 no. 2 and para. 5 nos. 1 to 3, Article 20b para. 1 nos. 1 and 2 and para. 3, Article 21 para. 1 nos. 1 and 2, Articles 21a and 21b including the headings, the heading of Section V, Articles 22, 22a and 23d including the headings, Articles 24 and 24a including the headings, the heading of Section VI, the heading of Subsection 1 of Section VI, Article 25, the heading of Subsection 2 of Section VI, Articles 26, 26a, 26b, 27 and 27a including the headings, the heading of Subsection 3 of Section VI, Article 28a paras. 2a to 2c, para. 3 no. 2, para. 5 and para. 6, Articles 28b and 29 including the headings, the heading of Subsection 4 of Section VI, the heading of Article 30, Article 30 paras. 1 to 3, para. 4 no. 2, paras. 7a to 10, Articles 30a, 30b, 30c, 30d including the headings, Article 39 paras. 2, 2b to 5, Article 39c paras. 2 and 3, Article 39d including its heading, Article 40 para. 2, Article 42 para. 6 nos. 3 and 4, Article 43 paras. 1 and 3, Article 57 paras. 1 and 5, Article 59 paras. 3 and 7, Article 59a, Article 60 paras. 1 and 3, Article 61 para. 2, Article 62 nos. 1a, 6a and 17, Article 62a, Article 63 paras. 2, 3 and 3a, Article 63 para. 4 nos. 2, 3, 6 and 9 to 11, Article 63 para. 4a, Article 64 para. 1 and paras. 2 to 6, Article 65 para. 2 no. 1 and para. 2a no. 1, Article 65a including its heading, the heading of Section XIV, the heading of Article 69, Article 69 paras. 1, 2, 3a, 3b and 5, the heading of Article 69a, Article 69a para. 4, Article 69b including its heading, the heading of Article 70, Article 70 para. 1 no. 1, paras. 1b, 1e, 2 and 4 to 4d, the heading of Article 70a, Article 70a paras. 1, 2, 4 and 5, the heading of Article 71, the heading of Article 72, Article 73 para. 1 nos. 2, 3, 8, 9, 12, 16 and 17, Article 73 paras. 3, 4 and 4a no. 3, Article 73a, Article 74, Article 74b including its heading, the heading of Article 75, Article 75 para. 1 nos. 1, 3 and 5, Article 75 paras. 1a, 2 and 5, Article 75 para. 7 no. 4, the heading of Article 77, Article 77 para. 4 nos. 15 and 19, para. 5, para. 6 nos. 2 to 8 and para. 7, the heading of Article 77a, Article 77a paras. 1 and 4, Article 77b paras. 1, 2 and 3 no. 4, para. 4 nos. 3 to 6, Article 77c paras. 1, 1a, 2, 2a and 5 to 9, Article 79 para. 2, para. 3 no. 2 and para. 6, Article 81 para. 3, Article 93 para. 5 nos. 1, 1a, 2, 8 and 12, Article 98 para. 1a, para. 2 nos. 1, 2, 7, 8 and 11, paras. 5a and 6, Article 99 para. 1 nos. 3, 4 and 6a, Article 99c, Article 99d paras. 1, 2, 4 and 5, Article 99e to Article 99g, Article 101a, Article 103 no. 16, Article 103q, Article 105 paras. 5 and 10, nos. 3 and 6a, no. 7 lit. c, no. 7 lit. d sublit. cc, nos. 8a, 8b and 9a, no. 11 lit. b, no. 12 lit. a, no. 12 lit. d of the Annex to Article 39b, nos. 6a, 7, 8, 8a, 8b and 12 of Annex 2 to I Article 43, Part 1 Liabilities, nos. 4 and 5 of Annex 2 to I Article 43, Part 1 Liabilities,

off-balance sheet items and Section IX of Annex 2 to I Article 43, Part 2 in the version of Federal Law Gazette I No. 184/2013 shall enter into force on 1 January 2014.

2. Article 5 para. 1 no. 9a and Article 28a para. 5 no. 5 in the version of Federal Law Gazette I No. 184/2013 shall enter into force on 1 July 2014.
3. The heading of Article 74a, Article 74a para. 1 introductory sentence, nos. 2 and 3 and Article 74a paras. 2 to 4 in the version of Federal Law Gazette I No. 184/2013 shall enter into force on 31 December 2014.
4. Article 74a para. 1 no. 1 in the version of Federal Law Gazette I No. 184/2013 shall enter into force on 31 December 2015.
5. Articles 23 to 23c including their headings in the version of Federal Law Gazette I No. 184/2013 shall enter into force on 1 January 2016.
6. The table of contents of Section XXIII including its heading and Articles 102 and 102a, and Article 2 nos. 2, 3, 5a to 7, 9 to 12, 15, 16, 23 to 25b, 30 to 32, 34, 36, 37, 48, 53, 56 to 57e, 60 to 70 and 76, Article 5 para. 4, Article 21c to Article 21h including the headings, the headings of Subsections 1 to 6 of Section V, Article 24b including its heading, the headings of Subsections 7 to 9 of Section V, Article 29a including its heading, Article 30 para. 4 no. 3, Article 42 para. 4 nos. 2 and 6, Article 63 para. 4 no. 7, Article 69 para. 6, Article 70 para. 11, Article 73 para. 1 nos. 17a to 19, Article 98 para. 2 nos. 3, 4, 4b and 9, Article 99 para. 1 no 5, the heading of Section XXIII, Articles 102 and 102a, Article 103 no. 9 lit. b and c, Annexes 1 and 2 to Article 22 and no. 7 of Annex 2 to I Article 43 Part 1, Liabilities, off-balance sheet items shall expire at the end of 31 December 2013.
7. The table of contents of Subsection 1 of Section VI including its heading, Article 3 para. 2 no. 7, the heading of Subsection 1 of Section VI, Article 25 including its heading and Article 74 para. 6 no. 3 lit. a in the version of Federal Law Gazette I No. 184/2013 shall expire at the end of 31 December 2014.

(81) Article 98 para. 1, Article 98 para. 5 and Article 99d para. 3 in the version of Federal Law Gazette I No. 184/2013 shall enter into force on 1 January 2014.

(82) Article 41 para. 6 shall expire at the end of 28 February 2014.

(83) Article 30 para. 4 no. 3 in the version of Federal Law Gazette I No. 59/2014 shall enter into force on 1 January 2014. Article 5 para. 1 no. 9a, Article 5 para. 4, Article 28a para. 5 no. 5 and Article 103q no. 10a in the version of Federal Law Gazette I No. 59/2014 shall enter into force on 1 July 2014.

(84) Article 3 paras. 2, 2a, and 4a and para. 7 lit. c, Article 9 para. 7, Article 15 para. 1, Article 27a, Article 30a paras. 5, 5a, 6, 8 and 10, Article 57 para. 5, Article 63 para. 4 no. 2, Article 69a paras. 1, 2 and 4a, Article 70 para. 4, para. 4b no 2, para. 4c and para. 4d no. 2, Article 73a, Article 74 para. 4, Article 82 para. 7, Article 98 para. 5 no. 3 and Article 103q no. 11 in the version of Federal Law Gazette I No. 98/2014 shall enter into force on 1 January 2015. The table of contents of Articles 71a and 71b, as well as Article 22 para. 1 no.3, and Article 71a including its heading and 71b shall expire at the end of 31 December 2014.

