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FACTS AND FIGURES TRENDS AND STRATEGIES 2021

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STRATEGY

THE FMA'S MEDIUM-TERM SUPERVISORY STRATEGY (2021–2025)

Austria's Financial Market Authority (FMA) pursues the objectives of maintaining the stability of the Austrian financial market and strengthening confidence in its proper functioning, taking preventive action to ensure compliance with regulatory standards, and protecting investors, creditors and consumers. In this way it makes an important contribution to the competitiveness and sustainability of Austria as a financial centre and the Austrian economy as a whole.

The FMA pursues these goals in a risk-oriented and principled manner. It applies the relevant rules proportionately according to the scale, complexity and risk propensity of the business model or service, and endeavours to remain neutral from the perspective of competition and technology, while supporting innovation as a driving force for the future viability of financial service providers and the financial centre.

This means being able to identify and analyse new developments, trends and risks in advance in order to be able to act with foresight and to apply preventive measures. Against this background, the FMA draws up a medium-term risk analysis and supervisory strategy for a period of five years, which it evaluates annually and on the basis of which the supervision and inspection priorities for the coming year are defined.

RISK ANALYSIS 2021–2025

The year 2020 has been an exceptionally difficult one. The COVID-19 pandemic has surprised and severely shaken our economy and society, not just in Austria and the European Economic Area but worldwide. In 2019 the view among economic experts was that the economy would only experience a "slight slowdown" in the face of "geopolitical uncertainties", but the pandemic has triggered a severe economic shock. Overstretched healthcare systems in many countries, strict lockdowns, travel restrictions and the disruption of cross-border supply chains have caused massive economic slumps worldwide, plunging some countries into a deep recession.

THE WORLD ECONOMY UNDER THE INFLUENCE OF THE COVID-19 PANDEMIC

It is only thanks to the quick and decisive measures taken by the European Central Bank (ECB), the European Union (EU) and the Federal Government that the economic consequences of COVID-19 have been kept in check, at least for the time being, while the impact on the economy and society has been cushioned as much as possible, an even harsher slump in economic output has been halted, and mass unemployment has been avoided. Ultimately, however, all that these aid and support programmes can do is buy time, as efforts are made to overcome the economic collapse and its effects until the virus is eradicated.

There is no still no effective treatment for coronavirus but promising vaccines are due to be available by the start of 2021 at the latest. It will still take many months, if not several years, for enough of the population to be vaccinated to enable economic restrictions to be lifted, travel opened up again and cross-border supply chains back fully functioning.

This makes it difficult to predict how the situation will develop in the coming years in an environment where so much remains uncertain. Only one thing is clear: the deep economic, political and social uncertainty caused by the pandemic will continue for some time to come, and dealing with the economic fall-out will be a huge and diverse challenge for us all.

- Phasing out public aid and support programmes will require a sensitive and careful approach to avoid any potential cliff effect.
- Loan deferrals (state and private moratoria), aid payments, new borrowing and the temporary relaxation of the legal requirement to file for bankruptcy have all created a backlog of insolvencies. Months of lost sales and income, along with a changed market environment in some areas, are also exacerbating the financial problems faced by many. Private insolvencies are likely to soar among those who are forced to accept part-time hours and due to a significant rise in unemployment.
- As soon as government aid and support programmes come to an end, banks are set to face a huge increase in non-performing loans (NPLs) as a result of COVID-19 as, for many companies and households, massive economic problems have only been delayed. Many banks were already having to make tangible increases to their risk provisions before the middle of the year, as some borrowers' creditworthiness plummeted.
- The increase in non-performing loans and insolvencies poses the threat of a risk shift from the real economy to the financial economy; in other words, the problems facing companies that produce and trade in goods and services will spread to those companies' financial service providers.
- With government and corporate debt soaring, and the associated erosion of creditworthiness, there is a threat of defaults on bond and stock markets, which will in turn put pressure on the assets of banks, insurance companies, *Pensionskassen* (pension companies) and investment funds.

And these are just a few examples of the challenges still to come as we deal with the economic consequences of the pandemic on the financial market.

This makes it all the more important that the EU quickly gets its € 1.8 trillion, solidarity-oriented COVID-19 recovery and investment programme up and running so that Europe's economy is given the boost it needs on the road to recovery.

At the same time, however, the shock of coronavirus in 2020 has also dramatically demonstrated just how important proactive and anticipatory regulation and supervision are. Although no one could have foreseen the shock, the FMA's supervisory strategy based on medium-term risk analysis has helped to be better prepared for the unexpected. The supervision and inspection priorities of the past years, such as improving the sustainability of business models, pushing ahead with digitalisation, taking advantage of its opportunities and addressing its risks, as well as resolutely resolving the problems arising from the global financial crisis and effectively implementing the lessons learned from it, have been key in helping Austrian financial service providers and the entire financial market to be better prepared for the challenges of the COVID-19 crisis than those of many other countries.

National self-interest is not a purely American phenomenon; it is also gaining ground in Europe, in some cases undermining solidarity within the EU and paralysing its decision-making power and claim to leadership.

Eduard Müller and Helmut Ettl, FMA Executive Directors

Our current medium-term risk analysis (2021-2025) shows that regulators, supervisors and financial market participants will face very unsettled times and major challenges over the coming years.

CHALLENGES OF AN IMMINENT GEOPOLITICAL RECESSION

THE STATE OF THE ECONOMY

The economic outlook is gloomy, with growth forecasts founded on hope more than anything else. "The prospect of several widely available COVID-19 vaccines next year is reason to hope for a rapid economic recovery," according to the Organisation for Economic Cooperation and Development (OECD) in its December 2020 global economic outlook. However, economic activity will still remain limited as social distancing, temporary local lockdowns and travel restrictions are expected to remain in place at least into the first half of 2021. The global economy is expected to take its time to recover as large swathes of the population in the OECD countries are vaccinated during 2021.

In any event, the economic impact of the crisis will continue to be felt for years to come: increased unemployment, heightened inequality and a more pronounced digital divide is how the OECD sums up the outlook.

Specifically, the OECD's optimistic scenario predicts that although global economic output will fall by 4.2% in 2020, it will start to rise again in 2021, with predicted growth of 4.2%. An increase of 2.2% is forecast for 2022.

Meanwhile, the forecast for the euro area is worse: it will take time to make up for the economic slump of 2020 and 7.5% drop in GDP, with increases of 3.6% and 3.3% forecast for 2021 and 2022 respectively. Growth will not return to its pre-crisis level until the end of 2022 at the earliest – and that is based on the hopeful scenario.

The OECD outlook for Austria is worse still: an even deeper drop in economic output

in 2020, amounting to a fall of 8%, will be followed by a much slower catching-up process: + 1.4% in 2021, + 2.3% in 2022. This would mean that Austria would not return to its pre-COVID levels of economic performance until 2023/2024.
The risk of insolvency is particularly high for young, small and less productive companies, as well as for the hospitality, transport, culture and leisure sectors, which have been hit particularly hard by the measures to contain the pandemic. These companies are particularly affected by a high level of debt financing, declining profits, a lack of debt-servicing capacity, and an investment backlog.
We can only agree with the OECD's assessment: there is reason to be hopeful, yet this must first be turned into reality. But there remains considerable uncertainty.

MULTILATERALISM IN CRISIS

In recent years, the trade wars started by US President Donald Trump and his scepticism towards multilateral negotiations and treaties, driven by his "America First" ideology, have fuelled fears of a geopolitical recession. Currently, all hope now rests on regime change in the White House, with Democrat Joe Biden about to replace Republican Donald Trump as President of the United States. Yet the threat of a geopolitical recession does not seem to have been completely banished: multilateralism is still in crisis, trade wars are potentially brewing, and nobody knows what the impact of Brexit will be.
Although the President-Elect has already made a clear commitment to multilateralism and announced his intention to rejoin the Paris Agreement, and to resume multilateral negotiations on world trade, climate protection and digital standards, he has also made it quite clear that the USA still sees itself as the world's leading power. There will be no power vacuum for others to fill.
For its part, China has used the USA's withdrawal from multilateralism under Trump to bolster its claim to economic and political superpower status. It has, for example, entered into a Regional Comprehensive Economic Partnership (RCEP) with 14 other Asian and Pacific countries, creating the world's largest free trade area with a population of 2.2 billion. The zone represents around one third of the world's total economic output. This amounts to a declaration of war on Europe and the USA, not least because this agreement renounces any commitments to human rights, workers' rights and climate protection, and is a also a form of trade war, with an attempt to undermine fair competition.
How Brexit will turn out is also still unknown. But one thing is clear: there will only be losers.
National self-interest is not a purely American phenomenon either; it is also gaining ground in Europe, in some cases undermining solidarity within the European Union and paralysing its decision-making power and claim to leadership. This trend towards political fragmentation increases uncertainty and heightens the economic and fiscal challenges facing the eurozone countries.
The principle of hope is also reflected in the broad political expectation that the European Union will soon be able to implement its huge investment programme designed to deal with the economic consequences of the COVID-19 pandemic and tackle climate change together in a spirit of solidarity. It is hoped that this will give the ailing European economy a much-needed boost and lead it quickly out of crisis.

THE SUSTAINABILITY/CLIMATE CHANGE CHALLENGE

Coronavirus has pushed the issue of climate change out of the headlines and political debates in 2020, but the planet is still getting warmer, with increasingly devastating consequences and rising costs. According to the World Economic Forum's (WEF) Global Risk Report for 2020, the failure of climate protection measures is the risk with the greatest potential for damage worldwide.

The Paris Agreement, which Austria has signed, defines a global framework to enable the world to combat dangerous changes to our climate. It aims to keep the increase in global average temperature well below 2°C and further efforts are to be made to limit the temperature increase to 1.5°C. It also aims to strengthen countries' capacity to adapt to the impacts of climate change and to support them as they do so.

The nationally determined contribution of the European Union to climate change under the Paris Agreement is based on the target of reducing greenhouse gas emissions by at least 40% compared with 1990 levels by the year 2030. A 20% reduction by 2020 was agreed as an interim target, while the share of renewable energy as a percentage of total production is to be increased to 20% by 2020 and 30% by 2030. At EU level the reduction target was achieved on schedule (2018: 23.2%), but the target was not met in Austria (2018: +0.6% compared with 1990). With regard to the share of renewable energy the achievements were the other way round: the EU only managed 18.9%, not 20%, while Austria achieved a level of 34%.

The transition to a sustainable, environmentally friendly and climate-neutral economy is also a major challenge in financial terms. In light of this, the EU adopted its Action Plan: Financing Sustainable Growth back in 2018. The Plan aims to redirect capital flows towards sustainable investments, embed sustainability in the risk management of financial service providers, and promote transparency and a long-term approach in economic activity.

The European Commission also announced its European Green Deal in 2019, the aim of which is to cut net emissions of greenhouse gases in the EU to zero by 2050, making Europe the first climate-neutral continent. The Green Deal includes an action plan to promote the more efficient use of resources by switching to a cleaner, circular economy, as well as to restore biodiversity and tackle pollution. Funding totalling € 250 billion has been earmarked for regions within the EU that are particularly challenged by the phasing out of fossil fuels and the transition to a zero-emission economy over the coming years. The Commission estimates the total cost of meeting climate and energy targets to be around € 260 billion per year between now and 2030.

For the transition to be a success, therefore, the financial and capital markets must also be mobilised to achieve the targets. The Action Plan therefore aims to redirect capital flows towards sustainable investment, in line with environmental, social and governance (ESG) factors.

In any event, the transition to a sustainable, climate-neutral economy must be driven forward quickly and vigorously with the financial markets also playing their part.

THE LOW INTEREST RATES CHALLENGE

Despite the tentative hope of 2019, any turnaround in interest rates is still some way off. While the ECB's loose monetary policy is supporting the economy with consistently low and negative interest rates, many financial market participants are coming under pressure as a result of the low interest rate environment. It is affecting customer behaviour as well as the profitability of financial institutions and their products, and is more generally calling into question the sustainability of certain business models. Banks that focus on interest-earning business and life insurers are facing particularly severe challenges. The increased pressure on margins is also increasingly driving market participants towards riskier investments. In this way, a general increase in the propensity to assume risk can be observed.

Even before the turmoil on the financial and capital markets triggered by the COVID-19 pandemic, the ECB had identified four major risks for the eurozone's financial system over the medium term: inaccurate asset valuations, the high level of debt owed by many companies and governments, weak profit forecasts in the banking sector and the high risk appetite outside the banking sector. The economic fallout of the pandemic has only exacerbated these.

Prolonged periods of low interest rates bring a risk of mispricing on the financial and capital markets, as interest rates lose their function as the basis for the price of money and thus as an indicator of the best possible allocation of resources. Falling or low levels of key rates make assets such as bonds, shares or real estate more attractive, tending to push up their price. This can lead to price bubbles and put massive pressure on excessively high valuations when interest rates rise in the medium or long term.

To achieve a positive return despite low interest rates, investment funds and insurance undertakings are increasingly investing in long-term bonds. However, the price of these bonds could fall sharply if there were to be a turnaround in interest rates. Moreover, the low interest rate level blurs the signal effect of the risk premium during pricing, given the small differential.

As early as 2019, the ECB considered the high levels of borrowing by governments and private entities in the eurozone to be a risk that should not be underestimated but that was manageable at the time. COVID-19 has raised the stakes: massive government aid and support programmes have significantly increased levels of national debt, while, at the same time, the economic collapse has also increased the debt burden of many companies and impaired their ability to service their debts. Although Austria is starting from a comparatively low level by eurozone standards, the effects still need to be closely monitored.

The consequences of the pandemic are placing more pressure on banks' profit levels, which were already comparatively weak. Falling interest income due to the low and negative interest rate environment, the high branch density and strong fragmentation of the banking landscape, and the slow progress in cost efficiency have been putting pressure on the profitability of banks for some time. Intensive competition is also doing its bit. And the opportunities of digitalisation are still not being fully exploited by many institutions. All of this is putting the viability of some business models to the test.

Now there is the threat of another significant increase in NPLs and total defaults, with a growing number of insolvencies expected once the aid and support programmes expire. Moreover, the massive economic slump and the changed economic environment, for example in terms of traffic, travel and holiday patterns, must be withstood.

The low interest rate environment has also intensified investors' hunt for returns. As secure investments are no longer able to generate returns, banks, insurance companies, investment funds and *Pensionskassen* are increasingly investing in less liquid, longer-term and riskier financial instruments and assets. This is making them more vulnerable to shocks, such as economic downturns, the bursting of asset bubbles and changes in interest rates. Larger capital outflows can put institutions under pressure, as such assets often cannot be sold quickly, or only through fire sales.

THE DIGITAL REVOLUTION CHALLENGE

The digital revolution brings many opportunities, increases efficiency and effectiveness, saves costs in the medium to long term and opens the way for new financial services and products. But it also makes financial markets and the providers on them more vulnerable: IT security and cybersecurity in all its forms represent an increasingly important operational risk.

For established financial service providers, however, digitalisation is first and foremost a major challenge. They have to evaluate and rethink the viability of their business models and strategies, make huge investments in new technology and, at the same time, face increasing competition from new players such as the BigTechs (Apple, Amazon, Facebook & Co) and FinTechs (small, agile start-up companies without an analogue cost burden) who are stirring up the market for financial services.

Innovation is an important driver in maintaining and strengthening the future viability of a financial centre and an entire economy. The regulation and supervision of the financial market must therefore be technologically and competitively neutral. Neither established providers nor new arrivals should be favoured or disadvantaged. Regulatory barriers that put digital providers, products or problem solutions at a disadvantage compared with their analogue counterparts must be pinpointed and removed. It is evident, however, that the density of regulation in the financial markets represents a barrier for young technology-oriented companies, and one that is difficult to overcome.

In order to counteract the risk of the Austrian financial market losing ground in terms of its technology and innovation, the FMA successfully set up its FinTech Point of Contact, back in 2016. This information hub allows all regulatory issues to be clarified at a single point of contact. At the end of 2020, the FMA also set up its regulatory sandbox, where FinTechs can test and develop their business model in the regulatory environment while receiving support and advice.

While FinTechs start without a historical cost burden, large parts of the IT systems of many established financial service providers are no longer up to the standards of a modern, globally networked and digital world. Moreover, critical business processes are often run on IT systems that have reached the end of their life cycle and are particularly susceptible to disruption and cyber attacks. These have to be completely replaced, with the corresponding level of investment that this entails.

It is clear that financial service providers are becoming increasingly intertwined with players inside and outside the financial sector. For example, parts of IT systems are provided by third or even fourth parties, and certain functions in the value chain are being outsourced to specialised providers (such as securities settlement, credit management or payroll). These systems and services are often provided by just a handful of dominant providers, leading to potential concentration risks that need to be managed properly.

The digital revolution brings many opportunities, increases efficiency and effectiveness, saves costs in the medium to long term and opens the way for new financial services and products. But it also makes financial markets and the providers on them more vulnerable.

However, the ongoing digitalisation of financial services also makes providers more vulnerable to operational IT shortcomings and cybercrime. Particular attention must therefore be paid to IT and cybersecurity.

Cybersecurity incidents are increasing sharply, causing significant costs, not to mention reputational damage. These incidents can even have systemic consequences, as they have the potential to affect other providers and sectors too, given the closely interwoven nature of the financial markets.

Moreover, a parallel universe – the world of cryptoassets – has emerged in the globally connected digital space, and still largely eludes regulation and supervision.

The first steps have at least now been taken:

- In 2020, for example, service providers related to virtual currencies, such as exchange and trading platforms and providers of electronic wallets, were added to the group of providers subject to the due diligence obligations for the prevention of money laundering and the financing of terrorism. Linked to this is an obligation to register with the FMA.
- The application of the prospectus regime has been extended to digital assets such as tokens and coins.
- Organised investment in certain digital assets requires registration as an alternative investment fund (AIF), resulting in regulation and supervision.

But these can only be the first steps in a longer process. Regulation and supervision must be fully extended to the world of cryptoassets to ensure technology and competition neutrality. The principle of “the same rules for the same business with the same risk” must apply.

To this end, the European Commission adopted a new, comprehensive Digital Finance Package in 2020, which includes a Digital Finance Strategy, a Retail Payments Strategy and legislative proposals for the regulation of cryptoassets (Markets in Crypto-assets, MiCA) and the stability of digital systems (Digital Operational Resilience Act, DORA). The Package aims to promote Europe’s competitiveness and innovation in the financial sector, giving consumers more choice and opportunities in financial services and modern payment methods, while also ensuring appropriate consumer protection and financial stability. It will also create the most far-reaching regulation and supervision in the world of cryptoassets to date.

This proposal for a regulation is very comprehensive and will be the subject of intense and detailed debate. It will therefore take some time before it is also adopted by the European Council and Parliament and will probably not enter into force until 2023 at the earliest. However, it already provides guidance on how best to exploit the opportunities of digital change in line with the forthcoming regulation, how to address and manage the risks and what contribution we can make to this in our capacity as national regulators and supervisors.

THE CHALLENGE OF A CLEAN FINANCIAL CENTRE

Austria's reputation as a clean financial centre is hugely important at the interface to the markets of Central, Eastern and South-Eastern Europe. Austrian financial service providers operating on a cross-border basis have built up strong market positions in these regions and beyond. However, handling funds from transition economies as well as from politically destabilised countries requires special care to ensure that the Austrian financial centre and its reputation are not abused for money laundering or other criminal activities.

The money laundering networks uncovered by journalists in international research networks on the basis of gigantic data leaks (Russian Laundromat, Panama and Paradise Papers, Ukio leaks or FinCEN, to name just a few) have dramatically demonstrated the harsh political consequences and the serious damage to reputation but also financial losses that can be caused by a negligent approach to due diligence obligations in place to prevent money laundering and the financing of terrorism. Money laundering, but also a negligent handling of the due diligence obligations to prevent it, can in some cases threaten the very existence of financial service providers. Furthermore, they are often linked to weaknesses in their governance and risk management.

Since the Austrian legislator – following an extremely critical country report from the Financial Action Task Force (FATF), the global standard setter in the fight against money laundering – transferred comprehensive powers to the FMA a good ten years ago to supervise compliance with anti-money laundering rules on the Austrian financial market, we have been pursuing a consistent strategy: we maintain a structured and open dialogue with the supervised entities in which we provide information on new regulatory developments at an early stage, clearly communicating our expectations. At the same time, we consistently pursue a zero-tolerance approach to violations of due diligence obligations, not hesitating to use measures of last resort, i.e. withdrawal of an entity's licence. We have removed two banks from the market, as well as several directors, and imposed record fines.

And this has been successful – the latest FATF analyses of the Austrian financial centre have been positive about the work of the FMA. It was also significant that, in the money laundering disclosures of the international journalist networks, suspicious cases or violations involving Austrian financial service providers either occurred prior to the transfer of authority to the FMA or had already been uncovered, consistently investigated or punished by the FMA itself.

The requirements in place to prevent money laundering are constantly being tightened up and extended. The FMA consistently addresses business areas particularly at risk of money laundering, such as back-to-back transactions and correspondent banking relationships. In addition, a focus is placed on ensuring that companies supervised by the FMA that are active in foreign markets also comply with its high standards for the prevention of money laundering there and that the systems used throughout the group are also rolled out across borders.

The first steps towards extending the fight against money laundering into the world of virtual currencies represent a particularly significant challenge. Certain service providers of virtual currencies that operate in Austria or offer services here have also been subject to the terms of the Financial Markets Anti-Money Laundering Act (FM-GwG; *Finanzmarkt-Geldwäschegesetz*) since 2020. The FM-GwG implements the Fifth Anti-Money Laundering Directive. It now covers exchange platforms (virtual currencies for fiat currencies) and custodian wallet providers, as well as those market participants that exchange one or more virtual currencies between themselves, or that transfer them, and those that provide financial services for the issue and sale of virtual currencies. Since then, they too have had to comply with the due diligence obligations to prevent money laundering and register with the FMA before taking up their activities in Austria.

The FMA has broken new regulatory and supervisory ground in this area, but is also consistently pursuing a zero-tolerance approach. We are also gaining valuable regulatory and supervisory experience for the expansion of the broad field of European regulation to include cryptoassets through the planned Markets in Crypto-assets (MiCA) and Digital Operational Resilience Act (DORA) legislation. This process has already been initiated by the European Commission as part of its Digital Finance Package for the European financial sector.

In order to better combat money laundering across borders, the FMA continues to believe in the need for a powerful institutional framework at least at European level and proposes a three-pillar model:

1. A **European Financial Intelligence Unit** to collect, evaluate and analyse data on a cross-border basis and derive prevention and enforcement strategies from it.
2. A **European Prevention Unit** to assist in monitoring compliance with due diligence obligations to prevent money laundering in cross-border economic transactions.
3. A **European Enforcement Unit** which, in close cooperation with the national authorities, clarifies concrete suspicious cases and ensures that sanctions are imposed with the severity required by law.

If we succeed, firstly, in extending regulation and supervision to prevent money laundering to cryptoassets and, secondly, in creating a powerful EU institution to combat money laundering, this will signify a huge leap forward.

THE COLLECTIVE CONSUMER PROTECTION CHALLENGE

In its capacity as supervisory authority, the FMA must maintain equidistance between its supervised entities and their customers. It may not take sides for either one or the other and can therefore not help in the enforcement of individual claims for damages. This is the responsibility of traditional consumer protection organisations as well as lawyers and the civil courts.

Technological disruptions, globalisation and serious ecological, social or societal changes, not to mention manifest crises, always bring with them major challenges and risks for consumers, investors and savers that are not to be underestimated.

Nevertheless, the FMA is fully committed to the principle of collective consumer protection. In keeping with this commitment, it monitors the supervised entities to ensure that they manage their risks properly, handle the funds entrusted to them in a dedicated and prudent manner, and have sufficient capital resources to enable them to fulfil their contractual obligations at all times. The FMA also monitors whether the supervised entities are adhering to the relevant statutory information, advice and distribution regulations, ensuring transparency in the markets through valid, fair and comparable information, and warning against particularly risky products and unauthorised or fraudulent providers that operate in the Austrian market.

However, what the FMA repeatedly finds is that many consumers are not in a position to choose the right financial product for them due to a lack of financial literacy. They do not understand how products work, or what the risks and opportunities are, and are therefore not well placed to make a rational and appropriate decision. All too often, they choose an unsuitable financial product that is too expensive or too risky for them, or are too easily taken in by scams or criminals.

One of the primary tasks of the FMA in collective consumer protection must therefore be to provide consumers with objective, concise and easily understandable information so that they can make an appropriate and rational decision as to which product best meets their needs.

However, it is not enough for this consumer information to be objective, concise and easy to understand; it must also be prepared and made available in an appropriate way for the target group. This involves developing digital and audiovisual content alongside the traditional printed flyer and folders, such as short easy-to-watch videos that can also be shared via social networks. The focus should be on media tailored to the specific target group, especially social media channels.

Technological disruptions, globalisation and serious ecological, social or societal changes, not to mention manifest crises, always bring with them major challenges and risks for consumers, investors and savers that are not to be underestimated. In this risk analysis, we want to focus on three key themes: the COVID-19 pandemic, digital change and the transition to a climate-neutral society and economy.

The pandemic has shown consumers that digitalisation can be both a blessing and a curse when it comes to financial services. Electronic and mobile phone banking have come into their own when people have been working from home, self-isolating, in lockdown, or complying with social distancing rules. Even at the supermarket check-out, customers have been able to help reduce the risk of transmission by using contactless payment methods (NFC), and the FMA also initiated a doubling of the limit on contactless transactions from € 25 to € 50.

