Deposit Guarantee Schemes and Investor Compensation Act

(*Einlagensicherungs- und Anlegerentschädigungsgesetz* – ESAEG)

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Full Title

Federal Act on Deposit Guarantee Schemes and Investor Compensation in Credit Institutions (Deposit Guarantee Schemes and Investor Compensation Act - ESAEG; Einlagensicherungs- und Anlegerentschädigungsgesetz)

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Chapter 1: Organisation of Deposit Guarantee Schemes

Deposit Guarantee Schemes

Article 1. (1) For the purposes of this federal act, deposit guarantee schemes shall be defined as:

1. the uniform deposit guarantee scheme pursuant to para. 2 and
2. deposit guarantee schemes pursuant to Article 3 para. 1 no. 2.

(2) The Wirtschaftskammer Österreich (WKO - Austrian Economic Chambers) shall establish a deposit guarantee scheme operated as a legal person in the form of a liability company. Members of the liability company may be:

1. the Wirtschaftskammer Österreich,
2. credit institutions pursuant to Article 8 para. 1 or pursuant to Article 45 para. 1,
3. credit institutions pursuant to Article 48 para. 2,
4. investment firms pursuant to Article 48 para. 3, and
5. Trade associations.

Those trade associations, the members of which predominantly belong to the uniform deposit guarantee scheme, shall in any case also be members of the liability company along with the Wirtschaftskammer Österreich. The articles of association of the liability company may prescribe additional arrangements regarding the rights of the members, insofar as such arrangements also ensure the balanced representation of the member institutions of the uniform deposit guarantee scheme.

(3) The uniform deposit guarantee scheme pursuant to para. 2 must admit:

1. Credit institutions that are obliged to belong to the uniform deposit guarantee scheme pursuant to Article 8 para. 1 or pursuant to Article 45 para. 1,
2. Credit institutions pursuant to Article 48 para. 2, and
3. Investment firms pursuant to Article 48 para. 3.

(4) All deposit guarantee schemes shall cooperate with one another by means of an early warning system, and shall exchange the necessary information for this purpose with one another. The deposit guarantee schemes shall collect the information, which they require to pursue their tasks in relation to the early warning system, from their member institutions in accordance with Article 93 of the Banking Act (BWG - Bankwesengesetz), as published in Federal Law Gazette No. 532/1993 as amended.

Organisational requirements for deposit guarantee schemes

Article 2. (1) The deposit guarantee schemes shall handle information that has been made accessible to them or which they have been provided with in performing their activities in a confidential manner, provided that this federal act or other federal acts do not prescribe the transmission of such information. The processing of personal data in relation with accounts held by depositors must be conducted by the deposit guarantee schemes in accordance with 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.

(2) Deposit guarantee schemes shall control, monitor and limit the risks that they are exposed to by means of adequate strategies and procedures. Deposit guarantee schemes shall make the necessary financial means as well as the required staffing available for the performance of the duties that have been conferred upon them by this federal act. The deposit guarantee schemes shall determine, observe and maintain effective policies for dealing with conflicts of interest. Those principles shall be set out in writing and must be appropriate to the size and organisation of the deposit guarantee scheme.

(3) The organisational provisions of the deposit guarantee schemes shall guarantee the determination of existing and potential liabilities for the respective deposit guarantee scheme. In particular, they shall guarantee the fulfilment of obligations in the pay-out event pursuant to Article 9 by establishing, replenishing and investing the deposit guarantee fund. Deposit guarantee schemes shall make the necessary organisational arrangements to ensure the immediate calculation and prompt repayment of the covered deposits.

(4) Member institutions shall be liable for:

1. damage claims asserted by court order against their deposit guarantee scheme in the amount of their contribution obligations pursuant to Article 22 in conjunction with the provisions of Part 2 of this federal act and
2. damage claims asserted by court order against their deposit guarantee scheme in the amount of their contribution obligations pursuant to Article 49 para. 1 in conjunction with the provisions of Part 3 of this federal act; this shall apply analogously to credit institutions and investment firms which have joined voluntarily pursuant to Article 48 paras. 2 and 3.

(5) The deposit guarantee schemes shall check their systems at least once every three years and where applicable more frequently by means of stress tests to check their ability to function properly. The first stress test must be conducted by 3 July 2017 at the latest. The deposit guarantee schemes shall use the information necessary to perform these stress tests only for the performance of such tests and shall only keep such information for as long as is necessary for that purpose.

(6) The deposit guarantee schemes shall inform the FMA about the results of their stress tests. The FMA shall determine by means of a regulation the results which shall be submitted, while taking into consideration European practices with regard to the content and the format. The FMA shall in turn submit the results of the stress tests to the European Banking Authority (EBA).

(7) A deposit guarantee scheme shall be required to be managed by at least two directors. The directors shall comply with the following requirements:

1. no reasons for exclusion as specified in Article 13 paras. 1 to 3, 5 and 6 Trade Act 1994 (GewO 1994 – Gewerbeordnung 1994) are identified for any of the directors, and bankruptcy proceedings have not been initiated for the assets of any director and no other legal entity other than a natural person on whose business the 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;

2. the directors shall be in an orderly economic situation and no facts are known to exist, which would raise doubts as to their personal reliability, honesty and impartiality as required for exercising the business operations of a deposit guarantee scheme;
3. the directors hold, on the basis of their prior training the suitable professional qualifications and have the necessary experience for the operation of a deposit guarantee scheme.

The deposit guarantee schemes shall notify the FMA of the names of their directors as well as all necessary information to be able to judge whether the requirements prescribed in nos. 1 to 3 have been fulfilled by the directors.

(8) Every deposit guarantee scheme shall in any case, irrespective of its legal form, appoint a supervisory board or another competent supervisory body. The deposit guarantee schemes shall notify the FMA of the names of the members of the supervisory body.

Recognition of institutional protection schemes as a deposit guarantee and investor compensation scheme

Article 3. (1) The FMA shall accept the application of an institutional protection scheme to be recognised as an deposit guarantee and investor compensation scheme, if the system

1. fulfils the requirements pursuant to Article 113(7) of Regulation (EU) No 575/2013,
2. operates a deposit guarantee scheme as a legal person in the form of a liability company, which fulfils the organisational requirements for deposit guarantee schemes pursuant to Article 2,
3. guarantees by means of its articles of association and by means of a contractual agreement between its member institutions, that the deposit guarantee scheme pursuant to no. 2 is able to fulfil the tasks conferred upon it by this federal act in an orderly manner and
4. consists of member institutions, the covered deposits of which pursuant to Article 7 para. 1 no. 5 amount to at least 15 % of the covered deposits of all CRR-credit institutions incorporated in Austria.

The FMA shall request an opinion from the Oesterreichische Nationalbank for this purpose.

(2) The application for recognition shall in particular contain the following documentation and information:

1. the statutes or the articles of association as well as the contractual basis of the institutional protection scheme,
2. the articles of association of the deposit guarantee scheme,
3. the names of the directors and members of the supervisory body of the deposit guarantee scheme as well as all information necessary to be able to judge whether the requirements for deposit guarantee schemes pursuant to Article 2 have been fulfilled and
4. evidence regarding the establishment of suitable processes to ensure that the available financial means pursuant to Article 7 para. 1 no. 12 are managed and invested separately from the rest of the system's assets.

(3) In the event that a member institution voluntarily terminates its membership of a recognised institutional protection scheme, Article 8 para. 1 and Article 39 shall apply.

Revocation of recognition of deposit guarantee and investor compensation schemes

Article 4. (1) The FMA shall revoke its recognition of an institutional protection scheme as a deposit guarantee and investor compensation scheme in the following cases:

1. one of the requirements pursuant to Article 3 para. 1 nos. 1 to 4 no longer exists,
2. the deposit guarantee scheme of the recognised institutional protection scheme continues to breach the provisions of Part 1 or 2 of this federal act despite the application of Article 5 para. 4, or
3. an institutional protection scheme recognised as a deposit guarantee and investor compensation scheme applies to have this recognition revoked.

By way of derogation from no. 1, the FMA is not obliged to revoke the recognition of an institutional protection scheme solely for the reason because the level of covered deposits of the member institutions of an institutional protection scheme falls below the value prescribed in Article 3 para. 1 no. 4 as a result of alterations to the composition of the institutional protection scheme or the repayment of covered

deposits in accordance with this federal act or in application of the Act on the Recovery and Resolution of Banks (BaSAG) or of Regulation (EU) No 806/2014; in such instances, the affected deposit guarantee scheme shall communicate all information to the FMA immediately, which the FMA requires for the assessment of the future ability of the institutional protection scheme to function as a deposit guarantee and investor compensation scheme. The FMA shall request an opinion from the Oesterreichische Nationalbank for this purpose.

(2) If the recognition of the institutional protection scheme as a deposit guarantee and investor compensation scheme is revoked by the FMA, then the institutional protection schemes shall inform its member institutions about the recognition being revoked, and to instruct them that they must join the uniform deposit guarantee scheme pursuant to Article 1 para. 1 no. 1 at latest by the time that the revocation takes legal effect pursuant to Articles 8 and 45 para. 1. The institutional protection scheme shall also inform the uniform deposit guarantee scheme about its recognition having been revoked.

(3) The deposit guarantee scheme of the institutional protection scheme shall transfer, once the recognition as an institutional protection scheme as a deposit guarantee and investor compensation scheme has been revoked, its available financial means including claims still open against its member institutions within five working days to the uniform deposit guarantee scheme.

Chapter 2: Supervision of Deposit Guarantee Schemes

Designated authority, relevant administrative authority

Article 5. (1) The FMA shall act as the designated authority pursuant to Article 7 para. 1 no. 19 as well as the relevant administrative authority pursuant to Article 3 (1) of Directive 2014/49/EU.

(2) The FMA shall monitor the compliance of deposit guarantee schemes with the provisions of Parts 1 to 3 of this federal act. The FMA shall be authorised at any time for this purpose:

1. to inspect and make copies of the deposit guarantee schemes' bookkeeping records, documents and data media;
2. to demand information from deposit guarantee schemes and their organisational bodies and to issue summons to and question persons in accordance with the laws on administrative procedures;
3. to conduct on-site inspections, conducted by external auditors, external auditing companies or other experts;
4. to grant the Oesterreichische Nationalbank the mandate for the inspection of deposit guarantee schemes. The competence for on-site inspections within the supervision of deposit guarantee schemes shall extend comprehensively to the inspection of all tasks relating to the deposit guarantee schemes in accordance with this federal act with the exception of Part 3. The Oesterreichische Nationalbank must ensure that it has sufficient personnel and organisational resources at its disposal to conduct the inspections indicated;
5. to request existing records of telephone conversations and data transmissions from deposit guarantee schemes;
6. to gather information from the external auditors of deposit guarantee schemes.

(3) In the event of an inspection pursuant to para. 2 no. 3 the inspection body shall be provided with a written inspection engagement and must voluntarily present proof of their identity as well as the inspection engagement before beginning the inspection.

(4) Where the Oesterreichische Nationalbank determines in the course of an on-site inspection that the inspection engagement issued in accordance with para. 2 no. 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 engagement or reject the extension with an indication of the reasons for the rejection without delay, at the latest, however, within one week.

(5) The FMA and the Oesterreichische Nationalbank must jointly define an inspection plan for each upcoming calendar year. The inspection plan must take the following into account:

1. the obligations of the deposit guarantee schemes in accordance with this federal act,
2. an appropriate frequency of inspections of all deposit guarantee schemes,
3. resources for ad-hoc inspections,
4. the review of measures taken to remedy the defects identified.

The inspection plan must define the focuses of inspections and inspection start dates for the respective deposit guarantee scheme. Where the Oesterreichische Nationalbank determines that an on-site inspection is necessary in order to fulfil the criteria pursuant to nos. 1 to 4 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 4. 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. 2 no. 4 shall remain unaffected by this provision.

(6) The Oesterreichische Nationalbank is authorised to carry out an on-site inspection pursuant to para. 2 no. 4 without having been issued an inspection engagement by the FMA for macroeconomic reasons if the inspections defined in the inspection plan pursuant to para. 5 or other FMA inspection engagements 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.

(7) The Oesterreichische Nationalbank must define the intended scope of the inspection pursuant to para. 6 in writing. The inspectors must deliver a copy of this document to the deposit guarantee scheme upon starting the inspection. In cases where the deposit guarantee scheme 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.

(8) 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 deposit guarantee scheme concerned immediately. The results of inspections by the Oesterreichische Nationalbank shall be treated in procedures as expert opinions. The Oesterreichische Nationalbank is empowered to provide the external auditor of the deposit guarantee scheme concerned with all the necessary information on the results of inspections conducted by the Oesterreichische Nationalbank.

(9) In the event that a deposit guarantee scheme breaches the provisions of Parts 1 to 3 of this federal act, then the FMA may

1. instruct the deposit guarantee scheme, 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 violations, completely or partly prohibit the directors of the member institution from managing the institution, unless this would be inappropriate based on the nature and severity of the violation 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;

(10) The FMA shall inform the relevant competent deposit guarantee scheme as soon as possible, if it identifies problems in a credit institution, which is expected to lead to a claim on the deposit guarantee scheme.

(11) The FMA shall take into account the European convergence of supervisory tools and supervisory procedures when enforcing the provisions of this federal act. For this purpose the FMA shall participate in the activities of the EBA, cooperate with the European Systemic Risk Board (ESRB), apply the guidelines and recommendations and other measures passed by the EBA, as well as complying with the warnings and recommendations issued by the ESRB pursuant to Article 16 of 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. The FMA may deviate from those guidelines and recommendations where a justified ground exists, in particular in the event of a conflict existing with provisions laid out in national law.

Cooperation with the Oesterreichische Nationalbank and between the authorities

Article 6. (1) The FMA and the Oesterreichische Nationalbank shall cooperate closely with one another to fulfil their respective tasks in accordance with this federal act.

(2) All notifications pursuant to Article 34, notifications and confirmations pursuant to Article 39 para. 1, reports pursuant to Article 17, the annual report pursuant to Article 31, the accounting report pursuant to Article 32, information pursuant to Article 40 para. 1 as well as notifications pursuant to Articles 33

and 54 para. 1 to be submitted to the FMA shall also be submitted to the Oesterreichische Nationalbank within the prescribed deadlines for submission to the FMA.

(3) The FMA and the Oesterreichische Nationalbank shall exchange all data with relevance for the supervision of deposit guarantee schemes, in particular those pursuant to para. 2, analysis data and findings, findings from on-site inspections pursuant to Article 5 para. 8 as well as other observations pursuant to para. 5 without due delay through the joint database pursuant to Article 79 para. 3 BWG. The FMA and the Oesterreichische Nationalbank shall store all relevant information collected in their activities regarding the supervision of deposit guarantee schemes in the joint database. Information which is available to both institutions is to be stored in the joint database by the Oesterreichische Nationalbank.