(85) Article 21 para. 4 no. 3 in the version of Federal Law Gazette I No. 18/2015 enters into force at the end of day of its announcement in the Federal Law Gazette, at earliest on 27 March 2015. The data which are already available from this date in the decentralised Business Register which is no longer to be maintained by the FMA about the activities of credit institutions as insurance intermediaries, shall be transferred into the GISA either by the FMA or on the initiative of the FMA at latest within two months after the entry into force of the federal law published in Federal Law Gazette I No. 18/2015. The FMA shall discontinue the decentralised Business Register for the activities of credit institutions as insurance intermediaries at the end of two months after the federal act published in Federal Law Gazette I No. 18/2015 has entered effect.
(86) Article 30d para. 2 in the version of Federal Law Gazette I No. 34/2015 shall enter into force on 1 January 2016.
(87) Article 3 para. 4a no. 1, Article 3 para. 7 lit. c, Article 5 para. 1 no. 9a lit. a sublit. bb, Article 28a para. 5 no. 5 lit. a sublit. bb, Article 43 paras. 1 and 1a, Article 54a, Article 63 para. 3a, Article 64, Article 65 para. 2 no. 1 and Article 93 para. 5 no. 6 lit. e and no. 8 as published in the version of Federal Law Gazette I No. 68/2015 shall enter into force on 20 July 2015. Article 64 para. 5 shall expire at the end of 19 July 2015. The provisions contained in the version of Federal Law Gazette I No. 68/2015 shall first be applicable on accounting documentation for business years beginning after 31 December 2015. The provisions contained in the version of Federal Law Gazette I No. 68/2015 shall also apply for business years that begin before 1 January 2016, although in such instances with regard to references to the UGB, the version of the UGB prior the version of Federal Law Gazette I No. 22/2015 shall apply.
(88) Article 38 para. 2 no. 1 in the version of the federal act in Federal Law Gazette I No. 116/2015, enters into force on 1 January 2016.
(89) (constitutional law provision) Article 38 para. 2 nos. 11 and 12 in the version of the federal act published in Federal Law Gazette I No. 116/2015 shall first apply for time horizons from 1 March 2015.
(90) Article 69a paras. 4 and 6 in the version of the federal act published in Federal Law Gazette I No. 159/2015 shall enter into force on 1 January 2016 and shall apply to financial years that commence after 31 December 2015.
(91) The table of contents with reference to Article 33 as well as Article 33 in the version of the federal act published in Federal Law Gazette I No. 159/2015 enters into force on 21 March 2016.
(92) Article 43 para. 1, Article 60a, Article 61 para. 3, Article 62 no. 6a, Article 63 para. 8 and Article 63b para. 3 in the version published by federal act in Federal Law Gazette I No. 43/2016 enter into force on 17 June 2016 and shall initially apply to the audit opinions for financial year beginning after 16 June 2016. Article 57 para. 5 in the version published in the federal act in the Federal Law Gazette I No. 43/2016 enters into force on 15 August 2015. Article 63a para. 4 and Article 103u in the version published by federal act in the Federal Law Gazette I No. 43/2016 enter into force on 17 June 2016.
(93) Article 40b para. 1 no. 1 lit. a in the version of the federal act published in Federal Law Gazette I No. 50/2016 enters into force on 1 July 2016.

(94) The table of contents with regard to Section X including its heading, Article 3 para. 1 no. 3 and para. 9, Article 11 para. 5 no. 2, Article 13 para. 4 no. 2 and para. 5 no. 2, Article 15 paras. 1 and 5, Article 17 para. 4, Article 20b para. 1 no. 5, Article 30a para. 7, Article 31 paras. 1, 3 and 5, Article 32 para. 4, the heading of Section X, Article 41, Article 42 para. 4 no. 3, Article 63 para. 4 no. 3, Article 79 para. 3 nos. 4 to 6 and para. 4a, Article 95 paras. 1 and 1a, Article 105 para. 7 and Article 108 no. 2 in the version of the federal act published in Federal Law Gazette I no. 118/2016 shall enter into force on 1 January 2017. Article 98 paras. 5b and 5c and Article 99 para. 1 no. 18 in the version of the federal act published in Federal Law Gazette I No. 118/2016 shall enter into force upon expiry of the date of their publication in the Federal Law Gazette, at earliest, however, on 1 January 2017. The table of contents with regard to Article 39e, and Article 3 para. 7 lit. c, Article 39e including its heading and Article 74 para. 6 no. 3 lit. c in the version of the federal act published in Federal Law Gazette I No 118/2016 shall enter into force on 31 December 2016. The table of contents with regard to Articles 40 to 40d, Article 2 nos. 72 to 75, Article 40 to Article 40d including headings, Article 78 paras. 8 and 9, Article 98 para. 5a no. 3, Article 99 para. 1 nos. 9 and 19 and para. 2 as well as Article 108 nos. 3 and 3a expires at the end of 31 December 2016.

(95) Article 2 para. 46 and Article 74 para. 6 no. 3 lit. a in the version of the Federal Act amended in Federal Law Gazette I No. 136/2017 shall enter into force on 1 August 2017. The table of contents with regard to Article 22b, Article 22b including heading, Article 98 para. 2 no. 12 and Article 98 para. 5b in the Version of the Federal Act amended in Federal Law Gazette I no. 136/2017 enter into force on 1 July 2018.

(96) Article 1 para. 1 no. 7a, Article 1 para. 3, Article 2 no. 29, Article 3 para. 1 no. 5, Article 3 para. 3 no. 6, Article 3 para. 4a no. 2 and para. 7 lit. d, Article 9 para. 7, Article 20 para. 3, Article 20 para. 7, Article 29, Article 39 para. 5, Article 39c para. 1, Article 39d para. 1, Article 63 para. 4 no. 9, Article 63 para. 6 no. 2, Article 63a para. 4, Article 96, Article 98 paras. 1, 1a, 2, 3, 4, 5, 5a no. 2, 5b, 5c, Article 99 para. 1, Article 99d paras. 1 and 2 in the version of the Federal Act amended by the Federal Law Gazette I No. 107/2017 enter into force on 3 January 2018.

(97) The table of contents with regard to Subsection 1 including its heading in Section VI, Article 3 para. 4a no. 1, Article 5 para. 4, der Section VI Subsection 1, Article 29, Article 39 para. 5, Article 39c para. 1, Article 39d para. 1, Article 42 para. 6, Article 60 para. 4, Article 63 para. 4 Z 3, Article 63a para. 4, Article 69 para. 1, Article 71 para. 6, Article 73a, Article 76 paras. 8, 10 and 11, Article 79 para. 4b, Article 98 para. 3 no. 4, Article 103v as well as the Annex to Article 25 including its heading in the version of the Federal Act amended in Federal Law Gazette I No. 149/2017 enter into force on 3 January 2018. Article 80 para. 1 shall expire at the end of 2 January 2018.

(97a) Article 1 para. 2 no. 7 and para. 3, Article 9 paras. 7 and 8, Article 34 para. 2, the introductory part of Article 37 para. 1, Article 37 para. 1 no. 2 and para. 2, Article 38 para. 6, Article 69a para. 8, Article 75 para. 1 no. 1 as well as Article 103j paras. 1 and 2 in the version of the Federal Act amended in Federal Law Gazette I no. 17/2018 shall enter into force on 1 June 2018.