At the same time, however, the lockdown has also highlighted the digital divide, namely the division of society into digital natives on the one hand, and those who are overwhelmed by or simply hostile to digital technologies on the other. Two thirds of Austrians use electronic banking, but one third do not. In some age groups the digital divide is even more striking: almost 90% of 25 to 30-year-olds use electronic banking via the Internet and their phone, while the equivalent figure for the over-65s is less than 30%. And even in the age group of 55 to 64-year-olds, the majority (51%) still do not use electronic banking. Many of them do actually have a digital account, since almost 100% of payments are now made electronically. Wages, salaries and social benefits are now all paid electronically in Austria, and official fees, taxes and similar payments can no longer be paid in cash. Instead, they tend to withdraw their money in cash at the bank counter, physically hand over their bank transfer forms and payment orders, still collect printed bank statements, and avoid digital and financial services.

We must therefore ensure that advancing digitalisation does not exclude entire groups of the population, such as the ever larger group of older people, from financial services. And we will have to consider how, in an increasingly digitalised world, we can still ensure access to at least basic financial services in all regions and for all population groups.

Yet even for digitally savvy consumers, the isolation caused by lockdown, self-isolation and working from home has made dealing with financial services challenging in many cases. The digital world is dominated by depersonalised individual transactions (transaction banking), where a few standardised parameters are used – via comparison websites for example – to select products from an almost limitless product universe. The lengthy, face-to-face and trust-based discussions typical of analogue relationship banking have been replaced by pop-up windows with information and further links, with frantic clicking depriving digital consumers of their rights to information and protection. Everything is anonymous and seductive, with short and snappy advertising slogans and eye-catching performance indicators. And everything happens at breakneck speed, including the decision to buy or take out finance.

Ensuring that the level of consumer protection in the digital world matches the level we have built up over decades in the analogue world will be a major challenge. How do we regulate liability, place of jurisdiction and protection schemes in a global cross-border digital world of goods? We have only just started finding answers to this long list of questions.

The digital revolution has also created a huge parallel world of financial services, the vast field of cryptoassets, with barely any regulation and thus marginal supervision. We have already discussed many of the challenges, opportunities and risks there under the themes of digitalisation and guaranteeing a clean financial centre. But the biggest challenge of all will be to create an appropriate level of consumer protection there too; at least when these providers approach Austrian consumers.

But first of all, these cryptoassets must be included in supervision and regulation so that consumer protection standards can be developed and enforced. The principle of "the same rules for the same business with the same risk" must then also apply to consumer protection. This can be done by subjecting providers of cryptoassets to regulation and supervision in the same way as traditional and licensed financial services, and by creating and promoting awareness of the risks specific to cryptoassets.

Although COVID-19 has somewhat delayed the EU's Action Plan to make Europe's economy and society environmentally friendly, climate-neutral and sustainable, substantial funding will be released over the coming years, driven by the European Green Deal, to finance the necessary investments. The EU itself estimates that this will cost around € 260 billion annually between now and 2030. The financial sector should and will make a significant contribution. Sustainability funds have already become the fastest growing category of investment fund in recent years. "Green" and "sustainable" products are selling like the proverbial hot cakes. That's all well and good if the label on the outside matches what's inside.

We must find ways and means to ensure that investments, financing and securities that claim to take account of environmental, social or societal developments actually do so. Greenwashing must be avoided. This will not only help to reverse climate change but also to protect consumers and investors.

In collective consumer protection, we must adhere consistently to our tried-and-test transparency initiative and extend it to the new fields. We must define and prescribe uniform information standards before contracts are concluded, during the term of these contracts, and when financial services are terminated. Criteria and key figures need to be clearly defined, facilitating valid comparisons. Opportunities and risks need to be presented fairly, and costs and fees must also be completely transparent. Ultimately, however, it is the customers alone who must choose: they must decide on the type of financial service or product, because only they know the risks that they are prepared to accept in exchange for reward. To be able to make well-informed decisions, we need responsible consumers who are also prepared to inform themselves properly. It is our goal to help them, with a financial literacy initiative, explaining the important features and effects of certain financial products and services in simple terms, thereby imparting the knowledge required to make appropriate risk-based decisions to match their needs on the basis of standardised, valid and comparable information.

As we have identified in our medium-term analysis and strategy (2021-2025), the risks have increased in 2020 and the challenges have become even greater: the pandemic has triggered a massive economic slump, and dealing with its economic consequences will be a major challenge for many economies (for governments and business) and will take some time. The hoped-for turnaround in interest rates is likely to be delayed for several more years, and the interest rate environment with low, if not negative, interest rates will continue to put pressure on many financial service providers. The transition to a climate-neutral, sustainable economy has faltered compared with the very ambitious plans of 2019. However, the COVID-19 pandemic has also shown the power of the digital revolution: remote working instead of office work, teleconferences and zoom calls replacing business trips, contactless payments not cash, online shopping instead of a trip to the shops, working from home rather than going to the office. And these are just a few examples.

Based on its 2021–2025 risk analysis, the FMA has revised its medium-term strategy and defined its **priorities for supervision and inspections for 2021,** which are explained in detail on the following pages *(> S. 20).*

Things will not be the same in the post-COVID world. Our new normal will involve many new challenges, some of which we were able to identify in this risk analysis, while others will only emerge over time. In any event, we will take these challenges into account as early as possible in our medium-term FMA strategy so that we can act with the utmost foresight and as preventively as possible.

THE PRIORITIES FOR SUPERVISION AND INSPECTIONS IN 2021

Austria's Financial Market Authority (FMA) is committed to the principle of transparency, engaging in open dialogue with the market and the supervised entities. Setting its priorities for supervision and inspections in the year ahead is a key aspect of the FMA's work.

Every year the FMA reviews, evaluates and revises its risk analysis for the financial markets over the next five years and adapts its medium-term supervisory strategy accordingly *(see article on page 5).* In its Facts and Figures, Trends and Strategies publication, as well as on its website, the FMA also publishes the key findings of its annual analysis, the particular risks that it has identified for the financial markets over the coming years, and its medium-term regulatory and supervisory priorities and strategies derived in response to these risks.

Based on the risk analysis for 2021-2025, and its medium-term risk strategy as adapted in line with its analysis, the FMA has set the following priorities for supervision and inspections in 2021:

RESILIENCE AND STABILITY: Minimising the consequences of COVID-19 and preparing for a stable return to normality.

DIGITALISATION: Recognising the latest developments on the financial market and responding quickly to new risks.

NEW BUSINESS MODELS: Creating positive parameters through structured dialogue and enabling new business models and innovation.

COLLECTIVE CONSUMER PROTECTION:

Strengthening market confidence through transparency and information, and boosting individual responsibility through financial literacy.

SUSTAINABILITY: Supporting the transition to a climate-neutral economy and curbing the risks of climate change for the financial market.

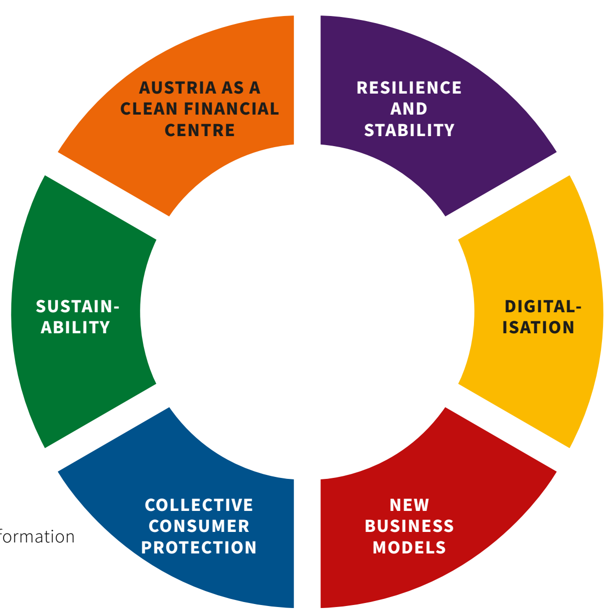
A CLEAN FINANCIAL CENTRE: Preserving the clean financial centre by means of targeted preventive measures.
Publication of the supervision and inspection priorities for the coming year is intended to draw the attention of the supervised entities to risk areas in their business field while also giving them the opportunity to prepare in a targeted way for the risk-oriented priorities for supervision in 2021. This raises awareness of risk and creates transparency around the challenges that the supervisory authority has identified and wishes to focus on, thereby giving the supervised entities a clear indication of the particular areas that they should be focusing on.

RESILIENCE AND STABILITY

MINIMISING THE CONSEQUENCES OF COVID-19 AND PREPARING FOR A STABLE RETURN TO NORMALITY

The period since the global financial crisis has been used by supervised companies, with the support of national and international supervisory authorities, to strengthen their ability to cope with future crises. At the same time, the relevant rules have been revised and extended in order to be better prepared for crisis situations, to be able to act more effectively in the face of a crisis, and to reduce the overall need for public money to shore up the financial sector.
So far, the financial sector's improved resilience has proven its worth during the COVID-19 crisis. Not only has it been able to cope well with the effects of the pandemic, but it has also been able to make a substantial contribution to supporting the real economy.
However, the economic challenges are not about to disappear. There remains huge uncertainty about the future state of the economy, as reflected in the economic forecasts, which vary greatly. In 2020 – according to the latest economic forecasts[1] – Austria's

***Figure 1:** FMA's Supervision priorities for 2021*



Austria as a clean financial centre
- Strengthening market integrity
- Unauthorised cryptoasset business
- Prevention of money laundering (VASPs)

Resilience and stability
- Lessons learned from the COVID-19 crisis
- Crisis governance by the supervised entities
- Crisis management at the FMA

Sustainability
- Sustainable investments
- Sustainability risks in risk management
- Structured dialogue on sustainability issues

Digitalisation
- Elimination of regulatory barriers
- Digital interconnectedness in the financial market
- Cyber risks and IT security

Collective consumer protection
- Further development of consumer information
- Combating investment fraud
- Market and cost transparency

New business models
- FinTechs and regulatory sandbox
- Regulatory framework for virtual assets
- Digital business models from established providers

[1] *Austrian Institute of Economic Research (WIFO; October 2020), Institute for Advanced Studies (IHS; October 2020), OeNB (June 2020), European Commission (November 2020).*

economic output measured in terms of gross domestic product (GDP) is expected to shrink by between 6.7% and 7.2%. Looking to 2021, the experts anticipate slow growth of between 4.1% and 4.9%, which will not be enough to make up the earlier decline. Despite far-reaching government aid and support programmes, the magnitude of the economic shock means that insolvencies will increase, along with a rise in non-performing loans. The level of vulnerability differs from sector to sector, however. The significant increase in unemployment and forced short-time work are also impairing the quality of lenders' loan portfolios.

It is therefore vitally important to continue strengthening the resilience and stability of the financial sector in order to continue to be able to successfully counter the unpredictability of the coming year and the effects of the COVID-19 crisis, not to mention banking crises. In order to achieve this goal, the FMA will therefore be focusing on the following priority areas.

ENHANCING THE FORWARD-LOOKING ELEMENT OF THE SUPERVISORY APPROACH

Given the uncertainty surrounding current forecasts on the actual impact of COVID-19 on the real and financial economy, potential negative developments should be identified as early as possible. In addition, interconnections, mutual dependencies and the related potential for direct and indirect contagion risks require further analysis and understanding. On this basis, the supervisor's expectations should be communicated in a timely and unambiguous manner, creating a clear and transparent supervisory framework during the crisis and while on the road to recovery.

- The further development of data processing and data handling methods will be presented in the form of a dashboard and supplemented with new analytical tools.
- The results of the micro- and macroprudential monitoring of the banking sector (analyses, on-site inspections, stress tests, scenario analyses etc.) will be reviewed by the authorities without undue delay and possible flashpoints recognised at an early stage. Appropriate and proportionate regulatory measures are to be introduced on the basis of a toolkit.
- Insurance companies' vulnerability to climate change is being investigated. Potential financial losses from unfavourable climate scenarios as well as potential impacts on the future insurability of risks and the coverage gap for the real economy are to be assessed.
- The estimation methods used for plausibility checks and forecasts at insurance companies based on those companies' quality-assured data and methods are being further developed.
- Regular meetings are being held with stakeholders to exchange data in the interest of the early detection of problems at supervised companies.
- Stress testing of corporate provision funds and investment funds reveals risks on the basis of scenario analysis.
- Interconnections (custodian bank, management company) are being analysed and fed into risk classification.
- The effects of COVID-19 are being identified in a timely manner, especially by evaluating the sustainability of business models and business continuity management, and the necessary regulatory measures are being implemented without delay. Any

structural changes in the banking landscape due to the crisis are being pinpointed and closely monitored by the supervisor. The FMA's expectations around the move out of crisis-related transitional rules are being clearly communicated.

- Resolution plans are to be further developed on a risk-based basis, with work focusing in particular on the concrete and practical implementation of the corresponding resolution strategies specific to individual institutions.

INTENSIFYING INTER-INSTITUTIONAL COOPERATION

Central to any form of effective and successful crisis management is close cooperation between institutions at national and international level, underpinned by the creation of a common understanding of overarching processes, procedures and responsibilities and an ongoing exchange of information. This approach is to be stepped up in the coming year, with stronger cooperation:

- Dialogue with external stakeholders on crisis management and resolution procedures will be further intensified, joint overarching processes will be established with the Federal Ministry for Finance, Oesterreichische Nationalbank (OeNB), the Vienna Stock Exchange, Central Securities Depositories (CSDs), Central Counterparties (CCPs), the relevant authorities, bank auditors etc.
- A structured exchange of information with deposit guarantee institutions will be established on topics relevant to resolution, and a common understanding for the implementation of measures in the event of an institution failing will be created.
- Dialogue with asset managers will also be enhanced further.

IMPROVING THE RESOLVABILITY OF CREDIT INSTITUTIONS

Joint efforts with credit institutions over recent years have already improved their resolvability and made a significant contribution to financial market stability. In line with the international approach, additional measures and initiatives will be taken in the coming year in order to achieve further progress in strengthening resolvability.

- The FMA's expectations of credit institutions in terms of their ability to be resolved are being set out and communicated.
- The focus is on the requirements for the provision of data in the event of a resolution, as well as on the implementation of the necessary measures to improve management information systems (MIS).
- Credit institutions are helped to draw up internal "playbooks" on the implementation of in-house resolution measures.
- Compliance with the prescribed MREL requirements (minimum requirement for own funds and eligible liabilities) is continuously monitored using a well-established MREL monitoring concept.
- "Liquidity in resolution" is pursued as a central theme, and international developments are taken into account.
- Banking supervision analyses the going-concern effects of actions by the resolution authority to address barriers to resolution, and resolution plans are to be commented on accordingly. Communication and coordination between banking supervision and bank resolution to identify and remove obstacles to resolution are to be stepped up.
- With regard to the MREL, the involvement of collective asset managers will be analysed.

- In the case of banks, conduct supervision will be deepened in order to avoid any obstacles to resolution and to identify interconnections and routes of infection.

STRENGTHENING THE FMA'S ABILITY TO ACT IN A CRISIS

The FMA's own ability to take action must also be improved further. In order to be able to react better and faster to future crises, appropriate analysis is needed with the relevant conclusions being drawn, so that – where necessary – implementation measures are introduced:

- The necessary measures based on the findings of the Court of Audit from its audit of bank resolution will be implemented.
- Work will be done on further separation strategies during resolution, and options for combining a range of different resolution tools and measures will be created in order to be able to react as flexibly as possible.
- At national level, a dry run is being carried out to test the resolution processes.
- Staff training in crisis prevention and crisis management will be intensified.
- As a preventive measure, additional options for action are being developed to cope with resource bottlenecks if there is a cluster of crises.
- In the event of a crisis, there is active coordination between supervision and resolution in accordance with the crisis cooperation manual, as well as proactive communication with the deposit guarantee scheme and, where necessary, with the Federal Ministry for Finance. The relevant departments of the FMA are proactively briefed in the interests of an integrated approach to supervision. Any lessons learned from the COVID-19 crisis are to be incorporated into the crisis cooperation manual.
- Generally, the internal interfaces are analysed from the perspective of crisis management, and processes and manuals are adapted where necessary.
- In insurance supervision, the criteria for the application of supervisory tools are being revised and fleshed out.
- The modernisation of supervisory tools for insurance undertakings will be further advanced.
- Potential macroprudential tools for the insurance market will be defined and put into practical effect.

Not only has the financial sector been able to cope well with the effects of the pandemic, but it has also been able to make a substantial contribution to supporting the real economy.

IMPROVING INSTITUTIONS' CRISIS GOVERNANCE

It is not only the FMA's ability to act but also the robustness of institutions' governance structures during times of crisis that must be further improved (crisis governance). Experiences from the COVID-19 crisis are being analysed, and the conclusions from this will be incorporated into these governance structures.

- Business continuity management in accordance with the Markets in Financial Instruments Directive (MiFID) is being reviewed, and the roles of key functions during the crisis will be set out in greater detail.
- The contingency plans of custodian banks and asset managers are to be reviewed within the scope of on-site inspections.

FURTHER STRENGTHENING THE ROLE OF INSTITUTIONS' SUPERVISORY BOARDS

Particularly in economically difficult and challenging times, a company's internal control bodies have a very important role to play. After having made the compliance and internal audit functions two of its supervision priorities over recent years, the FMA is now focusing on the role of the supervisory board in the governance structure.

- The new requirements governing reporting to the supervisory board under MiFID (Articles 22(2) and 25(3) of the Delegated Regulation) will be defined and monitored.
- In the insurance sector, special focus will be placed on the role of the supervisory board in the governance structure, particularly its interaction with the management board and key functions.

CONTINUING TO SAFEGUARD PRUDENT AND SUSTAINABLE LENDING

The FMA's previous supervision priority of ensuring prudent and sustainable lending has proven its worth in the context of the global pandemic and has been a key component of credit institutions' resilience to date. Over the coming years, the supply of credit to the real economy will be more important than ever. The FMA will therefore be continuing, even under these new conditions, to focus on maintaining a prudent and sustainable lending policy on the part of the banks in order to facilitate an economically viable path out of the crisis.

- The EBA Guidelines on loan origination and monitoring will be integrated into the supervisory processes and fed into the supervisory review and evaluation process (SREP).
- Models based on loan origination funds, i.e. lending through investment funds, are being analysed and evaluated.

DIGITALISATION

RECOGNISING THE LATEST DIGITALISATION DEVELOPMENTS ON THE FINANCIAL MARKET AND RESPONDING QUICKLY TO NEW RISKS

Digitalisation has become increasingly significant to the economy and society in recent years, and the financial market in particular is being heavily shaped by the application of new information technologies. The FMA can only effectively fulfil its supervisory mandate if it reacts in a timely manner to developments on the financial markets and among the supervised companies, not to mention in the non-regulated sector, and constantly develops and optimises its supervisory tools in this regard. The goal must be to uphold the high standards of financial market supervision in Austria even in a rapidly changing technological environment.

The impact of digitalisation on the financial market manifests itself in a variety of ways. Credit institutions, insurance undertakings, Pensionskassen (pension companies) and investment firms are increasingly using digital technologies in data management and in their business processes, using new software in asset management, developing new products using big data and artificial intelligence, establishing alternative customer advice and sales systems, as well as new forms of communication with their customers, and cooperating with FinTech companies. All of these developments require not only a constant modernisation of the FMA's supervisory tools, but also a holistic supervisory approach that never loses sight of the reciprocal links between supervised companies and technology providers.

NEW STUDY ON DIGITALISATION

In order to examine the state of technological innovation in the Austrian financial market, the FMA conducted a cross-sector digitalisation study in 2018/19, the results of which were published in June 2019. The study's broad roll-out to the entire financial market and its high participation rate meant that the FMA gained important information that it could use to ensure supervisory activities in response to the changing framework conditions were as targeted as possible. Digitalisation increases the speed of innovation in products, sales and customer relations. Given the speed of change, it is important for the FMA to conduct this type of digitalisation study again in 2021 so that it can continue to set the right priorities in its supervisory activities and identify current developments and risks relevant to supervision in a timely manner.

Digitalisation has become increasingly significant to the economy and society in recent years, and the financial market in particular is being heavily shaped by the application of new information technologies.

REMOVING BARRIERS TO DIGITALISATION

The FMA launched a public Call for Input for its 2019 Digitalisation Study, receiving numerous suggestions for further regulatory and supervisory development in response. Several stakeholders highlighted the obstacles to digitalisation that still exist, including regulations that do not allow for an end-to-end digital mapping of processes, in other words an entirely digital business process from start to finish. These barriers include rules on using the written form, digital identity issues, video advice, the use of personalised websites as "durable medium" and the like. The FMA will therefore be launching a comprehensive initiative on the feasibility of purely digital business transactions and the elimination of digitalisation barriers:

- The obstacles preventing the end-to-end digital settlement of financial services are to be analysed and presented in a structured manner.
- Suggestions for the removal of these obstacles will be formulated and discussed with the relevant stakeholders.

FOCUS ON CYBER RISK AND CYBERSECURITY

There is no doubt that the increasing use of new information and communication technologies also brings greater risk – for the providers of financial services and for their customers. Risks with a low probability of occurrence can cause enormous damage, and the ability to accurately quantify such risks often fails due to insufficient availability of historical data. Cyber risks and cybersecurity are key themes for the FMA, not least because even companies with inherently robust governance structures and adequate capital resources can be affected: for credit institutions, the focus is on the evaluation of cyber risk management and cybersecurity within the framework of the SREP.

- In the context of a Cyber Maturity Level Assessment, the vulnerability to cyber risks of insurance undertakings and insurance groups will be specifically reviewed in 2021. Any changes compared with the previous market-wide analysis in 2019 will subsequently be analysed.
- The FMA will support and accompany cyber risk initiatives launched by the individual financial sectors to further improve how they manage this type of risk.

KEY AUDITS IN THE AREA OF IT RISK

The IT risk facing supervised entities has long been one of the FMA's priorities. Even without the trend towards growing digitalisation, well-functioning IT systems are an important pillar for successful business models in the market. However, the related issues become all the more significant for providers who want to make the move towards digital business models. In recent years, the FMA has built up significant IT expertise in-house in order to be able to identify any significant problems at an early stage. The intention is to continue the key audits in the area of IT risk in 2021 and to further increase awareness of this area within the financial industry:

- In 2021 the FMA will be continuing to focus on the analysis and monitoring of IT risks and IT security at the supervised entities.
- IT risk and IT security audits will remain at the heart of the annual audit plans across all financial sectors.

DIGITAL INTERCONNECTEDNESS IN THE FINANCIAL MARKET

For the FMA, one particularly relevant task lies in the identification of potential interdependencies and thus potential chains of infection in the financial market at an early stage, so that the resulting risk can be mitigated. Such interconnectedness has already existed, for example, in financial conglomerates and groups, through mutual participations, financial instruments and other financial links, cooperation agreements and outsourcing. Digitalisation will result in this existing and pronounced level of interconnectedness growing further to encompass additional components, for example through individual or several companies being highly dependent on just a handful external cloud providers, payment service providers and the like. The FMA will intensively continue its work on as complete a "map" as possible of the interconnections in the financial market due to increasing digitalisation and the use of new information and communication technologies, in order to be able to identify critical dependencies, systemic risks and concentration risks as soon as possible.

NEW BUSINESS MODELS

CREATING POSITIVE PARAMETERS THROUGH STRUCTURED DIALOGUE AND ENABLING NEW BUSINESS MODELS AND INNOVATION

The "new business models" supervision priority addresses the rapid technological process that is fundamentally changing the way in which financial services and products are being offered.

For example, many new players are emerging in the financial market that are increasingly embracing technological developments such as distributed ledger technology (DLT), cryptoassets and artificial intelligence (AI). However, almost all areas of the financial market find themselves in the midst of this upheaval. Reference is made in this regard to the technological innovations that have been taking place for several years in the provision of payment initiation and account information services, the importance of which continues to grow.

Furthermore, in addition to using the technologies already mentioned, established companies are also increasingly exploring the possibility of setting up their own ecosystems or platforms in order to further expand their existing offering and remain competitive.

Platform economies are appearing in the form of crowdfunding and trading platforms for cryptoassets, to give just two examples. Through the use of technologies such as the tokenisation of assets, these platforms can often provide retail investors with

low-threshold access to investment in asset classes that were previously not always available to them.
Despite their innovative technological design, such business models often provide economically equivalent financial services that are already regulated. In the interests of collective consumer protection, the FMA is therefore closely monitoring current market developments in order to be able to identify new business models at an early stage and to classify them from a regulatory perspective. At the same time, the FMA is striving to provide regulatory support to market participants as they implement their innovative business models. The inspection priority of "new business models" therefore forms an important component of the FMA's integrated supervisory strategy.

CREATION OF THE REGULATORY SANDBOX

The regulatory sandbox gives providers of innovative business models the opportunity to try out a business model that is still under development, trialling how it can be implemented in compliance with the supervisory regulations. Particularly by providing comprehensive information on how the regulatory framework works, the FMA accompanies the evaluation of business models within the framework of the sandbox and can thus make a significant contribution to the implementation of new business models that are already under development. Through this joint process and through structured dialogue with providers of innovative business models, the FMA creates legal certainty and contributes to advancing innovation in the financial market.

- The sandbox is being put into practical effect, the requisite processes are being established, and the first procedures in the sandbox are being successfully conducted and supported.
- The companies that use the sandbox receive professional support from the individual specialist departments concerned and from cross-divisional interfaces.
- Procedural issues are monitored and any complaints procedures are conducted at various phases in the sandbox process.

TOKENISATION AS A SERVICE

Tokenisation as a service is the digitalisation of traditional assets such as securities, real estate, commodities or company shares using DLT. By issuing cryptoassets, ownership structures can be fragmented and/or the liquidity of illiquid assets can be increased, for example. Such services are often offered via specialised online platforms.