(4) The Oesterreichische Nationalbank shall carry out the on-site inspections pursuant to Article 5 para. 2 no. 4, the preparation of opinions and analyses conferred upon it within the scope of the supervision of deposit guarantee schemes 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 or completeness of such data, unless the FMA has justified reasons to doubt their accuracy or completeness.

(5) The Oesterreichische Nationalbank shall subject the data pursuant to para. 2 and the other supervisory information and observations in relation to deposit guarantee schemes stored in the database by the Oesterreichische Nationalbank or the FMA to ongoing comprehensive evaluation for the purposes of supervision of deposit guarantee schemes and for the purpose of preparing supervisory investigations (individual analysis). All findings of analysis, relevant information and other observations about deposit guarantee schemes shall be made available to the FMA by the Oesterreichische Nationalbank, and shall contain clear statements, on whether a suspicion exists that the provisions of this federal act have been breached. At the FMA's request, the Oesterreichische Nationalbank shall also prepare and submit additional analysis and provide additional explanations on the findings of analyses. The Oesterreichische Nationalbank is authorised to evaluate individual analysis data in light of the individual and overall economic situation, especially for the purpose of performing its duties in connection with financial stability. All individual analyses conducted by the Oesterreichische Nationalbank shall in any case 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.

(6) The Oesterreichische Nationalbank shall

1. draw up a statement of the costs arising from the duties and activities arising from this Federal Act in each business year and have this statement audited by the external auditor pursuant to Article 37 of the National Bank Act of 1984 (NBG; Nationalbankgesetz 1984), published in Federal Law Gazette No. 50/1984;
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. notify the Federal Minister of Finance and the FMA by 30 September every year of about the estimated costs arising from its duties and activities in accordance with this Federal Act, as well as the estimated annual average number of employees employed in performing duties and activities in accordance with this Federal Act;
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; such information may also be provided by means of a publication.

(7) The FMA and the resolution authority must cooperate closely with one another to fulfil their respective tasks in accordance with Part 2 of this federal act. Furthermore, the FMA and the resolution authority must cooperate with the authorities of other Member States as defined in Article 3 (2) of Directive 2014/49/EU, the European Central Bank within the scope of Regulation (EU) No 1024/2013 and the Board (Article 2 no. 18a BaSAG) within the scope of Regulation (EU) No 806/2014 and to exchange all information required for the fulfilment of Union Law tasks in financial supervision.

Part 2: Deposit Guarantee Schemes

Chapter 1: General provisions

Definitions

Article 7. (1) The following definitions shall apply in regard to Part 2 of this federal act:

1. Deposit guarantee schemes:
   a) the uniform deposit guarantee scheme pursuant to Article 1 para. 1 no. 1, as well as other statutory deposit guarantee schemes pursuant to point a of Article 1 para. 2 of Directive 2014/49/EU,
   b) contractual deposit guarantee schemes that are officially recognised as deposit guarantee schemes in accordance with Article 4(2) of Directive 2014/49/EU;
   c) recognized institutional protection schemes pursuant to Article 3 and other institutional protection schemes that are officially recognised as deposit guarantee schemes in accordance with Article 4(2) of Directive 2014/49/EU;
2. Institutional protection schemes: institutional protection schemes as referred to in Article 113(7) of Regulation (EU) No 575/2013;
3. Deposits: subject to para. 2
   a) deposits pursuant to Article 1 para. 1 nos. 1 and 12 BWG;
   b) credit balances which result from funds left in an account or from temporary positions in the course of banking transactions, the provision of payment services or the issuance of e-money and which the credit institution must repay according to the applicable legal and contractual provisions, including time deposits and savings deposits and
   c) any debt securitised by the credit institution by issuing a certificate, with the exception of covered bonds, that are issued in accordance with the Pfandbrief Act (PfandBG; Pfandbriefgesetz) published in Federal Law Gazette I No. 199/2021, as well as mortgage bonds (Pfandbriefe), municipal bonds (Kommunalschuldverschreibungen) and funded bank bonds (fundierte Bankschuldverschreibungen) which were issued in accordance with the Mortgage Bank Act (HypBG; Hypothekenbankgesetz) published in the Imperial Law Gazette item 375/1899 in the version amended by federal act in Federal Law Gazette I No. 107/2017, the Mortgage Bond Act (PfandbriefG; Pfandbriefgesetz) published in the German Reich Law Gazette I item 492/1927 in the version amended by federal act in Federal Law Gazette I No. 107/2017 and the Act on Funded Bank Bonds (FBSchVG; Gesetz vom 27. Dezember 1905, betreffend fundierte Bankschuldverschreibungen) published in the Imperial Law Gazette No. 213/1905 in the version amended by federal act in Federal Law Gazette I No. 29/2010;
4. Eligible deposits: Deposits which are eligible pursuant to Article 10 para. 1;
5. Covered deposits: eligible deposits up to an amount of EUR 100 000 or the equivalent amount per depositor at a member institution, as well as the temporarily covered deposits pursuant to Article 12; for the purposes of Chapter 3 temporarily covered deposits pursuant to Article 12 shall not be considered as covered deposits;
6. Depositor: the holder or, in the case of a joint account, each of the holders, of a deposit;
7. Joint account: an account opened in the name of two or more persons or over which two or more persons have rights that are exercised by one or more of those persons;
8. Unavailable deposit: a deposit held at a CRR-credit institution, at which a pay-out event pursuant to Article 9 has occurred;
9. CRR credit institution: a credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013 as well as a credit institution pursuant to Article 1 para. 1 BWG, which accepts deposits pursuant to Article 7 para. 1 no. 3;
10. Branch: a place of business in a Member State which forms a legally dependent part of a CRR-credit institution and which carries out directly all or some of the transactions inherent in the business of CRR-credit institutions;
11. Target level: the available financial means, which a deposit guarantee scheme pursuant to Article 18 para. 1 must build up, calculated on the basis of a percentage of the covered deposits of its member institutions;

12. Available financial means: cash, deposits and low-risk assets which can be liquidated within a period not exceeding that referred to in Article 13 para. 1 and payment commitments up to the limit set out in Article 21 para. 3;
13. Payment commitments: payment commitments of a CRR-credit institution towards a deposit guarantee scheme which are fully collateralised, subject to the condition that the collateral
    a) consists of low risk assets and
    b) is unencumbered by any third-party rights and is at the disposal of the deposit guarantee scheme;
14. Financial means: the deposit guarantee fund and extraordinary contributions;
15. Low-risk assets: items falling into the first or second category referred to in Table 1 of Article 336 of Regulation (EU) No 575/2013 or all items which are considered pursuant to Article 19 para. 4 to be similarly safe and liquid by the Financial Market Authority (FMA);
16. Home Member State: a home Member State as defined in point (43) of Article 4(1) of Regulation (EU) No 575/2013;
17. Host Member State: a host Member State as defined in point (44) of Article 4(1) of Regulation (EU) No 575/2013;
18. Competent authority: a national competent authority as defined in point (40) of Article 4(1) of Regulation (EU) No 575/2013;
19. Designated authority: a body which administers a deposit guarantee scheme pursuant to Directive 2014/49/EU, or, where the operation of the deposit guarantee scheme is administered by a private entity, a public authority designated by the Member State concerned for supervising that scheme pursuant to the Directive 2014/29/EU.
20. Resolution authority: the resolution authority pursuant to Article 3 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, or the committee pursuant to Article 42 of Regulation (EU) No. 806/2014, in their respective areas of competence;
21. Member institutions:
    a) in the case of the uniform deposit guarantee scheme pursuant to Article 1 para. 1 no. 1: CRR-credit institutions pursuant to Article 8 para. 1;
    b) in the case of a deposit guarantee scheme pursuant to Article 1 para. 1 no. 2: CRR-credit institutions, which are members of an institutional protection scheme recognised as a deposit guarantee and investor compensation scheme;
22. Marginal lending rate: the reference rate which forms the upper boundary of the interest corridor and which is set by the European Central Bank (ECB);
23. Credit institution: a credit institution pursuant to Article 1 para. 1 BWG.

(2) Credit balances shall not be considered as deposits pursuant to para. 1 no. 3, if

1. their existence can only be proven by means of a financial instrument pursuant to Article 1 no. 7 WAG 2018, unless it is a savings product which is evidenced by a certificate of deposit made out to a named person and which already existed on 2 July 2014 or
2. their principal is not repayable at par or
3. their principal is only repayable under a particular guarantee or agreement provided by the credit institution or a third party.

Membership of a deposit guarantee scheme

Article 8. (1) Subject to para. 2 CRR-credit institutions incorporated in Austria, which receive deposits, must belong to the uniform deposit guarantee scheme pursuant to Article 1 para. 1 no. 1.

(2) The obligation pursuant to para. 1 shall be waived for CRR-credit institutions, which belong to an institutional protection scheme that has been recognised as a deposit guarantee and investor compensation scheme pursuant to Article 3.

(3) If a CRR-credit institution incorporated in Austria does not belong to a deposit guarantee scheme, then its authorisation (licence) for taking deposits lapses; Article 7 para. 2 BWG shall apply.

Chapter 2: Reimbursement of Depositors

Pay-out event

Article 9. A pay-out event as defined in Part 2 of this federal act shall occur, if

1. the FMA has determined that a member institution is currently not in the position to pay out deposits that are due for reasons relating to its financial situation, and that there is no prospect that the member will be in a position to do so in the future; the FMA shall determine this to be the case at the latest within five working days from the point in time where it first identified that the affected member institution has not repaid its due and repayable deposits or
2. with regard to covered deposits of a member institution that a stoppage of payments has been decreed by the authorities (Article 70 para. 2 BWG, and Article 78 BWG) or
3. a court opens bankruptcy proceedings against a member institution or instructs supervised management procedure (Article 83 BWG).

The FMA shall publish the occurrence of a pay-out event pursuant to nos. 1 and 2 in the Official Gazette of the Wiener Zeitung and on its website without delay, and shall inform the deposit guarantee scheme, to which the affected member institution belongs.

Eligible deposits

Article 10. (1) Deposits shall be deemed to be eligible, with the following exceptions:

1. deposits, that other CRR-credit institutions hold on their own behalf and for their own account;
2. Own funds pursuant to point (118) of Article 4 (1) of Regulation (EU) No 575/2013;
3. Deposits that exist in conjunction with transactions, upon the basis of which persons have been convicted of money laundering in criminal proceedings conducted in Austria (Article 165 Criminal Code (StGB - Strafgesetzbuch), as published in Federal Law Gazette No. 60/1974) or in other criminal proceedings on the charge of money laundering pursuant to Article 1 (3) of Directive (EU) 2015/849;
4. Deposits by financial institutions pursuant to point (26) of Article 4 (1) of Regulation (EU) No 575/2013;
5. Deposits by investment firms pursuant to point (1) Article 4 (1) of Directive 2004/39/EC;
6. Deposits, for which the identity of their holders was never identified until the occurrence of the pay-out event pursuant to the provisions of the Financial Markets Anti-Money Laundering Act (FM-GwG - Finanzmarkt-Geldwäschegesetz), published in Federal Law Gazette I No. 118/2016, unless the identification of the holder pursuant to the provisions of the FM-GwG was subsequently rectified within twelve months following the occurrence of the pay-out event;
7. Deposits by insurance undertakings and reinsurance undertakings pursuant to points (1) to (6) of Article 13 of Directive 2009/138/EC;
8. deposits by collective investment undertakings;
9. deposits by pension and retirement funds;
10. deposits by authorities, in particular deposits by governments, regional and local authorities, as well as central securities depositories and
11. debt securities issued by a credit institution and liabilities arising out of own acceptances and promissory notes.

(2) Member institutions shall mark eligible deposits in such a way, that it is possible to report their amount at any time.

Calculation of eligible deposits and covered deposits in special cases

Article 11. (1) In the case of joint accounts, for the calculation of eligible deposits of the individual depositors the proportion of the deposits in the joint account held by each individual depositor shall be taken into account, if specific regulations have been communicated by the member institute to the depositors holding the joint account with regard to the breakdown of the deposits. In the event that the depositors have omitted to communicate the rules in writing to the membership institution regarding the breakdown of deposits held in the joint account, then the deposits in the joint account shall be distributed equally between the depositors. The member institutions shall in addition refer to both of these calculation methods and their respective conditions in the information sheet to be drawn up pursuant to Article 37a BWG.

(2) In the case of trust accounts that have been disclosed, the trustor has be deemed to be the depositor. The deposits held in such trust accounts shall be taken into account based on the share held by each trustor when calculating the eligible deposits of the individual depositors in accordance with the principles that apply for the management of these deposits. This shall also apply for a trustor, whose identity is not known to the member institution on the basis of the application of

1. simplified due diligence obligations pursuant to Article 8 FM-GwG, or
2. other provisions set out in national law, which waive the immediate disclosure of the identity of the trustor towards the credit institution,

if such a trustor's claim can be proven towards the deposit guarantee scheme. Trusteeships pursuant to nos. 1 and 2 shall only be taken into account when calculating the eligible deposits of individual individuals from the point in time from when the trustors have proven their claim towards the deposit guarantee scheme.

(3) Deposits in an account over which two or more persons may dispose as partners in an ordinary partnership, a limited partnership, a civil-law partnership or a business organisation of a similar nature under the law of a Member State or a third country, shall be aggregated when calculating the eligible deposits and covered deposits and shall be treated as deposits held by a single depositor.

(4) When calculating the amount of covered deposits, eligible deposits shall not be taken into account, where liabilities of the depositor also exist towards the membership institution, which are offset pursuant to legal or contractual provisions and which were due prior to or at latest at the point at which the pay-out event occurred; for these deposits not to be deemed as covered, the member institution shall inform the depositor prior to the conclusion of the contract that liabilities towards the member institution shall also be taken into account when calculating the covered deposits.

Temporarily covered deposits

Article 12. Eligible deposits over the amount of EUR 100 000 up to the amount of EUR 500 000 shall be deemed to be covered deposits, if the following conditions exist:

1. The deposits
   a) are resulting from real estate transactions relating to private residential properties or
   b) fulfil legally stipulated social purposes and are linked to specific life events of the depositor, such as marriage, divorce, retirement, dismissal, redundancy, invalidity or death or
   c) are based on the payment of insurance benefits or compensation payments for criminal injuries or wrongful criminal conviction and
2. the pay-out event occurs within twelve months after the amount has been credited or from the moment when such deposits become legally transferable.

Repayment of covered deposits

Article 13. (1) Following the occurrence of a pay-out event at one of their member institutions, every deposit guarantee scheme shall repay every depositor of this member institution the amount of their covered deposits within seven working days. Interest on deposits, which have accumulated up to the day upon which the pay-out event occurred, but which had not been credited on that day, shall also be repaid by the deposit guarantee scheme, as long as the total amount to be paid out does not exceed EUR 100 000, or in cases pursuant to Article 12 EUR 500 000, per depositor and member institution.