(98) The table of contents, Article 3 para. 3 no. 1, Article 3 para. 4a no. 1, Article 3 para. 7 lit. c, Article 75 including heading and Article 105 para. 15 in the version of the Federal Act as amended by

Federal Law Gazette I No. 150/2017 shall enter into force on 1 September 2018. Article 74a including its heading shall expire at the end of 31 August 2018.

(99) Article 3 para. 4a no. 1 and para. 7 lit. c, Article 39 paras. 5 and 6 no. 1, Article 42 para. 1, Article 63a para. 4, Article 73 para. 1 no. 11 and para. 1b, Article 73a in the version of the Federal Act amended in Federal Law Gazette I No. 36/2018 shall enter into force on 1 September 2018. Article 28a para. 5a to 5c, Article 39 para. 6 nos. 2 and 3, Article 39d para. 5, Article 98 para. 2 no. 7, Article 103w as well as Article 105 para. 17 in the version of the Federal Act amended in Federal Law Gazette I No. 36/2018 shall enter into force on 1 January 2019.

(100) Article 69 para. 1 in the version of the Federal Act amended in Federal Law Gazette I No. 76/2018 shall enter into force on 1 January 2019.

(101) Article 21 paras. 4, 5 and 6, Article 98 para. 5d, Article 99c para. 6, Article 99d paras. 1, 2 and 3, Article 99f and Article 103v in the version of the Federal Act amended in Federal Law Gazette I No. 112/2018 shall enter into force one month after its announcement in the Federal Law Gazette.

(102) The table of contents, the heading before Article 35, Article 35 para. 1 as well as Article 98 para. 3 no. 10 and para. 5b no. 7 in the version of the Federal Act amended in Federal Law Gazette I No. 46/2019 shall enter into force on 1 July 2019. Article 35 para. 3 shall be repealed at the end of 30 June 2019.

(103) Article 38 para. 2 no. 14 in the version of the Federal Act amended in Federal Law Gazette I No. 46/2019 shall enter into force on 1 March 2021.

(104) Article 3 para. 1 no. 10, Article 39 para. 2d, Article 69 para. 3, Article 74 paras. 1 and 4, Article 79 para. 2, Article 98 para. 5a no. 4 and Article 98 para. 5a no. 10 in the version of the Federal Act amended in Federal Law Gazette I No. 98/2021 shall enter into force on 28 June 2021. Article 75 paras. 1 and 3 in the version of the Federal Act amended in Federal Law Gazette I No. 98/2021 shall enter into force on 1 July 2021.

(105) Article 1 para. 1 no. 9, Article 69 para. 1, Article 70 para. 4 and Article 73a in the version of the Federal Act amended in Federal Law Gazette I No. 199/2021 shall enter into force on 8 July 2022.

(106) Article 1 para. 3, Article 79 para. 2a, Article 103z and Article 109 paras. 1 and 2 in the version of the Federal Act amended in Federal Law Gazette I No. 36/2022 shall enter into force on the following day after announcement.

(107) Article 69a para. 6 in the version of the Federal Act amended in Federal Law Gazette I No. 36/2022 shall apply to the FMA's financial years that begin after 31 December 2021.

(108) Article 1 para. 1, Article 1a para. 1 no. 4, Article 3 para. 7 lit. d, Article 4 para. 1, Article 5a para. 6, Article 6 para. 2 nos. 2, 5 and 6, Article 21b para. 1, Article 23a para. 2, Article 30 para. 2 no. 3, para. 6 and para. 11 no. 1, Article 69a para. 1 nos. 3 and 4, Article 69b para. 1 no. 5, Article 77 paras. 5 and 7, Article 77b para. 3 no. 4, Article 97 para. 1 nos. 1 and 2, Article 98 para. 1, Article 103z1 and Article 105 paras. 5 to 14 and 16 to 20 in the version of the Federal Act amended in Federal Law Gazette I No. 237/2022 shall enter into force on 1 February 2023. Article 22 para. 2 and Article 30 para. 2 nos. 2, 4 and 5 shall expire at the end of 31 January 2023.

(109) Article 10a para. 2 in the version of the Federal Act amended in Federal Law Gazette I No. 78/2023 enters into force on 1 August 2023.
(110) Article 38 para. 2 no. 15 and Article 105 para. 21 in the version of Federal Law Gazette I No. 106/2023 shall enter into force on 1 January 2024.
(114) Article 1 para. 3, Article 11 paras. 1 and 4, Article 13 para. 1 as well as Article 105 para. 22 in the version of the Federal Act amended in Federal Law Gazette I No. 111/2024 shall enter into force on the following day after announcement.
(115) Article 39 para. 2, Article 60 para. 3, Article 69 para. 2 no. 2, Article 70 para. 1 nos. 1 and 3, Article 105 para. 22 and Article 109 para. 3 in the version of the federal act in Federal Law Gazette I No. 112/2024 shall enter into force on 17 January 2025.
(116) In the version of the Federal Act amended by Article 3 of the FATF Inspection Amendment Act 2024 (FATF-Prüfungsanpassungsgesetz 2024), published in Federal Law Gazette I no. 5/2025, the following shall enter into force:

1. the entries in the table of contents regarding the heading for Section XV and Article 78, Article 38 para. 2 no. 5, Article 38 para. 2 nos. 15 and 16 in the version in point 4, the heading for Section XV, and Article 79 para. 3 no. 5 shall enter into force upon expiry of the date of their publication in the Federal Law Gazette; Article 78 para. 7 shall be repealed at the same time;
2. Article 38 para. 2 no. 16 in the version in point 5 and Article 79 para. 4a first and second sentences shall enter into force on 1 January 2026; Article 79 para. 3 no. 5 shall be repealed at the same time.

(117) Article 21 para. 5, Article 21b para. 1, Article 33 para. 6, Article 69 para. 1, Article 79 para. 3 no. 7, Article 98 para. 5d and Article 105 para. 5 no. 2 and paras. 24 and 25 in the version amended by Federal Act in Federal Law Gazette I No. 6/2025 shall enter into force into force at the end of the day on which it was announced.

Article 108. The following bodies are responsible for the enforcement of this federal act:

1. the federal government with regard to Article 78 paras. 1 to 3;
2. the Federal Minister of Justice with regard to Article 82 paras. 1 and 4, Article 83 to Article 91 as well as Article 100 and Article 101;
3. repealed;

3a. repealed;

4. the Federal Minister of Finance in coordination with the Federal Minister of Justice with regard to Article 2 nos. 1 to 4, Article 5 para. 2, Article 6 paras. 4 and 5, Article 7 para. 2, Article 20 para. 5 no. 3, Article 21 paras. 2 and 3, Article 38 paras. 1 and 2, Article 43, Article 44 para. 1, Article 63 para. 2 (last sentence) and para. 3, Article 66 to Article 68, Article 92 paras. 4 and 9, Article 94, and Article 103 no. 20;
5. the Federal Minister of Finance in coordination with the Federal Minister of Digital and Economic Affairs with regard to Article 1 para. 4;
6. the Federal Minister of Finance with regard to all other provisions.