- The FMA assesses relevant business models and their regulatory implications.
- It also reviews new financial instruments and business models that are based on new technological developments (tokenisation, DLT and cryptoassets).

PLATFORM ECONOMIES

Platform economies are fundamentally changing the way in which financial services are delivered. In addition to traditional trading venues, platforms are expanding the range of infrastructures in which the interests of a large number of investors can be pooled.

- The FMA is constantly monitoring the development of platform economies and the resulting regulatory challenges.

- In particular, the supervision of the prevention of money laundering and terrorist financing by virtual asset service providers, which has been in place since 2020, is being expanded and consistently developed.
- The implications of the Crowdfunding Regulation as well as other regulatory reference points for digital assets, such as in the Alternative Investment Fund Managers Act (AIFMG; *Alternatives Investmentfonds Manager-Gesetz*), are being evaluated and applied.
- Furthermore, the FMA reviews new financial instruments and business models from the perspective of new technological developments (financial innovations, DLT, cryptoassets and the Crowdfunding Regulation).

Many new players are emerging in the financial market that are increasingly embracing technological developments such as DLT, cryptoassets and AI.

LEGISLATIVE PROPOSALS FOR THE REGULATION OF CRYPTOASSETS

The future regulation of cryptoassets is set to involve a whole series of new rules alongside the addition of new parties to those groups that are subject to such rules. Stablecoins, which came to prominence primarily through the Facebook-initiated Libra project (now Diem), are to be addressed accordingly.

- The FMA accompanies the development of the legislative proposals as part of its involvement in international working groups.
- It is evaluating the effects of the new regulations on business models that already exist and/or are in the development stage, as well as the interaction with existing supervisory regimes.
- Financial instruments and business models based on new technological developments (financial innovations, DLT and cryptoassets) are reviewed and evaluated.

EXPLORING THE ISSUE OF ARTIFICIAL INTELLIGENCE

Technological progress and the increasing availability of data are boosting the use of AI applications in the provision of financial services. The FMA is taking an in-depth look at how AI is being used in the banking sector. It is also evaluating potential uses of AI, now and in the future, in the area of asset management and the resulting regulatory implications.

COLLECTIVE CONSUMER PROTECTION

STRENGTHENING MARKET CONFIDENCE THROUGH TRANSPARENCY AND INFORMATION, AND BOOSTING INDIVIDUAL RESPONSIBILITY THROUGH FINANCIAL LITERACY

The coronavirus pandemic has left many consumers feeling very worried. Savers and investors are concerned about the stability of the markets and the euro, about the viability of banks, and about how safe their money is. Digitalisation has pushed the changeover from relationship banking to transaction banking, severing the long-standing, trusted ties between customers and their house banks and personal advisors, and is picking up even more speed because of COVID-19 and social distancing requirements. Companies should counter this feeling of uncertainty, which is widespread among many customers of financial service providers, by exercising prudence and good business conduct. In such an environment, information and transparency requirements need to be met clearly, fairly and in a non-misleading way, with the Authority focusing on them even more strongly too.

Digitalisation was already making rapid advances in the financial industry but COVID-19 has given it an additional boost. The financial world's structures are being completely overhauled.

The crypto economy is showing a particularly dynamic development, with the tokenisation of assets progressing rapidly. Despite their innovative technological design, companies with such business models often provide economically equivalent financial services that are already regulated. However, in accordance with a technology-neutral approach, compliance with the provisions aimed at ensuring collective consumer protection must be verified in each individual case.

Many groups of investors and consumers find it difficult to keep pace with these developments. After all, in addition to the technological advances of existing financial products and the launch of new financial products, there are also digital offers and distribution systems such as comparison platforms to be considered.

Retail investors are now being given access to forms of investment that were previously not always available to them. Such developments open up new opportunities but also new risks, often a result not only of more complex product features but also easier availability. Purchase decisions can be made with just a few, sometimes rash clicks at any time of day or night, from the comfort of the customer's own home, but often turn out to be ill-judged decisions with serious consequences.

Companies and supervisory authority are faced with a challenge: they need to enable investors and consumers to assume more personal responsibility. To be able to reach a sound investment decision, consumers need to be prepared to look into the available information and be able to understand it.

Companies and supervisory authority are faced with a challenge: they need to enable investors and consumers to assume more personal responsibility. To be able to reach a sound investment decision, consumers need to be prepared to look into the available information and be able to understand it.

In the FMA's experience, however, a large proportion of investors and consumers have very little financial knowledge. They do not understand complex financial products and their risks, and are therefore not able to reach an appropriate investment decision.

In addition, the persistently low level of interest rates has driven investors towards ever riskier investments as they seek out higher returns. It is not unusual for them to fall victim to financial and investment fraudsters in the process, with promises of safe investments and high returns. Yet this is an impossibility in the financial market; the principle that high yields mean high risk always applies, with no exceptions.

Accordingly, the FMA will introduce the following collective consumer protection measures in the coming year.

CONSUMER INFORMATION

The FMA will expand its range of information for investors and consumers (e.g. the "A-Z of Finance" on its own website) and provide even more basic information on financial products and services in an objective, clear and easily understandable manner. To reach an ever larger number of investors and consumers on a regular basis, existing channels of communication such as the FMA's newsletter, social media accounts and informative videos will be expanded and other information channels introduced, such as the provision of periodic consumer information. Finally, the Authority will advance and intensify cooperation with other relevant bodies, particularly stakeholders.

MARKET TRANSPARENCY AND INFORMATION OBLIGATIONS

The FMA will verify compliance with market transparency and information obligations on a spot check basis but in a targeted manner, and urge supervised companies to always inform their customers clearly, fairly and in a non-misleading way that instils confidence.

MARKET AND COST TRANSPARENCY

Comparative analysis of key indicators relevant to consumers will be increased to improve market and cost transparency. The focus will be on market-compliant costs, charges and fees, and on performance and investment risks in the case of unit-linked life insurance.

PRODUCT DEVELOPMENT AND SALES

With regard to insurance undertakings, the focus in terms of product development and sales will be on the proper implementation of the demands and needs test and the impact of COVID-19. At the same time, the conduct rules will be expanded for both Austrian and international providers as part of a wider quality assurance package.

RISK-ORIENTED MARKET MONITORING

As part of the expansion of its risk-oriented market monitoring, the FMA plans to take a closer look at consumer trends. Inadmissible sales practices will be consistently investigated, with a focus on the collective protection of vulnerable groups of consumers.

- The European Markets in Financial Instruments Regulation (MiFIR), which has strengthened transparency around trade in financial instruments, enables the FMA to systematically analyse transaction data in relation to speculative financial instruments. Emerging trends in retail investors' investment behaviour will thus become apparent, allowing action to be taken to avert any uncovered risks before it is too late – both through education and information, and other supervisory measures.
- Making use of the synergies available from its integrated approach to supervision, the FMA will also concentrate on uncovering inadmissible sales practices and prohibit these.

AWARENESS RAISING ON ADMINISTRATIVE OFFENCES

Through its information initiative, the FMA plans to raise awareness among savers, investors and consumers of illegal business practices, some of which are committed out of ignorance but which are nonetheless punishable under administrative penal law.

FINANCIAL LITERACY

Many investors and consumers are not sufficiently financial literate to be able to appropriately judge the opportunities, risks and functioning of even simple financial products and services. The numerous enquiries and complaints received by the FMA provide valuable information on the actual financial needs of consumers and on where there are gaps in their knowledge and information. The FMA will continue with this analysis and contribute its findings to a future national strategy for financial literacy. At the same time, findings are also incorporated into consumer information and new reports aimed at consumers. This should help retail investors to make appropriate and rational decisions.

INVESTMENT FRAUD PREVENTION

One of the FMA's most important goals is to effectively prevent consumers becoming the victims of investment fraud. To achieve this, the FMA will initiate an information initiative. New communication channels will be established, and cooperation with stakeholders in particular expanded and intensified.

SUSTAINABILITY

SUPPORTING THE TRANSITION TO A CLIMATE-NEUTRAL ECONOMY AND CURBING THE RISKS OF CLIMATE CHANGE FOR THE FINANCIAL MARKET

Back in 2018, the European Commission published its Action Plan: Financing Sustainable Growth in order to achieve the goals of the Paris Agreement and the UN 2030 Agenda for Sustainable Development with its Sustainable Development Goals (SDGs). Through the European Green Deal, the roadmap towards a more sustainable economy, the Commission has also announced its strategy for a more sustainable financial system. The FMA took part in the consultations for this renewed sustainable finance strategy, which was launched in April 2020.

The financial sector is playing a pivotal role in the transition to a more sustainable, environmentally sound and climate-friendly society. Sustainability risks, that is risks arising from environmental, social and governance (ESG) factors, can have a negative impact on the performance of individual assets and financial market participants, as well as on financial market stability. The European and international initiatives mentioned here have triggered numerous further regulatory proposals relating to the financial market, with the Benchmarks, Disclosure and Taxonomy Regulations already having been adopted.

The FMA Guide for Managing Sustainability Risks, published in July 2020, is a valuable knowledge base for all institutions supervised by the Authority. Its objective is to strengthen the FMA's and supervised companies' common understanding of those risks and to ensure a level playing field for all.

The FMA is keeping abreast of all current activities and developments in the field of sustainability risks. The Authority also engages in an ongoing dialogue on sustainable finance with stakeholders within Austria and Europe as a whole. The inspection priority of "sustainability risks" therefore forms an important component of the FMA's integrated supervisory strategy.

APPLICATION OF THE DISCLOSURE AND TAXONOMY REGULATIONS

The Disclosure Regulation[2] includes new transparency requirements for financial market participants and financial advisors across all sectors. In future, information regarding approaches to the integration of sustainability risks must be disclosed on companies' websites, and a description of the integration of sustainability risks as well as any adverse impacts must be included in the pre-contractual information provided for each financial product. Most of the provisions of the Disclosure Regulation are already applicable, with the transparency provisions being further specified in Regulatory Technical Standards (RTS, delegated regulations).

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[2] *Regulation (EU) 2019/2088 of the European Parliament and of the Council on sustainability-related disclosures in the financial services sector.*

The Benchmarks Regulation[3] has been applicable on a staggered basis since April 2020. Its provisions have been fleshed out in delegated acts. This version is an amendment to an earlier version[4] and now contains additional requirements for ESG disclosures and climate transition benchmarks both for administrators of the new categories of benchmarks introduced with the Regulation (climate transition benchmarks, EU Paris-aligned benchmarks) and for all other administrators of benchmarks. The new disclosure requirements have to be implemented by all existing benchmark administrators. The amendments to the Benchmarks Regulation were accompanied by Commission delegated legal acts.

- The FMA verifies that existing administrators and benchmarks meet these disclosure requirements. In the case of climate transition benchmarks and EU Paris-aligned benchmarks, the FMA is also required to monitor Austrian administrators' compliance with the requirements laid down for the provision of those benchmarks.

The Taxonomy Regulation[5] establishes a unified classification system for sustainable investments within the EU. In relation to disclosure requirements, specific reporting requirements are added to those already applicable under the Disclosure Regulation. Accordingly, information must be published on how and to what extent the investments making up a financial product fund environmentally sustainable economic activities in accordance with the Regulation.

The financial sector is playing a pivotal role in the transition to a more sustainable, environmentally sound and climate-friendly society. Sustainability risks can have a negative impact on the performance of individual assets and financial market participants, as well as on financial market stability.

MONITORING OF INTEGRATION OF SUSTAINABILITY RISKS

- <u>Integration of sustainability risks into risk management, strategy and governance</u>
  The FMA will evaluate supervised companies in terms of whether they consider sustainability risks in their business and risk strategies. The focus of these activities is on climate risks since their methodical inclusion in risk management is currently the subject of much debate in Europe and around the world. However, the FMA expects all risks related to environmental, social and governance factors to be given appropriate consideration. Sustainability risks need to be reflected in the existing risk categories and thus integrated into existing risk management. In relation to the supervision of corporate governance, the FMA will verify that responsibilities have been clearly allocated and an appropriate knowledge and human resources management structure put in place to deal with sustainability risks.
- <u>Availability of sufficient risk management data</u>
  The availability of valid, standardised and therefore comparable data is a basic prerequisite for identifying, assessing and integrating sustainability risks into risk management and for compliance with transparency obligations. The FMA will evaluate whether the strategies developed to systematically identify and collect information on sustainability risk factors guarantee that sufficient and plausible data can be accumulated and whether supervised companies are giving their best

[3] *Regulation (EU) 2019/2089 of the European Parliament and of the Council amending Regulation (EU) 2016/1011 as regards EU Climate Transition Benchmarks, EU Paris-aligned Benchmarks and sustainability-related disclosures for benchmarks.*

[4] *Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014.*

[5] *Regulation (EU) 2020/852 of the European Parliament and of the Council on the establishment of a framework to facilitate sustainable investment.*

and are increasingly engaging with their contacts in the real economy to improve the available data. The FMA expects the data available on sustainability and climate change to improve over time, in line with the issue's increasing significance and as awareness of it grows.

- Handling of transparency requirements
  The FMA evaluates whether supervised companies have developed, continuously apply and regularly update a consistent approach to reporting on sustainability risks that is in line with the nature and scope of their business activities. Reporting should describe the risk management approach to dealing with sustainability risks and address the company's process for assessing the materiality of sustainability risks.
  The FMA believes that as scientific findings constantly evolve and supervised companies' understanding of the impact of sustainability risks on their own financial situation grows, the reporting and disclosure of sustainability risks will also continue to improve.
- SREP
  In its banking supervision activities, the FMA will assess the inclusion of sustainability risks in the supervisory review and evaluation process (SREP) and address the results in management talks. In this context, specific checks will be carried out to determine whether the requirements of the EBA Guidelines on loan origination and monitoring (EBA/GL/2020/06) are being met.
- Vulnerabilities of insurance undertakings
  In the insurance sector, the FMA will determine and analyse potential vulnerabilities of insurance undertakings.
- Climate change and pricing
  Evaluation of the practices and possibilities in relation to pricing the impact of climate change.
- Portfolio management
  The portfolios of insurance undertakings and *Pensionskassen* are analysed in terms of their orientation towards a low-carbon pathway against the background of various climate scenarios.
- Asset managers
  In relation to asset management ([real estate] investment fund management companies, alternative investment fund managers and corporate provision funds), the FMA will prioritise the integration of sustainability risks in its regular management talks and incorporate it into its annual analysis questionnaire, and also check within the scope of on-site inspections that those risks are handled appropriately.

EXCHANGE WITH INDUSTRY AND PARTICIPATION IN RELEVANT BODIES

- Structured dialogue
  The FMA continues to engage in dialogue with industry representatives and other stakeholders in individual sectors and across all sectors to strengthen awareness of the impact of sustainability risks. The FMA will use the results of these structured talks to bolster its positioning and for its ongoing efforts in the area of sustainability risks. The Authority continues to support financial market participants in including sustainability risks in their risk management and applying new regulations appropriately.

- <u>Participation at European and global level</u>
  The FMA keeps fully abreast of all activities and developments in the area of sustainability risks at Austrian, European and global level. The Authority is actively involved at the level of the ESAs working groups, as well as the Network for Greening the Financial System (NGFS) and Austrias Green Finance focus group. This makes a significant contribution to the further development of the regulatory requirements and ensures that Austrian interests are considered in the wider debate.

CLEAN FINANCIAL CENTRE AUSTRIA

PRESERVING THE CLEAN FINANCIAL CENTRE BY MEANS OF TARGETED PREVENTIVE MEASURES

Global developments surrounding the COVID-19 pandemic and related economic uncertainties are making for a difficult environment for both providers and consumers, which calls for the FMA's particular attention. To protect Austria's status as a clean and reputable financial centre and to maintain and strengthen market participants' confidence in financial transactions being carried out properly, the FMA focuses on ensuring market integrity, specifically in relation to trading in listed securities, the prosecution of unauthorised business activities, the fight against investment fraud, and due diligence obligations to prevent money laundering and terrorist financing.

To protect the integrity of the Austrian capital market, one priority is tackling market abuse, particularly the prevention of illegal insider dealing and market manipulation.

The number of companies that provide financial services without holding the requisite licence is steadily increasing. In economically unstable times it is therefore particularly important to eliminate all such activities. To this end, the FMA publishes notices to warn consumers of specific dubious providers and issues administrative decisions ordering such providers to refrain from performing unauthorised business transactions, enforcing the decisions with coercive penalties if necessary.

In the course of its activities to fight unauthorised business operations, and during its market monitoring and complaints management, the FMA repeatedly uncovers new financial scams. The FMA compiles the information garnered in this way in in an easily understandable form for investors and puts it on its website, as well as disseminating it through other communication channels such as social media, to ensure that a large number of investors are reached and awareness of dirty tricks is raised.

In its activities to prevent money laundering and terrorist financing, the FMA has pursued a zero-tolerance policy from the very beginning. In 2020 certain providers of virtual currencies were included in anti-money laundering (AML) supervision for the first time. The FMA has broken new supervisory ground in this area in many respects.

To protect the status of Austria as a clean financial centre, the FMA will therefore be setting the following priorities for supervision and inspections.

To protect Austria's status as a clean and reputable financial centre and to maintain market participants' confidence in financial transactions being carried out properly, the FMA focuses on ensuring market integrity, the prosecution of unauthorised business activities, the fight against investment fraud, and due diligence obligations to prevent money laundering and terrorist financing.

ILLEGAL PRACTICES IN THE WAKE OF COVID-19

In the wake of the global pandemic, new illegal practices have hit the financial markets. These practices need to be identified, with a particular focus on unauthorised business operations as well as on investigations into financial reporting, conduct and AML prevention. All findings that are gained in the process and relevant to investors and consumers will be put on the FMA website in a clear, simple and understandable form, in this way countering investment fraud through transparency and information. The Authority will also take measures to bolster market integrity, with a focus on market abuse in trading with listed securities, and the development and monitoring of systems for market abuse detection in particular:

- Identification, evaluation and tracking of the impact of COVID-19 on unauthorised business activities.
- Certain providers of virtual currencies, so-called virtual asset service providers (VASPs), have been subject to the due diligence requirements to prevent money laundering since 2020 and are required to register with the FMA. Illegally operating VASPs must be prosecuted and removed from the market.
- Experience and findings from investigations into unauthorised business operations are systematically evaluated to recognise scams and the patterns behind them. This information is then prepared for use in the prevention of fraudulent activity.
- Monitoring activities in relation to issuers' improper accounting practices (in accordance with IFRS[6]) is being stepped up and expanded to include structured analysis of ESEF[7] data. Financial reporting and other public information (ad hoc reports, media monitoring) will be analysed for COVID-19 effects on a spot check basis.
- Risk-based evaluation of banks' precautions to avert market abuse will be carried out (particularly monitoring precautions to avoid insider dealing by defining specific requirements of "personal transactions").
- Specific verification of compliance with trading bans for executives.

ROLL-OUT OF AML DUE DILIGENCE OBLIGATIONS ON BUSINESS MODELS

In response to the numerous money laundering scandals, the global standards to prevent them are continuously being tightened up. The EU is working on an institutional framework for combating money laundering in order to be in a better position to coordinate cross-border cooperation and to make any such cooperation more effective and efficient. The European Commission has already outlined a road map by publishing its AML Action Plan. To contribute to this new framework, the FMA will not only make AML a priority in its operational supervision in Austria but also in its work in European bodies in 2021. Furthermore, the Authority will also expand its zero-tolerance policy to include new business models and providers.

- Intensification of supervisory measures in relation to VASPs by:
  - analysing potential money laundering patterns in connection with virtual currencies
  - increased on-site presence
  - forwarding of suspicious transactions to the Financial Intelligence Unit
  - prosecuting breaches of due diligence requirements in administrative penal proceedings
  - consistently monitoring actions to remedy shortcomings.
- Intensification of the supervision of money remitters (payment service providers, agents, CCPs) through:
  - increased on-site presence

6 *International Financial Reporting Standards.*
7 *European Single Electronic Format.*

- forwarding of suspicious transactions to the Financial Intelligence Unit
  - prosecuting breaches of due diligence requirements in administrative penal proceedings
  - consistently monitoring actions to remedy shortcomings.
- Integration of findings from AML supervision into the SREP
- Proactive participation in the Europeanisation of supervision in relation to combating money laundering and terrorist financing
  - active representation in AMLSC[8] and EGMLTF[9]
  - active involvement in the implementation of Europe's AML Action Plan
  - setting up AML Colleges for Austrian groups of credit institutions and actively contributing to their efforts.

[8] *Standing Committee on anti-money laundering and countering terrorist financing at the EBA.*
[9] *Expert Group on Money Laundering and Terrorist Financing at the European Commission.*

RESILIENCE AND STABILITY

THE CHALLENGE TO THE FINANCIAL MARKET THROUGH THE COVID-19 PANDEMIC: THE RESPONSES OF THE FMA AS REGULATOR AND FINANCIAL MARKET SUPERVISOR

The COVID-19 pandemic has created a new global situation affecting practically everyone, facing each of us with significant challenges – in our private and professional lives, as well as in business and households, and in the real economy and in financial markets. The battle against the virus has more than once meant drastically limiting business affairs and social life, resulting in market turbulence and in economic output plummeting.

And the battle has not yet been won – but will continue even once an effective vaccine has been developed or a treatment identified. It will be months, perhaps even years, before significant numbers of the world's population have been effectively immunised to an extent allowing travel and goods transport to return to a normal level, before all links in supply chains are restored, and before the damage caused by the COVID-19 pandemic is repaired.

This means that both supervised companies as well as the Financial Market Authority (FMA) need to come to grips with the challenges posed by COVID-19 and the resulting changed conditions. Managing this situation requires new perspectives as well as forward-looking action and a transparent, intensive exchange of information. Due to coronavirus, we are having to chart unknown waters, with still much to learn about managing the impacts of the first pandemic on a globalised, connected and digitalised world – impacts felt beyond the scope of health policy and affecting social and economic policy.

HELPFUL LESSONS LEARNED FROM THE GLOBAL FINANCIAL CRISIS

The challenges brought on by the COVID-19 pandemic have also shown how important the financial crisis of 2007/2008 was, inasmuch as policymakers, the financial sector and regulators learned the right lessons and also consistently applied themselves to putting them into practice. Regulation and supervision were set in an EU framework, rules and regimes were reviewed and revised in the light of the financial crisis, and regulatory gaps were filled. Today, our crisis toolbox is much better equipped than it used to be. Austria's financial service providers are now much more stable and better able to face any crisis.

Just a few figures to illustrate: when the first lockdown was imposed in mid-March 2020, Austrian banks had an average Common Equity Tier 1 capital ratio of 16% or twice as much as prior to the financial crisis, according to an ad-hoc analysis by the Oesterreichische Nationalbank (OeNB). The issues stemming from the crisis had been largely resolved: the volume of non-performing loans had been shrunk, from a consolidated figure of almost 9% at the peak of the crisis to about 2%, a historic low. Own funds amounted to € 89 billion at the start of the lockdown, with € 39 billion consisting of free regulatory capital or capital buffers created specifically for crisis situations. This maximum amount of losses can be absorbed without overstepping legal limits. Or, a maximum of € 300 billion in loans can be generated from this capital.

Austria's insurance sector is also strong and stable. When the COVID-19 pandemic broke out, sector solvency was significantly above 200% based on the Solvency Capital Ratio (SCR), an indicator measuring the extent to which a company can absorb unexpected losses while still fully meeting obligations towards policyholders. This means that insurance companies had more than twice as many own funds at their disposal than necessary. Although the SCR did in fact drop marginally following the first wave of the pandemic and the ensuing lockdown, one in two companies continued to report a level of own funds of over 200%, with the mean being 199.29% overall.

While in 2007/2008 banks and financial service providers were the cause of the crisis, they were able to provide significant support in managing the economic impact of the coronavirus crisis. The financial sector has the power to bolster the real economy during the crisis while fuelling and driving the business cycle towards an upswing.

A MAXIMUM OF FLEXIBILITY WITH AS MUCH RISK IDENTIFICATION AS NECESSARY

In our role as regulator and supervisor, the FMA has been pursuing from the outset a sharply defined COVID-19 strategy, closely coordinated with our partners at European level, including the European Central Bank (ECB), as well as the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA).

- This strategy involves, firstly, a commitment by the FMA to fully utilise the strong potential for regulatory flexibility offered by the existing regime, as a means of easing the burden on the financial sector as much as possible without jeopardising financial stability. As a result, financial service providers have wider options for supporting households and businesses in this challenging situation, thereby contributing significantly to a stable real economy. The highest priority remains nonetheless to take any and all action necessary to prevent the crisis from spreading to the financial sector and causing a risk shift.

- Secondly, the supervisory authority needs to insist adamantly on companies' consistent identification of risks even during the crisis, so as to allow risks to be duly accounted for, analysed and managed under risk management systems. This is a necessary precondition for ensuring financial market security in the long term.

The financial sector and the supervisory authority will need to cooperate in this tightrope act for some time to come.

A COMMON EFFORT BY THE PUBLIC SECTOR, THE FINANCIAL SECTOR AND THE SUPERVISORY AUTHORITY

In our role as regulator and supervisor, the FMA has closed ranks with partners at national level, supporting with its own measures the government programmes initiated with the goal of mitigating the economic impacts of the coronavirus crisis. By supporting fiscal support programmes, the FMA contributes to ensuring faster as well as more effective and efficient implementation of these programmes in the financial market – on a continued basis and in response to any developments.