(2) The repayment pursuant to para. 1 shall be made in euro. In the event that accounts are denominated in another currency other than euro, the mean exchange rate for the day on which the pay-out event occurred shall be used for the purpose of calculating the amount to be repaid. The member institutions shall inform their depositors that a repayment in the pay-out event shall be paid out in euro.

(3) Except in the case of a repayment of covered deposits pursuant to Article 12 the deposit guarantee scheme shall repay the covered deposits pursuant to para. 1, without requiring the depositor to have to apply to the deposit guarantee scheme to do so. Deposit guarantee schemes shall collect the necessary information from their member institutions required for preparation of pay-outs without delay and take appropriate measures to be in a position to check and determine the entitle to and amount of the claims of the depositors within the period of time stated in para. 1.

(4) The reference date for the calculation of the amount of covered deposits is the day on which the pay-out event occurred.

(5) Applications for the repayment of covered deposits pursuant to Article 12 shall be made to the deposit guarantee scheme within twelve months of the occurrence of the pay-out event. The deposit guarantee scheme may not, however, deny a depositor a repayment on the grounds that this period has expired, if the depositor was not in a position to assert their right to compensation in time. The member institutions shall also inform the depositors in the information sheet to be drawn up pursuant to Article 37a BWG about the deadline for applying for repayment of temporarily covered deposits pursuant to Article 12.

Exclusion, Deferment and Suspension of Repayment

Article 14. (1) A deposit guarantee scheme may prescribe in their articles of association, that pay-outs pursuant to Article 13 shall not be made, if no transaction has been made relating to a deposit within the last 24 months and the value of this deposit is lower than the administrative costs that would be incurred by the deposit guarantee scheme in making such a repayment pursuant to Article 13. In such a case the member institutions of this deposit guarantee scheme shall inform their depositors of this circumstance in the information sheet to be drawn up pursuant to Article 37a BWG.

(2) By way of derogation from Article 13 para. 1 the repayment by a deposit guarantee scheme may be suspended in the following instances:

1. The claim of the depositor for repayment by the deposit guarantee scheme is contestable;
2. the deposit is the subject matter of a legal dispute;
3. the deposit is subject to restrictive measures, which have been imposed by a competent authority or the European Union or by another state or an international organisation, and which are legally enforceable in Austria;
4. no transactions have been made in conjunction with the deposit within the last 24 months;
5. the deposit is a temporarily covered deposit pursuant to Article 12;
6. the deposit is a deposit pursuant to Article 11 para. 2;
7. a deposit guarantee scheme must make a repayment pursuant to Article 36 para. 1 to deposits of a branch in Austria.

Pay-out may be suspended in cases pursuant to nos. 1, 2, and 5 until the claim of the depositor is recognised by the deposit guarantee scheme or until a legally effective ruling has been handed down by a court, or in cases pursuant to no. 3 until the restrictive measure has been rescinded, and in cases pursuant to no. 7 until the necessary means have been made available by the deposit guarantee scheme in the home Member State. In cases pursuant to nos. 4 and 6 the pay-out must be conducted within three months of the pay-out occurring.

(3) By way of derogation from Article 13 para. 1 the repayment by a deposit guarantee scheme shall be suspended, if criminal proceedings as defined in Article 10 para. 1 no. 3 are been conducted against the depositor or another person holding a claim to the deposit or with a holding in the deposit or if the authority (the Financial Intelligence Unit - Geldwäschemeldestelle pursuant to Article 4 para. 2 of the Criminal Intelligence Service Austria Act (BKA-G; Bundeskriminalamt-Gesetz) as published in Federal Law Gazette I No. 22/2002) has been informed pursuant to Article 16 para. 1 FM-GwG. In such cases the repayment shall be suspended until the Public Prosecutor's Office communicates that the criminal proceedings have been concluded in a legally effective manner, have been halted or terminated in some other way, or the Financial Intelligence Unit states that there is no reason to pursue the case further; the Financial Intelligence Unit shall communicate this statement without delay to the relevant deposit guarantee scheme once the issue has been resolved.

Language regime for the Repayment Procedure

Article 15. (1) All correspondence between a deposit guarantee scheme and depositors shall be conducted in the following languages:

1. in the official language of the Union institutions that is used by the member institution holding the covered deposit when writing to the depositor; or
2. in the official language or languages of the Member State in which the covered deposit is located.

(2) If a CRR-credit institution operates directly in another Member State without having established branches, the information shall be provided in the language that was chosen by the depositor when the account was opened.

Subrogation of the deposit guarantee scheme into the depositor's rights

Article 16. If a deposit guarantee scheme makes payments to repay depositors in the event of the occurrence of a pay-out event or a deposit guarantee scheme makes payments to depositors as part of resolution proceedings, including the application of resolution tools or the exercising of resolution powers pursuant to Article 132 BaSAG, then the deposit guarantee scheme shall subrogate into the rights of the depositors against the affected member institution. In a bankruptcy proceeding these claims of the deposit guarantee schemes shall be given equal treatment as covered deposits.

Reporting requirements of the deposit guarantee scheme

Article 17. Following the conclusion of a repayment process the deposit guarantee scheme shall report to the FMA as well as to the member institutions of the deposit guarantee scheme about how the available financial means have been used as well as the endowment of the deposit guarantee fund.

Chapter 3: Funding

Section 1: The Deposit Guarantee Fund

Provisioning of the deposit guarantee fund

Article 18. (1) Every deposit guarantee scheme shall establish a deposit guarantee fund consisting of available financial means of equivalent to at least 0.8% of the total of the covered deposits of the member institutions (target level).

(2) Deposit guarantee schemes shall ensure that the amount of available financial means is commensurate to their existing and potential liabilities.

(3) Compensation for administrative expenditures shall be prescribed separately for the member institutions.

(4) The recognition of contributions to the resolution financing arrangement pursuant to Article 123 para. 2 BaSAG or to the Single Resolution Fund pursuant to Articles 69, 70 and 71 of Regulation (EU) No 806/2014 towards the target level of the deposit guarantee fund shall not be permitted.

Investment of the deposit guarantee fund

Article 19. (1) Deposit guarantee schemes shall operate the deposit guarantee fund in the interests of the depositors, and in so doing shall in particular pay attention to the security, profitability and requirement of liquid funds as well as the appropriate combination and diversity of assets. The available financial means of the deposit guarantee fund shall be invested in low-risk assets. The investment strategy shall ensure adequate liquidity in the occurrence of a pay-out event.

(2) The investment of available financial means of the deposit guarantee fund in all member institutions of its own deposit guarantee scheme shall be limited to a maximum total of 10%.

(3) The deposit guarantee scheme shall be required to display particular diligence in the selection of investments. The deposit guarantee scheme shall also ensure that it has adequate knowledge and understanding of the investments in which the deposit guarantee fund is invested. The deposit guarantee scheme shall set out criteria and procedures in writing and take appropriate precautions, to ensure that investment decisions, which have been taken for the deposit guarantee fund, correspond to the investment goals, investment strategy and the risk limit.

(4) The FMA shall determine, at the request of a deposit guarantee scheme, whether it deems specific instruments to be of a similarly secure and liquid nature as instruments that fall under the first or second named categories in table 1 of Article 336 of Regulation (EU) No 575/2013. The deposit guarantee scheme shall justify in its application why, the instruments that are being presented for classification should be classified as being of a similarly secure and liquid nature.

Guaranteeing and recovery of liabilities

Article 20. (1) It is only possible to assert a claim for guaranteeing or recovering liabilities, which have been effectively justified by the deposit guarantee scheme for the deposit guarantee fund that it manages.

(2) It is not possible to assert a claim for guaranteeing or recovering liabilities, which have not been justified by the deposit guarantee scheme for the deposit guarantee fund that it manages.

(3) The assets in the deposit guarantee fund of the deposit guarantee scheme may neither be legally effectively pledged or otherwise encumbered, nor may they be collateralised or otherwise encumbered nor given or assigned as security.

(4) Exposures against the deposit guarantee scheme and exposures that are to be assigned to the deposit guarantee fund may not be legally effectively set off against one another.

(5) The assets that have been assigned to the deposit guarantee fund shall form a special bankruptcy estate in the bankruptcy proceeding (Article 48 para. 1 of the Insolvency Code (IO - Insolvenzordnung), as published in the Imperial Law Gazette no. 337/1914).

Section 2: Collection of Financial Means

Contributions

Article 21. (1) The deposit guarantee schemes shall prescribe annual contributions for its member institutions, insofar as the target level has not yet been reached, or once the target level is no longer reached.

(2) Every member institution shall pay its contribution to the deposit guarantee scheme for the full amount agreed by the agreed deadline.

(3) The contributions of a member institution may consist of payment commitments, with the total amount of the annual contributions and the total of the available financial means from contributions may only consist of a maximum of 30% of payment contributions. The recognition of payment commitments is tied to the existence of a written agreement between the deposit guarantee scheme and the member institution which is to be reviewed on an at least annual basis.

(4) In the event that the provisioning of a deposit guarantee fund falls below 0.8% of covered deposits of the member institutions once the target level has first been reached, then the deposit guarantee shall collect annual contributions from its member institutions in order to ensure that the target level is once again reached within the following five years.

(5) In the event that the provisioning of a deposit guarantee fund falls below 0.54% of covered deposits of the member institutions once its target level has first been reached, then the deposit guarantee scheme shall at least collect annual contributions in order to ensure that the target level is once again reached within six years of dropping below this threshold.

(6) In the event that the provision of a deposit guarantee fund falls below the target level, or in the event that this target level has not yet been reached, then returns from the insolvency estate of a member institution of the deposit guarantee fund affected by a pay-out event shall be provided up to the amount of the target level of the deposit guarantee fund and shall be taken into account with regard to future contributions to be made by member institutions, unless the returns are to be used in accordance with paras. 4 and 5 for the repayment of liabilities from credit operations pursuant to Article 25; this also applies to returns that have been transferred to second affected deposit guarantee schemes.

(7) Prescribed contributions and extraordinary contributions by the deposit guarantee scheme shall be executed on the due date, even if the reasons and amounts prescribed are disputed.

(8) CRR-credit institutions joining a deposit guarantee scheme from 1 January 2018 onwards shall also make an additional payment equal to the amount of the annual contribution in addition to the annual contribution due for the first full business year pursuant to para. 1. The CRR-credit institution shall make a prepayment of this additional payment without delay upon being granted a licence, its amount being calculated for the first full business year by the deposit guarantee scheme pursuant to Article 23 para. 1 on the basis of information and forecasts laid down in the business plan pursuant to Article 4 para. 3 no. 3 BWG. Following the submission of the notification pursuant to Article 33 para. 1 as well as other relevant information for the calculation of the contribution for the first full business year, the deposit guarantee scheme shall calculate the contribution obligation in accordance with the first sentence, and shall prescribe the amount by which the contribution differs to either be prepaid or to be credited.

Extraordinary contributions

Article 22. (1) The deposit guarantee schemes shall prescribe and collect in a timely fashion extraordinary contributions from their member institutions of up to 0.5% of the amount of covered deposits per calendar year, in the event that the available financial means of a deposit guarantee scheme are insufficient to be able to repay depositors in the event of a pay-out event occurring or are insufficient to be able to service obligations from credit operations. The member institutions shall remit their extraordinary contributions for the prescribed amount by the prescribed due date subject to para. 4.

(2) The amount of the extraordinary contributions of the member institutions is measured on the basis of the ratio of the most recently due annual contribution of the member institution as a proportion of the total amount of most recently due annual contributions of the member institutions of a deposit guaranteescheme.

(3) The FMA shall approve the application of a deposit guarantee scheme to collect extraordinary contributions of more than 0.5% of the total of covered deposits of the member institutions, if:

1. the deposit guarantee scheme means available from the fund and the extraordinary contributions pursuant to para. 1 are not sufficient to reimburse the depositors in the event of a pay-out event occurring, or
2. this approach ensures that the financial means of a deposit guarantee scheme are commensurate to its existing and potential liabilities, or
3. the extraordinary contributions are required for the timely servicing of obligations arising from a credit operation or for obligations pursuant to Article 24 para. 2.

The FMA shall request an opinion from the Oesterreichische Nationalbank for this purpose.

(4) The FMA may approve a member institution's application for the deferment of payments of extraordinary contributions, if the payment of these extraordinary contributions would result in the member institution making the application having an inadequate solvency or liquidity situation. The deferment of payments shall be limited to a maximum period of six months, although the period may be extended upon application by the member institution. Once neither the solvency nor the liquidity of the institution are no longer endangered, then the deferred extraordinary contributions and interest accrued shall be paid by the member institution to the deposit guarantee scheme. The FMA shall request an opinion from the Oesterreichische Nationalbank for this purpose.

(5) Member institutions should also submit the opinion of an external auditor, from which it can be determined that the payment of the full amount of the extraordinary contributions that have been prescribed in the respective billing year would result in an inadequate solvency or liquidity situation for the member institution.

(6) As soon as the member institution that is in arrears fulfils its obligations, the deposit guarantee scheme shall prescribe a pro rata repayment to the member institutions that paid extraordinary contributions in order to guarantee the deposit guarantee scheme's ability to function. If expenditures are incurred by other member institutions as a result of the deferment of extraordinary contributions, these expenses are to be met by the member institution in arrears.

Consideration of risk-based aspects when collecting contributions and extraordinary contributions

Article 23. (1) The contributions and extraordinary contributions of the member institutions are calculated on the basis of the amount of covered deposits (basic component) as well as in proportion to the nature of the risks, to which the relevant member institution is exposed.

(2) The method for setting contributions and extraordinary contributions shall be determined by the deposit guarantee scheme, and shall be approved by the FMA. The FMA shall request an opinion from the Oesterreichische Nationalbank for this purpose. The method may prescribe that members of an institutional deposit guarantee scheme must remit lower contributions. The method takes into account indicators for the probability of default of member institutions and the risk of potential losses for the deposit guarantee scheme, in the event that a pay-out event occurs. The method may also take into account the quality and quantity of balance sheet items and risk indicators.

(3) The FMA shall approve the method for the determination of contributions and extraordinary contributions of a deposit guarantee scheme, if

1. the basic component is calculated on the basis of the proportion of the covered deposits of a member institution of the covered deposits of all member institutions and

2. the FMA is of the view that the risk categories, risk indicators, weightings of risk factors and risk categories as well as other necessary components prescribed in the method are suitable to handle the nature of the risk.

The FMA shall inform the EBA of the methods that it has approved for the identification of contributions and extraordinary contributions.