Transposition Notes

Article 109. (1) The amendment published by federal act in Federal Law Gazette I no. 98/2021 transposes Directive (EU) 2019/878 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures, published in OJ L 150, 07.06.2019, p. 253.
(2) The amendment published by federal act in Federal Law Gazette I No. 36/2022 serves the purpose of implementing Regulation (EU) 2019/2175 amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority), Regulation (EU) No 1094/2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority), Regulation (EU) No 600/2014 on markets in financial instruments, Regulation (EU) 2016/1011 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds, and Regulation (EU) 2015/847 on information accompanying transfers of funds, OJ L 334, 27.12.2019. p. 1.
(3) The amendment published by Federal Act in Federal Law Gazette I No. 112/2014 transposes Directive (EU) 2022/2554 amending Directives 2009/65/EC, 2009/138/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU, 2014/65/EU, (EU) 2015/2366 and (EU) 2016/2341 regarding digital operational resilience in the financial sector, OJ L 333, 27.12.2022, p. 153.

ANNEXES

Annex to Article 23a

Calculation of the countercyclical buffer rate

1. The countercyclical buffer rate is the weighted average of the countercyclical buffer rates, which apply in the territories in which the material credit exposures of the credit institution or the group of credit institutions are situated, or which apply based on Article 23b para. 2 or 3. To calculate the weighted average credit institutions and groups of credit institutions have to apply to each applicable countercyclical buffer rate the total own funds requirements for credit risk, determined in accordance with Part Three, Titles II and IV of Regulation (EU) No 575/2013, that relate to the relevant credit exposures in the territory in question, divided by their total own funds requirements for credit risk that relates to all of their relevant credit exposures.
2. If the FMA defines a rate of over 2.5 % for the total risk exposure amount in accordance with Article 92 (3) of Regulation (EU) No 575/2013 pursuant to Article 23 (9) for the capital buffer requirement for the countercyclical capital buffer, then for the purposes of the calculation in accordance with no. 1 as well as where applicable for the purpose of the calculation of the component of the consolidated own funds that relates to the credit institution in question, the following shall apply to credit exposures in Austria:
   a. credit institutions incorporated in Austria shall apply the buffer rate that exceeds 2.5 % of the total risk exposure;
   b. credit institutions that are active in Austria by way of the freedom to provide services or the freedom of establishment shall apply a countercyclical buffer rate of 2.5 % of the total risk exposure, provided that the authority or public body pursuant to Article 77 para. 5 no. 6 in the Member State in which they were authorised has not recognised the buffer rate of over 2.5 % pursuant to Article 137 (1) of Directive 2013/36/EU,
   c. credit institutions that are active in Austria by way of the freedom to provide services or the freedom of establishment shall use the countercyclical buffer rate determined by the FMA, provided that the authority or public body pursuant to Article 77 para. 5 no. 6 in the Member State in which they were authorised has recognised the buffer rate pursuant to Article 137 (1) of Directive 2013/36/EU,
3. If the buffer rate determined by a designated authority pursuant to Article 136 (1) of Directive 2013/36/EU exceeds 2.5 % of the total risk exposure amount in accordance with Article 92 (3) of Regulation (EU) No 575/2013, then for the purposes of the calculation in accordance with no. 1 as well as where applicable for the purpose of the calculation of the component of the consolidated equity capital that relates to the credit institution in question, the following shall apply to material credit exposures in this third country:

a. credit institutes shall apply a countercyclical buffer rate of 2.5 % of the total risk exposure amount, if the FMA has not recognised the buffer rate in excess of 2.5 % pursuant to Article 23b para. 1;
b. credit institutions shall apply the countercyclical buffer rate determined by the designated authority pursuant to Article 136 (1) of Directive 2013/36/EU, if the FMA has recognised the buffer rate pursuant to Article 23b para. 1.

4. If the buffer rate determined by the competent third-country authority exceeds 2.5 % of the total risk exposure amount in accordance with Article 92 (3) of Regulation (EU) No 575/2013, then for the purposes of the calculation in accordance with no. 1 as well as where applicable for the purpose of the calculation of the component of the consolidated equity capital that relates to the credit institution in question, the following shall apply to material credit exposures in this third country:
   a. credit institutes shall apply a countercyclical buffer rate of 2.5 % of the total risk exposure amount, if the FMA has not recognised the buffer rate in excess of 2.5 % pursuant to Article 23b para. 1;
   b. credit institutions shall apply the countercyclical buffer rate determined by the competent third-country authority, if the FMA has recognised the buffer rate pursuant to Article 23b para. 1.
5. Relevant credit exposures shall include all those exposure classes, other than those referred to in Article 112 (a) to (f) of Regulation (EU) No 575/2013, that are subject to:
   a. they are subject to the own funds requirements for credit risk under Part Three, Title II of Regulation (EU) No 575/2013;
   b. where the exposure is held in the trading book, then the own funds requirements for specific risk under Part Three, Title IV, Chapter 2 Regulation (EU) No 575/2013 or incremental default and migration risk under Part Three, Title IV, Chapter 5 of Regulation (EU) No 575/2013 shall apply;
   c. where the exposure is a securitisation, the own funds requirements under Part Three, Title II, Chapter 5 of Regulation (EU) No 575/2013 shall apply.
6. Credit institutions and groups of credit institutions shall identify the location of a material credit exposure, and shall take into consideration the relevant EBA rules.
7. For the purposes of the calculation required under no. 1:
   a. a countercyclical buffer rate shall apply from the date specified in the information published in accordance with Article 23a para. 4 lit. e or Article 23 para. 5 if the effect of the FMA's decision is to increase the buffer rate;
   b. a countercyclical buffer rate for a third country subject to lit. c shall apply 12 months from the date on which a change in the buffer rate was announced by the relevant third-country authority, irrespective of whether that authority requires CRR-institutions established in that third country to apply the change within a shorter period, if the effect of that decision is to increase the buffer rate;

c. where the FMA sets the countercyclical buffer rate for a third country pursuant to Article 23b para. 2 or 3, or recognises the countercyclical buffer rate for a third country pursuant to Article 137, that buffer rate shall apply from the date specified in the information published in accordance with Article 139(5)(c) or Article 137(2)(c), if the effect of that decision is to increase the buffer rate;

d. a countercyclical buffer rate shall apply immediately if the effect of that decision is to reduce the buffer rate.

8. For the purposes of lit. b, a change in the countercyclical buffer rate for a third country shall be considered to be announced on the date that it is published by the relevant third-country authority in accordance with the applicable national rules.

Annex to Article 23e

Calculation of the systemic risk buffer rate

1. Credit institutions shall calculate the systemic risk buffer rate as follows:

$$B_{SR} = r_T \times E_T + \sum_i r_i \times E_i$$

where

B_{SR} = capital buffer requirement for the systemic risk buffer;

r_T = applicable buffer ratio for the total risk exposure of a credit institution;

E_T = total risk exposure of a credit institution calculated pursuant to Article 92(3) of Regulation (EU) No 575/2013;

i = index for the subset of exposures pursuant to no. 1;

r_i= applicable buffer rate for the total risk exposure amount of the subset of exposures i; and

E_i= total risk exposure amount of a credit institution for the subset of exposures i calculated pursuant to Article 92(3) of Regulation (EU) No 575/2013;

2. A systemic risk buffer rate may apply for the following:
   a. all domestic exposures;
   b. the following domestic exposures:
      aa) all retail exposures towards natural persons that are secured by residential property pursuant to Article 4 (1) (75) of Regulation (EU) No 575/2013;
      bb) all exposures towards legal entities that are secured by mortgages against commercial immovable property;
      cc) all exposures towards legal entities with the exception of those listed in sublit. bb;
      dd) all exposures towards natural persons with the exception of those listed in sublit. aa;
   c. all exposures located in other Member States with the exception of the exposures pursuant to Article 23e paras. 10 and 13;
   d. sectoral exposures situated in other Member States pursuant to lit. b, however only for recognising one buffer rate set by another Member State pursuant to Article 23f;
   e. exposures situated in third countries;
   f. subsets of all categories of exposures listed in lit. b.
3. In the case of groups of credit institutions the calculation shall occur based on consolidated requirements.