Thus, soon after the Federal Government's decision to impose a lockdown in March 2020, the FMA adopted a comprehensive package of measures to relieve pressure from supervised companies. The package included temporarily suspending pending proceedings, interrupting on-site inspections to continue them off-site where possible, extending deadlines for submitting statements, and simplifying reporting obligations. While a complete description of the specific measures would go far beyond the scope of this article, a detailed summary is available on the FMA website (www.fma.gv.at) under the "COVID-19 Infos" link.

The largely preventive measures taken by the supervisory authority are aimed at giving the companies affected the flexibility they require to maintain business operations in this situation and to focus especially on supporting the real economy.

In the following, a very brief and highly cursory summary of the most significant steps taken to simplify regulatory processes and make supervision more flexible:

BANKING

- Where deferred loan repayment has been agreed under a moratorium complying with the provisions of the corresponding EBA guideline, a debtor is not to be classified as defaulting based on the agreed deferral alone, other criteria also need to be met.
- In the context of disclosing financial circumstances when applying for federally guaranteed loans, it has been clearly ruled that an analysis of creditworthiness based on the period prior to the crisis is sufficient.
- The regulator extended the deadline for disclosing the annual financial statement for 2019 to the end of October 2020.
- In relation to cases of deferred loan repayment under the statutory moratorium, the FMA has ruled that the customers concerned must receive comprehensible and transparent information on requirements, applications, any proof to be submitted as well as on the effects of the moratorium, as early as when the moratorium is implemented.
- When assessing a debtor's ability to service a loan, a credit institution may apply a liquidity review over a full year in the past.
- The FMA also recommends banks to apply the transitional rules for the IFRS 9 accounting standards. Banks should increasingly apply a medium-term perspective. Where deferred loan repayment is under a moratorium complying with the EBA

guideline, banks should take a through-the-cycle perspective and additionally consider the government measures for mitigating the economic impact of the crisis.

BANK RESOLUTION

- In its capacity as national resolution authority, the FMA issued a decision setting out updated MRELs applying at consolidated level to the 16 largest banks falling under the Authority's direct remit in June 2020. By making the MREL requirements binding on the banks, the FMA seeks to ensure that adequate funds are available in the event of resolution, in order to absorb losses and recapitalise the institution and thus enable the individual resolution strategy to be successfully implemented. In accordance with BRRD II, a transitional period was set for compliance with the decision, until 1 January 2022. A transitional period until 30 June 2023 was set for cases where institutions currently fall short of MREL. The resulting solution for flexibly responding to the impact of the coronavirus crisis is transparent and ensures legal certainty.

PREVENTION OF MONEY LAUNDERING AND TERRORIST FINANCING

- To ensure the ability to verify an individual's identity even during the lockdown, the FMA has enabled online identification even when working from home.

COVID-19: TRICKSTERS AND FRAUDSTERS RESPONDED QUICKLY

The COVID-19 crisis has acerbated insecurity in many quarters of daily life, also requiring many to get used to working at home during lockdowns. Through its monitoring activities during that time, the FMA found a significant rise in cases of fraud. Tricksters have quickly adjusted their methods to take into account the special challenges confronting consumers and company workers under lockdown conditions, adapting their scams and acting especially aggressively in this difficult situation.

CEO FRAUD

Fraudsters frequently try to take advantage of the special challenging circumstances under which corporate employees work, including remote working from home, by sending falsified and fraudulent emails to executives and specifically management board members to get them to approve credit transfers under circumvention of standard internal controls. "Strict confidentiality" is always requested and the recipients are asked to limit communication to emails to the group of individuals listed in the message (listing falsified email addresses). In addition, fake information and letters purportedly from well-known law firms are often attached, with additional or alternative references to regulations by supervisory authorities such as the FMA, including falsified links, Internet domains and email addresses. In isolated cases, even fake FMA decisions are included as attachments, with the FMA logo, lettering or header simply copied and inserted in electronic letters or emails, or the signatures of real FMA staff members either forged or copied from original documents issued by the FMA. Substantial financial damage has been incurred in some cases.

PHISHING

The FMA has observed an upswing in activities falling under the category of phishing. The term refers to the practice of attempting to prompt consumers to reveal confidential account information through fraudulent emails or com-

- In cases where a customer takes out a life insurance policy in person, the insurance agent can complete the due diligence requirements for the prevention of money laundering at a later point in time and verify the customer's identity then.
- For the case of government loans to aid or support businesses in the context of COVID-19, the FMA has enabled simplified due diligence obligations as set out in the Financial Markets Anti-Money Laundering Act (FM-GwG; *Finanzmarkt-Geldwäschegesetz*).

These are just a few examples of the flexibility with which the FMA has responded to the crisis in our capacity as regulator and supervisor, in concert with our partners in the EU.

The largely preventive measures taken by the supervisory authority are aimed at giving the companies affected the flexibility they require to maintain business operations in this situation and to focus especially on supporting the real economy. Measures stipulated at international level were also taken in order to contain any exaggerated irrational behaviour and excessive market responses, and to strengthen the liquidity and capital base of the supervised companies.

The FMA's integrated approach to supervision, which brings together regulation and supervision of Austria's entire financial market under one roof, is proving itself once again during the COVID-19 crisis.

munication via social media, allowing criminals to carry out fraudulent transactions. In such cases, recipients are ostensibly requested – often in a fake email or letter from their banks – to update their account information, or additional account details are requested to enable or complete a transaction.

PENNY STOCK SCAMS

Fake information services and investor letters also surfaced, spreading purported insider tips relating to shares – claimed about to skyrocket in price but worthless in fact – issued by companies on the brink of launching a drug or vaccine against COVID-19. After bringing under their control all or a majority of the valueless shares, listed mostly at penny or cent prices and under remote exchanges or market segments, the fraudsters spread fake coronavirus news to drive up the prices of the shares, which they subsequently sell to unsuspecting (retail) investors at high prices, even though worthless.

ADVANCE FEE SCAM

The FMA also observed a widespread flourishing of loan offers, ostensibly available without difficulty via email or a website. This usually involves fraudsters who promise loans under attractive terms while requiring no, or only a very superficial, credit check. Before remitting the loan sum, however, the imposters require a marginal fee or other type of payment in advance. The advance fee is collected but the loan is never paid out.

FMA WARNING

In response, the FMA reported the increase in fraudulent activities in press releases, interviews and statements broadcast over TV and radio, at the same time urgently warning the public not to fall for these scams. "Stay critical in the crisis," was the advice of FMA Executive Directors Helmut Ettl and Eduard Müller, "Make sure to comply with standard control mechanisms and precautions, even at this highly challenging time. Now, if ever, the saying goes that 'If it's too good to be true, it's probably not'."

For example: due to special structural conditions, the market participants at the Vienna Stock Exchange again, similar to the global financial crisis, overreacted to COVID-19 and in some cases reacted even irrationally when compared with their international counterparts. Therefore, to control excessive short selling for speculative reasons, the FMA utilised an instrument originally developed by the European Union to contain irrational behaviour during the global financial crisis and issued a regulation temporarily banning short selling in certain categories of financial instruments *(see box below).* And this has been successful: with the excessive speculative behaviour quickly receding, the national step that had been accorded at EU level proved appropriate and effective as well as beneficial to all market participants.

The COVID-19 pandemic poses significant challenges for the real and the financial economy, with a scope still unable to be fully appreciated. Faced with these challenges, the FMA made the number one priority in this difficult situation clear from the outset: maintaining and strengthening the capital base. The supervisory authority issued a number of measures to help create more options to enable or at least support supervised companies in providing their financial services despite the difficult

THE SUCCESSFUL STRUGGLE AGAINST EXCESSIVE AND SPECULATIVE SHORT SELLING

As early as February 2020, the FMA observed a significant rise in short-selling transactions at the Vienna Stock Exchange. These activities were apparently prompted by COVID-19 infections flaring up in several European countries and the resulting serious healthcare crisis in a number of EU Member States. Under EU regulations, net short positions reaching a threshold of 0.2% of issued share capital must be notified to the competent national authority, which in the case of the Vienna Stock Exchange is the FMA. There was a sudden skyrocketing of the number of enquiries concerning regulatory issues in relation to short selling, and a similar sharp rise in users registering for access to the FMA's online tool used to report corresponding net short positions. An increase was also seen in the trading of shares on the Vienna Stock Exchange's official market and in net short positions in these shares.

On 16 March 2020, the European Securities and Markets Authority (ESMA) exercised its option of lowering the notification threshold for net short positions. In the interests of increased market transparency, it reduced the threshold for reporting net short positions from 0.2% to 0.1% of issued share capital.[1]

In a market environment marked by unusually high volatility, short selling can give occasion to significant risks. Concerted attacks by speculators on certain individual financial instruments can trigger share-price extremes and irrational overreactions, ultimately damaging investor confidence and causing significant disadvantage for the financial market. As a result of general economic uncertainty and the spread of COVID-19, the Vienna Stock Exchange's blue-chip index ATX dropped drastically within the brief period of 14 to 16 March 2020, ultimately falling by 45%, following highly turbulent trading activity. Such plummeting prices are an incentive for some to take further advantage of the pessimistic market mood and engage in exaggerated short selling, thereby setting in motion a continuously accelerating downward spiral in share prices. The first signs of such a market trend were identified in the weeks following 14 February 2020.

After intense consultation with partner authorities in the EU as well as ESMA, the FMA issued a temporary ban on short selling on 18 March 2020, applying to defined financial instruments listed on the Vienna Stock Exchange. The step, taken simultaneously with five other Member States, was aimed at maintaining investor and consumer confi-

[1] *Renewal of this measure was still being discussed when this report went to press.*

situation. In addition, the measures for greater flexibility resulted in some cases in enhanced options for absorbing losses. Another aspect is the comprehensive packages of measures funded from the government budget, and lastly through taxpayers, to support households and businesses, with the indirect effect of additionally protecting the financial sector from horrendous losses.

In the face of these challenges and under these conditions, it would be more than difficult to justify the payment of dividends or bonuses. Consequently, in stakeholder bodies at EU level, the FMA advocated a recommendation urging all market participants to refrain from paying out dividends or bonuses and from share buybacks. A success: the recommendation, applying Europe-wide and to all sectors, is a step towards ensuring a level playing field within the European Economic Area during the crisis while drawing a clear line for shareholders and investors and relieving pressure from executives. At the same time it is a success of our integrated approach to supervision. The urgent recommendation has been extended until the end of 2020. Whether, and if so how, to continue implementing the urgent recommendation was a subject still being discussed intensively when this report went to press.

dence. This emergency action at national level expired on 15 April 2020, to be subsequently replaced by an adapted version of the ban, softening certain restrictions, which went into effect on 16 April 2020. Once markets had calmed again, the short selling ban was later lifted as of 18 May 2020, in concerted action with the other Member States that had passed similar emergency measures, namely Belgium, France, Greece, Italy and Spain.

When the FMA regulation of 18 March 2020 banning short selling took effect, the ATX soon conformed with the trends seen for other comparable indices.

Aggregate net short positions were quickly and significantly reduced *(> Chart 1),* to approach the mean level recorded for other EU Member States.

Chart 2 on the mean NSP shows that the net short positions have risen steadily since the summer months and are now lower than at the beginning of the year. The FMA will continue to observe the trend with vigilance and be prepared to intervene whenever emergency action might be needed again.

The FMA's firm response to excessive short selling and exaggerated speculation proved successful. The irrational market trend was halted, while institutional and retail investors' confidence in proper trading conditions was maintained. The emergency measures, i.e. lowering the notification threshold for net short positions to 0.1% of issued share capital along with a temporary, limited ban on short selling, were justified and necessary at the time.

Chart 1: *Estimated volatilities of selected share indices (in %)*

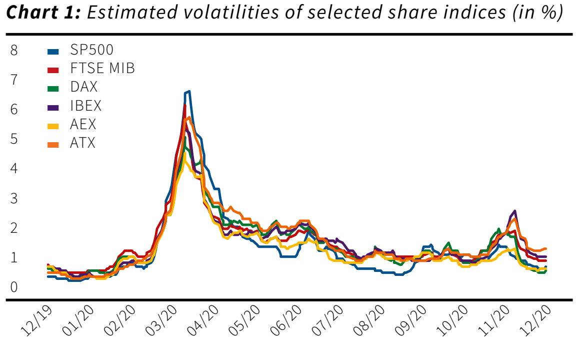
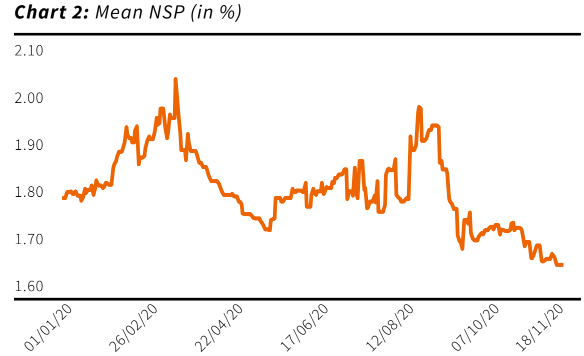


Chart 2: *Mean NSP (in %)*



Admittedly, due to the abundance of challenges, this is only a cursory overview of regulatory and supervisory activities during the COVID-19 pandemic. It can be no more than a sort of provisional summary, with the virus continuing to spread worldwide and new infection clusters constantly shooting up in Europe and around the world, and it will probably be some time before a vaccine or drug actually proves effective on a large scale. Since lockdowns and travel restrictions were imposed and supply chains disrupted, the real economy has already taken a deep dent globally, with a halt in economic growth and in some regions even recessions resulting. Obviously, this has had and will continue to have repercussions for financial markets.

The FMA's integrated approach to supervision, which brings together regulation and supervision of Austria's entire financial market under one roof, is proving itself once again during the COVID-19 crisis.

Up to now, the impact on financial service providers has been softened by the broad assistance provided to households and businesses from public budgets – be it through shortened working hours or state guarantees and moratoria or in the form of subsidies for fixed costs or compensation for lost income. In the end, these measures mostly serve to buy time to allow us to prepare for resolving the crisis in the long term. This is shown by an OeNB study concluding that without state assistance about 5.5% of all Austrian businesses would have had to apply for insolvency proceedings in the course of 2020. The risk of cliff effects is obvious once these measures expire. To avoid such effects will be a task for the coming months if not years. Another issue is the high administrative burden for financial service providers and other groups as a result of implementing and processing the large-scale government aid programmes, including loan moratoria, state guarantees and direct assistance payments.

It remains to be seen how many households and businesses will be unable to weather the economic challenges caused by the COVID-19 crisis. One fact is already clear though: the number is likely to rise significantly in the aftermath of the economic downturn. This is seen among other things in updated figures for the banking sector, indicating the need to appreciably enlarge credit impairment provisions in response to revised customer credit ratings. A significant increase in both the number and volume of unsatisfactorily serviced loans is to be feared, meaning banks will need to absorb painful defaults. Banks need to take thorough precautions, to quickly and successfully manage these risks, and also to have the required financial resources on hand to absorb the losses.

While the OeNB sees Austria's banking sector as able to manage any insolvency wave caused by a continued economic downturn as the pandemic continues, the central bank still calls on banks to do their homework and get ready for this eventuality. Specifically, they need to unlock potential for enhanced efficiency and cost reduction, which could be achieved especially through further digitalisation.

The European Central Bank (ECB) also judges the burden of debt piled up during the coronavirus crisis as the major challenge facing public budgets as well as households and businesses in the medium term. The ECB's response is to call on the European Union to speedily implement the previously adopted funding package of € 1.8 trillion to build a greener, more fully digital and more resilient Europe and to provide support in solidarity with the Member States hardest hit by the coronavirus crisis. Pointing to the high level of debt in many sectors, the ECB also urges early realisation of the planned Capital Markets Union, which would allow a greater volume of debt to be replaced by equity.

Despite all of these highly encouraging initiatives, it would be naive to imagine this global crisis precipitated by the COVID-19 pandemic as leaving financial markets unscathed. Even among financial service providers, it will leave deep, painful scars. Regulators and supervisors in the EU and Austria are in any case working hard to avoid any cracks in financial market stability should one or more credit institutions bow out. And we are confident of succeeding. We have, after all, learned the right lessons from the global financial crisis and have put a regulatory and institutional framework in place to ensure orderly resolution of even a major financial market player if need be, and to avoid any crack in market stability and ensuing damage to investors' and consumers' confidence.

The "road to recovery" will in any case be long, hard and difficult.

SOLVENCY II REVIEW – THE FURTHER DEVELOPMENT OF THE NEW SUPERVISORY REGIME FOR INSURANCE UNDERTAKINGS

The Solvency II set of rules[1], which entered into force on 1 January 2016, fundamentally changed the regulatory and supervisory regime for insurance undertakings. The rules created new – primarily risk-based – solvency requirements in relation to the own funds of insurance undertakings and insurance groups, implemented qualitative requirements for risk management, and hugely expanded the disclosure obligations.

The transition from a quality-oriented to a risk-oriented system with quantitative and in particular qualitative elements was so fundamental that the European lawmakers stipulated from the outset that the reform would be evaluated based on the experience of its practical application over the first five years. The aim of this Solvency II review is to determine whether the intended goals have in fact been achieved and whether there are ways of making the system more efficient and more effective in future.

The European Commission has therefore issued the European Insurance and Occupational Pensions Authority (EIOPA) with several requests for advice[2] and reform proposals. In response, EIOPA has been working with the national competent authorities to gather data and facts, discussing the material in common working groups and preparing appropriate proposals for changes. An initial – relatively small – reform package has already been signed off, and was implemented in 2019. The European Commission will present its comprehensive Solvency II report to the European Parliament and Council at the end of 2020 and request further proposals for reform.

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[1] *Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II).*

[2] *https://register.eiopa.europa.eu/publications/requests-for-advice.*

FIRST PHASE OF THE SOLVENCY II REVIEW

The first request for advice related to ways of simplifying the standard formula used to calculate the regulatory solvency capital requirement (SCR). Based on the EIOPA recommendation, the Commission revised the Delegated Regulation[3] on the Solvency II Directive, subsequently publishing the new version on 18 June 2019. To simplify the SCR calculation, changes were made to such items as non-life risk, the loss-absorbing capacity of deferred taxes, and the capital requirements for loans or equity associated with a lower risk and for which no ratings are provided.

SECOND PHASE OF THE SOLVENCY II REVIEW

In October 2019, EIOPA published a Consultation Paper[4] based on its joint work with the national supervisory authorities and containing analysis, findings and reform proposals in response to the Commission's request for advice from February 2019. Full impact assessments of the proposed changes have also been carried out as part of this second phase of suggested reforms. These have included:

- Individual impact analysis for individual insurance undertakings
- Holistic impact analysis for specific scenarios that also take into account the interactions between the proposed measures
- A supplementary information-gathering process, incorporating the data from the COVID-19 market stress situation in order to estimate the impact of the proposed changes during a crisis.

Austrian insurance undertakings participated very intensively in these studies. The market coverage for the comprehensive, scenario-based impact analysis was over 97% as a result, the highest level of any participating country. This also means that the results for the Austrian market are guaranteed to be representative. Austrian insurers were able to gather initial experience of the new methods and gained an insight into the impact of the reform ideas on the individual solvency capital calculation. At the same time, the process produced in-depth analysis of the sensitivities and vulnerabilities of the individual insurance undertakings, while the resulting findings provided important input for positions and negotiations at European level, particularly in the interests of ensuring fair competition on a cross-border basis.

KEY REFORM PROPOSALS IN THE SOLVENCY II PACKAGE

Based on the consultation paper, the surveys, analysis and impact studies, and the feedback from stakeholders, the Solvency II review package encompasses the following major areas of reform:

- **New extrapolation method for the risk-free interest rate term structure**
  Although continuing to apply the Smith-Wilson extrapolation method has not yet been ruled out, possibly with new parameters, an alternative is now being evaluated. Its parameters would generate a lower and thus more conservative interest rate term structure than the current model.

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[3] Commission Delegated Regulation (EU) 2019/981 amending Delegated Regulation (EU) 2015/35.
[4] https://www.eiopa.europa.eu/content/consultation-paper-opinion-2020-review-solvency-ii_en.

- **Changes to calculation of technical provisions**
  Some small changes, such as to contract boundaries and the inclusion of operating costs, have no material impact in Austria. The inclusion of a dampening factor for projected SCRs in the calculation of the risk margin can result in a considerable reduction in the SCR, which in turn can result in lower requirements with regard to provisions.
- **Adjustments to optional measures for long-term guarantees (LTG measures)**
  In particular, the volatility adjustment (VA) of the risk-free interest rate term structure is to be realigned. Instead of being based purely on a central reference portfolio, it will also incorporate factors specific to the undertaking in future. Additionally, adjustments will be made to the duration-based equity risk and matching adjustment (MA).
- **Updating of interest rate risk sub-module**
  An expansion of the interest rate stress in the standard formula is being considered in order to reflect the actual market circumstances more accurately.

EXTRAPOLATION OF THE RISK-FREE INTEREST RATE TERM STRUCTURE

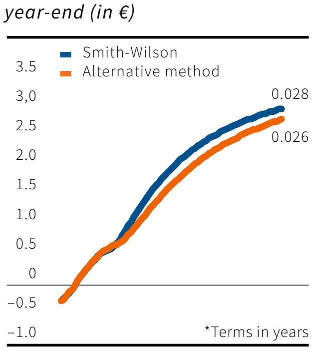
The "risk-free interest rate term structure" is the theoretical profit that can be generated in the future without being required to assume additional risk. Under Solvency II, this interest rate term structure is key to the calculation of technical provisions. Particularly in the case of undertakings that sell long-term insurance products (life and health insurance), a change in this curve can have a significant impact on the solvency capital ratio.

It is EIOPA that calculates the risk-free interest rate term structure, makes it available, and regularly updates it. Under the current system, this is based on the last liquid point (LLP), which is the point after which an estimate needs to be used in place of market data. As of this point, the values in the curve are extrapolated, currently using the Smith-Wilson method.

There was some criticism of the yield curve used for the euro in particular during the run-up to the Solvency II review, with some indicators showing that the curve is too high in places. The LLP, as of which no further market data is used, is set at 20 years, a relatively early point for the insurance sector, despite the fact that the available data, as detailed in the Solvency II Review Consultation Paper, would also allow a much later LLP.

In order to calculate an interest rate term structure that is more closely aligned to the market and more reliable, an alternative extrapolation method was tested during the holistic impact analysis. The transition from the use of market data to purely mathematical extrapolation, rather than being abrupt, is carried out gradually under this method. The interest rate term structure obtained using this tested configuration of the model is therefore slightly lower compared with the current methodology (as at 31 December 2019) *(> Chart 3)*.

Chart 3: *Extrapolated risk-free interest rate term structures 2019 year-end (in €)*



According to the study, the impact of this new curve on Austrian insurance undertakings would still be on a scale that would be acceptable in terms of the solvency capital ratio for the insurance sector as a whole, albeit with some insurers being hit harder than others. Assuming a more conservative interest rate term structure would have a much greater impact in other European countries that have a stronger focus on long-term insurance products.

CALCULATION OF TECHNICAL PROVISONS

Aside from the modified interest rate term structure, three other proposals raised during the Solvency II review also influence how the technical provisions are calculated:

- Article 18(3)of the Framework Directive is to be brought into line with the boundaries of insurance and reinsurance contracts. However, most of the Austrian market is not affected by this change, with no significant impact on those undertakings that are.
- Article 31(4) of the Delegated Regulation is to be amended to the effect that the best estimate should be based on a more realistic assumption of expenses relating to new business and also take into account costs. Again, this adjustment has no material impact on insurers in Austria.
- The proposed changes to how the risk margin (RM) is calculated would however have a clear impact on Austrian insurers. Specifically, a discounting factor is incorporated that cushions the impact of future SCRs on the RM[5]. This in turn primarily affects insurance products designed for the long term and can mean that the prescribed technical provisions are significantly reduced. Correspondingly, the impact studies show that this change helps in some cases to cushion the impact of the lower interest rate term structure on long-term insurance business, at least partially.

OPTIONAL LTG MEASURES

The optional LTG measures are adjustments to the solvency capital calculation that do not apply to all insurance undertakings across the board:

- **Volatility adjustment** (Article 77d of the Framework Directive)
  The volatility adjustment (VA) is an add-on applied to the risk-free interest rate term structure and designed to reflect the fact that insurers should still be able, even during periods of high volatility, to hold their positions on a long-term basis instead of realising a loss. The measure is not subject to approval in many countries, particularly Austria, and is the most commonly applied LTG measure.
- **Transitional measure on technical provisions/the risk-free interest rates** (Articles 308c and 308d of the Framework Directive)
  These measures, which are subject to approval, enable the calculation methods for technical provisions and the risk-free interest rate term structure as set out in Solvency II to be implemented gradually between now and 2032.
- **Matching adjustment** (Articles 77b and 77c of the Framework Directive)
  The matching adjustment (MA) is an add-on to the risk-free interest rate term structure that can be applied to form matching portfolios in which positive and negative future cashflows are offset against each other. This measure is subject to approval and to some very specific criteria. It is therefore currently only in use in Spain (and the United Kingdom).
- **Duration-based equity risk** (Article 304 of the Framework Directive)
  Using this measure, which is subject to approval, undertakings can apply a reduced shock to the equities that they hold compared with the standard formula if the term of the instruments in question is longer than twelve years. However, only separately reported special items in pension business are eligible. To date, only one company in France has applied this measure.

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5 $RM_{scenario} = CoC \,.\, \Sigma_{t\geq 0} \frac{SCR(t) \text{ x } max\,(\lambda^t, 0.5)}{[1 + r\,(t+1)]^{t+1}}$, where $\lambda = 0,975$

With regard to the Austrian market, only the volatility adjustment and the transitional measures relating to technical provisions are directly relevant.