(4) In the event that the required information has not been supplied, the contributions and extraordinary contributions are to be determined by the deposit guarantee scheme on a provisional basis on the basis of a potential risk profile. Upon submission of the information required for the calculation of contributions, the deposit guarantee scheme shall calculate the contributions and extraordinary contributions of the member institution on the basis of the actual information, and shall stipulate the difference to be paid or credited compared to the provisionally remitted contributions and extraordinary contributions.

(5) The deposit guarantee scheme shall inform its member institutions about the method that it applies for calculating contributions and extraordinary contributions. When determining contributions and extraordinary contributions the deposit guarantee scheme shall wherever possible refer to available information.

Full coverage of claims

Article 24. (1) As soon as the first affected deposit guarantee scheme (Article 13 para. 1) determines that it may not be able to guarantee the repayment of covered deposits from the assets in its fund or by collecting extraordinary contributions within the pay-out delay to Article 13, it shall notify the other deposit guarantee schemes without delay about the shortfall amount.

(2) The remaining deposit guarantee schemes (second affected deposit guarantee schemes) are obliged, upon being requested to by the first affected deposit guarantee scheme in order to cover the shortfall amount to make financial means available without delay in proportion to the ratio of the total amount of covered deposits of their member institutions as a proportion of the total of the covered deposits of the member institutions of all second affected deposit guarantee schemes, as of the last reporting cut-off date pursuant to Article 33 para. 1.

(3) The specific conditions for making financial means available pursuant to paras. 1 to 2 are to be contractually agreed in advance and to be updated where applicable in accordance with the conditions of paras. 1 and 2 as well as Article 26.

Credit operations

Article 25. (1) The first affected deposit guarantee scheme shall execute credit operations, in the event that the claims for repayment in the case of a pay-out event are unable to be fully and promptly satisfied using the financial means held in the fund and extraordinary contributions pursuant to Articles 21 to 24 or Article 27.

(2) As long as the credit operation is not one with another deposit guarantee scheme in another Member State pursuant to Article 12 of Directive 2014/49/EU, all deposit guarantee schemes shall contribute to the repayment of obligations arising from credit operations in the respective proportion to the amount of the covered deposits of their member institutions in relation to the total of all covered deposits, as of the last reporting cut-off date pursuant to Article 33 para. 1. The concrete conditions for carrying out such a credit operation are to be contractually agreed in advance and to be updated where applicable in accordance with the conditions of this paragraph as well as of Article 26.

(3) By special legal authorisation, the Federal Minister of Finance may assume liability for credit operations in accordance with para. 1 on behalf of the federal government.

Claims arising between deposit guarantee schemes

Article 26. With regard to financial means, which are made available to the first affected deposit guarantee scheme pursuant to Article 24 para. 2 or pursuant to Article 27 para. 1 and with regard to payments pursuant to Article 25 para. 2 claims arising for the second affected deposit guarantee scheme against the first affected deposit guarantee scheme only insofar as the first affected deposit guarantee scheme receives returns from the insolvency estate of the former member institute. The claims of the second affected deposit guarantee schemes are calculated in these cases to such an extent that the returns from the insolvency estate are to be divided up proportionally on the basis of the financial means to be contributed by each deposit guarantee scheme for the pay-out event in proportion to the total financial means to be contributed to cover the pay-out event; the first affected deposit

guarantee scheme shall pay out the amount calculated in this manner to every second affected deposit guarantee scheme without delay.

Financing in special cases

Article 27. (1) In the event of the repayment of covered deposits

1. of a CRR-credit institution, for which a licence has been or will be granted between 3 July 2005 and 31 December 2017, or
2. a CRR-credit institution, which has changed or will change trade association between 03 July 2005 and 31 December 2017,

by way of derogation from Article 24 all deposit guarantee schemes are obliged, upon being requested to by the first affected deposit guarantee scheme in order to cover the shortfall amount to make financial means available without delay in proportion to the ratio of the total amount of covered deposits of their member institutions as a proportion of the total of the covered deposits of the member institutions of all second affected deposit guarantee schemes, as of the last reporting cut-off date pursuant to Article 33 para. 1. The deposit guarantee scheme, to which the affected CRR-credit institution belongs, shall for this purpose communicate to the other deposit guarantee schemes without delay the total amount that is to be paid out to the depositors as a result of the pay-out event occurring. The deposit guarantee schemes are empowered to exchange information as necessary for the purpose of fulfilling these obligations. The CRR-credit institutions named in nos. 1 and 2 shall belong for a period of ten years from the date of their licence being granted or from their changing trade association to a special accounting group within their protection scheme. Once ten years have passed, membership of the special accounting group shall lapse for the CRR-credit institutions named in nos. 1 and 2. From the point where a pay-out event occurs, the provisions of this paragraph shall no longer apply for the CRR-credit institutions named in nos. 1 and 2, instead the provisions of Article 24 shall apply.

(2) Para. 1 is not applicable in cases where the competent deposit guarantee scheme decides to exempt the member institution from the application of the ten-year period indicated in para. 1.

Section 3: Use of Financial Means

Purpose of use

Article 28. (1) Financial means may only be used for:

1. the reimbursement of depositors in the case of a pay-out event occurring,
2. for the purposes of claims by deposit guarantee schemes within the scope of a resolution pursuant to Article 132 BaSAG or pursuant to Article 79 of Regulation (EU) No 806/2014,
3. expenses incurred for financial means,
4. the servicing of obligations arising from credit operations pursuant to Article 25,
5. the granting of credits in accordance with Article 29 and
6. support measures within an institutional protection scheme pursuant to Article 30.

(2) The deposit guarantee scheme shall repay extraordinary contributions collected from its member institutions, which were not used for one of the purposes specified in para. 1, once the reimbursement procedure has been concluded.

Granting of loans to deposit guarantee schemes

Article 29. (1) Deposit guarantee schemes shall be entitled to grant loans to other deposit guarantee schemes, in the event that the deposit guarantee scheme taking out the loan:

1. is unable to fulfil its obligations pursuant to Article 9 (1) of Directive 2014/49/EU as a result of having insufficient financial means available pursuant to Article 10 of Directive 2014/49/EU in the case of a pay-out event;
2. has collected extraordinary contributions pursuant to Article 10 (8) of Directive 2014/49/EU;
3. is contractually obliged, to use this loan to cover claims pursuant to Article 9 (1) of Directive 2014/49/EU;
4. at the point in time where the contract is concluded does not have any obligations to repay loans to other deposit guarantee schemes;
5. has informed the protection scheme granting the loan of the required amount of the loan;

6. is requesting a total amount lent of a maximum of 0.5% of the covered deposits of the institutions of the deposit guarantee scheme taking out the loan, and
7. has informed the EBA without delay about the amount of the loan that is being sought, and has provided EBA with credible evidence in writing about its compliance of the conditions pursuant to nos. 1 to 6.

(2) Moreover, the granting of a loan is bound by the following conditions:

1. The loan shall be repaid in full within five years, although the loan may be repaid in annual instalments, with the accrued interest being taken into account in the repayment instalment;
2. an interest rate has been agreed upon that is at least equal to the marginal lending rate;
3. the deposit guarantee scheme granting the loan has informed EBA about the agreed interest rate and the term of the loan, and
4. following the granting of the loan, there are available financial means in the deposit guarantee fund of the deposit guarantee scheme granting the loan of at least 0.8% of the total covered deposits of the member institutions.

Support measures within an institutional protection scheme

Article 30. (1) The deposit guarantee scheme of an institutional protection scheme which is recognised as a deposit guarantee and investor compensation scheme may use its available financial means for support measures, if such measures prevent the default of a member institution, and the following conditions are satisfied:

1. the resolution authority has not taken any resolution actions;
2. the deposit guarantee scheme has available at its disposal organisational provisions and procedures, which are suitable for the selection and execution of support measures and the management and monitoring of the associated risks for the deposit guarantee scheme and for the coverage of claims in the case of a pay-out event;
3. the costs of the support measures are lower than the costs which would be incurred for the deposit guarantee scheme as a result of a pay-out event;
4. the deposit guarantee scheme prescribes obligations for the member institution, including, as a minimum strict risk monitoring and comprehensive verification rights for the deposit guarantee scheme;
5. the member institution to be offered support is obliged to guarantee access to the covered deposits;
6. the FMA has confirmed the ability of the other member institutions for the payment of extraordinary contributions pursuant to para. 3, and
7. all available readily available funds pursuant to point (b) Article 113 (7) of Regulation (EU) No. 575/2013 have already been exhausted to provide the necessary support for the member institution.

The FMA shall request an opinion from the Oesterreichische Nationalbank for this purpose. Prior to the application of support measures the deposit guarantee scheme of the institutional protection scheme recognised as a deposit guarantee and investor compensation scheme have consulted with the FMA and the resolution authority about the measures to taken subject to which obligations for the member institution to be granted support.

(2) If the FMA, following consultation with the resolution authority reaches the conclusion that the conditions for the application of resolution actions are fulfilled, then it shall prohibit the execution of the support measures listed in para. 1.

(3) If available financial means pursuant to para. 1 are used, then the member institutions of the institutional protection scheme recognised as a deposit guarantee scheme shall make financial means available equal to the amount of the amount that has been used for support measures, if necessary in the form of extraordinary contributions, in the case that at least one of the following conditions applies:

1. depositors are to be reimbursed and the available financial means in the deposit guarantee fund are less than 0.54% of the covered deposits of all member institutions in the deposit guarantee scheme, or

2. the available financial means in the deposit guarantee fund fall, as a result of the support measures provided, to less than 0.5% of the covered deposits of all member institutions in the deposit guarantee scheme.

(4) The deposit guarantee scheme of an institutional protection scheme that is recognised as a deposit guarantee and investor compensation scheme shall notify the FMA of its intention to use available financial means for support measures. Furthermore, in the event that requirements exist in relation to state aid, it shall be required to consult with the Federal Minister of Science, Research and Economy in relation to these requirements. The deposit guarantee scheme shall make all necessary information available to the Federal Minister of Science, Research and Economy that is required for the assessment of the state aid requirements. Furthermore, the deposit guarantee scheme shall inform the FMA and the Federal Minister of Finance about the initiation and outcome of the procedure that shall in any case be necessary in relation to the authorisation of state aid by the European Commission. In the event that state aid requirements exist, a pay-out of available financial means for support measures shall only be permissible, if no objections are raised by the European Commission against the intended support measures, or if authorisation has been granted to conduct the intended support measures. When conducting the support measures, the deposit guarantee scheme shall ensure compliance with any provisions in relation to the authorisation of state aid by the European Commission.

Section 4: Annual Report, Reports and Notifications

General provisions

Article 31. (1) Deposit guarantee schemes shall draw up an annual financial statement and an accounting report on an annual basis (annual report). The financial year of the deposit guarantee schemes is the calendar year.

(2) The deposit guarantee scheme shall regularly monitor and assess the adequacy and effectiveness of principles, methods and rules for the annual financial statement and the accounting report. It shall take all necessary measures to remedy any shortcomings without delay.

(3) The deposit guarantee scheme shall report to the supervisory board or to any other competent supervisory body on a regular basis, at least four times a year, in the form of a report about the investment strategy, internal procedures for investment decisions and any conflicts of interest that have arisen. In the case that shortcomings are identified, the deposit guarantee scheme shall take necessary measures to remedy the shortcomings, and shall also report about measures taken to the supervisory board or another competent supervisory body.

(4) When calculating the total value of the assets assigned to the deposit guarantee fund as of the cut-off date, discernible risks and anticipated losses that have occurred in the current business year or in previous business years are to be taken into account, even if these circumstances have only become known between the cut-off date and the date on which the annual financial statement has been filed. Necessary value adjustments in the valuation of individual asset items should be taken into account.

(5) The directors of the deposit guarantee scheme shall take responsibility for the legality of the annual financial statements and the deposit guarantee scheme's reports on its activities. The annual financial statements of every deposit guarantee scheme shall be audited by an external auditor pursuant to Articles 268 to 276 UGB. This audit shall also cover the observance of Chapter 3 of this federal act by the deposit guarantee scheme, with the findings of this audit to be presented in a separate annex to the audit report about the annual financial statement. This audit covers the organisational structure as well as the administrative, accounting and control mechanisms (Article 2 para. 2) which the deposit guarantee scheme has put in place in view of the provisions set forth in Chapter 3 of this federal act. The outcome of this audit opinion is to be expressed with a negative assurance. The FMA shall issue a regulation defining the form and layout of this annex. The annual financial statement must be prepared in a timely manner to ensure observance of the submission deadline pursuant to para. 6.

(6) The audited annual financial statement, the audited accounting report on the assets of the deposit guarantee fund as well as the audit reports about the annual financial statements and the accounting report including the annex to the audit report about the annual financial statement referred to in para. 5 are to be submitted to the FMA at latest within six months after the end of the financial year, while the annual financial statement shall also be published.

Accounting Report

Article 32. (1) The external auditor of the deposit guarantee scheme must review the legal compliance of the accounting report. If no objections are raised about the assets of the deposit guarantee fund following the final results of the audit of the accounting report, then the external auditor shall confirm this by means of the following audit opinion: "The accounting report and the financial statement, which I/we have audited in accordance with professional standards, comply with the legal provisions. The accounting report presents, in compliance with generally accepted accounting procedures, a fair view of the position of the deposit guarantee fund."

(2) The accounting report shall contain an earnings statement, a statement of assets as well as investment conditions, and shall report about alterations to the asset portfolio and the endowment of the deposit guarantee fund at the start and end of the financial year. The accounting report shall be drawn up in accordance with the specific format contained in the **Annex to Article 32**.

(3) The audited accounting report about the assets of the deposit guarantee fund and the audit report on the accounting report shall be submitted to the supervisory board or another competent supervisory body of the deposit guarantee scheme without delay. The accounting report must be prepared in a timely manner to ensure that the submission deadline defined in Article 31 para. 6 is observed.

Reports

Article 33. (1) The member institutions must notify their deposit guarantee scheme by 31 January each year about the amount of the total of their covered deposits as of 31 December of the preceding year. The deposit guarantee schemes shall notify the FMA by 28 February each year of the amount of the total covered deposits of its member institutions, including all necessary information for the calculation of contributions and extraordinary contributions as well as the amount and composition of the available financial means of the deposit guarantee fund as of 31 December of the preceding year. The FMA shall notify the EBA of the amount of covered deposits of all member institutions as well as the amount and composition of available financial means of all deposit guarantee funds by 31 March each year.

(2) Notifications by deposit guarantee schemes pursuant to para. 1 are to be submitted in a standardised format by means of electronic transmission or electronic media. This transmission must meet certain minimum technical requirements to be defined by FMA after consultation with the Oesterreichische Nationalbank. The FMA shall determine by means of a regulation the scope and form as well as the content and format for notifications by deposit guarantee schemes pursuant to para. 1. The FMA may stipulate that the notifications pursuant to para. 1 shall only be submitted to the Oesterreichische Nationalbank, provided that the FMA, by so doing, is not compromised in the performance of its duties in accordance with this federal act or other federal acts.