Annex to Article 24

Calculation of the Maximum Distributable Amount (MDA)

1. Credit institutions shall calculate the maximum distributable amount (MDA) by multiplying the total pursuant to no. 2 by the factor determined pursuant to no. 3. Where measures are enforced following the calculation of the Maximum Distributable Amount pursuant to Art. 24 para. 2 nos. 1 to 3, then these measures shall reduce the distributable amount.
2. The total amount to be multiplied shall consist of the following components:
   a. all interim profits not included in Common Equity Tier 1 capital pursuant to Article 26 (2) of Regulation (EU) No 575/2013, less any distribution of profits or payments as a result of any of the actions pursuant to Article 24 para. 2 nos. 1 to 3; plus
   b. all full-year profits not included in Common Equity Tier 1 capital pursuant to Article 26 (2) of Regulation (EU) No 575/2013, less any distribution of profits or payments as a result of any of the actions pursuant to Article 24 para. 2 nos. 1 to 3; less
   c. the amounts which would be payable as tax if the profits specified in lits. a and b were to be retained.
3. The factor shall be determined as follows:
   a. where the Common Equity Tier 1 capital maintained by the institution which is not used to meet one of the own funds requirements under Article 92 (1) (a), (b) and (c) of Regulation (EU) No 575/2013 as well as the additional own funds requirement for meeting other risks than the risk of excessive leverage pursuant Article 70 para. 4a no. 1, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92 (3) of Regulation (EU) No 575/2013, is within the lowest quartile of the combined buffer requirement, the factor shall be 0;
   b. where the Common Equity Tier 1 capital maintained by the institution which is not used to meet one of the own funds requirements under Article 92 (1) (a), (b) and (c) of Regulation (EU) No 575/2013 as well as the additional own funds requirement for meeting other risks than the risk of excessive leverage pursuant Article 70 para. 4a no. 1, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92 (3) of Regulation (EU) No 575/2013, is within the second quartile of the combined buffer requirement, the factor shall be 0.2;
   c. where the Common Equity Tier 1 capital maintained by the institution which is not used to meet the own funds requirements under Article 92 (1) (a), (b) and (c) of Regulation (EU) No 575/2013 as well as the additional own funds requirement for meeting other risks than the risk of excessive leverage pursuant Article 70 para. 4a no. 1, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92 (3) of Regulation (EU) No 575/2013, is within the third quartile of the combined buffer requirement, the factor shall be 0.4;

d. where the Common Equity Tier 1 capital maintained by the institution which is not used to meet the own funds requirements under Article 92 (1) (a), (b) and (c) of Regulation (EU) No 575/2013 as well as the additional own funds requirement for meeting other risks than the risk of excessive leverage pursuant Article 70 para. 4a no. 1, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92 (3) of Regulation (EU) No 575/2013, is within the highest quartile of the combined buffer requirement, the factor shall be 0.6;

The lower and upper bounds of each quartile of the combined buffer requirement shall be calculated as follows:

$$\text{Lower bound of quartile} = \frac{\text{Combined buffer requirement}}{4} \times (Q_n - 1)$$

$$\text{Upper bound of quartile} = \frac{\text{Combined buffer requirement}}{4} \times Q_n$$

Where "Q_n" indicates the ordinal number of the quartile concerned.

In the case of groups of credit institutions, the calculation shall occur based on consolidated requirements.

Annex to Article 24c

Calculation of the Maximum Distributable Amount (MDA) in relation to the leverage ratio

1. Credit institutions shall calculate the maximum distributable amount (MDA) in relation to the leverage ratio by multiplying the total pursuant to no. 2 by the factor determined pursuant to no. 3. Where measures are enforced following the calculation of the maximum distributable amount (MDA) in relation to the leverage ratio pursuant to Art. 24c para. 2 nos. 1 to 3, then these measures shall reduce the distributable amount in relation to the leverage ratio.
2. The total amount to be multiplied shall consist of the following components:
   a. all interim profits not included in Common Equity Tier 1 capital pursuant to Article 26 (2) of Regulation (EU) No 575/2013, less any distribution of profits or payments as a result of any of the actions pursuant to Article 24c para. 2 nos. 1 to 3; plus
   b. all full-year profits not included in Common Equity Tier 1 capital pursuant to Article 26 (2) of Regulation (EU) No 575/2013, less any distribution of profits or payments as a result of any of the actions pursuant to Article 24c para. 2 nos. 1 to 3; less
   c. the amounts which would be payable as tax if the profits specified in lits. a and b were to be retained.
3. The factor shall be determined as follows:
   a. where the Additional Tier 1 capital maintained by the institution which is not used to meet requirements under Article 92 (1) (d) of Regulation (EU) No 575/2013 and pursuant to Article 70 para. 4a no. 1 for meeting the risk of excessive leverage that is not adequately covered by Art. 92 (1) (d) of Regulation (EU) No 575/2013 expressed as a percentage of the total exposure measure calculated in accordance with Article 429 (4) of Regulation (EU) No 575/2013, is within the lowest quartile of the leverage ratio buffer requirement, the factor shall be 0.
   b. where the Additional Tier 1 capital maintained by the institution which is not used to meet requirements under Article 92 (1) (d) of Regulation (EU) No 575/2013 and pursuant to Article 70 para. 4a no. 1 for meeting the risk of excessive leverage that is not adequately covered by Art. 92 (1) (d) of Regulation (EU) No 575/2013 expressed as a percentage of the total exposure measure calculated in accordance with Article 429 (4) of Regulation (EU) No 575/2013, is within the second quartile of the leverage ratio buffer requirement, the factor shall be 0.2.
   c. where the Additional Tier 1 capital maintained by the institution which is not used to meet requirements under Article 92 (1) (d) of Regulation (EU) No 575/2013 and pursuant to Article 70 para. 4a no. 1 for meeting the risk of excessive leverage that is not adequately covered by Art. 92 (1) (d) of Regulation (EU) No 575/2013 expressed as a percentage of the total exposure measure calculated in accordance with Article 429 (4) of Regulation (EU) No 575/2013, is within the third quartile of the leverage ratio buffer requirement, the factor shall be 0.4.

d. where the Additional Tier 1 capital maintained by the institution which is not used to meet requirements under Article 92 (1) (d) of Regulation (EU) No 575/2013 and pursuant to Article 70 para. 4a no. 1 for meeting the risk of excessive leverage that is not adequately covered by Art. 92 (1) (d) of Regulation (EU) No 575/2013 expressed as a percentage of the total exposure measure calculated in accordance with Article 429 (4) of Regulation (EU) No 575/2013, is within the highest quartile of the leverage ratio buffer requirement, the factor shall be 0.6.