The amendments contained in the current working version of the Opinion Paper mainly concern a remodelling of the VA, the recommendation that the duration-based equity risk measure be phased out, and some relaxation of the rules around the applicability of the MA.

With regard to the VA, however, it should be noted that by having varying levels applied from one undertaking to another, in contrast to purely basing the VA on a centralised reference portfolio, any undesired overshooting or undershooting effects are avoided.

INTEREST RATE RISK SUB-MODULE

The calibration of the interest rate risk sub-module remained unaffected by the 2019 revision of the Delegated Regulation. The Commission has only begun to tackle the calibration method corrections that are viewed as necessary during the current phase of the Solvency II review. EIOPA is therefore repeating its analysis of how well calibration of the interest rate risk sub-module in the standard formula is suited to the low interest rate environment. These evaluations build on earlier surveys conducted in 2017 and 2018. The findings suggest that the standard formula significantly underestimates the interest rate risk. The reasons for this include the following:

- The interest rate changes observed empirically were of a greater magnitude than the values used to calibrate stress.
- No stress is defined for interest rates that have already fallen below zero, even though rates could in reality fall even further, as has been shown.
- The methods applied by internal model users to measure interest rate risk in some cases differ substantially from the current standard formula.
- The impact assessment of the proposals shows that a significant risk exists, with current capital requirements inadequate for ensuring the level of security sought.

The conclusions reached through previous analysis remain basically unchanged, so that EIOPA will again propose that interest rate risk stress be modified. Field studies also reveal significant material impact on the own funds situation as a result of raising the level of interest rate shock. Consequently, allowing a transitional phase prior to the increased stress factors is considered helpful.

The FMA will vigorously represent the interests of the Austrian financial market and its insurance industry based on analysis, impact studies and surveys, placing a particular focus on ensuring a level playing field.

The Solvency II review is now in its final phase. After analysing and taking account of the third study – the additional gathering of information – and further in-depth discussion of the proposals, EIOPA will submit its response to the European Commission's request for advice at the end of 2020. Meanwhile, during the final discussions on the EIOPA advice, the FMA will work to ensure that the effects of the proposed changes contribute to a greater risk focus in the existing system and that the planned changes do not have any sudden impact on the Austrian financial market, with the adjustment process taking place in a smooth and orderly manner. A further important aspect is the concept of a level playing field, ensuring fair competition for all regardless of Member State.

PLAYBOOKS – A NEW SUPERVISORY TOOL FOR GREATER RESOLVABILITY

During the global financial crisis governments often found themselves forced to bail out banks with taxpayers' money to prevent contagion to other institutions or even the real economy and to limit the impact on financial market stability. These governments took on the liabilities or debts of the crisis-hit banks, recapitalised them or carried out all of these measures. Ultimately, it was often taxpayers who relieved shareholders and creditors of the losses looming over them, resulting in the use of the term "bail-out". This type of socialisation of losses during times of crisis, after the profits had previously been privatised during the boom years, was perceived as socially unjust and hugely criticised at the time. Bank bail-outs also actually triggered a government debt crisis in some of the countries affected.

The Financial Stability Board (FSB), which is based at the Bank for International Settlements (BIS) and monitors the stability of the global financial system, was prompted to recommend a paradigm shift, from a "bail-out" to a "bail-in" mentality. Its view was that it should no longer be possible to blackmail governments and force them to rescue banks in order to secure the stability of the financial markets. Instead, rather than making taxpayers foot the bill for rescuing or resolving a bank, the shareholders and creditors should be called upon to assume the losses and any recapitalisation measures, in the form of a bail-in.

It was on the basis of this argument that the European Union established a European resolution regime for banks in 2014, with the Financial Market Authority (FMA) being given the function of national resolution authority, responsible for implementing and enforcing the new rules in Austria. Together with the relevant EU agency and EU institutions, the FMA is therefore in charge of resolution planning and the implementation of resolution measures in the banking sector. To this end, it has developed a new supervisory tool for greater resolvability, known as the playbook. Every bank must prepare a meticulous playbook setting out in fine detail its plan of action should the authorities impose resolution on it.

THE EUROPEAN RESOLUTION REGIME

The European resolution regime for banks is based on two tools:

- the **Bank Recovery and Resolution Directive** (BRRD), which defines uniform resolution rules for all banks throughout the EU, and
- the **Single Resolution Mechanism** (SRM), which fleshes out the resolutions rules (based on the BRRD) for banks in the euro area.

The Brussels-based Single Resolution Board (SBR) is the SRM's decision-making body at European level and relies on the network of national resolution authorities. In particular, it is directly responsible for systemically important banks with cross-border activities. The FMA has a seat and a vote in the SRB Plenary Session and cooperates closely with the SRB at a technical level in the Internal Resolution Teams and in a range of different working groups. Austrian credit institutions and groups of credit institutions that do not fall under the direct remit of the SRB are the sole responsibility of the FMA in its capacity as national resolution authority. There were 413 such banks in 2020.

One of the premises of this new European resolution regime is that banks should as a general rule continue to be liquidated on the basis of their national insolvency legislation. Resolution only takes place subject to clearly defined conditions[1] being met. The main conditions are:

- The credit institution is about to fail or is likely to fail (FOLTF).
- It must not be possible to avert the default by alternative measures within a reasonable time period. These alternative measures include private-law measures, such as a capital increase, or other supervisory measures by the FMA in the capacity of supervisory authority.
- The resolution must be in the public interest.

This is deemed to exist if resolution measures are required in order to achieve goals set out in law and if these goals cannot be guaranteed to the same extent by insolvency proceedings. These include, in particular, ensuring the continuity of critical functions or avoiding significant adverse effects on financial stability.

As the national resolution authority, the FMA has the following tools at its disposal for implementation of a resolution process and the achievement of these goals:

- Sale of business tool
- Bridge institution tool
- Asset separation tool
- Bail-in tool.

Implementation of a resolution process generally requires financial resources. The aim of the new resolution regime for banks is to avoid the need to use tax revenues. Instead, the financing should be provided by the credit institution's owners and creditors. Consequently, banks must have sufficient equity and eligible liabilities available

[1] *Codified in Article 49 of the Bank Recovery and Resolution Act (BaSAG;* Bankensanierungs- und Abwicklungsgesetz*).*

at all times to enable a resolution to take place. Known as the MREL (minimum requirement for own funds and eligible liabilities), this amount is set by the responsible resolution authority. Given that some resolution tools use up less financial resources than others, the MREL is set according to the selected resolution strategy. However, particularly the bail-in requires a high MREL. Accordingly, the FMA, in its role as the national resolution authority, sets a bank-specific MREL requirement for each credit institution every year.

Strictly speaking, the transactions covered by the term “bail-in” relate to two different tools. Through the write-down and conversion of capital instruments (WDCCI) power, holders of these instruments can be called upon to absorb losses and convert the instruments. The bail-in tool then extends further in that it is not just the relevant capital instruments that can be written down and converted, but also eligible liabilities. The latter encompass a large portion of a bank’s liabilities, but not, for example, secured deposits and liabilities to employees. Upon the conversion, the former creditor ultimately becomes a shareholder.

The playbook forces the bank to survey and evaluate its status quo in detail and to identify and eliminate potential resolution obstacles in advance and then take the necessary preventive measures to be able to proceed with a bail-in in the event of resolution.

PLAYBOOKS – PLANNING FOR EVERY EVENTUALITY

As well as having to ensure that they have sufficient loss-absorbing capacity, credit institutions must also make organisational preparations for the implementation of a bail-in. In order to clarify the details, the FMA called on selected banks to draw up their “bail-in playbook” for the first time in 2020. The aim of the playbook is to provide a comprehensive description of all of the internal organisational structures and workflows needed to carry out a bail-in. The specific requirements are based, in keeping with the principle of proportionality, on the SRB’s guidance on bail-ins, as detailed in the publication “Expectations for Banks”[2] and a set of documents providing operational guidance on bail-in implementation[3].

The goal of the resolution authority is to have a set of guidelines that can be implemented in practice for all banks that plan to use the bail-in instrument in the event of a resolution:

- Firstly, this ensures that, in the event of its resolution, every bank already has a process manual to hand on how resolution can be carried out efficiently, effectively and quickly.
- Secondly, it enables the resolution authority to determine whether the bank is able to provide all of the required information in the event of resolution and can properly implement a bail-in in practice.

At the same time, the preparation of these instructions enables the bank to test the resilience of its internal processes beyond recovery planning.

The playbook must be prepared in advance during periods of non-crisis, as every resolution process is complex and takes place under enormous time pressure. For planning purposes, it is assumed that the resolution process can be launched within two days and three nights, referred to as the “resolution weekend”. Waiting until things get serious to analyse the processes would be too late and jeopardise the success of the resolution process.

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[2] *Available on the SRB website at: https://srb.europa.eu/en/node/962.*

[3] *Available on the SRB website at: https://srb.europa.eu/en/content/operational-guidance-bail-implementation.*

Specifically, the banks' playbooks must cover the following areas:

GOVERNANCE AND EXTERNAL COMMUNICATION

The organisational units that would be involved in the implementation of a bail-in and the applicable decision-making hierarchies must be clarified. In addition, all relevant key persons must be named, including details of how they can be contacted in an emergency. In order to maintain or stabilise market confidence, a communication strategy specially designed for the resolution must be developed.

IDENTIFICATION OF CAPITAL INSTRUMENTS AND ELIGIBLE LIABILITIES

The bank must identify all relevant capital instruments and eligible liabilities. This relates to capital instruments and liabilities following a creditor waterfall (whereby the junior liabilities are bailed in first, followed by the next more senior tranches and so on)[4] and the excluded liabilities[5]. The aim is not a comprehensive listing of the identified instruments in the playbook, but a full and comprehensible presentation of the identification process.

PROVISION OF DATA

The internal processes to generate the data needed to execute a bail-in must be set out. For this purpose, the bank must list the required IT systems and focus in particular on the time aspect, the degree of automation and potential dependencies on third parties.

INTERNAL IMPLEMENTATION

An overall process description for the implementation of a bail-in must be presented, taking into account accounting and company law aspects and their representation in the internal systems.

EXTERNAL IMPLEMENTATION

In line with the design of the internal implementation procedures, the bank must also describe the processes that would be used to include the external actors involved in the implementation of a bail-in, namely central securities depositories, market operators, advisors and others.

As a new supervisory tool, the playbook serves a dual purpose. Firstly, it provides the bank with an internal process manual that can be consulted as soon as a resolution is required. Secondly, it forces the bank to survey and evaluate its status quo in detail and, together with the resolution authority, to identify and eliminate potential resolution obstacles in advance and to take the necessary preventive measures to be able to proceed with a bail-in in the event of resolution.

[4] *Article 90 BaSAG in conjunction with Article 131 BaSAG.*
[5] *Article 86 para. 4 BaSAG.*

DIGITALISATION

THE IT SYSTEM OPERATOR MAP: VISUALISING INTERCONNECTED-NESS IN THE AUSTRIAN FINANCIAL MARKET AND IDENTIFYING RISKS

IT RISKS AND THE INTERCONNECTED FINANCIAL SECTOR

Invented in the 1950s, electronic data processing comes with massive risks when used commercially. The financial industry was one of the earliest users of this technology[1] and today, like most sectors of the economy, it depends greatly on functioning IT systems. It is therefore very important to consider IT risks in management and supervisory processes. Most companies are aware of the potentially serious consequences of a system malfunction or a successful cyber attack, which is why they prepare for IT risks during normal operations and take them into account in their risk management framework. But regulation and supervision also have to appropriately address IT risks.

A particular challenge in the management, regulation and supervision of IT risks is the extreme extent to which financial services groups and financial markets in general are interconnected, as well as the tight integration with and within the IT service provider industry. It is important to consider IT risk at individual company level but, given the degree of interconnection, this alone does not provide a complete picture of the risk situation from a macroeconomic and regulatory perspective.

One reason is the extensive interconnectedness of the financial sector at the level of IT services. IT service providers often play a central role in the operation and expansion of IT systems, such as the maintenance of physical infrastructure, continuous development and updating of applications, and the securing of company networks

[1] *Muri/Unteregger/Griessner, IT-Risiko in Banken – aufsichtsrechtliche Entwicklungen [IT risk in banks – supervisory developments], Journal of Banking and Financial Research (ÖBA) 10/2019, p. 719.*

WHAT IS IT RISK?

Broadly speaking, IT risk is a subcategory of operational risk[2], i.e. the risk of loss resulting from inadequate or failed internal processes, people and systems or from external events.[3]
IT risk essentially comprises IT availability risk, IT security risk, IT change risk, IT data integrity risk and IT outsourcing risk.[4]

- **IT availability risk:** the risk that data and IT systems are not available, or not in a timely manner, to authorised persons when needed.[5] A failure of online or mobile banking systems, for example, impairs IT availability.
- **IT security risk:** the risk of unauthorised access to company systems or data. The most illustrative example in this category is cyber attacks.[6]
- **IT change risk:** the risk arising from an institution's inability to manage IT system changes.[7] Failed or delayed IT projects are an example of this.
- **IT data integrity risk:** the risk that data stored and processed by IT systems is incomplete, inaccurate or inconsistent.
- **IT outsourcing risk:** the risk arising from the commissioning of a third party (within or outside the company group) to provide IT systems or services.[8]

against attacks by hackers. In many cases, these specialised companies are key to enabling financial market players to offer their (new and innovative) products.
At the same time, these beneficial connections result in exposure to new risks. Any error, not to mention outage, at an IT service provider can paralyse the outsourcing client's essential systems or make it vulnerable to cyber attacks. Because many players in the financial industry use their IT infrastructure to store sensitive data (e.g. account information at a bank or health data at a health insurance institution) or operate systems where even a brief outage can result in serious costs and loss of reputation (e.g. electronic payment systems), these risks must be addressed.
Moreover, a breakdown at a single service provider can have serious repercussions for the multiple companies that connect to it. Larger service providers in particular, but also providers specialising in niche areas, provide services to numerous outsourcing clients, giving rise to potential concentration risk.

RISKS ASSOCIATED WITH DATA CENTRE OUTSOURCING

Among the services commonly used by companies, this potential concentration risk is especially relevant in the outsourcing of data centres. The objects at risk comprise entire buildings and rooms that house the central computer technology of possibly

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2 *OeNB/FMA, Guidelines on Operational Risk Management, p. 69 et seq.*
3 *BCBS, Sound Practices for the Management and Supervision of Operational Risk.*
4 *EBA Guidelines on ICT Risk Assessment under the Supervisory Review and Evaluation Process (SREP) (EBA/GL/2017/05), no. 8.*
5 *Kersten/Klett, Der IT Security Manager, p. 66.*
6 *EBA/GL/2017/05, no. 10.*
7 *EBA/GL/2017/05, no. 8.*
8 *Muri/Unteregger/Griessner, IT-Risiko in Banken – aufsichtsrechtliche Entwicklungen [IT risk in banks – supervisory developments], Journal of Banking and Financial Research (ÖBA) 10/2019, p. 719*

several companies or organisations, as well as the organisation that manages this infrastructure. If a company's core digital systems are operated centrally via a single (internal or external) data centre, fire or water damage or an outage of data links, even of short duration, can cause great damage not only to the data centre but also to the companies using its services. The special demands on data centre infrastructure, such as high energy consumption and the need for complex security measures (e.g. emergency power supply, fire extinguishing systems, physical access restrictions, redundant data links etc.), act as incentives for credit institutions to outsource data centre services to specialist providers.

Although high security standards generally prevail at data centres, serious incidents do occasionally occur, as some prominent international examples demonstrate:

- In early 2017, some AWS Cloud servers were accidentally shut down and unavailable for hours, rendering many websites and online services inaccessible.[9]
- Also in 2017, a data centre error struck British Airways. A single, wrongly pulled plug, the consequences of which were not mitigated by security mechanisms, resulted in roughly € 100 million in damage and left around 75 000 airline passengers delayed or stranded.[10]
- In 2019, virtual privacy network provider NordVPN was affected by a security vulnerability at a data centre, allowing corporate and customer data to be downloaded by an unknown external attacker. This case shows that, not only system stability, but protection of sensitive data and cybersecurity can be dependent on the IT service providers used.[11]

A particular challenge in the management, regulation and supervision of IT risks is the extreme extent to which financial services groups and financial markets are interconnected, as well as the tight integration with and within the IT service provider industry.

THE IT SYSTEM OPERATOR MAP

Currently, system operators of the data centres serving companies in the financial sector are not subject to any supervision and can only be screened in the course of on-site inspections of supervised entities using their services.

As the supervised entities are often very closely connected at the level of system operator, the FMA launched a project in 2019 to map these connections. The idea is as described above: if, for example, a system operator on the Austrian financial market is affected by a cyber incident, this could impact each of the companies that have outsourced their data centre operation to this system operator.

The project revealed where potential concentration risks lie and provided valuable insights for supervisory strategy and practice.

The source of the analysis was information gathered from selected supervised entities (banks, insurance undertakings, investment firms, *Pensionskassen*, corporate provision funds, [real estate] investment fund management companies, as well as market infrastructures) that have outsourced certain digital services to IT system operators. The information came from questionnaires, data extracted from internal databases, the analysis of findings made in the course of on-site inspections and the results of direct management talks. The companies were selected on the basis of market relevance. A total of 122 supervised entities were included.

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[9] *https://www.theverge.com/2017/3/2/14792442/amazon-s3-outage-cause-typo-internet-server.*

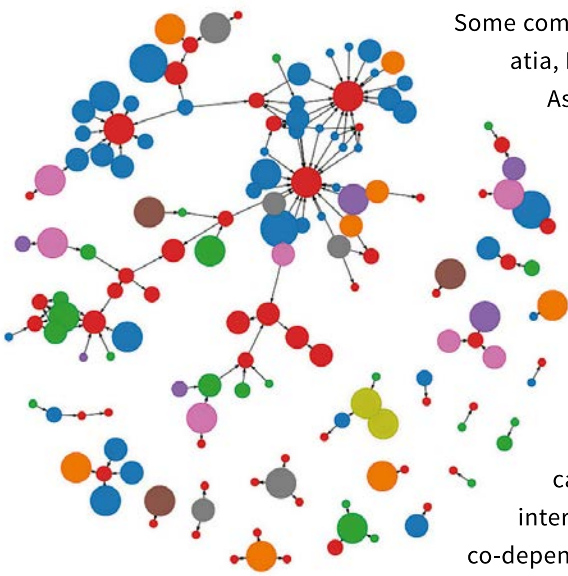
[10] *https://www.bloomberg.com/news/articles/2017-06-06/british-airways-points-to-human-error-for-may-flight-outage.*

[11] *https://nordvpn.com/blog/official-response-datacenter-breach/.*

The analysis demonstrated that a total of 53 different service providers are used for system operation. These include both IT service providers connected with the supervised entities and independent IT service providers. The investigation of these connections between supervised entities and IT system operators also revealed that the three largest IT system operators alone have a market share of around 24% among the financial sector companies included in the analysis. The top ten IT system operators hold around 47% of the market. In determining these figures, the number of connections to the supervised entities and the market relevance of the supervised entities were taken into account.

Another interesting finding is that only 28 of the 122 companies surveyed do not outsource data centre services and rely on internal IT system operation. Conversely, this means that 77% of the companies surveyed are dependent on IT system operators.

Figure 2: *IT system operator map of the Austrian financial market*



Some companies outsource IT system operations abroad (e.g. to Germany, Croatia, Belgium, Turkey).

As expected, IT system operators service more than just one industry, and the analysis uncovered and mapped existing cross-sector dependencies: there are cases where individual IT system operators are responsible for the IT operations of banks as well as management companies, insurance undertakings and investment firms.

The result of this analysis confirms that outsourcing to IT system operators in the financial sector does indeed lead to concentration risks *(> Figure 2).*

Although, for reasons of official secrecy, only an anonymised chart can be shown here to map how tightly the Austrian financial market is interwoven at the level of IT system operators, the complexity of these co-dependent relationships is clearly evident. The red dots represent IT system operators, the other colours represent the companies of the Austrian financial

Key regulatory frameworks relating to the topic of IT risk can be found on the **FMA website:**

- EBA Guidelines on ICT and security risk management
- EBA Guidelines on major incident reporting under Directive (EU) 2015/2366 (PSD2)
- EBA Guidelines on outsourcing arrangements
- EIOPA Guidelines on outsourcing to cloud service providers
- FMA Guide on IT Security in Management Companies[12]
- FMA Guide on IT Security in Investment Service Providers and Investment Firms[13]
- FMA Guide on IT Security in *Pensionskassen*
- FMA Guide on IT Security in Insurance and Reinsurance Undertakings

The **European Securities and Markets Authority** (ESMA) has published the following key publication on its **website:**

Draft Guidelines on Outsourcing to Cloud Service Providers[14]

[12] *https://www.fma.gv.at/download.php?d=3597 (available in German).*

[13] *https://www.fma.gv.at/download.php?d=3598 (available in German).*

[14] *https://www.esma.europa.eu/sites/default/files/library/esma50-164-3342_cp_cloud_outsourcing_guidelines.pdf.*

market (credit institutions, investment fund management companies, insurance undertakings, *Pensionskassen*, investment firms, corporate provision funds, real estate investment fund management companies and market infrastructures).

A FIRST STEP, TO BE FOLLOWED BY OTHERS

Due to technological developments, it can be assumed that the importance of IT system operators will continue to grow.

Even for those companies that were not part of this study, dependence on IT system operators is a major issue. For example, growing numbers of cloud services are being employed because they allow data storage, computing power or complex IT infrastructures to be procured easily and cost-effectively. Due to the predominance of global big players in this arena, concentration risks are also likely here.

The results gained from analysing IT interconnectedness in the Austrian financial market, and the IT system operator map produced from this analysis, confirm that the financial sector is highly dependent on IT service providers and the associated concentration risks also play an important role. The FMA will therefore take further steps to complete and expand the mapping of IT risks in the financial sector.

CYBER MATURITY LEVEL ASSESSMENT: HOW THE FMA MEASURES AND ASSESSES THE CYBER RESILIENCE OF AUSTRIAN INSURANCE COMPANIES AND *PENSIONSKASSEN*

IT security has long been a priority for supervision and inspections by the FMA. This is manifest in numerous measures, such as topic-specific FMA Guides, separate modules for off-site activities and on-site inspections, or as a focal point in management talks. Now the FMA has developed its own tool in insurance supervision to measure and assess the cyber resilience of Austrian insurance undertakings: the Cyber Maturity Level Assessment. This instrument is already being used by *Pensionskassen* in the form of a self-assessment.

A survey conducted by the FMA parallel to the Cyber Maturity Level Assessments clearly showed – in line with the results of an Interpol study[1] – that Austrian insurance undertakings and *Pensionskassen* are indeed among the targets of cyber criminals. In 2018 alone, for example, insurance companies saw losses in excess of € 200 000 as a direct result of more than 550 documented cyber incidents. This figure does not even include indirect costs such as lost working time and opportunity costs due to system failures. And it further demonstrates the importance of the supervisory focus on IT and cybersecurity – a fact increasingly recognised at European level as well. There are plans, for instance, to implement a Europe-wide reporting system for serious operational or security incidents in the insurance sector, similar to what has already been established for banks. This system will facilitate analysis of new developments in cyber incidents and allow comparisons between EU Member States.

[1] *Interpol, Cybercrime: COVID-19 Impact - August 2020, page 8.*

OBJECTIVES OF THE FMA CYBER MATURITY LEVEL ASSESSMENTS

With its Cyber Maturity Level Assessments, the FMA pursues the following primary objectives:

- **Strengthening cyber maturity:** Analysis of cyber resilience, assessment of the maturity level and active monitoring of further developments in this area for the insurance and pension company sectors as a whole, as well as at individual company level. In particular, the assessments strive to identify and eliminate security vulnerabilities.
- **Raising awareness of cyber risks:** The FMA aims to raise cyber risk awareness among insurance undertakings and *Pensionskassen*. To contribute, the Authority shares and discusses the methodology and findings of the assessments with the Austrian Insurance Association (VVO) or the Association of Austrian Occupational Pension Funds *(Fachverband der Pensionskassen).*
- **Identifying possible courses of action:** The assessments are based on and refer to relevant IT standards, which companies' individual cyber risk management regimes are also expected to observe.
- **Preparing companies for the relevant EIOPA guidelines:** The European Insurance and Occupational Pensions Authority (EIOPA) has published Guidelines on information and communication technology security and governance (EIOPA ICT Guidelines)[2]; compliance is mandatory from 1 July 2021 for all insurance undertakings subject to Solvency II.
- **Improving supervisory risk scoring:** The inclusion of cyber maturity levels in supervisory risk scoring provides a basis for relevant prudential measures and priorities, e.g. in the context of inspections or management talks.
- **Improving the basis for decision-making in advanced testing:** Only after a sufficient level of cyber maturity has been achieved does it make sense from a supervisory perspective to carry out cost-intensive and time-consuming cybersecurity testing, such as Red Team Testing or Threat-Led Penetration Testing (TLPT)[3].

Cyber Maturity Level Assessment identifies strengths and weaknesses in the information and communication technology systems of the supervised entities, provides important indications to counteract deficits and security vulnerabilities and thus contributes to strengthening the cyber resilience of the Austrian financial market.