Notifications

Article 34. Deposit guarantees must notify the FMA in writing of the following without delay:

1. Any occasions of the deposit guarantee fund falling below the target level, the measures that are being enforced within the scope of the provisions of this federal act in order to ensure that the target level is once against reached, as well as the point at which the target level has once again been reached;
2. delays in payments by member institutions;
3. the collection of extraordinary contributions and their amount;
4. the finding that an amount is missing pursuant to Article 24 para. 1;
5. loan applications pursuant to Article 25, also supplying all important information;
6. missing or incomplete submission of information to deposit guarantee schemes by member institutions;
7. the withdrawal of a member institution from the deposit guarantee scheme;
8. the planned merger of deposit guarantee schemes;
9. a membership institution joining another deposit guarantee scheme and the resulting amount of assets in the fund to be transferred;
10. the conclusion of cooperation agreements with a deposit guarantee scheme;
11. in the case of institutional protection schemes, which have been recognised as a deposit guarantee scheme and investor compensation scheme:

a) amendments to their articles of association or amendments to the articles of association or other contractual agreements in relation to the institutional protection scheme, which might have an effect on the activity of the institutional protection schemes as a deposit guarantee and investor compensation scheme;
b) the intention of the institutional protection scheme, to take a decision resulting in the relinquishment of being recognised as a deposit guarantee scheme and investor compensation scheme or to dissolve the institutional protection schemes;

12. any changes in the persons appointed as directors including information about the fulfilment of conditions in accordance with Article 2 para. 7;
13. any change in the persons appointed as a member of the supervisory board.

Electronic Submission

Article 34a. The FMA may, following a hearing by the Oesterreichische Nationalbank, prescribe by means of a regulation that notifications, reports, submissions and communications, for the purpose of bringing items to its attention and for submission pursuant to Article 2 para. 6 first sentence, Article 31 para. 6 and Article 34 para. 1 nos. 1 to 13 of this federal act may only be submitted in electronic form, as shall be required to correspond to specific formats, minimum technical requirements and modalities for transmission. In so doing, the FMA shall observe the principles of economy and expediency, ensuring that the data is electronically available to the FMA and the Oesterreichische Nationalbank at all times and supervisory interests are not compromised. 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.

Chapter 4: Cross-border cooperation, information requirements and Provisions for Sanctions

Section 1: Cooperation between deposit guarantee schemes

Branches of CRR-credit institutions in other Member States

Article 35. (1) If a CRR-credit institution operates branches in other Member States, then the deposits taken there will be protected by the deposit guarantee scheme to which the CRR-credit institution belongs. Repayment must be made in accordance with the instructions of the deposit guarantee scheme on its behalf by a deposit guarantee scheme in the host Member State. The deposit guarantee scheme must provide the necessary funding prior to pay-out and shall compensate the deposit guarantee scheme of the host Member State for the costs incurred.

(2) The deposit guarantee scheme shall make all information available to the deposit guarantee scheme in the host Member State, which it requires for the repayment of deposits and for carrying out stress tests.

(3) To ensure an effective cooperation, the deposit guarantee scheme shall conclude a cooperation agreement with a deposit guarantee scheme in the host Member State. The deposit guarantee scheme must be in the position to exchange information on an effective cross-border basis, and to communicate with other deposit guarantee schemes, their affiliated CRR-credit institutions, the competent and designated authorities as well as other bodies as need arises. The FMA shall inform the EBA about the existence of and content of such cooperation agreements.

Branches of CRR-credit institutions from other Member States in Austria

Article 36. (1) If a CRR-credit institution incorporated in another Member State operates branches in Austria, then the deposit guarantee scheme with which the corresponding cooperation agreement has been concluded, shall repay deposits in accordance with the instructions of the deposit guarantee scheme of the CRR-credit institution's home Member State on its behalf, provided that the deposit guarantee scheme of the home Member State has made the necessary financial means available and has repaid any incurred costs. The deposit guarantee scheme shall not be liable for any transactions that are undertaken in accordance with the instructions of the deposit guarantee scheme of the home Member State.

(2) The deposit guarantee scheme shall also inform the depositors concerned on behalf of the deposit guarantee scheme of the home Member State and shall be entitled to receive correspondence from those depositors on behalf of the deposit guarantee scheme of the home Member State.

Section 2: Information Requirements

Branches of foreign credit institutions

Article 37. (1) In the case of branches of a foreign credit institution pursuant to Article 2 no. 13 BWG, which receive deposits in Austria pursuant to Article 7 para. 1 no 3, the FMA shall check whether a deposit guarantee scheme exists in the country of origin of the foreign credit institution pursuant to Article 2 no. 13 BWG, which is comparable to one as defined in this federal act. Equivalence is deemed to exist, if depositors enjoy the same coverage level and the same protective scope as are prescribed in this federal act. The FMA shall notify the foreign credit institution pursuant to Article 2 no. 13 BWG about the result of this check.

(2) Every branch of a foreign credit institution pursuant to Article 2 no. 13 BWG, which takes deposits in Austria pursuant to Article 7 para. 1 no. 3, shall make all important information available to its current and potential depositors with regard to the safeguards that apply to the deposits that it accepts both by way of a bulletin in their lobby as well as on their website. This information shall in particular explain, whether a deposit guarantee scheme exists in the country of origin of the foreign credit institution pursuant to Article 2 no. 13 BWG that is comparable in form to one as defined in this federal act. The information shall be made available in a clear and comprehensive way in German or in the language in which the depositor and the credit institution agreed upon when the account was opened.

Information for depositors

Article 38. (1) The deposit guarantee scheme shall publish the necessary information for depositors on its website, in particular information concerning the provisions regarding the process for reimbursement of deposits and conditions of deposit guarantees as envisaged under this federal act.

(2) Member institutions shall inform potential investors about their membership of a deposit guarantee scheme and the rules in this federal act that apply with regard to the guaranteeing of deposits by making this information accessible at business premises accessible to consumers or on their website. If the member institution takes deposits through branches in Member States, the information must also be published in the official language(s) of the Member State in which the branch has been established.

(3) The information pursuant to paras. 1 and 2 may only be used for advertising purposes in the form of a note about the deposit guarantee scheme guaranteeing the product to which the advertisement refers, as well as a factual description of how the deposit guarantee scheme works. It shall not be permissible to make a reference to unlimited coverage of deposits.

(4) Insofar as a member institution uses different banks pursuant to Article 2 of Directive 2008/95/EC to approximate the laws of the Member States relating to trade marks, OJ L 299 of 08.11.2008 p. 25, then it shall inform the depositor of this fact and explain that the total of the deposits held at this credit institution shall form the basis for the calculation of covered deposits pursuant to Article 7 para. 1 no. 5. In such a case the CRR-credit institution shall also include this information in the information sheet to be drawn up pursuant to Article 37a BWG.

Changing of deposit guarantee scheme

Article 39. (1) If a CRR-credit institution intends to change from being a member of one deposit guarantee scheme to another, then it must communicate this intention at least six months in advance to the deposit guarantee scheme of which it was hitherto a member and the FMA. The new deposit guarantee scheme that it wishes to be admitted to shall reach a decision regarding the application within six months, and shall confirm in writing about the intended admission of the CRR-credit institution; this confirmation shall be submitted to the FMA. During the time horizon mentioned in the first sentence the CRR-credit institution shall continue to be obliged to remit contributions pursuant to Articles 21 to 24 to the deposit guarantee scheme of which it has hitherto been a member.

(2) Within two months of changing membership of a deposit guarantee scheme, the deposit guarantee scheme which it was previously been a member of shall transfer the contributions to the new deposit guarantee scheme that were remitted for the twelve months prior to the termination of its membership by the CRR-credit institution; extraordinary contributions in accordance with Article 22 are excluded from

this provision. This para shall not apply if a CRR-credit institution has been excluded from a deposit guarantee scheme pursuant to Article 40 para. 3.

(3) If some of the deposits of a CRR-credit institution are transferred to another CRR-credit institution or to another Member State and thus become subject to another deposit guarantee scheme, the contributions of that credit institution paid during the 12 months preceding the transfer, with the exception of the extraordinary contributions in accordance with Article 22, shall be transferred to the other deposit guarantee system in proportion to the amount of covered deposits transferred.

(4) Existing obligations of the CRR-credit institution towards the deposit guarantee scheme of which it was previously a member from previous pay-out events shall continue to exist following the CRR-credit institution changing to the new deposit guarantee scheme.

(5) In the event of a change of the deposit guarantee scheme of which the CRR-credit institution is a member, the CRR-credit institution shall inform depositors within one month following this change about this fact.

Section 3: Supervisory measures and penal provisions

Measures against member institutions

Article 40. (1) In the event that a member institution is unable to meet its obligations as a member of a deposit guarantee scheme, then the deposit guarantee scheme shall inform the FMA of this fact without delay.

(2) If a member institution breaches the provisions of the second part of this federal act, then the FMA shall, following a consultation with the respective deposit guarantee scheme:

1. instruct the member institution, 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 violations, completely or partly prohibit the directors of the member institution from managing the institution, unless this would be inappropriate based on the nature and severity of the violation 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) In the event that the member institution is unable to fulfil its obligations despite the measures taken pursuant to para. 2, then the deposit guarantee scheme may, with the approval of the FMA, exclude the member institution from being a member of the deposit guarantee scheme, if another deadline of at least one month has been set. If the member institution is unable to fulfil its obligations by the time that the deadline for exclusion expires, then the deposit guarantee scheme shall exclude the member institution from being a member. Article 8 para. 3 shall apply. Deposits which are held at the time at which the CRR-credit institution is excluded shall continue to be protected by the deposit guarantee scheme.

(4) The excluded CRR-credit institution shall inform depositors without delay about its exclusion from the deposit guarantee scheme and the legal consequences of this exclusion.

Penal Provisions

Article 41. (1) Any person who, as person responsible (Article 9 1991 Administrative Penal Act (VStG - Verwaltungsstrafgesetz 1991)) for a member institution,

1. does not punctually remit contributions pursuant to Articles 21 to 23;
2. does not submit notifications pursuant to Article 33 or only submits them in an incomplete or incorrect manner;
3. breaches the obligations pursuant to Article 38 para. 2;

commits an administrative offence and shall be fined up to EUR 100 000 for cases listed in no. 1 or up to EUR 60 000 for cases listed in nos. 2 or 3 by the FMA.

(2) Anyone running advertising contrary to the provisions set down in Article 38 para. 3 or Article 53 is committing an administrative offence, and shall be fined up to EUR 60 000 by the FMA.

(3) Any person who as person responsible (Article 9 VStG) of a branch of a foreign credit institution pursuant to Article 2 no. 13 BWG breaches the obligations pursuant to Article 37 para. 2, is committing an administrative offence and shall be fined up to EUR 60 000 by the FMA.

(4) Any person who, as person responsible (Article 9 VStG) for a deposit guarantee scheme,

1. breaches the obligations pursuant to Article 2;
2. breaches the obligations pursuant to Article 13 para. 1;
3. breaches the obligations pursuant to Article 18 para. 1;
4. breaches the obligations pursuant to Article 24 para. 2;
5. breaches the obligations pursuant to Article 27;

commits an administrative offence and shall be fined up to EUR 100 000 by the FMA.

(5) Any person who, as person responsible (Article 9 VStG) for a deposit guarantee scheme,

1. breaches the obligations pursuant to Article 21 para. 1 or Article 22 para. 1;
2. breaches the obligations pursuant to Article 31 para. 6;
3. does not submit notifications pursuant to Article 33 or only submits them in an incomplete or incorrect manner;
4. fails to provide immediate written notification pursuant to Article 34;
5. breaches the obligations pursuant to Article 38 para. 1;

commits an administrative offence and shall be fined up to EUR 60 000 by the FMA.

(6) In the event of a breach of notification requirements pursuant to Article 34 the FMA shall refrain from initiating and conducting administrative penal proceedings if the notification not duly submitted was subsequently made before the FMA gained knowledge of the said breach.

Article 42. *(repealed)*

Usage of collected fines

Article 43. Fines imposed by the FMA pursuant to the second part of this federal act shall be received by the Federal Government.

Part 3: Investor compensation

Definitions

Article 44. For the purposes of part 3 of this federal act, the following definitions shall apply:

1. competent authority: the authority of a Member State that was named by the Member State as being the competent authority pursuant to Article 48 of Directive 2004/39/EC, or a competent authority as defined in point (40) of Article 4 (1) of Regulation (EU) No 575/2013;
2. branch: a place of business which forms a legally dependent part of a credit institution, a credit institution pursuant to Article 9 para. 1 BWG or an investment firm as defined in Article 17 para. 1 WAG 2018 and which carries out directly all or some of the transactions inherent in the business of the credit institution or the investment firm; in the event that a credit institution or an investment firm as defined in Article 12 para. 1 WAG 2007 has several places of business in one and the same Member State, they shall be regarded as being a single branch;
3. depositor: a natural or legal person, who has entrusted money or instruments to a credit institution pursuant to Article 9 para. 1 BWG or an investment firm pursuant to Article 17 para. 1 WAG 2018 in connection with investment services subject to guarantee obligations;
4. Member State: a State pursuant to Article 2 no. 5 BWG.
5. Investment firm: An investment firm pursuant to Article 1 no. 1 WAG 2018;
6. Credit institution: a credit institution pursuant to Article 1 para. 1 BWG.
7. Member institute:
   a) in the case of the uniform deposit guarantee scheme pursuant to Article 1 para. 1 no. 1: credit institutions pursuant to Article 45 para. 1;
   b) in the case of a deposit guarantee scheme pursuant to Article 1 para. 1 no. 2: credit institutions which are members of the recognised institutional protection scheme;
8. Investment service: investment service pursuant to Article 2 no. 29 BWG
9. Investor compensation system: the uniform deposit guarantee scheme pursuant to Article 1 para. 1 no. 1, recognised institutional protection schemes pursuant to Article 3, as well as other established and officially recognised investor compensation schemes pursuant to Article 2 (1) of Directive 97/9/EC.

Membership of a deposit guarantee scheme

Article 45. (1) Subject to para. 2 credit institutions, which conduct investment services subject to guarantee obligations pursuant to para. 4, shall belong to the uniform deposit guarantee scheme pursuant to Article 1 para. 1 no. 1.

(2) The obligation pursuant to para. 1 shall be waived for CRR-credit institutions, which belong to an institutional protection scheme that has been recognised as a deposit guarantee and investor compensation scheme pursuant to Article 3.