The lower and upper bounds of each quartile of the leverage ratio buffer requirement shall be calculated as follows:

$$\text{Lower bound of quartile} = \frac{\text{Leverage ratio buffer requirement}}{4} \times \left(Q_n - 1\right)$$

$$\text{Upper bound of quartile} = \frac{\text{Leverage ratio buffer requirement}}{4} \times Q_n$$

Where "Qn" indicates the ordinal number of the quartile concerned.

In the case of groups of credit institutions the calculation shall occur based on consolidated requirements.

Annex to Article 25

Outsourcing conditions

1. The service provider shall possess the relevant qualifications, capacity, as well as all authorisations required by law to perform the outsourced tasks, services, or activities in a reliable and professional manner;
2. the service provider shall perform the outsourced services efficiently; for such purpose, the credit institution shall determine assessment methodologies for the performance of such services;
3. the service provider shall duly monitor the performance of the outsourced tasks and shall reasonably control any risks associated with such outsourcing;
4. where doubts exist about whether the service provider is effectively performing tasks in compliance with all applicable legal and administrative provisions, adequate measures shall be initiated;
5. the credit institution must continue to possess the necessary specialist knowledge to effectively monitor the outsourced tasks and to control any risks associated with such outsourcing;
6. the service provider shall inform the credit institution without delay about any development that may materially impede its ability to perform the outsourced tasks effectively and in compliance with all applicable legal and administrative provisions;
7. the credit institution must be able to terminate the outsourcing agreement if required, without doing so having any negative effect on the continuity and quality of the services provided for its customers;
8. the service provider shall cooperate with the FMA and the Oesterreichische Nationalbank with regard to the outsourced activities;
9. the credit institution, its bank auditors, the FMA and the Oesterreichische Nationalbank must actually have access to the data related to the outsourced activities and to the service provider’s business premises. The FMA and the Oesterreichische Nationalbank must be able to exercise such access rights;
10. the service provider shall protect all confidential information about the credit institution and its customers;
11. the credit institution and the service provider shall establish a contingency plan and ensure continuous compliance with the plan, which guarantees the storage of data in the event of a system failure as well as ensuring the regular testing of backup systems, where so doing is required in light of the outsourced function, service, or activity;
12. In the case of outsourcing to a service provider located in a third country, the credit institution shall continually monitor the political, legal and economic developments in the third country, and shall ensure promptly, that any negative developments shall not impede the FMA’s performance of its supervisory duties or, in the event that this is not possible, shall notify the FMA of this circumstance without delay, and to revoke the outsourcing arrangement without culpable delay.

Annex to Article 37a

Depositor Information Sheet

Basic information about the protection of deposits	
Deposits in [insert name of credit institution] are protected by:	[insert the name of the relevant deposit guarantee scheme] (1)
Limit of protection:	EUR 100 000 per depositor per credit institution (2) [where applicable:] The following trademarks are part of your credit institution [insert all trademarks which operate under the same licence]
If you have more deposits at the same credit institution:	All your deposits at the same credit institution will be "aggregated", and the total amount is subject to a cap of EUR 100 000 (2)
If you have a joint account with (an)other person(s):	The cap of EUR 100 000 applies for each individual depositor (3)
Reimbursement period in case of credit institution's failure:	7 working days (4) [replace by (an)other deadline(s) if applicable]
Currency of reimbursement:	Euro
Contact:	[Insert the contact details of the relevant deposit guarantee scheme (address, telephone no., e-mail address etc.)]
More information:	[insert the website address of the relevant deposit guarantee scheme]
Acknowledgement of receipt by the depositor:	

Additional information (all or some of the below)

(1) The competent deposit guarantee scheme for protection of your deposit:

[Only where applicable:] Your deposit is covered by a contractual scheme officially recognised as a Deposit Guarantee Scheme. If insolvency of your credit institution should occur your deposits will be repaid up to EUR 100 000.

[Only where applicable:] Your credit institution is part of an Institutional Protection Scheme officially recognised as a Deposit Guarantee Scheme. This means that all institutions that are members of this scheme mutually support each other in order to avoid insolvency. If insolvency should occur your deposits will be repaid up to EUR 100 000.

Additional information (all or some of the below)
[Only where applicable:] Your deposit is covered by a statutory Deposit Guarantee Scheme and a contractual Deposit Guarantee Scheme. If insolvency of your credit institution should occur your deposits will in any case be repaid up to EUR 100 000.
[Only where applicable:] Your deposit is covered by a statutory Deposit Guarantee Scheme. In addition, your credit institution is part of an Institutional Protection Scheme in which all members mutually support each other in order to avoid insolvency. If insolvency should occur your deposits will be repaid up to EUR 100 000 by the deposit guarantee scheme.
(2) General Cap on Protection:
In the event that a deposit is not available because a credit institution is unable to meet its financial obligations, then depositors will be reimbursed by the deposit guarantee scheme. The maximum relevant coverage level is EUR 100 000 per credit institution. This means that all deposits at the same credit institution are added up in order to determine the coverage level. If, for instance a depositor holds a savings account with a balance of EUR 90 000 and a current account with a balance of EUR 20 000, the depositor will only be repaid EUR 100 000.
[Only where applicable:] This method will also be applied if a credit institution operates under different trademarks. The [insert name of the account-holding credit institution] also trades under [insert all other trademarks of the same credit institution]. This means that all deposits with one or more of these trademarks are in total covered up to EUR 100 000.
In the event that accounts are denominated in another currency other than euro, the median exchange rate is used for the calculation of the amount to be refunded for the day on which the pay-out event occurred.
(3) Cap on coverage for joint accounts:
In the case of joint accounts, the limit of EUR 100 000 applies to each depositor.
[Only where applicable:] However, deposits in an account to which two or more persons are entitled as members of a business partnership, association or grouping of a similar nature, without legal personality, are aggregated and treated as if made by a single depositor for the purpose of calculating the limit of EUR 100 000 and shall be treated as the deposit of a single depositor. In some cases [insert cases defined in national law] deposits are protected over and above EUR 100 000. More information can be obtained under [insert the web address of the relevant DGS].
(4) Reimbursement: [to be adapted]
The responsible Deposit Guarantee Scheme is [insert name and address, telephone, e-mail and website]. It will repay your deposits (up to EUR 100 000) within [insert repayment period as is required by national law] at the latest, from [31 December 2023] within [7 working days].
[Add information on emergency/interim pay-out if repayable amount(s) are not available within 7 working days.]

Additional information (all or some of the below)

If you have not been repaid within these deadlines, you should contact the Deposit Guarantee Scheme since the time to claim reimbursement may be barred after a certain time limit. Further information can be obtained under [insert website of the responsible DGS].

Other important information:

In general, all retail depositors and businesses are covered by Deposit Guarantee Schemes. Exceptions for certain deposits are stated on the website of the responsible Deposit Guarantee Scheme. Your credit institution will also inform you on request whether certain products are covered or not. If deposits are eligible reimbursement, the credit institution shall also confirm this on the statement of account.

Annex to Article 39b

Principles of remuneration policy and practices

1. The remuneration policy shall be consistent with and promote sound and effective risk management and shall not encourage risk-taking that exceeds the level of tolerated risk of the credit institution.

1a. The remuneration policy and practices are gender-neutral.

2. The remuneration policy shall be in line with the business strategy, objectives, values and long-term interests of the credit institution, and shall incorporate measures to avoid conflicts of interest.