LEGISLATIVE ENVIRONMENT

The strengthening of cyber resilience is a matter of Europe-wide concern. In particular since publication of the FinTech Action Plan[4] in March 2018, the European Commission has been pursuing the goals of strengthening the defence of the EU financial sector against cyber attacks and removing barriers to cloud services, among other issues. The Joint Advice of the three European Supervisory Authorities EIOPA, EBA[5] and ESMA[6] on the need for legislative improvements relating to ICT risk management requirements[7] developed in the context of the FinTech Action Plan – together with the

[2] *EIOPA, Consultation paper on the proposal for guidelines on ICT security and governance, EIOPA-BoS-19-526.*
[3] *A TLPT is a controlled attempt to compromise a company's cyber resilience by simulating the tactics, techniques and procedures of real attackers (see also FSB, Cyber Lexicon).*
[4] *European Commission, FinTech Action Plan: For a more competitive and innovative European financial sector, COM(2018) 109 final.*
[5] *European Banking Authority.*
[6] *European Securities and Markets Authority.*
[7] *ESA, Joint Advice of the European Supervisory Authorities to the European Commission on the need for legislative improvements relating to ICT risk management requirements in the EU financial sector, JC 2019 26.*

supervisory convergence plan of EIOPA – formed the basis for the preparation of the mentioned EIOPA ICT Guidelines, on which the FMA collaborated.

These rules, to be implemented starting 1 July 2021, are based on the comparable EBA Guidelines but take into account the specific requirements of the insurance sector. In addition, the EIOPA ICT Guidelines should be in line with other activities of the European Commission, such as those aimed at improving resilience to cyber attacks[8] or activities relating to the new digital finance strategy for Europe[9].

Moreover, even before entry into force of the EIOPA ICT Guidelines, insurance undertakings subject to Solvency II have been required to adequately manage ICT risks based on the rules for operational risk management and the requirement to carry out an own risk and solvency assessment in conjunction with the EIOPA Guidelines on system of governance and the EIOPA Guidelines on own risk and solvency assessment.[10] The FMA Guide on IT Security in Insurance and Reinsurance Undertakings[11], published in July 2018, presented specific information for supervised undertakings and served to promote a common understanding of the relevant topics. The EIOPA ICT Guidelines replace the FMA Guide.

The FMA also published a Guide for *Pensionskassen*, which is comparable to that published for the insurance sector and is likewise based on the rules for risk management and own risk assessment.[12]

METHODOLOGY OF THE FMA CYBER MATURITY LEVEL ASSESSMENTS

The assessment to be completed by the companies comprises twelve subject areas relating to governance, controlling and operational implementation and ascertains the maturity level of the cybersecurity measures in place. It is based on relevant international standards, in particular CIS Controls[13], ASD (Australian Cyber Security Centre) Essential Eight Maturity Model[14], COBIT 5.0[15], IAIS Application Paper on Supervision of Insurer Cybersecurity[16], ISO 27001[17] and the EIOPA ICT Guidelines.

For the five-level maturity ranking, in which a higher level is associated with a better maturity, the expectations per maturity level for each possible answer are described by the FMA in order to limit the scope for interpretation as much as possible from the outset. The FMA based its ranking on COBIT 4.1 and ISO standards[18].

As a result, maturity levels are measured and compared per company, per sector, for

[8] *European Commission, Consultation on Financial services – improving resilience against cyberattacks (new rules), accessed on 5 August 2020.*

[9] *European Commission, Consultation on a new digital finance strategy for Europe / FinTech action plan, accessed on 5 August 2020.*

[10] *Article 110 para. 2 no. 5 of the Insurance Supervision Act 2016 (VAG 2016;* Versicherungsaufsichtsgesetz*) (operational risk management), Article 111 para. 1 no. 1 VAG 2016 (overall solvency needs) in conjunction with the EIOPA Guidelines on system of governance (EIOPA-BoS-14/253) and the EIOPA Guidelines on own risk and solvency assessment (EIOPA-BoS-14/259)*

[11] *FMA, Guide on IT Security in Insurance and Reinsurance Undertakings (available in German).*

[12] *FMA, Guide on IT Security in* Pensionskassen *(available in German).*

[13] *CIS Center for Internet Security, The 20 CIS Controls & Resources.*

[14] *Australian Government – Australian Signals Directorate, Essential Eight Maturity Model.*

[15] *COBIT 5.0.*

[16] *IAIS, Application Paper on Supervision of Insurer Cybersecurity.*

[17] *ISO, ISO/IEC 27001 Information Security Management.*

[18] *ISO, ISO/IEC 21827:2008 Information technology – Security techniques –Systems Security Engineering – Capability Maturity Model® (SSE-CMM®).*

GOVERNANCE	1. Cybersecurity strategy	3.0
	2. Employees	3.0
CONTROLLING	3. Risk and information security management	2.9
	4. Test methods and practices	2.6
	5. Incident management	2,9
OPERATIONAL IMPLEMENTATION	6. IT assets	3.8
	7. Vulnerability and patch management	3.1
	8. Configuration and security settings	3.2
	9. Authorisation concept	3.6
	10. Data security and encryption	3.2
	11. Network security	3.4
	12. Logging and monitoring	2.9

Figure 3: *Results per subject area in the insurance sector*

individual subject areas and for subject groups, with a particular distinction being made between technical and organisational characteristics *(> Figure 3).*

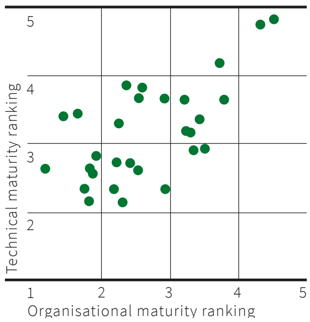
ASSESSMENT RESULTS FOR THE INSURANCE SECTOR AS A WHOLE

In the insurance sector maturity levels per subject area range from 2.6 for test methods and practices to 3.8 for IT assets.

- **Austrian insurance sector as a whole has basic measures in place to ensure cyber resilience**
  Significant steps have already been taken to ensure cybersecurity, with an average maturity level of 3.1. However, there is room for improvement in procedural documentation and ideas for process improvements. When looking at the individual companies, results diverge greatly: average maturity levels range from 2.0 to 4.7. Accordingly, all decisions on necessary measures are to be made individually for each company.
- **No clear correlation identifiable between company size and cyber maturity**
  This is particularly true for those companies in the middle of the assessment range. As expected, in addition to the total amount of premiums written, which were used here as an indicator of company size, other factors also have an impact on the degree of cyber maturity.
- **Involvement of company management bodies in cybersecurity issues should be expanded**
  This can be seen, for example, in practices surrounding reporting to the management board, which is a prerequisite for better decision-making. At most insurance companies, the entire board is regularly informed about cybersecurity issues, but such a flow of information is not yet universally practised. Assessments of the adequacy of staffing levels, which guarantee a sufficient number of professionally qualified employees, also exhibit potential for optimisation.
- **Insurance companies have primarily been focusing on technical security measures – as opposed to governance and controlling**
  On average, at 3.3 technical implementation of cybersecurity solutions achieves a higher maturity level than governance and controlling at 2.9 *(> Chart 4).*
  This is in line with the results of the FMA digitalisation study[19], which showed that IT departments are the driving force behind technological innovations.

[19] *MA, Digitalisation in the Austrian Financial Market – Status Quo, Outlook and Call for Input, June 2019.*

***Chart 4:** Technical versus organisational maturity ranking in the Austrian insurance sector*



Further results and findings on the insurance sector can be found in the FMA's Report on the State of the Austrian Insurance Industry 2019.[20] The detailed results of the Cyber Maturity Level Assessment in the pension company sector are published in the Report on the State of the Austrian *Pensionskassen* 2020[21].

Three general recommendations for action can be derived from the Cyber Maturity Level Assessments of the Austrian insurance industry and pension company sector:

1. **Cyber resilience must be understood as a task for the entire company**
   IT topics affect more than just the IT departments: they are of substantial importance for every business process and for the achievement of business objectives in particular. Each and every employee contributes to the cybersecurity of the company. In particular, the commitment of the management board, e.g. through the definition of an ICT strategy, is decisive for the concrete design of governance and controlling measures as well as operational implementation.
2. **Cyber resilience is a continuous improvement process**
   Absolute cybersecurity cannot be achieved. Technological innovations and changes in the environment require ongoing evaluation and adaptation of the security measures taken. At present, the risks associated with the COVID-19 pandemic, e.g. with regard to potential workarounds for employees working from home, need to be managed.
3. **Responsibility for cyber resilience cannot be delegated**
   The ultimate responsibility for cyber resilience always remains with the outsourcing company. Close cooperation with the service provider and any sub-providers is essential. Moreover, the possible effects of concentration risk, e.g. in relation to business continuity management, must also be considered.

Three general recommendations for action can be derived from the Cyber Maturity Level Assessments: cyber resilience must be understood as a task for the entire company, cyber resilience is a continuous improvement process and responsibility for cyber resilience cannot be delegated.

The Cyber Maturity Level Assessment developed by the FMA and already applied in the insurance and pension company sectors has proven to be a valuable new supervisory tool. It identifies strengths and weaknesses in the information and communication technology systems of the supervised entities, provides important indications for official measures to counteract deficits and security vulnerabilities and thus contributes to strengthening the cyber resilience of the Austrian financial market.

[20] *FMA, Report on the State of the Austrian Insurance Industry 2019, October 2019 (available in German).*
[21] *FMA, Report on the State of the Austrian* Pensionskassen *2020 (available in German).*

REGTECH AND SUPTECH: NATURAL LANGUAGE PROCESSING AND THE TECHNICAL AUTOMATION OF MARKET MONITORING, DATA ANALYSIS AND REPORTING

The FMA, in its capacity as regulator and supervisor occupying a central position in the financial market, has access to a huge amount of data. This data comes from the obligatory reporting carried out by the supervised entities, as well as from the FMA's own surveys and investigations. None of this data is collected for the sake of it. Rather, it is gathered in order to be able to assess the business development and risk situation of the supervised entities so that market developments can be evaluated and so that transactions and financial services can be monitored. Reports submitted by banks as part of their regulatory reporting, for example, enable the FMA and Oesterreichische Nationalbank (OeNB) to assess and monitor the risks and thus the capital requirements of these banks. Meanwhile, with regard to securities trading, the reporting data can be used to monitor market participants' transactions and positions, thereby guaranteeing the integrity and stability of the financial market and combating corruption.

SUPTECH VERSUS REGTECH

The FMA must therefore collect, securely store, process and understand huge quantities of data in order to fulfil its remit effectively and efficiently. This requires complex technical solutions, broadly referred to as "SupTech", as an abbreviation of "supervisory technology". Behind this trendy buzzword lies a simple definition, namely the application of technological innovations by supervisory authorities. Meanwhile, the term RegTech refers to the use of FinTech applications to support financial service providers with their reporting and compliance. Technology companies that offer such

RegTech refers to the use of FinTech applications to support financial service providers with their reporting and compliance.

solutions are often also referred to as RegTechs.[1] The technologies used range from analysis methods for large quantities of data (big data) to the application of machine learning and artificial intelligence through to distributed ledger technology (buzzword: blockchain).

For the FMA, which needs to process data in its capacity as supervisory authority for the financial sector at a time of rapid digital change, the use of innovative technologies is not just indispensable. In fact, SupTech provides the FMA with the opportunity to gain first-hand knowledge and understanding of the technologies used on the market that it supervises.

THE HORIZON 2020 PROJECT

Against the background of the advancing digitalisation of society, the European Commission launched a broadly based research and innovation programme entitled "Horizon 2020" back in 2014. The programme is designed to promote cooperation between research, supervision and innovative businesses and to drive forward the digitalisation process in the European Economic Area (EEA). The project entitled "A FINancial supervision and TECHnology compliance training programme" is part of the Horizon 2020 programme. Its aim is to make the European FinTech sector more competitive and to help create a level playing field with fair competition throughout the European single market. In order to achieve this goal, supervisors, universities and FinTechs should work together to create and apply innovative solutions in the field of RegTech and SupTech. One of the main focuses is on using digitalisation to support compliance with supervisory law.

The initiatives for solving specific problems, referred to as "use cases", are designed to develop tools for specific applications and also to promote an active exchange of knowledge and experience between the project partners from the different fields. The close cooperation within the projects creates new networks in the internal market and helps reduce any barriers between researchers, supervisors and innovative users, which may be anxious about collaborating. In this way, FinTechs discover open and positive access to supervisory law and supervision itself. The idea is that working together with practitioners will open up new perspectives to the scientific world.

One particularly exciting and successful example of the potential of this interdisciplinary cooperation and the use of innovative technologies in supervision is the automation of risk-based market monitoring for packaged retail investment products and insurance-based investment products. This is an area in which the FMA is responsible for supervising compliance with the European PRIIPs Regulation[2], one of the key focuses of which is the design of key information documents for this product type.

SUPTECH TOOL FOR PRIIP KIDs

The PRIIPs Regulation prescribes a highly standardised Key Information Document

[1] *Cf.: Basel Committee on Banking Supervision: Sound Practices: implications of fintech developments for banks and bank supervisors, February 2018; Financial Stability Institute Insights – Innovative technology in financial supervision (suptech) – the experience of early users, July 2018; ESMA Report on Trends, Risks and Vulnerabilities No. 1/2019.*

[2] *Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs).*

(KID) for PRIIPs across all sectors. Before this type of product is offered to retail investors, the provider must make a KID freely available on its website for each specific product. Distributors must provide retail investors with this KID in good time before any contract is concluded. In this way, retail investors should have the benefit of an easily comprehensible and brief overview (maximum of three pages) of this investment product's essential features. Furthermore, standardising the type of document needed across all sectors enables retail investors to compare different products. In addition to a product description, the KID must also include an overall risk indicator as well as performance scenarios and a presentation of the product costs. This information sometimes requires complex mathematical calculations, but the results of these must be presented in a precisely specified form and in a way that is easy to understand.

In Austria, in terms of the number of financial investment products issued, most of the issuing activity covered by the PRIIPs Regulation relates to banks. Depending on issuing cycle (with some products only running for a very short time), this amounts to between 6 000 and 15 000 products per reporting date, which means the same number of PRIIP KIDs being written and published. The KIDs must also be updated to take account of market developments at least once a year, or even daily in the case of certain volatile products, and then re-published. This results in a huge volume of documents on the Austrian market alone, with around 30 000 pages being produced for every reporting date.

Even with a risk-based approach to analysing the KIDs, the FMA would face an almost insurmountable workload were it to rely on manual reviews. In addition, the Austrian PRIIPs Enforcement Act makes no provision for the (advance) notification of PRIIP KIDs to the FMA, and the FMA is also not required to approve or endorse them in any way. The KIDs "only" need to be published on the provider's website.

A further complicating factor is that, in contrast to the traditional reporting system, the data from the PRIIP KIDs is not available in an easily machine-readable form. Rather, the data is contained in thousands of pdf files containing text, figures and tables. Despite the strict requirements of the PRIIPs Regulation, the providers also have a certain amount of freedom in terms of design (e.g. text, formatting etc.). For this reason, and because the specifications for the respective product types, such as bonds or OTC derivatives, differ greatly in some areas, the PRIIP KIDs are often very different from one issuer to another and from one product to another despite their common basic structure.

The FMA, as the supervisory authority responsible for compliance with the PRIIPs Regulation by the legal entities it supervises, therefore faces three major challenges particularly with regard to banks:

- to locate and download all available PRIIP KIDs on the providers' websites,
- to convert the pdf files it finds into a uniform machine-readable form, and
- to analyse this data and turn into usable data for supervision purposes.

For resource reasons alone, a manual solution would be out of the question given the high number of KIDs involved. Such a complex and extensive task is therefore the perfect area for the application of SupTech. The innovative digital problem solution must, at least from a risk-based perspective, create a market overview and identify conspicuous KIDs so that these can then be addressed using traditional administrative procedures.

The FMA has therefore developed a SupTech tool that can already overcome some of the problems mentioned above:

It has, for example, designed software using the R programming language to automate the process of downloading PRIIP KIDs from the relevant credit institution websites. This software can be used to download all KIDs, especially in the case of issuers that publish in large numbers (several thousand KIDs). The tool is constantly being further developed in order to minimise the number of manual interventions still needed in some areas and to speed up the process.

The pdf files obtained in this way are also automatically converted into machine-readable text in R. Using rules-based text mining algorithms, the essential information and figures are extracted from the texts and used to create a statistical market overview. The data is then analysed, once again as part of an automated process in R. Conspicuous products, product classes and issuers are identified automatically and as part of a rules-based process, forming the basis of risk-based supervision. The rules applied relate, for example, to maximum and minimum performance values, costs, the number of performance scenarios required based on the product term, or certain statistical comparison rules, and are derived from the FMA's supervisory experience.

This (partially) automated SupTech solution enables comprehensive market monitoring in this area, creates a valuable market overview and reliably identifies conspicuous PRIIP KIDs. As a result, the FMA has been able to assume a pioneering role in PRIIP supervision in the EEA. A further benefit is that the PRIIP KIDs prepared by Austrian credit institutions are of a particularly high standard in terms of presentation compared with other EU countries.

The SupTech tool for monitoring and analysing PRIIP KIDs is now being developed further in cooperation with Vienna University of Economics and Business (WU) as part of the Horizon 2020 programme in the form of the use case "Using artificial intelligence and big data to review PRIIP KIDs for the further development of the FMA's automated market monitoring approach". The main goals are to further reduce the manual effort required, to make the application as user-friendly as possible, to incorporate new and innovative methods into the analysis, and to automate the reporting and visualisation of the data and findings obtained. It has also been shown that artificial intelligence and machine learning in data analysis can reveal patterns and trends that are barely discernible to human operators.

The SupTech tool will now be further developed in three modules as part of this new project:

- **Module 1:** A fully automated web crawler, a program for the automated download of PRIIP KIDs from the websites of the providers/credit institutions, aims to tackle the issues of complex websites and download delays in particular.
- **Module 2:** Using artificial intelligence, a complexity indicator for these investment products is to be extracted from the information contained in the PRIIP KID. The program analyses the content of the KID and identifies certain product features, such as whether the product includes a guarantee or the type of option (European, American, exotic). Conclusions about the complexity of the product can be drawn from the type and number of product features. This information is a useful indicator for risk-based supervisory practice. The identified product features can also be used to classify products. From a technical perspective, the analysis is performed by artificial intelligence developed specifically for speech recognition and process-

ing: BERT (Bidirectional Encoder Representations from Transformers). This artificial intelligence was trained and tested using a data set provided by the FMA. First of all, however, a large number of PRIIP KIDs had to be examined and categorised using human intelligence.

- **Module 3:** For (partially) automated reporting, the internal FMA report on PRIIP market monitoring, which has been carried out manually to date, is to be largely automated in the R programming language. However, certain texts and conclusions and the interpretation of certain data will remain the domain of human intelligence for some time to come.

SUPTECH TOOL FOR INVESTMENT FUNDS

Since as long ago as 2010, and thus before the introduction of the PRIIP KID, European law[3] has required the provision of standardised key information documents for investment funds. Under Austrian law, management companies supervised by the FMA must prepare and publish such customer information documents ("investment fund KIDs")[4] for all Austrian retail funds. These documents must contain legally prescribed, uniformly structured information, including in particular the objectives and investment policy, performance, risk and return profile, and certain costs of the fund. In contrast to PRIIP KIDs, however, the FMA is aware of the funds for which investment fund KIDs are required, which is why there is no need for any fully automated web crawler in this area. Market analysis is already being carried out using data from the investment fund KIDs, such as the annual FMA market study on the fees charged by Austrian retail funds[5]. Market screenings are also carried out.

SupTech refers to the application of technological innovations by supervisory authorities.

Based on the findings of the PRIIPs project, the Horizon 2020 programme is now evaluating to what extent the second and third modules of the PRIIPs tool can also be used for the supervision of investment funds and analysis of investment fund KIDs. Given that the latter are also highly standardised documents, the FMA's view is that automated and rules-based analysis would also be a suitable approach in this area. In this way, anomalies in individual funds can be identified quickly, efficiently and effectively, contributing to a targeted and resource-efficient review of relevant supervision issues.

Cooperation within the Horizon 2020 project has impressively demonstrated how innovative SupTech and RegTech approaches can be used to make supervision more efficient and more effective. This is why the FMA is already developing more ways of using digitalisation and artificial intelligence to automate work processes and to enhance the multidimensional character and usability of its data.

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[3] Commission Regulation (EU) No 583/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards key investor information and conditions to be met when providing key investor information or the prospectus in a durable medium other than paper or by means of a website.

[4] There is currently an exemption for the production of PRIIP KIDs.

[5] https://www.fma.gv.at/en/fma-spotlight-on/fees-charged-by-funds/

NEW BUSINESS MODELS

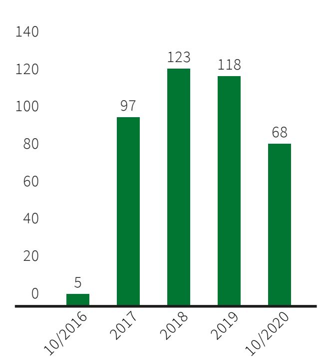
THE FMA'S REGULATORY SANDBOX: MODEL AND IMPLEMENTATION

In Austria, discussions to introduce a regulatory sandbox have been ongoing since the first models emerged internationally, particularly when the UK's Financial Conduct Authority (FCA) established its own sandbox.[1] These discussions centred around the questions: how should we design a programme for FinTechs to help them break down the barriers to the regulated financial market, to improve innovative business models' regulatory fitness and to ensure the Authority keeps abreast of new developments in the market? What could be the role of the FMA, whose statutory remit is to ensure financial market stability but not to promote competition?

Without doubt, financial innovation is vital for a dynamic financial market. In 2016, the FMA therefore set up its FinTech Point of Contact and established it as Austria's innovation hub.[2] The intention was to create a central point of contact at the FMA for young and innovative firms, and to pool all relevant knowledge in one place. Indeed, it was mostly young firms that took advantage of the tailor-made information offer and the easy and direct FinTech enquiry service to test their business ideas for regulatory compliance. The service provided by the Point of Contact continues to be in high demand, handling more than 100 enquiries from Austrian and international FinTechs every year *(> Chart 5)*.

As a progressive Authority, we cannot just sit back and admire our work, satisfied with what we have achieved so far. We are always aiming higher by trying out new approaches. Accordingly, the FMA observed and analysed other jurisdiction's sand-

Chart 5: *FinTech enquiries 2016–2020*



[1] *The UK launched its sandbox in 2016 and has published its first "Regulatory sandbox lessons learned report", see https://www.fca.org.uk/publication/research-and-data/regulatory-sandbox-lessons-learned-report.pdf.*

[2] *https://www.fma.gv.at/en/fintech-point-of-contact-sandbox/fintech-navigator/.*

box models, such as those in Denmark, Malta, Poland, Lithuania, the Netherlands and Norway, drawing its conclusions from the lessons learned with existing models and proactively discussing new approaches for Europe.
At national level, discussions intensified when the FinTech Advisory Board set up at the Federal Ministry for Finance (BMF) became operational in April 2018. This body is made up of experts from the BMF and FMA, FCA representatives in charge of the UK's sandbox, as well as FinTechs and representatives of the established industry. Their knowledgeable in-depth discussions have focused on the transformation of existing business models into digital ones, potential regulatory or supervisory barriers for FinTechs and the possibility of establishing a regulatory sandbox in Austria. The sandbox is a project that has from the very beginning been geared to the market's needs and adjusted to the legal and administrative possibilities, by involving both stakeholders and regulators and supervisors. On 1 September 2020, the FMA launched its sandbox programme.

STEERING FINANCIAL INNOVATION

The objective of the sandbox is to foster and support innovation, thereby increasing the attractiveness of Austria as a base for business. At the same time, it helps to advance supervision: knowledge can be expanded and new dynamics in the market spotted at an early stage if the Authority keeps up to date with new technologies.
This is beneficial to both sides of regulation, and also to society at large, as reflected in the sandbox's funding: while the FMA's regular supervision work is almost exclusively funded by fees paid by the supervised entities, the sandbox receives an annual budget of € 500 000 from the Federal Government. The FMA uses this budget solely for the sandbox, so that FinTechs participating in it do not have to bear any costs. However, if a licence is required for the test phase, standard licence fees will have to be paid, as in the case of every other licence application.

DIFFERENCES BETWEEN SANDBOX AND INNOVATION HUB

An innovation hub like the FMA's FinTech Point of Contact serves the purpose of ensuring supervisory transparency, of providing information and exchanging information with FinTechs.

A distinction is made today between an innovation hub and a regulatory sandbox:
Innovation hub: The FMA's FinTech Point of Contact is an innovation hub. It serves the purpose of ensuring supervisory transparency, of providing information and exchanging information with FinTechs. It can be contacted long before actual market entry, when the FinTech's idea has not been thoroughly thought-out, as is often the case. The FinTech Point of Contact provides information about the supervisory framework for a planned product or service but does not offer additional support. Innovation hubs such as the FinTech Point of Contact are usually consulted by young companies, but also by established technology providers and financial service providers cooperating with young FinTechs.
Regulatory sandbox: The regulatory sandbox is intended to prepare FinTechs for the supervised market by allowing them to test a specific product or service in a live market environment. The business model must be well advanced and "ready for testing", and the FinTech is then guided by the supervisory authority and steered through the regulatory environment for an extended period of time (two years maximum). For non-licensed companies, the sandbox means that the licensing process is tailored to

its needs while taking account of existing statutory requirements. Following licensing, the model's testing phase starts and it goes "live". The overarching aim is to transfer the company over to regular supervision at the end of the sandbox test. Established licensed companies with innovative business models[3] may also use the sandbox to test whether their planned new processes and technologies fit within the regulatory framework.

The sandbox is a tool to apply the principle of proportionality in (FinTech) supervision in a targeted and tailored manner: where the Authority has a statutory margin of discretion, it may set a specific regulatory (testing) framework for the FinTech. Still, supervised entities must at all times adhere to all binding laws, requirements and on-going obligations, even in the sandbox.