(3) If a credit institution does not belong to a deposit guarantee scheme, then its authorisation (licence) to conduct investment services subject to guarantee obligations pursuant to para. 4; Article 7 para. 2 BWG shall apply.

(4) Investment services subject to guarantee obligations are as follows:

1. custody business (Article 1 para. 1 no. 5 BWG);
2. trading for one's own account or on behalf of others in instruments pursuant to points b to f of Article 1 para. 1 no. 7 BWG;
3. third-party securities underwriting (Article 1 para. 1 no. 11 BWG);
4. severance and retirement fund business (Article 1 para. 1 no. 21 BWG);
5. investment services pursuant to Article 3 para. 2 nos. 2 or 3 WAG 2018;

Compensation event

Article 46. (1) The deposit guarantee schemes shall ensure that, in the event of

1. bankruptcy proceedings are initiated with regard to a member institution;
2. receivership being ordered for a member institution (Article 83 BWG);
3. with regard to the claims of an investor arising from investment services subject to guarantee obligations provided by a member institution, that a suspension of payments is ordered (Article 70 para. 2 BWG and Article 78 BWG); such an order shall be issued at the latest five working days after the FMA first established that the member institution concerned has failed to repay claims which are due and payable, or
4. the competent authorities of the home Member State of a credit institution that has voluntarily joined for supplementary cover (Article 48 para. 2) or an investment firm that has voluntarily joined for supplementary cover (Article 48 para. 3) shall notify this finding or a decision pursuant to Article 2 (2) of Directive 97/9/EC pursuant to point (b) of Annex II of that directive,

the claims of an investor arising from investment services subject to guarantee obligations shall be paid out up to a maximum amount of EUR 20 000 or its equivalent amount in a foreign currency per investor, at the request of the investor following verification of the investor's identity within three months from the point at which the amount and entitlement to the claim was determined. Where investments are held in an escrow account on behalf of other persons, such persons shall be required to provide proof of identity and evidence for the legitimacy of their claim. Multiple pay-outs are only permissible if there are claims arising from investment services subject to guarantee obligations on legitimised joint accounts, or if the investors with a claim to a legitimised account provide evidence for the legitimacy of their claim. If criminal proceedings are pending as defined in Article 10 para. 1 no. 3 or if the Financial Intelligence Unit (Geldwäschemeldestelle)(Article 4 para. 2 of the Criminal Intelligence Service Austria Act (BKA-G; Bundeskriminalamt-Gesetz)) has been informed pursuant to Article 16 para. 1 FM-GwG, then a pay-out shall be suspended until the Public Prosecutor's Office communicates that the criminal proceedings have been concluded in a legally effective manner, have been halted or terminated in some other way, or the Financial Intelligence Unit states that there is no reason to pursue the case further; the Financial Intelligence Unit shall communicate this statement without delay to the relevant deposit guarantee scheme once the issue has been resolved. The deposit guarantee scheme is to have recourse to claims against the credit institution concerned in the amount of the amounts paid and the demonstrable costs. Should one of the cases listed in nos. 2 to 4 arise, the credit institution is obliged to provide the deposit guarantee scheme with all information necessary for its activities, to make documents and personnel available and to enable the necessary access to IT systems. In the case of no. 1, this obligation applies to the bankruptcy trustee. The deposit guarantee scheme concerned must notify the FMA without delay in cases where a member institution fails to fulfil its obligations to the deposit guarantee scheme under this federal act.

(2) The deposit guarantee schemes shall, in accordance with part 3 of this federal act, compensate investors for claims arising from investment services subject to guarantee obligations, which have arisen from the fact that a credit institution, a credit institution pursuant to Article 48 para. 2 or an investment firm pursuant to Article 48 para. 3 was not in the position, in accordance with statutory or contractual regulations, to:

1. repay funds which are owed to or belong to investors and are held for their account in connection with investment services subject to guarantee obligations; or
2. return to investors those instruments which belong to them and are held, kept in custody or administered for their account in connection with investment services subject to guarantee obligations.

(3) Parties entitled to claims arising from investment services subject to guarantee obligations may lodge such claims with the deposit guarantee scheme during a period of one year from the time at which a pay-out event is announced pursuant to para. 1. The deposit guarantee scheme may not however deny compensation to an investor citing the fact that the compensation period has expired, in the event that the investor was unable to assert a claim in time.

Limitation of the paybox function

Article 47. (1) For investment services pursuant to Article 45 para. 4 in the case of creditors that are not natural persons, regardless of the maximum amount quoted in Article 46 para. 1 the deposit guarantee scheme's obligation to payout shall be capped at 90% of the claim from investment services subject to guarantee obligations per investor. A credit balance or other claims from investment services subject to guarantee obligations held in an account over which two or more persons may dispose as partners in an ordinary partnership, a limited partnership, a civil-law partnership or a business organisation of a similar nature under the law of a Member State or a third country, shall be aggregated when calculating the cap in this paragraph and shall be treated as a credit balance and other claims from investment services subject to guarantee obligations held by a single investor. The deposit guarantee scheme is entitled to offset compensation claims against claims of the credit institution. Article 19 para. 2 IO shall apply to all cases in which claims arising from investment services subject to guarantee obligations are to be paid out.

(2) The following claims arising from investment services subject to guarantee obligations are excluded from cover by the deposit guarantee scheme:

1. Claims arising from investment services subject to guarantee obligations of other credit institutions, financial institutions or investment firms, or CRR-credit institutions authorised in a Member State or a third country;
2. Claims related to transactions in connection with which persons have been convicted of money laundering in criminal proceedings (Article 165 StGB);
3. Claims of governments and central administrations as well as the claims of regional and local authorities;
4. Claims of undertakings for collective investments in transferable securities (Directive 2009/65/EC), management companies and investment funds, as well as claims of undertakings of contract insurance, pension insurance, pension companies, pension funds and fixed-income funds;
5. Claims of
   a) the directors of the credit institution or investment firm pursuant to Article 17 para. 1 WAG 2018 and members of its supervisory bodies competent according to applicable law or the articles of association, and management board members in the case of credit cooperatives;
   b) personally liable members of credit institutions or investment firms organised as commercial-law partnerships;
   c) parties entitled to claims who hold at least 5% of the capital of the credit institution or investment firm pursuant to Article 17 para. 1 WAG 2018;
   d) parties entitled to claims who are responsible for carrying out statutory audits of the accounting documents of the credit institution or investment firm pursuant to Article 17 para. 1 WAG 2018;
   e) parties entitled to claims, who perform one of the functions listed in points a to d in affiliated undertakings (Article 244 Company Code (UGB - Unternehmensgesetzbuch) as published in

the German Imperial Law Gazette p. 219/1897) of the credit institution or investment firm pursuant to Article 17 para. 1 WAG 2018, although holdings below the thresholds listed pursuant to Article 19 para. 1 of Regulation (EU) No 575/2013 do not trigger the application of the exception listed in this point,

6. Claims belonging to close relatives (Article 72 StGB) of the parties entitled to claims named under no. 5 acting on behalf of the parties entitled to claims named under no. 5 as well as third parties acting on behalf of the parties entitled to claims named under no. 5,
7. Claims of other companies which are affiliated undertakings (Article 244 UGB) of the relevant credit institution or investment firm pursuant to Article 17 para. 1 WAG 2018;
8. Claims for which the credit institution or investment firm pursuant to Article 17 para. 1 WAG 2018 granted the party entitled to a claim was granted interest rates or other financial benefits/advantages on an individual basis which contributed to the deterioration of the financial situation of the credit institution or investment firm pursuant to Article 17 para. 1 WAG 2018;
9. Debt securities of the credit institution or investment firm pursuant to Article 17 para. 1 WAG 2018 and liabilities arising from own acceptances and promissory notes;
10. Claims not denominated in euros, Austrian Schilling, the national currency of a Member State or in ECU, with this restriction only applying to financial instruments pursuant to Article 1 no. 7 WAG 2018; and
11. Claims belonging to companies which qualify as large corporations as defined in Article 221 para. 3 UGB.

Cross-border compensation

Article 48. (1) According to Articles 45 to 47 and Article 51 claims arising from investment services subject to guarantee obligations are also covered, which were performed at a credit institution pursuant to Article 10 BWG in a Member State in a branch in a third country. In cases where the investor compensation scheme in that Member State ensures higher or more extensive cover for claims than are provided for in Articles 45 to 47 as well as Article 51, only the rules stipulated in this federal act shall apply to the amount compensation to be paid by the Austrian deposit guarantee scheme.

(2) Credit institutions pursuant to Article 9 para. 1 BWG, which provide investment services subject to guarantee obligations in Austria through a branch pursuant to Article 45 para. 4, shall be authorised, provided that they are a member of an investor compensation scheme in their home country as defined in Directive 97/9/EC, to join the uniform deposit guarantee scheme pursuant to Article 1 para. 1 no. 1 in addition to being a member of the investor compensation scheme in their home Member State. This supplementary membership only applies to investment services subject to guarantee obligations provided in Austria, and only to the extent that Articles 45 to 47 and 51 ensure higher or more extensive cover for claims arising from investment services than the investor compensation scheme in the credit institution's home Member State. The deposit guarantee scheme must require the credit institutions (Article 9 para. 1 BWG) which have voluntarily joined the scheme for supplementary cover to pay proportionate contributions immediately in cases where guaranteed claims arising from investment services are paid out. Article 49 shall apply to the calculation of proportionate contributions. In this context, credit institutions which voluntarily join a scheme for supplementary cover must not be accorded worse treatment than Austrian credit institutions. If a credit institution which has voluntarily joined a scheme for supplementary cover has several branches in Austria, these branches are to be regarded as a single branch in the calculation of claims pursuant to Article 45 para. 4 and in the calculation of contribution payments pursuant to Article 49.

(3) Investment firms pursuant to Article 17 para. 1 WAG 2018 that provide investment services subject to guarantee obligations in Austria via a branch pursuant to Article 45 para. 4 nos. 1 to 3 or 5, are authorised to join, provided that they are members of an investor compensation scheme as defined in Directive 97/9/EU, the uniform deposit guarantee system pursuant to Article 1 para. 1 no. 1 in addition to the investor compensation scheme in their Home Member State. For investment firms pursuant to Article 17 WAG 2018 that provide investment services in Austria pursuant to Article 3 para. 2 no. 2 or no. 3 WAG 2018, where such services do not include the holding of money, securities or other instruments, meaning that the provider of such services may not at any time become a debtor of their clients, Article 76 WAG 2018 shall apply instead. The supplementary membership only applies to investment services subject to guarantee obligations provided in Austria pursuant to Article 45 para. 4 nos. 1 to 3, and only to the extent that Article 45 to 47 and Article 51 provide a greater or further-reaching protection of claims arising from investment services than the investor compensation scheme in the

investment firm's home Member State. The protection scheme shall oblige investment firms that have voluntarily joined the scheme for supplementary cover to pay contributions on a pro rata basis without delay in the event of a pay-out of guarantees claims arising from investment services subject to guarantee obligations. Article 50 is to be applied analogously to the calculation of proportionate contributions. In this instance, the investment firm that has joined on a voluntary basis for the purpose of supplementary cover shall not be allowed to be treated worse than a comparable Austria credit institution based on the type of institution and purpose of business. If an investment firm that has voluntarily joined a scheme for supplementary cover has several branches in Austria, they shall be regarded as a single branch in the calculation of claims pursuant to Article 45 para. 4 and in the calculation of contribution payments pursuant to Article 50.

(4) If the credit institution that has voluntarily joined for supplementary cover does not comply with its obligations, then the relevant deposit guarantee scheme shall inform the FMA of this without delay. The FMA shall request that the credit institution that has voluntarily joined for supplementary cover complies with its obligations, while at the same time contacting the competent authority of the credit institution's home Member State. In the event that the credit institution that has voluntarily joined for supplementary cover is unable to meet its obligations despite such measures, then it may be excluded with the consent of the competent authority of the home Member State from the deposit guarantee scheme with a notice period of twelve months being set. The aforementioned provisions shall also apply for investment firms that have voluntarily joined for supplementary cover. Investment services performed prior to the point of exclusion shall remain included in the coverage of the supplementary investor compensation. The depositors and investors shall be informed by the deposit guarantee scheme about the supplementary coverage ceasing to apply by means of publication in the Official Gazette of the Wiener Zeitung as well as in at least one other nationally circulated daily newspaper. The institution that has been excluded shall inform about the circumstances for the supplementary coverage ceasing to apply in a clear manner both in the form of a bulletin in its lobby as well as in its advertising and in its contractual documentation.

(5) Credit institutions which have established branches in another Member State under the freedom of establishment are entitled in the same way to join the local deposit guarantee and investor compensation scheme for supplementary cover with regard to investment services provided in that Member State as defined in Article 48 para. 3. In the event of a pay-out event occurring pursuant to Article 46 para. 1 nos. 1 to 3, the FMA provide the notification provided for in Annex II (b) of Directive 97/9/EC to the competent authority in the host Member State.

Funding

Article 49. (1) The deposit guarantee schemes shall oblige their member institutions to make proportionate contributions without delay in cases where compensation is paid out for covered investment services. Deposit guarantee schemes must make organisational arrangements in order to enable the immediate calculation and payment of the guaranteed claims. Unless para. 4 is applicable, the obligation to pay contributions initially only applies to member institutions belonging to the deposit guarantee scheme that is affected by the pay-out event, para. 2 notwithstanding. In cases where compensation for guaranteed investment services is paid out, the calculation of contributions by the member institutions is to be performed in accordance with Article 50. However, member institutions are obliged to pay a maximum total contribution of 1.5% of the assessment base pursuant to point a) of Article 92 (3) of Regulation (EU) No 575/2013 as of the preceding balance sheet date per business year, plus 12.5 times the own funds requirement for position risk (Part Three, Title IV, Chapter 2 of Regulation (EU) 575/2013) 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; in cases where repeated payment obligations arise within a period of five business years, the assessment base pursuant to point a) of Article 92 (3) of Regulation (EU) No 575/2013 is to be reduced by the amounts already claimed multiplied by 40; this applies analogously to credit institutions and investment firms which have voluntarily joined a deposit guarantee scheme for supplementary cover pursuant to Article 48 paras. 2 and 3.

(2) In cases where the deposit guarantee scheme in question is unable to pay out the guaranteed claims in full, the other deposit guarantee schemes are obliged to make proportionate contributions without delay in order to cover the shortfall. Para. 1 and Article 50 are to be applied analogously to the calculation of those proportionate contributions. Those deposit guarantee schemes are to have recourse to claims against the relevant original deposit guarantee scheme in the amount of the contributions made to a protection sum of up to EUR 20 000 per secured claim and the demonstrated costs.