3. The supervisory board or the credit institution's other supervisory body competent according to applicable law or the articles of association shall adopt and periodically review the general principles of the remuneration policy and shall be responsible for monitoring their implementation. Where credit institutions have established a remuneration committee pursuant to Article 39c, these duties can be taken on by said remuneration committee.

4. The implementation of the remuneration practices shall, at least annually, be subject to a central and independent internal review for compliance with polices for remuneration adopted by the supervisory board or the other supervisory body competent according to applicable law or the articles of association.

5. Staff engaged in control functions shall be independent from the business units they oversee, shall have appropriate authority, and be remunerated in accordance with the achievement of the objectives linked to their functions, independent of the performance of the business areas they control.

6. The remuneration of the senior officers in the risk management and compliance functions shall be directly overseen by the remuneration committee.

6a. Taking into account national practices, the remuneration policy shall make a distinction between criteria for fixed and variable remuneration components. This distinction should be based on the following criteria in particular:

   a. Criteria for determining fixed remuneration components:
      aa) relevant professional experience and
      bb) specific activity performed in the respective organisational structure, taking into account the level of responsibility associated with such activity;
   b. Criteria for determining variable remuneration components:
      aa) sustainable and risk-adjusted performance and
      bb) performance that extends beyond the stipulated performance objectives.

7. Where remuneration is performance related, it shall be based on a combination of the assessment of the performance of the individual and of the business unit concerned and of the overall results of the credit institution and when assessing individual performance, financial and non-financial criteria shall be taken into account:

a. The assessment of the performance shall be set in a multi-year framework in order to ensure that the assessment process is based on longer-term performance and that the actual payment of performance-based components of remuneration is spread over a period which takes account of the underlying business cycle of the company.

b. The total variable remuneration shall not limit the ability of the credit institution to strengthen its capital base.

c. Guaranteed variable remuneration is not compatible with sound risk management or the principle of performance-oriented pay and may not form part of future remuneration systems; exceptionally, a guaranteed variable remuneration may be granted in conjunction with the hiring of new employees if limited to the first year of employment and if the credit institution has a solid and sufficient capital base.

d. Credit institutions that benefit from government support measures on the basis of the provisions of the FinStaG, Federal Law Gazette I No. 136/2008, or pursuant to Article 1 para. 4 of the Interbank Market Support Act (IBSG; Interbankmarktstärkungsgesetz), Federal Law Gazette I No. 136/2008, shall also adhere to the following principles:

aa) Variable remuneration shall be limited as a percentage of net revenue where it is inconsistent with the maintenance of a sound capital base and timely exit from government support measures.

bb) Credit institutions shall restructure remuneration in a manner aligned with sound risk management and long-term growth. Where appropriate, this shall include establishing limits to the remuneration of directors.

cc) Directors shall only be paid variable remuneration if such payment is justified and appropriate.

8. Fixed and variable components of total remuneration shall be appropriately balanced and the fixed component shall represent a sufficiently high proportion of the total remuneration to allow the operation of a fully flexible policy, on variable remuneration components, including the possibility to dispense with a variable remuneration completely.

8a. Credit institutions shall ensure that there is an appropriate balance between fixed and variable components of overall remuneration. The amount of variable remuneration components must not exceed the amount of fixed remuneration components.

8b. In deviation from no. 8a, the variable remuneration components may be increased by means of a resolution adopted by shareholders or other members to up to 200% of the fixed remuneration components, provided that the following conditions are fulfilled:

a. The adoption of the resolution is preceded by a comprehensive recommendation from the credit institution, setting out the reasons for the increased variable remuneration and its scope, including the number of employees affected, their functions and the expected impact in terms of maintaining a solid capital base for the credit institution.

b. The credit institution informs the FMA immediately of any such recommendation. The information provided must include, in particular, the proposed increase in variable

remuneration components and the reasons for this increase. Additionally, it must be shown that this increase will not jeopardise the credit institution's compliance with its obligations under Regulation (EU) No 575/2013 or this federal act, including the compulsory own funds requirements.

c. The shareholders or other members are informed of the planned resolution by the credit institution in advance with adherence to an appropriate period of notice.

d. For the resolution to take effect, at least half of the voting capital must be present, with a majority of 66% of the votes. In deviation from the above, the resolution may take effect despite non-compliance with the required quorum if adopted by a majority vote of 75%. Employees of a credit institution who will be directly affected by an increase in variable remuneration components shall be excluded from exercising their voting right either directly or indirectly.

e. The credit institution informs the FMA immediately of the resolution adopted. In particular, the information provided must include the increased maximum ratio of fixed to variable remuneration components. The FMA shall analyse national remuneration practice on the basis of this information, submitting the findings of its analysis to the EBA on an annual basis.

9. Payments related to the early termination of a contract shall reflect performance achieved over time and shall be designed in a way that does not reward failure.

9a. If a credit institution takes over payments forming part of overall remuneration that would be payable upon early termination of an employee's contract by the employee concerned to another undertaking due to a contractual obligation, such payments must be compatible with the credit institution's long-term interests, including withholding and deferral, as well as performance and clawback agreements.

10. The measurement of performance used to calculate variable remuneration components or pools of variable remuneration components shall include an adjustment for all types of current and future risks and takes into account the cost of the capital and the liquidity required. The allocation of the variable remuneration components within a credit institution shall also take into account all types of current and potential risks.

11. A substantial portion, which amounts to at least 50% of the variable remuneration components, shall consist of an appropriate balance of:

a. shares or dependent on the legal form of the credit institution concerned, equivalent ownership interests or share-linked instruments or, dependent on the legal form of the credit institution concerned, equivalent non-cash instruments provided that the instruments listed were issued and they have been securitised and are transferable.

b. capital instruments that comply with the criteria of Article 52 or Article 63 of Regulation (EU) No 575/2013 or other instruments that can be fully converted into capital instruments pursuant to Article 28 of Regulation (EU) No 575/2013 or can be written

down and that adequately reflect the credit institution's credit rating and can be used as variable remuneration instruments.

The aforementioned instruments shall be subject to an appropriate retention policy designed to align incentives with the longer-term interests of the credit institution concerned. The FMA may place restrictions on the types and designs of those instruments or prohibit certain instruments as appropriate. The aforementioned principles shall be applied to both the portion of the variable remuneration deferred in accordance with no. 12 and the portion of the variable remuneration not deferred.

12. A substantial portion of the variable remuneration, which amounts to at least 40%, shall be deferred over a period of at least five years and shall be correctly aligned with the nature of the business, its risks and the activities of the member of staff in question. Remuneration payable under deferral arrangements shall not be acquired any faster than on a proportional basis. In the case of a variable remuneration component of a particularly high amount, at least 60% of the amount shall be deferred. The length of the deferral period shall be established in accordance with the business cycle, the nature of the business, its risks and the activities of the member of staff in question:

    a. The claim may only be acquired or the variable remuneration, including the deferred portion, only be paid if it is sustainable according to the financial situation of the credit institution as a whole, and justified according to the performance of the credit institution, business unit and individual concerned. Without prejudice to the general principles of civil and labour law, the total variable remuneration shall be significantly limited if the credit institution's financial or earnings situation deteriorates or turns negative. In this context, both current remuneration and reductions in payouts of amounts recently earned, including through malus or clawback arrangements, shall be taken into account. Malus or clawback arrangements may be entered into up to the amount of the total variable remuneration components. In this regard, the credit institutions must stipulate precise criteria for the application of malus and clawback rules. These criteria shall take particular account of situations in which employees have participated in or been responsible for actions that have resulted in significant losses, as well as of situations in which employees did not fulfil the requirements of relevant professional qualification or personal reliability.

    b. The policy pertaining to discretionary pension payments shall be in line with the business strategy, objectives, values and long-term interests of the credit institution. If an employee leaves the credit institution before retirement, discretionary pension benefits shall be held by the credit institution for a period of five years in the form of instruments as defined in no. 11 lits. a and b. In case of an employee reaching retirement, discretionary pension benefits shall be paid to the employee in the form of instruments as defined in no. 11 lits. a and b and be subject to a five-year retention period.

c. Staff members shall undertake not to use personal hedging strategies or remuneration- and liability-related insurance to undermine the risk alignment effects embedded in their remuneration arrangements.

d. Variable remuneration shall not be paid through vehicles or methods that facilitate the avoidance of the requirements of this federal act or of Regulation (EU) No 575/2013.