It should be noted that a regulatory sandbox is not meant to provide economic or management consulting, to help secure funding or to arrange for the acquisition of equity stakes in the FinTech.

Internationally, there is currently no uniform framework for or general understanding of what a regulatory sandbox should actually do or achieve. National sandbox models therefore vary greatly, and cannot be compared. As a consequence, there has been some misunderstanding about what constitutes a "test" of a business model in the sandbox: does it mean that a service subject to licensing requirements may be rendered before that licence has been granted, or with some sort of "light licence"? Such misunderstood concepts were easily explained, as financial market law is as a rule enshrined in European directives and regulations, with little scope for nations to do their own thing in terms of the regulatory framework. It would not be sensible to lower regulatory requirements either: FinTechs do not come with fewer risks than traditional business models, and easing the regulatory and supervisory requirements for new technologies would not be in line with the principle of technological neutrality as endorsed by regulators and supervisors. This would run counter to the principle of ensuring a level playing field for all, i.e. fair competitive conditions for all products, sectors, providers and technologies.

The FMA's regulatory sandbox therefore follows this principle, as do other countries within the European Economic Area: no banking activities, securities transactions, payments services, insurance business and other activities that require a licence permitted without a licence; no business subject to registration permitted without registration; and no public offer permitted without a capital market prospectus.

THE SANDBOX PROVISION SETS THE LEGAL TONE

A new provision was added to the FMA's primary law, the Financial Market Authority Act (FMABG; *Finanzmarktaufsichtsbehördengesetz*): Article 23a details the conditions for admission to the sandbox, the principles of the whole process and the financing of expenses.

The Austrian law is based on the Joint ESA report on regulatory sandboxes and innovation hubs.[4] Austria's sandbox complies with this common European understanding. However, Austrian constitutional and procedural law is strongly characterised by the

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[3] *The FMA regards these companies as FinTechs, which is why they can also be sandbox firms.*

[4] *https://www.esma.europa.eu/sites/default/files/library/jc_2018_74_joint_report_on_regulatory_sandboxes_and_innovation_hubs.pdf.*

Figure 4: *The four phases in the regulatory sandbox*

1	2	3	4
ADMISSION	**PRE-SUPPORT**	**SANDBOX TEST**	**EVALUATION**
In consultation with the Regulatory Sandbox Advisory Board	Preparation and guidance, determining of test parameters	Financial service provision with newly granted licence	Final report and exit, transfer to regular supervision

principles of legality, of settling matters with an administrative decision including the option to file appeals and the Authority's obligation to state the reasons for decisions and its accountability. The FMA's scope to admit or reject companies and subsequently interact with them is therefore limited. At the same time, lawmakers favour a thoroughly integrated and flexible institution: the Authority should engage with companies directly and clarify matters swiftly. It remains to be seen whether the processes can meet all the varying requirements in practice.

ADMISSION

The sandbox can be used by companies wishing to provide financial services that require a licence or registration and wanting to test their business models. An application for admission can be filed at any time, but must include proof of the admission criteria being fulfilled. On its website, the FMA has compiled all necessary information and documents under "FinTech Point of Contact & Sandbox".
Please note: an application to be admitted to the regulatory sandbox must be filed with the FMA before activities requiring a licence are commenced.
The FinTech Point of Contact will continue to be a valuable initial contact point to find out whether a business model is even subject to supervision, and it will continue to exist as an innovation hub.
If a licensed company applies to be admitted together with a non-licensed FinTech, only the business model of the non-licensed FinTech must be in the development stage (e.g. a particularly innovative onboarding system to be implemented by the licensed company). In this case, the two sandbox participants should have entered into a cooperation agreement, clearly dividing the roles and responsibilities and ensuring that their cooperation runs smoothly.
Prior to admission to the sandbox, the FMA verifies that the conditions set forth in Article 23a para. 2 FMABG are actually met:

- Is the business model based on information and communication technology (ICT)?
- Is the business model subject to supervision by the FMA, i.e. is there any obligation to hold or obtain a licence, approval, authorisation or registration?
- Is the business model subject to an evaluation by the FMA and not by the European Central Bank (ECB), the Single Resolution Board or a European Supervisory Authority?
- Is it in the economic interest of an innovative financial centre due to its innovation value?
- Is there a threat to financial market stability or consumer protection?
- Is it ready for testing? Do any general legal or technical impediments exist?
- Can market readiness be accelerated by the sandbox?

- Can outstanding regulatory issues be cleared up?

To evaluate the enhanced innovation value as well as market and test readiness, the Regulatory Sandbox Advisory Board must submit an opinion. This body has been set up at the Federal Ministry for Finance (BMF) and is composed of representatives from the BMF, the Federal Chancellery, the FMA and Oesterreichische Nationalbank (OeNB), as well as members with specific professional experience or other relevant expert knowledge (particularly industry or research).

PRE-SUPPORT BEFORE TESTING

After admission to the sandbox, the FMA forms an individual FinTech Supervisory Team for each single company. The idea behind this is that every company should be individually advised by a tailored team of FMA experts irrespective of business model. The company and team then agree on the test parameters, milestones and timetable for the test. If a licensing process or extension of the licence is required for the planned activity, the regulatory process is explained and possible limitations and requirements discussed.

This phase is usually completed with the FMA issuing an administrative decision granting the licence, extension or registration. The company is now allowed to engage in activities requiring a licence or registration, and the testing phase may be started. The licensing process is usually conducted in accordance with the provisions in the individual supervisory laws, taking account of the size, risks, equipment and processes of the specific company. Within its scope of supervisory discretion under law, the FMA may also set less stringent requirements than apply to other companies (e.g. in relation to certain documentation obligations that may be postponed) or impose appropriate conditions.

A regulatory sandbox is a protected environment to prepare FinTechs for a regulated activity, allowing them to test their business model in a live market.

THE TESTING PHASE

Each sandbox test begins with publication of a brief description of the specific business model on the FMA's website. Sandbox participants may also communicate their business models and specific features that are being tested in the sandbox. However, they are not allowed to suggest that participation in the sandbox constitutes a benefit for consumers, and must phrase their information objectively. If this rule is broken, sandbox testing may be stopped immediately.

Once in the sandbox, participants can offer their services, in accordance with the scope of their licence or registration, in the market – and are supervised along the way. The test parameters and milestones are regularly discussed in management meetings with the FinTech Supervisory Team.

EXIT FROM THE SANDBOX

The test can be closed down at any point. For example, if it becomes clear during the process that a particular business model cannot be implemented within the scope of a licence. Or that it might make more sense to implement it not with the company having its own licence but through a licensed partner. After all, the sandbox is used to test whether a business model can be realised under supervision and by the designated persons, and it should emerge from the process stronger. Withdrawing from the sandbox does not mean the FinTech's idea has failed. It might very well be successful outside regulation, possibly with an adapted business model.

The FinTech Point of Contact has dealt with several companies which, after being told that they needed a licence from the FMA, have adapted their business model and changed their services in order to legally operate in the market without a licence.

The aim of the whole testing exercise is to transfer sandbox participants over to regular supervision, sooner or later. The administrative decision granting the licence can include new provisions, if necessary, or repeal others. The law no longer requires an evaluation of the test before moving over to regular supervision. Insights from sandbox models in other European countries have shown, however, that there is much to be gained from thoroughly analysing the sandbox process, both for the FinTech and for the supervisor. The company may find areas that require additional attention, while the FMA can use the lessons learned from specific supervisory cases and experience gained with new technologies for its own regulatory work. The FMA may also find regulatory loopholes or insufficiencies going beyond the individual businesses, and feed those findings into future legislative proposals.

The overriding objective is to ensure that there is less regulatory burden for companies later on: as they will have gone through an intense and fruitful sandbox phase, they will have implemented their processes in a careful and sustainable manner from the onset and in close cooperation with the FMA. Ultimately, however, the market will decide whether a business model is successful in the long run, and not the sandbox.

HOW EUROPEAN IS THE SANDBOX?

Digitalisation facilitates cross-border activities, often even enabling that step across the border in the first place. In addition, supervisory law has meanwhile been largely harmonised at European level. Banking supervision is now partly the remit of the European Central Bank, within the Single Supervisory Mechanism (SSM), and national authorities are already supervising a variety of companies that have implemented FinTech models in accordance with national and European law. Accordingly, international coordination on topics related to FinTechs has grown and accelerated over the past few years. A dedicated Expert Group established by the European Commission has been tasked with identifying and removing regulatory obstacles to financial innovation within the EU[5] to facilitate cross-border activities and enable providers to make full use of the vast internal market.

In its "FinTech Action plan: For a more competitive and innovative European financial sector"[6], published in March 2018, the European Commission suggested conducting further analysis in relation to so-called innovation facilitators, i.e. regulatory sandboxes and innovation hubs. Subsequently, the European Supervisory Authorities (ESAs)[7] jointly published a report in January 2019: "FinTech: Regulatory sandboxes and innovation hubs". The report provides clear definitions and corrects a number of misun-

[5] *The final report submitted by the Expert Group to the Commission can be found at: https://ec.europa.eu/info/publications/191113-report-expert-group-regulatory-obstacles-financial-innovation_en.*

[6] *https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52018DC0109&.*

[7] *The ESAs are comprised of the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA).*

derstandings, looks into the pros and cons as well as the opportunities and risks of established innovation facilitators, lists their differences and sets out a number of best practices in its annex. It therefore provides a good basis for designing new sandbox models as well as new types of innovation hubs.

Many different innovation hubs and sandboxes have meanwhile been set up across Europe; they differ in their functionalities but pursue similar aims.[8] Austria's regulatory sandbox was the seventh of its kind in Europe. The national sandboxes operate autonomously in their respective region but all within the European regulatory framework. However, no national sandbox may circumvent European supervisory law and, for example, allow a payment service provider to work as a payment institution without a licence "for testing purposes". The revised Payment Services Directive (PSD II) requires all payment service providers in Europe to hold a licence.

The European sandboxes and innovation hubs have meanwhile established a joint forum, the European Forum of Innovation Facilitators (EFIF)[9], with the aim of promoting greater coherence in national solutions. This is a joint platform of the three ESAs (EBA, EIOPA and ESMA), in which countries' young sandbox models are analysed, discussed and advanced. "Forum shopping" or regulatory arbitrage, which is the practice of trying to exploit supervisory authorities' different approaches for one's own benefit, should be prevented in this way. EFIF develops common regulatory approaches to innovative products, services and business models. The FMA is also taking part in these meetings – formerly with its FinTech Point of Contact and now with its new FinTech Point of Contact & Sandbox.

There are currently no efforts to establish a "European" sandbox, and this is not expected to change in the near future. However, the European Commission has confirmed its support for the establishment of innovation facilitators (most recently in its Digital Finance Strategy for the EU[10] of 24 September 2020) and aims to strengthen the innovation network provided by the EFIF; a procedural framework for cross-border sandboxes is to be launched too.

Many market participants have long since voiced their interest in an Austrian sandbox solution. We will see whether this innovative possibility of testing business models will meet a genuine demand and boost innovation, as we hope it will.

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[8] An up-to-date list of all sandboxes and innovation hubs can be found at: https://esas-joint-committee.europa.eu/efif/innovation-facilitators-in-the-eu.

[9] https://esas-joint-committee.europa.eu/efif/efif-homepage.

[10] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0591&.

COLLECTIVE CONSUMER PROTECTION

IGNORANCE OF THE LAW IS NO EXCUSE: CONSUMERS IN CONFLICT WITH FINANCIAL REGULATIONS

In the course of its operational activities, the Austrian Financial Market Authority (FMA) repeatedly encounters retail investors and consumers who are engaging in financial transactions that breach existing rules and laws, for the simple reason that they are not aware of them. However, ignorance of the law is no excuse. This is an indisputable principle of law. This means that nobody can excuse their actions by saying that they did not know that they were breaching a statutory prohibition or a legally stipulated obligation, and criminal intent is not a prerequisite for a culpable act. The FMA is obliged to appropriately sanction such breaches.

Two particularly common breaches that consumers and retail investors commit through negligence are:

- Self-dealing (cross trades) with securities on the stock exchange, which falls under the offence of market manipulation; an administrative offence that the FMA is required by law to sanction with an administrative penalty.
- Non-disclosure of trust transactions, i.e. a customer does not inform their bank that they are executing transactions through their own bank account for the account of another. This constitutes a breach of the due diligence obligations to prevent money laundering and terrorist financing, an offence that also falls within the FMA's administrative penal competence.

In both cases, supervised companies are legally obliged to immediately report any suspicion they might have about a possible breach to the competent authority, namely the FMA.

CROSS TRADES – SELF-DEALING WITH SECURITIES

MARKET MANIPULATION

The European Market Abuse Regulation (MAR)[1] aims to combat illegal insider dealing and market manipulation on Europe's financial markets. As an EU regulation, this legal act applies directly in Austria.

According to the MAR[2], the offence of market manipulation is committed by anyone who places orders to trade or enters into transactions that:

- Give, or are likely to give, false or misleading signals as to the supply of, demand for, or price of, a financial instrument
- Secure, or are likely to secure, the price of one or several financial instruments at an abnormal or artificial level (unless there are legitimate reasons and this conforms with an accepted market practice) or
- Employ a fictitious device or any other form of deception or contrivance.
- The dissemination, through the media, of information, rumours or news that give false or misleading signals about financial instruments to the market is also defined as market manipulation.
- Likewise, the transmission of false or misleading information or provision of false or misleading inputs in relation to a benchmark or any other behaviour which manipulates the calculation of a benchmark is also classed as market manipulation.

The FMA is obliged to sanction the offence of market manipulation either by way of administrative penal proceedings or in criminal proceedings through the courts. The type of prosecution depends on the transaction amount. The FMA is responsible for cases involving less than € 1 million while the public prosecutors and courts deal with higher amounts.

If responsibility lies with the FMA, the Authority is required to sanction the administrative offence with a fine of up to € 5 million or up to three times the pecuniary benefit gained from the breach including any loss avoided (provided the benefit gained can be quantified)[3]. In addition, any pecuniary benefit gained is to be declared forfeited.

If the offence falls within the jurisdiction of an ordinary court, the applicable sentence is a minimum of six months and up to five years' imprisonment[4].

In both cases, i.e. regardless of whether the offence is punishable under administrative penal law or falls within the jurisdiction of the courts, legal entities (the responsible company) may also be held accountable. In such a case, the maximum fine is € 15 million or 15% of the entity's total annual revenue.

If the FMA has reasonable suspicion of a breach that falls within the jurisdiction of the courts, it is obliged to report the case to the public prosecutor's office.

TRADING RULES OF THE VIENNA STOCK EXCHANGE

One of the main aims of the Trading Rules of Wiener Börse AG is to counteract and

1 Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC.
2 Article 12(1) MAR.
3 Article 154 para. 1 no. 3 of the Stock Exchange Act 2018 (BörseG 2018; Börsegesetz).
4 Article 164 BörseG 2018.

prevent potential market abuse. Supervision of trading in listed securities should ensure that all transactions comply with the rules of fair and proper trading. In this context, compliance with Vienna Stock Exchange's Trading Rules[5] is also verified.

The Trading Rules of the Vienna Stock Exchange specify that the entry of opposite trades by a single exchange member for the same security which may be matched and lead to the execution of an order in the trading system (cross trades) is not permitted. This is on condition that the exchange member acts knowingly, or negligibly in the case of algorithmic trading engines, on both the buy and the sell side for its own account or for the account of one and the same customer.

CROSS TRADES OR SELF-DEALING

Cross trades or self-dealing are fictitious transactions. Opposite orders for one and the same financial instrument traded on a regulated market are placed by one and the same person and subsequently executed. The identity of the beneficial owner does not change, which is why this is referred to as self-dealing.

While professional market participants are (or should be) aware of the fact that such transactions are not allowed, the FMA catches retail investors executing such transactions time and again, without them being aware or knowing that their behaviour is illegal.

They place buy and sell orders at the stock exchange for the same security simultaneously or within very short periods of time. If these orders are matched, i.e. when the trading system links the opposite orders to create a transaction and sets the price, the investor is in fact buying back the sold security. This means that they have executed a cross trade and committed the offence of market manipulation.

In the course of many related administrative penal proceedings against retail investors, the FMA has continually encountered the same reasons for their misconduct:

- In many cases, retail investors do not even know that it is technically possible to buy their own security on the stock exchange, in other words to be buyer and seller at the same time. Since they are unaware of the technical possibilities, they are often oblivious to the risk of self-dealing when placing a buy and a sell order for the same security within a short period of time.
- Retail investors also frequently do not know the Vienna Stock Exchange's Trading Rules well enough.
- In the vast majority of the cases they are unaware that such transactions are forbidden. To them, they have merely committed a negligible administrative infringement as they did not execute the cross trade deliberately and certainly not with any intent to cause damage.
- Cross trades happen particularly often with illiquid securities, the trading volumes for which are usually very low. This is because, usually, no orders or only very few orders are placed with which matching is possible in the case of illiquid securities.
- In some cases, the accused persons claim to have forgotten about their first order by the time they placed the opposite order.
- Many retail investors place such opposite orders leading to cross trades and self-dealing to dress up their tax returns, using them to offset losses:
  Income from securities is subject to 27.5% capital gains tax. Losses from securities

[5] *Article 33 para. 1 BörseG 2018.*

transactions can only be offset for tax purposes against income/profits from such transactions if they have actually been realised within the same calendar year. Otherwise, they are of no consequence for tax treatment; mere book losses cannot be taken into account.

With self-dealing, the aim is to actually realise a security's book losses in order to further reduce the tax payable on profits already recorded during the same year (including capital gains tax from dividends and interest). A tax loss is generated if an investor sells a security that they originally purchased for a higher price at the current lower price. Since the investor actually wants to keep the security as they expect to make profits from it in future, they buy it back – for roughly the same price. In other words, the investor wants to keep the security in their securities account but, in the meantime, also wants to realise any book losses for tax purposes. To this end, they place a buy order at the same time or soon after their sell order, so that these orders can be matched (theoretically). It is precisely this process that prepares the ground for self-dealing, which is prohibited under the Trading Rules of the Vienna Stock Exchange, and which constitutes market manipulation.

The permitted course of action would be to sell the security to a third person and then buy it back subsequently, even if this repurchase is made on the basis of the same price. This type of "buying back", unlike "buying from yourself", is permitted under administrative penal law. The latter would be considered self-dealing.

Fictitious transactions, which include the above cross trades by retail investors for tax optimisation reasons, send out misleading signals to other market participants regarding the actual supply of and demand for securities. The fictitious transaction carried out for no economic reason generates sales (volume) in a security, giving a misleading signal to the market that may have an effect on the price. Sales trends are, after all, used by investors to gauge a financial instrument's future price development.

Such fictitious transactions create misleading signals, particularly in narrow markets, i.e. in the case of illiquid securities with typically very low trading volumes: the price level reached does not accurately depict or no longer depicts the result of natural developments in the market. The market price is no longer the result of unimpeded supply and demand, a concept deserving protection, but is based on transactions that lack the economic relevance normally found in transactions on the stock exchange. The resulting pricing leads invested and potential investors astray, as they cannot know that one and the same person is behind both supply and demand.

The self-dealing caused an abnormal or artificial price level: the price of the share is now higher or lower than it would have been if the general pricing criteria for a listed company had been applied.

The more market participants are involved in the pricing process through their buy and sell orders, the more likely there is to be an appropriate price level for that share. An artificial price level may, in the short term, be created by one single market participant. The less liquidity associated with trading in a share, the more likely (and thus the more dangerous) it is that there will be cross trades/self-dealing, resulting in an abnormal or artificial price level.

As soon as an investor places opposite orders for the same security within a short period of time and they match, this constitutes a cross trade (or self-dealing) and thus market manipulation under the law.

The offence is deemed to have been committed irrespective of whether investors were aware of it, whether they acted intentionally or negligently, i.e. not as prudently as could have been expected. The competent authority is obliged to carry out an investigation into the matter and to duly sanction any breaches.

HIDDEN TRUST RELATIONSHIPS – A BREACH OF STATUTORY ANTI-MONEY LAUNDERING OBLIGATIONS

Criminal intent is not a prerequisite for a culpable act when an action is assessed from an administrative penal perspective.

Money laundering is the process of channelling illicit funds or illegally obtained assets into the financial and economic system. This is done to conceal the illegal origin of the proceeds of crimes (predicate offences) and to launder those funds. The criminal proceeds are moved around the globalised financial world through many cross-border transactions until their true origin can no longer be traced, or only with great difficultly. To fight organised crime, drug dealing, human trafficking and the illegal weapons trade as well as the financing of worldwide terrorism, the international community has agreed on a set of global standards to prevent money laundering and the abuse of the global financial system to finance it. These FATF Recommendations, developed by the Financial Action Task Force, are used throughout the world's financial systems, and were also incorporated into the anti-money laundering directives adopted by the European Union.

In Austria, they were included in the Financial Markets Anti-Money Laundering Act (FM-GwG; *Finanzmarkt-Geldwäschegesetz*), which includes extensive AML due diligence and reporting obligations. Provisions relating to the beneficial owner laid down in the Beneficial Owners Register Act (WiEReG; *Wirtschaftliche Eigentümer Registergesetz*) supplement those in the FM-GwG.

OBLIGATIONS FOR FINANCIAL SERVICE PROVIDERS

Statutory due diligence obligations apply first and foremost to credit institutions and payment service providers and only secondly to other individuals and businesses active in the financial industry (e.g. insurance undertakings, investment services providers, AIFMs or even the Austrian Post with regard to its money transaction business). Accordingly, financial service providers are required, at the time of establishing a business relationship (e.g. opening of a current account), to:

- Identify their customers
- Identify the true beneficial owner
- Record the type and purpose of the business relationship (What does the customer need the account for? What type of transaction behaviour is to be expected?)
- Clarify the source of funds (professional activity or other income?).

In keeping with the know-your-customer (KYC) principle, the credit institution must be able to assess at all times whether the transactions subsequently carried out or the actual customer behaviour are in fact in line with expected customer behaviour or whether they should be regarded as unusual.

This means that the financial service provider must have sufficient information in order to be able to spot any abnormalities and investigate the actual situation accordingly (e.g. by enquiring with the customer or by obtaining meaningful supporting documents) and, if necessary, to stop the respective transactions and forward the requisite information in the form of a suspicious transaction report[6] to the Financial Intelligence Unit.

Compliance with the due diligence and reporting obligations not only prevents money laundering and terrorist financing by deterring individuals who intend to abuse the Austrian financial marketplace for their criminal purposes, due to the transparency rules applicable to customers, but also helps criminal prosecution authorities (down the line) with their investigation and prosecution activities.

OBLIGATIONS FOR CUSTOMERS

Apart from the requirements imposed on financial service providers, the FM-GwG also contains obligations for the customer that are indispensable for monitoring business relationships. These provisions oblige customers to provide information and to prove the validity of that information by presenting corresponding documents. Of particular significance in this respect is the obligation to disclose trust relationships.

STATUTORY OBLIGATIONS RELATING TO TRUST RELATIONSHIPS

A trust relationship is a legal relationship whereby one person (trustor) transfers rights to another person (trustee). The trustee may only exercise the rights granted to them in a certain way, owing to the special relationship with the trustor; they are therefore contractually limited in their power of disposition.[7] If the trustee breaches the agreement concluded with the trustor, however, this does not in any way impact on the validity of any dispositions made by the trustee in relation to third parties.

In the financial industry, a trust relationship is one where the customer (trustee) maintains a business relationship or carries out the occasional transaction in their own name but for the account of or on behalf of another. The trust relationship is therefore based on a formal or informal agreement between the trustor and the trustee, whereby the trustor entrusts funds to the trustee. The trustee disposes of those funds, arranges credit transfers, cash withdrawals or disposals in their own name. It is only the trustee that is contractually linked to the financial service provider. In practice, trustees often dispose of the funds of several trustors and, for example, carry out transactions for them through their own accounts.

Fiduciary uses of a business relationship include cases where:

- Funds from the trustor are invested for them in a savings account held in the name of the trustee
- Funds are used to acquire financial instruments in the name of the trustee through the trustee’s securities settlement account
- Funds from one or more trustors are accepted through the trustee’s account and subsequently forwarded to third parties.

And these are just a few examples.

In contrast, no case of fiduciary use exists where several persons have the authority to sign, as applies to the accounts of legal entities but also to the accounts of many natural persons. However, this only applies if the assets in the account are solely attributable to the account holder (or holders in the case of joint accounts).

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[6] *Article 16 para. 1 no. 3 FM-GwG.*
[7] *See the decision of the Administrative Court (VwGH) of 13 September 2018, Ra 2018/15/0055 with further refs.*

The financial service provider must be informed of each and every trust relationship, even if an account is only used occasionally in a fiduciary capacity.

Below are two examples from everyday supervisory practice where private individuals did not comply with the statutory obligation to disclose a trust relationship:

- Mr D lives in Germany and is receiving benefits. At the same time, however, he continues to have a private income in Austria. To make sure the German authorities do not get wind of this income, he asks his life partner, Ms O, to open an account in her name in Austria, to have the payments made to that account, and then withdraw them in cash for Mr D. Ms O did not inform her bank of this trust relationship because the couple did not want the German social security authorities to know about Mr D's Austrian income.
- Ms R, who lives abroad, authorised Ms N to perform legal transactions in the name and for the account of Ms R in Austria, for which Ms N receives compensation. In the course of this legal relationship, Ms N accepts funds belonging to Ms R in her private bank account. These are used for Ms R's rent and to meet other payment obligations. Ms N did not inform her bank advisor that she was using the account in a fiduciary capacity, either when she opened it or at a later date.