(3) In cases where the deposit guarantee schemes as a whole are unable to pay out claims arising from guaranteed investment services up to the amount of EUR 20 000 in full, the original deposit guarantee scheme concerned must take out loans or issue debt securities in order to meet the remaining payment obligations. By special legal authorisation, the Federal Minister of Finance may assume liability for these obligations on behalf of the federal government. In the event of claims against these guarantees, the Austrian federal government may take recourse against the same deposit guarantee scheme only twice in a five-year period. This recourse is limited to the amount resulting from the concerned original deposit guarantee scheme's claim to the annual contribution of the member institutions pursuant to para. 1 at the time of recourse.

(4) In cases where guaranteed claims are paid out

1. for a credit institution which voluntarily joined the deposit guarantee scheme for supplementary cover pursuant to Article 48 para. 2,
2. for an investment firm which voluntarily joined the deposit guarantee scheme for supplementary cover pursuant to Article 48 para. 3,
3. for a credit institution which was issued a licence after 3 July 2005, or
4. for a credit institution which changed trade associations after 3 July 2005,

all deposit guarantee schemes must pay proportionate contributions immediately. Para. 1 and Article 50 are to be applied analogously to the calculation of those proportionate contributions. The deposit guarantee schemes are empowered to exchange information as necessary for the purpose of fulfilling their obligations. Institutions pursuant to nos. 1 to 4 must be assigned to a separate accounting group within their deposit guarantee schemes for a period of ten years starting from the time at which they join voluntarily for supplementary cover pursuant to Article 48 para. 2 or 3, from the time at which their licence is issued, or from the time at which they change trade associations. Once ten years have elapsed, their assignment to a separate accounting group is to expire; from that time onward, guaranteed events are no longer subject to the provisions of this paragraph, but to those of para. 1.

(5) Para. 4 is not applicable in cases where the competent deposit guarantee scheme decides to exempt the institution pursuant to para. 4 nos. 1 to 4 from the application of the ten-year period indicated in para. 4.

Assessment basis

Article 50. (1) Paras. 2 to 5 below apply to the calculation of claims pursuant to Article 46 para. 2 lodged in accordance with Article 46 para. 3, to the calculation of contributions to be made by member institutions and to the pay-out of compensation amounts.

(2) The amount of the claim is to be determined on the basis of the market value of the instruments at the time when the guaranteed event pursuant to Article 46 para. 1 occurred. The claim must also include interest and dividends accrued during the period between the occurrence of the guaranteed event (Article 46 para. 1) and the payout of the compensation.

(3) The trustee appointed pursuant to Article 23 para. 7 Securities Deposit Act (DepotG - Depotgesetz), as published in Federal Law Gazette No. 424/1969, shall provide the deposit guarantee scheme with all information required for the purpose of calculating the amounts of compensation claims and to cooperate with the deposit guarantee scheme. In particular, the trustee must inform the deposit guarantee scheme as early as possible about the composition and amount of the special bankruptcy estate pursuant to Article 23 para. 6 DepotG.

(4) Immediately after the end of the period for lodging claims, the deposit guarantee scheme must collect contributions from the member institutions for the purpose of covering the compensation claims. The contributions to be paid by member institutions for the purpose of paying out compensation for claims arising from investment services are to be calculated according to their respective shares of commission income from investment services subject to guarantee obligations as indicated in Annex 2 to Article 43, Part 2, Item 4 BWG in relation to the total amount of such commission income for all member institutions as of the preceding balance sheet date. In the case of credit institutions which conduct severance and retirement fund business, the total remuneration for asset management pursuant to Article 26 para. 3 no. 2 of the Act on Severance and Retirement Funds for Salaried Employees and Self-Employed Persons (BMSVG - Betriebliches Mitarbeiter- und Selbständigenvorsorgegesetz) and the second and third sentence of Article 70 BMSVG serve as a basis instead of the commission income mentioned above.

(5) If extraordinary impediments exist for the determination of claims or the collection of the amounts to be compensated, or if the trustee appointed in accordance with Article 23 para. 7 DepotG communicates that extraordinary difficulties have arisen in the process of calculating the amount of the special bankruptcy estate pursuant to Article 23 para. 6 DepotG, and if for this reason the deadline pursuant to Article 46 para. 1 cannot be met, the period shall be extended by an additional three months. Moreover, at the request of the deposit guarantee scheme concerned, the Federal Minister of Finance is entitled to approve the extension of the period by three months after consulting the FMA and the Oesterreichische Nationalbank where this is warranted by special circumstances in order to avert economic hardship, in particular dangers to the stability of the financial system.

Exclusion of double reimbursement

Article 51. (1) A creditor does not have a right to double reimbursement by virtue of the fact that a reimbursement is paid out in accordance with the provisions of Part 2 as well as Part 3 for a single claim. Claims arising from credit balances in accounts, which according to the provisions of this federal act could be reimbursed either as a covered deposit or as claims arising from investment services subject to guarantee obligations, shall be repaid in accordance with the provisions of Part 2 of this federal act (Deposit Guarantee Schemes).

(2) Assets assigned to the investments of a severance and retirement fund are to be classified as investor compensation regardless of the type of investment; in the case of severance and retirement fund business, the maximum amount of EUR 20 000 pursuant to Article 46 para. 1 refers to the severance pay or retirement fund entitlement of each individual party entitled to benefits from the severance and retirement fund.

Investor information

Article 52. Credit institutions pursuant to Article 48 para. 2 which provide investment services subject to guarantee obligations in Austria and investment firms pursuant to Article 48 para. 3 by making this information accessible at business premises accessible to consumers or on their website to inform the investment-seeking public about the provisions of this federal act which govern investor compensation and, where necessary, about the regulations of the home Member State or third country in cases where the investment services provided by a branch of a foreign credit institution or of a foreign investment firm are subject to a compensation scheme according to the regulations of that third country. Upon initiation of a business relationship involving investment services subject to guarantee obligations, every investor must be provided with written information which describes in an easily understandable manner the compensation scheme to which the credit institution or investment firm belongs as well as the amount and scope of coverage. This information must be provided in German language and free of charge at the latest when the contract is concluded. At the investor's request, the credit institution must provide detailed written information regarding investor compensation free of charge. The obligation to provide investors with the information indicated above also applies to credit institutions and investment forms which provide investment services subject to guarantee obligations under the freedom to provide services.

Advertising

Article 53. Advertising an institution's membership of an investor compensation scheme is only permissible if such advertising is limited to naming the deposit guarantee scheme of which the relevant credit institution or investment firm is a member.

Other responsibilities of deposit guarantee schemes

Article 54. (1) The deposit guarantee scheme must report the withdrawal from the deposit guarantee scheme of an institution to the FMA without delay.

(2) Deposit guarantee schemes must cooperate with the investor compensation schemes in other Member States in accordance with Annex II to Directive 97/9/EC and in accordance with the cases referred to in Article 48 paras. 2, 3, 4 and 5 and in Article 52.

Permanence of obligation to reimburse

Article 55. Articles 44 to 54 apply to credit institutions pursuant to Article 1 para. 1 BWG and Article 9 BWG, as well as investment firms pursuant to Article 17 WAG 2018 from whom their licence or authorisation to provide investment services subject to guarantee obligations has been revoked, or whose licence or authorisation for those activities has lapsed, for all claims incurred up to the time when

the licence or authorisation was revoked or lapsed, even in cases where the pay-out event pursuant to Article 44 para. 1 nos. 1 to 4 occurred after the revocation or lapsing of the licence or authorisation. Such institutions must fulfil their obligations to the deposit guarantee scheme as indicated in Articles 44 to 54 regardless of whether the licence or authorisation is revoked or has lapsed.

Part 4: Costs, transitional and final provisions

Specification of costs

Article 56. (1) The costs of the FMA for the supervision of deposit guarantee schemes in accordance with this federal act shall be considered as costs for accounting group 1 (costs of banking supervision) pursuant to Article 19 para. 1 no. 1 FMABG. The deposit guarantee schemes shall be liable for the payment of such costs. The FMA shall form a sub-accounting group for these institutions that are liable to pay costs within the accounting group for banking supervision for this purpose.

(2) For every deposit guarantee scheme that is subject to the payment of costs, the cost figure shall first be determined. The cost figure of the deposit guarantee scheme shall be the total of the cost figures determined in accordance with Article 69a para. 2 BWG for the member institutions belonging to this deposit guarantee scheme.

(3) A ratio shall be calculated for each deposit guarantee scheme based on the proportion of the cost figure of each deposit guarantee scheme pursuant to para. 1 to the sum total of all cost figures. The costs in sub-accounting group 1 pursuant to para. 1 shall be split between the individual deposit guarantee schemes in accordance with their respective ratios.

Gender-neutral use of language

Article 57. Insofar as expressions relating to persons in this federal act are given only in the masculine form, they shall refer equally to men and women. The respective gender-specific form shall be used when reference is made to specific persons.

References

Article 58. (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 reference is made in this federal act to Directive 2004/39/EC, then unless otherwise stated, it shall apply to Directive 2004/39/EC of the European Parliament and of the Council 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 of 30.04.2004 p. 1, last amended by Directive 2010/78/EU, OJ L 331 of 15.12.2010 p. 120, and to be repealed with effect from 03.01.2017 by Directive 2014/65/EU, OJ L 173 of 12.06.2014 p. 349.

(3) Where reference is made in this federal act to Directive 2009/65/EC, then unless otherwise stated, it shall apply to Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), OJ L 302 of 17.11.2009 p. 32, most recently amended by Directive 2014/91/EU, OJ L 257 of 28.08.2014 p. 186.

(4) Where reference is made in this federal act to Directive 2014/49/EU, then unless otherwise stated, it shall apply to Directive 2014/49/EU on Deposit Guarantee Schemes, OJ L 173 of 12.06.2014 p. 149, most recently corrected by OJ L 309 of 30.10.2014 p. 37.

(5) Where reference is made in this federal act to Regulation (EU) 575/2013, then unless otherwise stated, it shall apply to Regulation (EU) 575/2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 646/2012, OJ L 176 of 27.06.2013 p. 1, most recently amended by the Delegated Regulation (EU) 2015/62, OJ L 11 of 17.01.2015 p. 37.

(6) Where there is a reference in this federal act to Directive (EU) 2015/849, then unless otherwise instructed, it shall apply to 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 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC, OJ L 141 of 05.06.2015, p. 73.

(7) Where reference is made in this federal act to Directive 2009/138/EC, then unless otherwise stated, it shall apply to Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and

Reinsurance (Solvency II), OJ L 335 of 17.12.2009 p. 1, most recently amended by Directive 2014/51/EU, OJ L 153 of 22.05.2014 p. 1.

(8) Where reference is made in this federal act to Directive 97/9/EC, then unless otherwise stated, it shall apply to Directive 97/9/EC on investor-compensation schemes, OJ L 84 of 26.03.1997 p. 22.

(9) Where reference is made in this federal act to Regulation (EU) 806/2014, then unless otherwise stated, it shall apply to Regulation (EU) 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, OJ L 225 of 30.07.2014 p. 1.

Transitional provisions

Article 59. The following transitional provisions shall apply following the announcement of the federal act in Federal Law Gazette I No. 117/2015:

1. (regarding Article 1 para. 1): By derogation from Article 1 para. 1 nos. 1 and 2 until 31 December 2018 deposit guarantee schemes as defined in this federal act shall be the deposit guarantee schemes pursuant to Article 59 no. 3.
2. (regarding Article 1 para. 2): Between 1 January 2018 and 31 December 2018 the liability company to be founded pursuant to Article 1 para. 2 shall not be considered as a deposit guarantee scheme as defined in this federal act.
3. Every trade association shall maintain a deposit guarantee scheme until 31 December 2018, to which deposit guarantee scheme the credit institutions that belong to this trade association pursuant to Article 8 para. 1 or pursuant to Article 45 para. 1 must belong, and which must also admit credit institutions pursuant to Article 48 para. 2 and investment firms pursuant to Article 48 para. 3. The deposit guarantee schemes must be operated as legal persons in the form of liability companies. The deposit guarantee schemes shall take preparatory steps to ensure that the liability company pursuant to Article 1 para. 2 is founded on time by 1 January 2018 as well as to ensure that the provisions of this federal act are fulfilled by the deposit guarantee scheme pursuant to Article 1 para. 1 no. 1 from 1 January 2019. The deposit guarantee schemes shall cooperate during this preparatory phase with one another, with the liability company pursuant to Article 1 para. 2 and with the FMA. The FMA is authorised to request information from the deposit guarantee schemes and the liability company pursuant to Article 1 para. 2 regarding the current status of preparations. As part of the cooperation pursuant to these nos., with the exception of the FMA, numerical information shall only be requested in aggregated form. The liability company pursuant to Article 1 para. 2 shall handle information that it is provided with in performing its activities during the preparatory stage, or which have been made accessible to it, in a confidential manner.
4. The deposit guarantee schemes established in the trade associations pursuant to Article 59 no. 3 shall transfer the available financial means on 1 January 2019 from their deposit guarantee fund to the uniform deposit guarantee scheme (Article 1 para. 1 no. 1) or where applicable to the deposit guarantee scheme of a recognised institutional protection scheme (Article 1 para. 1 no. 2). In the event that several deposit guarantee schemes exist as of 1 January 2019, then the available financial means shall be transferred in accordance with to the contributions made by every member institution pursuant to Article 21 up until this date to the deposit guarantee schemes to which the member institutions shall belong with effect from 1 January 2019. In the event that valid claims of second affected deposit guarantee schemes still exist as of the qualifying date of 1 January 2019 against a first affected deposit guarantee scheme of a trade association, then at the end of 1 January 2019 the member institutions of the second affected deposit guarantee schemes shall enter into the rights of the second affected deposit guarantee scheme and the member institutions of the first affected deposit guarantee scheme shall enter into the pledges of the first affected deposit guarantee scheme, in their respective proportions in accordance with the contributions paid up until this point in time by every member institution pursuant to Article 21. The deposit guarantee schemes, to whom such pledged member institutions have been assigned after 1 January 2019, shall transfer these open claims by means of collecting extraordinary contributions from the former members of the first affected deposit guarantee scheme to whom the former members of the second affected deposit guarantee schemes belong.