13. The principles listed in no. 11, the introduction of no. 12 as well as in the second and third sentence of no. 12 lit. b) shall not apply to:

a. credit institutions that are not large CRR institutions pursuant to point 146 of Article 4 (1) of Regulation (EU) No 575/2013 for which total assets on an individual basis on average over the last four years immediately preceding the current financial year

aa) stood at a maximum of EUR 5 billion, or

bb) stood at more than EUR 5 billion, however a maximum of EUR 15 billion, and the credit institution meets the conditions pursuant to Article 4 (1) 145) lits. c, d and e of Regulation (EU) No 575/2013;

b. employees, whose annual variable remuneration does not exceed EUR 50 000 and does not constitute more than one third of the total annual remuneration of the employee in question.

14. The FMA may instruct credit institutions pursuant to lit. a sublit. bb, to apply the principles listed in no. 11, the introduction of no. 12, as well as the second and third sentences of no. 12 lit. b, where this is appropriate on a case-by-case basis due to the nature, scope and complexity of the credit institution's activities, its internal organisation or due to the characteristics of the group to which the credit institution belongs.

Annex 1 to Article 43

Layout of the Balance Sheet

Assets

1. Cash in hand, balances with central banks and post office banks
2. Treasury bills and other bills eligible for refinancing with central banks:
   a. Treasury bills and similar securities
   b. Other bills eligible for refinancing with central banks
3. Loans and advances to credit institutions:
   a. Repayable on demand
   b. Other loans and advances
4. Loans and advances to customers
5. Debt securities including fixed-income securities
   a. issued by public bodies
   b. issued by other borrowers

   showing separately:

   own debt securities
6. Shares and other variable-yield securities
7. Participating interests

   showing separately:

   Participating interests in credit institutions
8. Shares in affiliated undertakings

   showing separately:

   Shares in credit institutions
9. Intangible fixed assets
10. Tangible assets

    showing separately:

    Land and buildings occupied by a credit institution for its own activities
11. Shares in a controlling company or in a company holding a majority of shares

    showing separately:

    Nominal value
12. Other assets
13. Subscribed capital called but not paid
14. Prepayments and accrued income
15. Deferred tax assets

Total assets

==========

Off-balance sheet items

1. Foreign assets

Liabilities

1. Liabilities to credit institutions
   a. Repayable on demand
   b. With agreed maturity dates or periods of notice
2. Liabilities to customers (non-banks)
   a. Savings deposits

   showing separately:
      aa) Repayable on demand
      bb) With agreed maturity dates or periods of notice
   b. Other liabilities

   showing separately:
      aa) Repayable on demand
      bb) With agreed maturity dates or periods of notice
3. Securitised liabilities
   a. Debt securities issued
   b. Other securitised liabilities
4. Other liabilities
5. Accruals and deferred income
6. Provisions
   a. Provisions for severance payments
   b. Provisions for pensions
   c. Provisions for taxation
   d. Other provisions

6a. Fund for general banking risks

7. Tier 2 capital pursuant to Part Two, Title I, Chapter 4 of Regulation (EU) No 575/2013
8. Additional Tier 1 capital pursuant to Part Two, Title I, Chapter 3 of Regulation (EU) No 575/2013

   showing separately:

   Contingent convertible bonds pursuant to Article 26a BWG

8a. (repealed)

8b. Instruments without voting rights pursuant to Article 26a BWG

9. Subscribed capital
10. Capital reserves
    a. Committed
    b. Uncommitted
11. Retained earnings
    a. Legal reserve
    b. Statutory reserves
    c. Other reserves

12. Liability reserve pursuant to Article 57 para. 5 BWG
13. Net profit or loss for the year

Total liabilities

==========

Off-balance sheet items

1. Contingent liabilities
   showing separately:
   a. Acceptances and endorsements
   b. Guarantees and assets pledged as collateral security
2. Commitments
   showing separately:
   Commitments arising from repurchase transactions
3. Commitments arising from agency services
4. Eligible capital in accordance with Part Two of Regulation (EU) No 575/2013, of which Tier 2 capital pursuant to Part Two, Title I, Chapter 4 of Regulation (EU) No 575/2013
5. The own funds requirements as defined in Article 92 of Regulation (EU) No 575/2013, of which: own funds requirements pursuant to Article 92(1)(a) to (c) of Regulation (EU) No 575/2013
6. Foreign liabilities

Annex 2 to Article 43

Layout of the Income Statement

1. Interest receivable and similar income
   showing separately:
   from fixed-income securities
2. Interest payable and similar expenses

I. NET INTEREST INCOME

3. Income from securities and participating interests
   a. Income from shares and other variable-yield securities
   b. Income from participating interests
   c. Income from shares in affiliated undertakings
4. Commissions receivable
5. Commissions payable
6. Net profit or net loss on financial operations
7. Other operating income

II. OPERATING INCOME

8. General administrative expenses
   a. Staff costs
      showing separately:
      aa) Wages and salaries
      bb) Expenses for statutory social contributions and compulsory contributions related to wages and salaries
      cc) Other social expenses
      dd) Expenses for pensions and assistance
      ee) Allocation to provision for pensions
      ff) Expenses for severance payments and contributions to severance and retirement funds
   b. Other administrative expenses
9. Value adjustments in respect of asset items 9 and 10
10. Other operating expenses

III. OPERATING EXPENSES

IV. OPERATING RESULT

11. Value adjustments in respect of loans and advances and provisions for contingent liabilities and for commitments

12. Value re-adjustments in respect of loans and advances and provisions for contingent liabilities and for commitments
13. Value adjustments in respect of transferable securities held as financial fixed assets, participating interests and shares in affiliated undertakings
14. Value re-adjustments in respect of transferable securities held as financial fixed assets, participating interests and shares in affiliated undertakings.

V. PROFIT OR LOSS ON ORDINARY ACTIVITIES

15. Extraordinary income showing separately:
    showing separately
    Withdrawals from the fund for general banking risks
16. Extraordinary expenses
    showing separately:
    Allocations to the fund for general banking risks
17. Extraordinary result (subtotal of items 15 and 16)
18. Tax on profit or loss
19. Other taxes not reported under Item 18

VI. PROFIT OR LOSS FOR THE YEAR AFTER TAX

20. Changes in reserves showing separately:
    Allocation to liability reserve
    Reversal of liability reserve

VII. NET INCOME FOR THE YEAR

21. Profit or loss brought forward

VIII. NET PROFIT OR LOSS FOR THE YEAR