5. (regarding Article 3): Applications may be lodged for recognition pursuant to Article 3 from the announcement of this federal act and recognition pursuant to Article 3 granted; recognition of an institutional protection scheme as a deposit guarantee and investor compensation scheme by the FMA pursuant to Article 3 will however only be effect from 1 January 2019 at the earliest.
6. (regarding Article 7): By derogation from Article 7 para. 1 nos. 1 and 21 the following definitions shall apply until 31 December 2018 for the purposes of part 2 of this federal act:
   a) Deposit guarantee schemes:
      aa) statutory deposit guarantee schemes pursuant to Article 59 para. 3, as well as other statutory deposit guarantee schemes pursuant to Article 1(2) of Directive 2014/49/EU,
      bb) contractual deposit guarantee schemes that are officially recognised as deposit guarantee schemes in accordance with Article 4(2) of Directive 2014/49/EU;
      cc) institutional protection schemes that are officially recognised as deposit guarantee schemes in accordance with Article 4(2) of Directive 2014/49/EU;
   b) CRR-credit institutions pursuant to Article 8 para. 1;
7. (regarding Article 8 para. 1): By derogation from Article 8 para. 1 until 31 December 2018 it shall apply that CRR-credit institutions incorporated in Austria that receive deposits,
   a) must belong to the deposit guarantee scheme affiliated to their trade association pursuant to Article 59 no. 3 or
   b) may join the deposit guarantee scheme of another trade association, without changing which trade association they are a member of and subject to the approval of the deposit guarantee scheme of their trade association and the approval of the deposit guarantee scheme which they intend to join.
8. (regarding Article 13 para. 1): By derogation from the prescribed repayment period pursuant to Article 13 para. 1 of seven working days, the following repayment periods shall apply for the following transitional periods:
   a) until 31 December 2018: up to 20 working days;
   b) from 1 January 2019 until 31 December 2020: up to 15 working days;
   c) from 1 January 2031 until 31 December 2023: up to ten working days.

   During the transitional periods pursuant to points a to c, the deposit guarantee schemes must, at the depositor's request following an application to do so, pay out an appropriate amount of the covered deposits to the depositor, in order to cover the depositor's living expenses, in the event that the deposit guarantee schemes are not able to repay the complete amount of covered deposits to the depositors within seven working days of a pay-out event occurring. The deposit guarantee schemes shall undertake the pay-out of the appropriate amount on the basis of and having checked the application of the depositor, the information that it has already been provided with as well as the information to be supplied by the member institutions. The original claim of the depositor for a pay-out of an amount equal to the amount of covered deposits that the depositor holds pursuant to Article 13 shall be reduced in this instance by the appropriate amount that is paid out by the deposit guarantee scheme to cover living expenses.
9. (regarding Article 18 para. 1):
   a) The deposit guarantee fund is to be filled until 3 July 2024 (end date), with a contribution for 2015 to be collected that is the equivalent to one half of the normal annual contribution. The deposit guarantee scheme must ensure that its methods ensure the even provisioning of the deposit guarantee fund, while also taking into account the effects on the business cycle for potential procyclical effects when collecting contributions.
   b) The FMA may approve an extension of the end date of up to four years upon the request of a deposit guarantee scheme, in the event that the protection scheme has paid out in total an amount in excess of over 0.8% of covered deposits following the entry into force of Directive 2014/49/EU but before the end date. The authorisation must also specify the target level to be achieved during the years of the extended build-up phase.
   c) At the time that the federal act enters into force as published in Austrian Federal Law Gazette I No. 117/2015 the available asset items of the deposit guarantee scheme, which fulfil the requirements set for available financial means, may be deposited into the deposit guarantee fund of the respective deposit guarantee scheme.
   d) Subject to the occurrence of a pay-out event the deposit guarantee schemes pursuant to no. 3 shall ensure, that their deposit guarantee fund is endowed as of 1 January 2019 with

available financial means amounting to 0.31% of the covered deposits of their member institutions.

10. (regarding § 21 Abs. 3): by derogation from Article 21 para. 3 the proportion of the payment commitments to the respective annual contributions of the member institutions shall be:
    a) 2015 0%;
    d) 2016 up to 10%;
    c) 2017 up to 20%; and
    d) 2018 up to 25%;
11. (regarding Article 27 para. 2): Until 31 December 2018, in addition to Article 27 para. 2 it shall also apply that CRR-credit institutions pursuant to Article 27 para. 1 no. 1 may, subject to majority approval of their owners having been granted, also join the deposit guarantee scheme of the trade association to which a majority of the owners themselves belong; in such cases, approval is also required from the deposit guarantee scheme of the trade association to which these owners belong.
12. (regarding Article 44): By derogation from Article 44 nos. 7 and 9 the following definitions shall apply until 31 December 2018 for the purposes of part 3 of this federal act:
    a) Member institution: a credit institution pursuant to Article 45 para. 1;
    b) Investor compensation system: statutory deposit guarantee schemes pursuant to Article 59 no. 3 as well as other established and officially recognised investor compensation schemes pursuant to Article 2 para. 1 of Directive 97/9/EC.
13. (regarding Article 45 para. 1): By derogation from Article 45 para. 1, until 31 December 2018 it shall apply that credit institutions, which execute investment services subject to guarantee pursuant to Article 45 para. 4,
    a) must belong to the deposit guarantee scheme affiliated to their trade association pursuant to Article 59 no. 3, or
    b) may join the deposit guarantee scheme of another trade association, without changing which trade association they are a member of and subject to the approval of the deposit guarantee scheme of their trade association and the approval of the deposit guarantee scheme which they intend to join.
14. (regarding Article 48 para. 2): By derogation from Article 48 para. 2, credit institutions pursuant to Article 9 para. 1 BWG, which perform investment services subject to guarantee obligations in Austria through a branch pursuant to Article 45 para. 4 and which belong to an investor compensation scheme as defined in Directive 97/9/EC in their home country, are entitled until 31 December 2018 to join the deposit guarantee scheme of that trade association to which they would belong based on their institution type if they were an Austrian credit institution; if they cannot be assigned to a trade association on this basis, they may join the trade association whose members are most similar to the relevant investment firm in terms of institution type. This supplementary membership only applies to investment services subject to guarantee obligations provided in Austria, and only to the extent that Articles 45 to 47 and 51 ensure higher or more extensive cover for claims arising from investment services than the investor compensation scheme in the credit institution's home Member State. The deposit guarantee scheme must require the credit institutions (Article 9 para. 1 BWG) which have voluntarily joined the scheme for supplementary cover to pay proportionate contributions immediately in cases where guaranteed claims arising from investment services are paid out. Article 49 shall apply to the calculation of proportionate contributions. In this context, credit institutions which voluntarily join a scheme for supplementary cover must not be accorded worse treatment than Austrian credit institutions. If an credit institution which has voluntarily joined a scheme for supplementary cover has several branches in Austria, these branches are to be regarded as a single branch in the calculation of claims pursuant to Article 45 para. 4 and in the calculation of contribution payments pursuant to Article 49.
15. (regarding Article 48 para. 4) By way of derogation from Article 48 para. 4 investment firms pursuant to Article 17 para. 1 WAG 2018 that provide investment services subject to guarantee obligations in Austria through a branch pursuant to Article 45 para. 4 nos. 1 to 3 or 5 and that belong to an investor compensation scheme in their home country as defined in Directive 97/9/EC shall be authorised until 31 December 2018 to join, in addition to the investor compensation scheme in their home Member State, the protection scheme of that trade

association to which they would belong based on their institution type if they were an Austrian credit institution; if they cannot be assigned to a trade association on this basis, they may join the trade association whose members are most similar to the relevant investment firm in terms of their institution type. For investment firms pursuant to Article 17 WAG 2018 that provide investment services in Austria pursuant to Article 3 para. 2 no. 2 or no. 3 WAG 2018, where such services do not include the holding of money, securities or other instruments, meaning that the provider of such services may not at any time become a debtor of their clients, Article 76 WAG 2018 shall apply instead. The supplementary membership only applies to investment services subject to guarantee obligations provided in Austria pursuant to Article 45 para. 4 nos. 1 to 3, and only to the extent that Articles 45 to 47 and 51 provide a greater or further-reaching protection of claims arising from investment services than the investor compensation scheme in the investment firm's home Member State. The protection scheme shall oblige investment firms that have voluntarily joined the scheme for supplementary cover to pay contributions on a pro rata basis without delay in the event of a pay-out of guarantees claims arising from investment services subject to guarantee obligations. Article 50 is to be applied analogously to the calculation of proportionate contributions. In this instance, the investment firm that has joined on a voluntary basis for the purpose of supplementary cover shall not be allowed to be treated worse than a comparable Austria credit institution based on the type of institution and purpose of business. If an investment firm which has voluntarily joined a scheme for supplementary cover has several branches in Austria, they shall be regarded as a single branch in the calculation of claims pursuant to Article 45 para. 4 and in the calculation of contribution payments pursuant to Article 50.

16. (regarding Article 49 para. 5): Until 31 December 2018, in addition to Article 49 para. 5 it shall also apply that CRR-credit institutions pursuant to Article 49 para. 4 no. 3 may, subject to majority approval of their owners having been granted, also join the deposit guarantee scheme of the trade association to which a majority of the owners themselves belong; in such cases, approval is also required from the deposit guarantee scheme of the trade association to which these owners belong.
17. (regarding Article 56): The actual costs incurred for 2015 will only be invoiced in 2016, although a prepayment assessment notice for 2016 may already be issued to member institutions pursuant to Article 7 para. 1 no. 21 and member institutions pursuant to Article 44 no. 7 in 2015.

Article 59a. Following the publication of the federal act in Federal Law Gazette I No. 118/2016 the following transitional provision shall apply:

(regarding Article 56): Until the uniform deposit guarantee scheme has been established, Article 56 shall be applied with the proviso that the deposit guarantee schemes established at the trade associations pursuant to Article 59 no. 3 shall be liable to pay costs. The notification about the FMA's actual costs shall be levied towards the deposit guarantee schemes for the first time in 2017 for the 2016 financial year. The notification for a prepayment to member institutions for the 2017 financial year shall be omitted and the prepayment notification may only be sent to deposit guarantee schemes for the 2018 financial year in 2017. The FMA shall reimburse the member institutions by 31 December 2017 the difference from the 2015 financial year that has been allocated to a provision pursuant to Article 69a para. 4 BWG, as well as the prepayments made for the 2016 financial year that have already been submitted pursuant to Article 59 no. 17.

Enforcement

Article 60. The Federal Minister of Justice shall be responsible for the enforcement of Article 16 of this federal act, and the Federal Minister of Justice together with the Federal Minister of Finance shall be responsible for the enforcement of Article 20 para. 5 of this federal act. The Federal Minister of Finance shall be responsible for the enforcement of the remaining provisions of this federal act.

Entry into force

Article 61. (1) Article 1 para. 2 and Article 59 no. 2 shall enter into force on 1 January 2018; Article 1 para. 3, Article 28 para. 1 no. 6, Article 30 and Article 34 no. 11 shall enter into force on 1 January 2019.

(2) Article 30 para. 4 in the version of the federal act in Federal Law Gazette I No. 159/2015, enters into force on 1 January 2018. Article 31 para. 5 in the version of Federal Law Gazette I No. 159/2015 shall first be applicable for financial years beginning after 31 December 2015. For financial years that have

already commenced prior to 1 January 2016, Article 31 para. 5 shall apply in the version of the federal act prior to that of Federal Law Gazette I No. 159/2015.

(3) Article 10 para. 1 nos. 3 and 6, Article 11 para. 2 no. 1, Article 14 para. 3 first sentence, Article 46 para. 1 fourth sentence and Article 58 para. 6 in the version of the Federal Act amended in Federal Legal Gazette I no 118/2016 shall enter into force on 1 January 2017. Articles 56 and 59 in the version of the Federal Act published in Federal Law Gazette I No. 118/2016 shall apply for financial years beginning after 31 December 2015.

(4) Article 7 para. 2 no. 1, Article 44 nos. 2, 3 and 5, Article 45 para. 4 no. 5, Article 47 para. 2 no. 5 lits. a, c, d and e, nos. 7, 8 and 9, Article 47 para. 2 no. 10, Article 48 para. 3, Article 55 and Article 59 no. 15 in the version of the Federal Act amended in Federal Law Gazette I no. 107/2017 shall enter into force on 3 January 2018. Article 42 including its heading shall expire at the end of 2 January 2018.

(5) Article 6 para. 6 in the version of the Federal Act amended in Federal Law Gazette I No. 149/2017, shall enter into force on 3 January 2018.

(6) Article 38 para. 2 and Article 52 in the version of the Federal Act amended in Federal Law Gazette I No. 46/2019 shall enter into force on 1 July 2019.

(7) Article 7 para. 1 no. 3 point c in the version of the Federal Act amended in Federal Law Gazette I No. 199/2021 shall enter into force on 8 July 2022.

Annex to Article 32

Content of the accounting report

1. Assets and liabilities
   a) Bank credit balance
   b) Securities
   c) Payment commitments by member institutions pursuant to Article 21 para. 3
   d) Exposures, of which:
      aa) Exposures, which exist towards another deposit guarantee scheme pursuant to Article 26
      bb) Exposures, which exist towards another deposit guarantee scheme pursuant to Article 29 on the basis of the granting of a credit
   e) Other assets
   f) Total assets
   g) Liabilities of the deposit guarantee scheme towards third parties, of which:
      aa) Liabilities, which exist towards another deposit guarantee scheme pursuant to Article 26
      bb) Liabilities, which exist as a result of conducting a credit operation pursuant to Article 25
   d) Net asset value
2. Income during the reporting period, of which
   a) Contributions, of which payment commitments by member institutions pursuant to Article 21 para. 3
   b) Extraordinary contributions, of which: increased extraordinary contributions
   c) Financial means received from other deposit guarantee schemes pursuant to Article 24
   d) Payments based on a credit granted pursuant to Article 29
   e) Proceeds from the investment of available financial means
   f) Proceeds from exposures
   g) Other proceeds
   h) Return flows from the insolvency estates of CRR-credit institutions
3. Expenses, of which
   a) Expenses for the purposes of claims by deposit guarantee schemes within the scope of a resolution pursuant to Article 132 BaSAG or pursuant to Article 79 of Regulation (EU) No 806/2014
   b) Expenses for pay-out events, of which
      aa) financial means made available to another deposit guarantee scheme pursuant to Article 24
      bb) financial means made available to another deposit guarantee scheme pursuant to Article 27
      cc) payments as a result of credit operations pursuant to Article 25
   c) Expenses for support measures pursuant to Article 30
   d) Expenditures for existing obligations towards third parties
   e) Other expenditures
4. Information about the development of the financial means of the deposit guarantee fund during the reporting period, including information about changes to the composition of the securities portfolio during the reporting period
5. Endowment of the deposit guarantee fund
   a) Available financial means as a percentage of covered deposits
   b) Under/overendowment of the deposit guarantee fund
6. Calculation method for total risk
7. Administrative costs arising from the administration of the deposit guarantee fund.

Article 1

Note on Transposition

This federal act transposes:

1. Directive 2014/49/EU on deposit guarantee schemes, published in OJ L 173 of 12.06.2014 p. 149, most recently corrected by OJ L 309 of 30.10.2014 p. 37, and
2. Directive 97/9/EC on investor compensation schemes, OJ L 84 of 26.03.1997 p. 22.