Under the FM-GwG[8], financial service providers must ask their customers to indicate whether the business relationship[9] or the occasional transaction[10] is conducted for their own account or for the account of or on behalf of others. If the latter applies, the customer must prove the identity of the trustor. Trust relationships are usually queried orally at the time of the account being opened, or by ticking the relevant question in a standardised questionnaire. Customers must comply with this disclosure requirement and notify the bank of any changes during existing business relationships immediately and of their own accord. The customer is obliged to act proactively from the time they intend to use the business relationship on behalf of and for the account of a trustor.

If fiduciary use is suspected but has not been notified, the credit institution must immediately ask the customer to inform them as to whether a trust relationship exists. If the customer states that they intend to act for the account of or on behalf of another, they must also prove the identity of the trustor, and the financial service provider needs to establish and verify the identity of that trustor. The identification process has been specified in detail in the law. If the customer is an obliged entity as defined in the WiEReG[11], information about their beneficial owners may also be obtained from the register of beneficial owners.[12]

If the financial service provider suspects or has reasonable grounds to suspect, on the basis of the customer's transaction behaviour and/or on the basis of information subsequently gathered, that the trustee concealed a trust relationship, or did not disclose related changes during an existing business relationship or gave incorrect details about the trustor's identity, it must immediately submit a suspicious transaction report[13] to the Financial Intelligence Unit.

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[8] *Article 6 para. 3 FM-GwG.*
[9] *Article 5 para. 1 no. 1 FM-GwG.*
[10] *Article 5 para. 1 no. 2 FM-GwG.*
[11] *Article 1 para. 2 WiEReG.*
[12] *For further information see also the FMA Circular on due diligence procedures for the prevention of money laundering and terrorist financing of 28 December 2018, para. 110 (available in German).*
[13] *Article 16 para. 1 no. 3 FM-GwG.*

SANCTIONING OF NON-DISCLOSURE OF TRUST RELATIONSHIPS

The disclosure of trust relationships should prevent customers from circumventing identification requirements. In contrast to other details provided by the customer, which can be verified with appropriate documents, the financial service provider will have almost no means of finding out whether a trust relationship exists if the customer chooses to conceal it. The provider therefore depends on the customer's statements unless their transaction behaviour subsequently raises doubts about those statements' truthfulness. Lawmakers have taken account of this fact by stipulating that the related offence is of administrative penal relevance, i.e. if the customer makes incorrect statements about a trust relationship at the time of the business relationship being established or fails to disclose related changes during an existing business relationship.

The law stipulates that trustees are to be fined up to € 60 000 if they breach disclosure obligations[14]. The FMA, in its capacity as competent authority, is required to initiate related investigations and administrative proceedings to appropriately sanction the breach. In addition, the financial service provider will usually terminate the business relationship given that the customer has infringed their contractual obligations.

Even though the obligation to disclose trust relationships has been enshrined in the Austrian Banking Act (BWG; *Bankwesengesetz*) since the 1990s (and is now laid down in the FM-GwG), both consumers and businesspeople regularly breach this obligation, particularly in their dealings with credit institutions. Depending on the severity of the breach, administrative proceedings are initiated and/or fines imposed. In the FMA's experience, it is often the case that negligent infringements occur when accounts are being used for fiduciary purposes at a later stage in a business relationship. Aside from those cases where customers plan to conceal a beneficial owner's identity, there are also many cases where customers simply do not feel they have done anything wrong. It seems that financial service providers frequently fail to convey the importance of revealing trust relationships. Credit institutions are basically only required to ask their customers about possible trust relationships, and therefore often neglect to adequately inform them about the significance and necessity of such disclosure.

Both in the case of administrative infringements owing to cross trades and self-dealing with listed securities and in the case of hidden trust relationships with financial transactions, the well-known legal principle applies: ignorance of the law is no excuse.

Adherence to the disclosure requirements not only helps prevent money laundering and terrorist financing but also usually protects everyone involved. As the trustor does not have any rights of disposal in relation to the funds in hidden trust accounts, they bear a substantial risk that the trustee could use those entrusted funds for purposes other than those agreed. Trustees also bear a legal risk in such trust structures, particularly when private individuals are recruited as financial agents. Numerous criminals use personal contacts, email or various online platforms to find money mules, i.e. they use other people's bank accounts to transfer illicit funds. Bank customers who allow their accounts to be used for such transfers may be criminally prosecuted for money laundering. In the end, these individuals, sometimes acting in good faith, often become victims of fraudulent scams themselves.

IGNORANCE OF THE LAW IS NO EXCUSE

Both in the case of administrative infringements owing to cross trades and self-deal-

[14] *Article 6 para. 3 FM-GwG.*

ing with listed securities and in the case of hidden trust relationships with financial transactions, the well-known legal principle applies: ignorance of the law is no excuse. This means that nobody can excuse their actions by saying that they did not know that they were breaching a statutory prohibition or a legally stipulated obligation. Moreover, criminal intent is not a prerequisite for a culpable act when an action is assessed from an administrative penal perspective. Every single breach does not of course lead to an administrative penalty being imposed. Whether a breach is significant and should be sanctioned will be determined by the FMA after appropriate consideration of the specific facts of the case (e.g. extent of fiduciary use or impact of the cross trade) and the specific fault of the accused person in the individual case (e.g. are they experts in the field?).

SUSTAINABLE LENDING FROM THE PERSPECTIVE OF COLLECTIVE CONSUMER PROTECTION

Sustainable lending lies in the interests of both banks and their customers. Loans that are properly serviced and repaid limit the bank's risk, enable the customer to fulfil wishes and dreams without having to save up all of the necessary funds first, and to do so without unplanned costs or restrictions.

An excessively lax approach to lending represents a systemic risk for banks. Loans that are already at risk of default (referred to as non-performing loans or NPLs) need to be backed by additional capital depending on the probability of default, and banks are also forced to write down their receivables and establish provisions. If default then occurs, this risk becomes real. The global financial crisis, for example, triggered a serious recession with a very slow recovery process for national economies. Consequently, many companies and households were left unable to continue servicing their loans properly. The NPL ratio (the proportion of all outstanding loans that are no longer being properly serviced) grew to an average of almost 9% for all Austrian banks, on a consolidated basis (all loans granted in Austria and those granted abroad). More specifically, the ratio of NPLs in Austria itself reached as high as 5%, compared with close to 14% in the markets of Central, Eastern and South-Eastern Europe (CESEE). It took a huge, drawn-out and laborious effort to bring the NPL ratios back to around the 2% mark by 2020 (in both Austria and the CESEE countries), a historically low level. In absolute terms, this all-time low figure for NPLs within Austria nevertheless still accounted for a total volume of € 6.5 billion.

Behind these global figures, however, lie many tragic personal stories, with individuals being forced to make massive sacrifices in their lives in order to find a way of repaying their loan. Families have lost their homes, and borrowers have faced personal bankruptcy.

Against this background, the Financial Market Authority (FMA) began focusing on the issue of sustainable lending, making it one of its supervision and inspection priorities some years ago now as bank lending started to pick up speed again after the financial crisis. The FMA's approach has not been limited to the perspective of the banks' risk management but has also prioritised collective consumer protection, which is the main focus here. In particular, the FMA initiatives to promote sustainable lending will be presented using the examples of housing loans and consumer credit. Also covered in this article are the FMA's successful efforts to contain and limit the risks emanating from foreign currency loans, a form of lending that enjoyed a boom in the years before the global financial crisis.

PRUDENT LENDING FOR THE PROTECTION OF CONSUMERS

For borrowers, it is important that they are always able to service their loan properly, i.e. as agreed according to the terms and conditions. If they are unable to do so, they risk immediately incurring extra costs such as reminder, processing, debt restructuring or even execution fees. Generally, the charging of penalty interest on arrears will have been contractually agreed. In addition, there is also the potential for legal and court fees to be incurred, or high fees charged by debt collection companies. In any event, the costs of repaying the loan can jump dramatically.

Accordingly, when a loan is being granted in the first place, it is important to make sure that the borrower will still be able to afford the repayments if the economic environment, particularly key parameters of the loan agreement such as the interest rate or the borrower's personal circumstances, notably income or living costs, change for the worse. Adhering to sustainable lending standards is an important aspect in preventing repayment problems.

When a loan is being granted, it is important to make sure that the borrower will still be able to afford the repayments if the economic environment or their personal circumstances change for the worse.

HOUSING LOANS

The total volume of outstanding housing loans at the beginning of 2020 was in the region of € 144 billion, marking an increase of 4% in the space of just one year. The figures have been moving in this direction for several years now. Over the past three years, the average amount of new housing loans granted has been € 29 billion, while the equivalent figure for the period between 2014 and 2016 was around € 19.5 billion. The boom in housing loans can therefore be expected to continue, if not actually gather speed.

The most important reason for the strong demand for housing loans is the persistently low level of interest rates, which have been low for many years now. To add to this environment, mortgage interest rates have also been falling as a result of the intense competition among banks in this market segment. They continued to fall in 2019, with the effective annual interest on housing loans averaging 1.82% at the end of the year.

Housing loans are generally taken out on a long-term basis. It is therefore important that borrowers will be able to repay the loan over a long loan term, a period during which their personal circumstances, income and financial commitments can easily change. Borrowers must be able to afford their interest payments and repayments even in the event of an interest rate hike. Given the low interest rate environment that has persisted for so long now, and the long-term nature of housing loans, it is important to focus on the risks associated with an interest rate increase, as the impact can be severe. This can be achieved through a fixed-rate agreement or, in the case of a variable-rate loan, through having appropriate income reserves or by hedging the interest rate risk.

With rates at a historically low level, the trend is clearly moving in the direction of fixed rates with the proportion of variable-interest loans already having fallen below 50%. More and more borrowers want to tie themselves in to a low rate of interest for as long as possible. This has resulted in historically low borrowing costs in the house buying market.

At the same time, however, property prices are rising disproportionately strongly, which in turn is pushing up total financing costs. Ultimately, the low interest rate environment not only keeps lending rates low, it also depresses the rates on relatively secure investments such as saving deposits or governments bonds, prompting a flight to the real economy, and to real estate first and foremost. This is driving up property prices. The European Systemic Risk Board (ESRB) has already issued warnings about the creation of a property price bubble, while the Financial Market Stability Board (FMSB), its counterpart in Austria in which the FMA has a seat and a vote, is urging credit institutions to adopt a sensible lending policy with regard to real estate loans.

As an integrated financial market supervisory authority, the FMA addresses its supervision and inspection priority of sustainable real estate lending from the perspective of consumers and borrowers, as well as from the perspective of lenders, namely banks.

The most important criteria for the sustainability of a housing loan are as follows:

- The borrower must have a minimum level of **capital**, whereby a share of equity below a benchmark of 20% is considered critical.
- As a guide, the **debt servicing costs** should not account for more than between 30% and 40% of the borrower's net income. The lending decision should be based on a conservative calculation of household income and expenditure. Income should only be taken into account if it is verified, regular and sustainable, while expenditure should be honestly and realistically stated in the loan application. On average, housing loans now account for around 75% of total household borrowing.
- **Loan terms** should not be disproportionately long, with a duration of more than 35 years only being agreed in justified exceptional cases. In particular, the loan term should take account of how the borrower's income will develop over the life cycle of the loan. As a general rule, this means that the housing loan should have been paid off by the time the borrower reaches retirement.

As an integrated financial market supervisory authority that observes and analyses the entire Austrian financial market from all angles, the FMA has in recent years addressed its supervision and inspection priority of sustainable real estate lending from the perspective of consumers and borrowers, as well as from the perspective of lenders, i.e. banks.

It has analysed random samples of the lending standards that credit institutions apply when granting home loans and real estate finance to ensure that sustainability criteria were being adequately taken into account, and it has also reviewed whether appropriate procedures and precautions (such as regular training) have been implemented to ensure that the employees dealing with this financial product always apply these standards properly and on the basis of the latest updates. Appropriate credit checks were a major focus of this work.

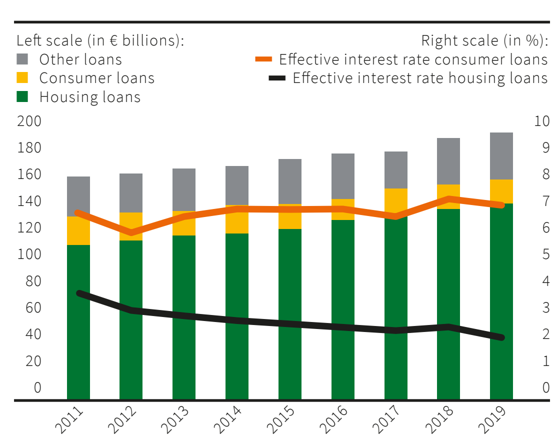
In the course of data collection, market analyses and on-site inspections, the FMA has evaluated the conditions of outstanding and newly granted loans in terms of sustain-

ability criteria at both sector and individual institution level. In particular, the development of lending standards over time and their practical implementation have also been examined. The results were discussed within the framework of the structured dialogue with the banks in the form of target/performance comparisons. Management talks to raise awareness of the issues at stake were held with credit institutions that had deviated significantly from the lending guidelines, with progress being evaluated during on-site audits. Since autumn 2020, additional reporting data on private housing finance indicators has also been regularly made available to the supervisory authority: for example, loan-to-value ratio, debt service-to-income ratio (how much of the borrower's income is needed to service the debt) and loan term.
The long-term affordability of real estate financing products is, as already mentioned, in the interests of both the banks and their borrowers. It also serves to secure financial market stability in Austria. When granting home loans, the main criterion for banks is therefore the affordability of the loan rather than the mortgage security.

CONSUMER CREDIT

Consumer credit is a good example of how much the approach to financing has changed in recent years.
Only a generation ago, even a consumer loan could only be applied for in person at a bank. The application was followed by an individual credit assessment, for which a number of documents, confirmations and forms of evidence were required. The whole process took at least several days. Then, consumer credit was mainly used by households to finance consumer durables such as furniture and fitted kitchens, cars or expensive household appliances.
Today, buying consumer goods on credit has become practically an everyday occurrence, particularly as this credit can be obtained quickly and easily. Standardised online loans, retail finance deals based on the motto "Buy today, pay tomorrow" (or actually in one, two, three years' time) or payment in instalments and extensive use of credit cards are just a few examples.
Digitalisation has also significantly altered the relationship between banks and their customers. There is a trend away from relationship banking twards transaction banking: customers no longer conduct their banking transactions exclusively at their house bank with which they have a long business relationship and where they do (almost) all their banking. Instead, they are increasingly opting for the provider that is the most convenient, the quickest and the most available for whatever financial product (transaction) they need at a given moment. Increasingly, contracts are being concluded online at the click of a mouse. Particularly in the case of online retail, it is now commonplace for a credit deal offer to be displayed next to the Buy Now button: the customer's preferred loan repayment rate can be calculated online, and a video explains how easy it is to make flexible partial payments. It only takes a few clicks and the buyer's wishes are paid for on credit.
The fact that it is so quick and easy to arrange finance online lowers the customer's inhibition threshold while stimulating a desire to consume.

Chart 6: *Household debt 2011–2019 (source: OeNB)*



Consumer credit has been booming for years. The volume of outstanding loans at the end of 2019 was around € 18 billion. The volume of new loans rose for the third year in a row, amounting to a good € 4.7 billion in 2019. The volume of outstanding loans also grew in 2019 compared with the previous year *(> Chart 6).*

If only the terms and conditions of consumer loans are considered, this development might seem surprising. Although the European Central Bank's key interest rates have been historically low for many years and are now oscillating around 0% and tending to fall further, the effective interest rate (i.e. what the loan actually costs including all fees) for consumer loans has remained consistently high over the past ten years, averaging around 7%. Over the same period, the effective interest rate on mortgage loans has fallen from around 3.5% to just below 2%. Consumer loans were thus almost four times as expensive as housing loans in 2019; the average annual effective interest rate for housing loans was 1.82% in 2019, compared with 7.05% for consumer loans.

It is also significant that fees account for a very large share of the effective interest rate in the case of consumer loans. While the nominal interest rate at the time of the loan being granted averages around 5%, fees push up the true costs by 2 percentage

FOREIGN CURRENCY LOANS

Foreign currency loans (FX loans) involve complex risks that are often difficult for private borrowers to understand and assess, such as currency and interest rate risk. Moreover, the majority of foreign currency loans were sold in the form of bullet loans with separate repayment vehicles. This means that it is only the interest that is paid during the term of the loan, with parallel investments being made in an investment product in order to be able to repay the full loan amount at the end of the term. The hope is that the investment product will generate a higher return than the interest costs, reducing the overall cost of the loan. This creates an additional risk, namely the risk that the repayment vehicle does not perform as well as hoped, creating a shortfall at the end of the loan term between the outstanding loan amount and the amount saved on the repayment vehicle. It is then up to the borrower to make up the shortfall using other sources of finance or assets. These risks are not just very complex but can and often do have a cumulative impact.

Consequently, the Financial Market Authority has consistently warned of the high and cumulative risks associated with foreign currency loans. This warning was barely heeded during the boom years up until 2008 but proved more than justified in the face of the economic turbulence triggered by the global financial crisis.

In autumn 2008, after the bankruptcy of US investment bank Lehman Bros. set the global financial crisis in motion, Austrian banks ran into difficulties refinancing their foreign currency loans, almost all of which were denominated in Swiss francs. At the same time, there was a huge rise in the debts of borrowers who had taken out foreign currency loans as the Swiss franc grew strongly against the euro. Meanwhile, the turmoil on the financial markets, the persistent economic crisis and the sustained low interest rate environment had a very painful impact on how the repayment vehicles performed.

In October 2008, the FMA therefore imposed a de facto ban on new foreign currency loans to households due to the risk to the stability of the Austrian financial market. The granting of bullet loans with repayment vehicles to end consumers was also largely prohibited.

The biggest challenge, however, was how to sustainably reduce the volume of foreign currency loans already outstanding at the time, which amounted to around € 38 billion, without jeopardising the stability of and confidence in the financial market.

points to give an effective interest rate of approximately 7%. Moreover, the additional costs of late payment, especially for financing offered directly at the point of sale, are disproportionately high. As well as interest on arrears, borrowers also face high flat-rate processing and legal fees. Given the relatively low loan amount, these cause the effective financing costs to explode. Analysis[1] of private insolvencies in Austria shows that a large portion of the debts owed relate to consumer finance. High interest rates on loans, interest on arrears and additional charges for reminders, deferrals, debt rescheduling and the failed collection of outstanding debts mean that the costs triple in the space of eight years. For example, the average small claim in private insolvencies was € 3 200 and based on an original loan amount of € 1 100. The number of private bankruptcies has also been rising for years, particularly as a result of excessive debt from consumer financing.

From the banks' point of view, consumer loans are a particularly lucrative product, especially in a low-interest environment, because of the high risk premium and the en-

[1] *ASB Schuldnerberatung debt counselling service.*

The FMA therefore put together a comprehensive package of measures. A gentlemen's agreement was quickly concluded with the main credit institutions and banking sectors to support borrowers as far as possible in limiting risks and to promote a switch from foreign currency to euro-denominated financing by offering attractive deals. In addition, the FMA subsequently published its "Minimum Standards for the Risk Management and Granting of Foreign Currency Loans and Loans with Repayment Vehicles"[2], the provisions of which have been tightened up and extended over the years. Firstly, these addressed the risk management of the banks, which were obliged to continuously monitor and report on risk developments at both an aggregate and individual level. Secondly, the banks were obliged to invite borrowers to a personal meeting in the event of significant changes in risk to discuss the development of the risk position of their loan (and, if applicable, of the repayment vehicle) and to propose ways of limiting that risk.

This approach was successful. By mid-2020, the outstanding volume of foreign currency loans had been reduced by 76.5% or € 35.9 billion (after adjustment for exchange rate effects). During this period, the Swiss franc appreciated by 55.4% against the euro. This means that anyone who borrowed € 100 000 in 2008 would now have to repay more than € 150 000 – and that is without even including interest. While foreign currency loans accounted for 31.8% of all outstanding loans at the peak of the FX credit boom in 2006, this figure had been slashed to just under 7.5% by 2020. At the end of June 2020, foreign currency loans with a nominal volume of just over € 13 billion were still outstanding.

The FMA Minimum Standards were extended again in 2017 with the aim of additionally informing private borrowers about the size of any repayment shortfall due to the repayment vehicle being unlikely to generate the income required to repay the bullet loan. Up-to-date details of the outstanding loan amount must be provided, along with a shortfall forecast. There should also be discussion of ways to make up the shortfall with appropriate proposals to this effect. These discussions should be held regularly and at least annually once a loan only has seven years of its term left.

Currently, the repayment shortfall on foreign currency loans with a repayment vehicle at final maturity averages 32%, and the average remaining term is around 9 years.

[2] *FMA Minimum Standards for the Risk Management and Granting of Foreign Currency Loans and Loans with Repayment Vehicles*

forceable fees, as also reflected in the effective interest rate. Competition for market share in this product segment is correspondingly intense, but – as the figures show – is not driven by lending conditions but by aggressive advertising and sales practices. In order to be heard in the information and stimulus overload of the Internet, sales and marketing messages are often highly abbreviated or exaggerated. The many comparison portals that are thriving on the Internet also tend to concentrate on a small number of headline parameters.

Simple standardised credit products offered online, which customers can tailor to their individual financing needs with just a few clicks, as well as the closest possible interlinking with the point of sale for the goods in question, make credit-financed consumption a particularly tempting proposition for many consumers. This is especially relevant given how quickly the credit is made available, usually at the same time as the purchase.

Adverts for consumer loans often suggest that the borrower would actually benefit from taking out the loan. They target a short-term satisfaction of needs: being able to have something you didn‘t have before. The long-term consequences of the borrowing are ignored. Credit details and complex contract terms, business conditions or warnings are squeezed into pop-up windows that annoy consumers when they are trying to make a purchase decision, and that can be made to disappear at the click of a mouse.

For lenders, credit scoring helps them to manage risk at the time of the loan being granted and to ensure that the individual loans they grant and the entire loan portfolio match their risk appetite. Lending standards must therefore be in line with the bank's credit and risk policy.

The easy availability of this type of financing often leads to an accumulation of consumer credits that result in spiralling debt. All too often, the term of a consumer loan actually exceeds the lifetime of the object that it is financing. This means that the replacement item also needs to be bought on credit. If, for example, a smartphone is purchased on a five-year finance deal but stops working after three years, consumers are likely to buy a new phone on a new consumer credit deal. The borrower then has two consumer loans to be serviced in parallel. If the borrower experiences payment difficulties and is late making the repayments, high additional costs will be incurred and the spiralling debt will only get worse.

In this way, consumer credit is a major challenge from the perspective of collective consumer protection.

In focusing on the granting of consumer loans, the FMA is placing particular emphasis on information and transparency. In press talks, interviews and press releases, the supervisory authority tries to raise awareness among consumers of the specific risks and challenges associated with consumer finance. The FMA website contains simple and easy-to-understand information and explanations for consumers on consumer loans, presenting the opportunities and risks, and explaining the rights and obligations of lenders and borrowers.

In its supervision of credit institutions, the FMA pays special attention to the implementation of appropriate consumer lending standards. Market monitoring flags up particularly aggressive providers, while conduct supervision activity focuses on advertising methods and sales practices. The FMA also checks and compares the fees charged for the sale of online consumer credit in order to curb illegal sales practices and increase market transparency. The consumer complaints submitted to the FMA are continuously analysed to check for a conspicuous number of complaints about the same consumer finance product or provider, with any such issues being addressed in the course of operational supervision. Any irregularities in connection with consumer finance are identified during supervision of banks' complaints management, as required by law.

EUROPEAN INITIATIVE FOR SUSTAINABLE LENDING

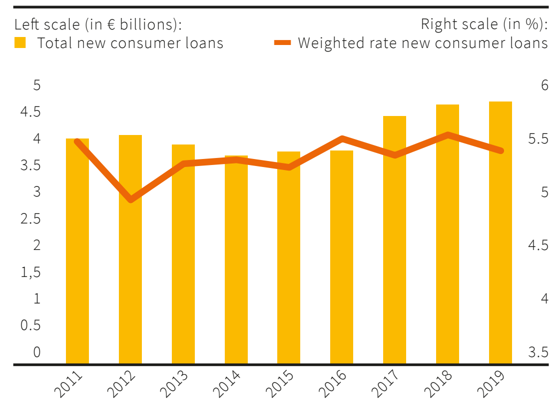


Chart 7: *Increase in new consumer lending 2011–2019 (source: OeNB)*

The European Banking Authority (EBA), in its latest consumer report[3], also recognises the danger of excessive consumer borrowing as a result of an overly relaxed approach to the granting of consumer loans and mortgages, driven in particular by low interest rates, targeted marketing and certain market practices. Moreover, the persistently high prevalence of non-performing loans (NPLs)[4] among all outstanding loans as a consequence of the global financial crisis also created problems around new lending to the real economy. According to the ECB, it has been a difficult process to reduce the NPL ratio in Europe to 3.41% in 2019. With a figure of 2.2%, Austria was below the EU average. Loans that were issued too freely during the good times are naturally the loans that become non-performing during the downturn.

In late May 2020, the EBA published its "Guidelines on loan origination and monitoring"[5].

The primary aim of these Guidelines is to have robust, prudent and sustainable lending standards in place so that default levels are kept as low as possible in future. They cover such aspects as internal governance, creditworthiness assessments, loan pricing, the valuation of security and issues relating to the ever more central collective consumer protection. The Guidelines will generally be applicable with effect from 30 June 2021. Transitional rules are in place until then, however, with existing loans being subject to the new rules from the end of June 2022 onwards.

The FMA has already entered into an intensive dialogue with the banks on the implementation of the EBA Guidelines. It will work consistently to build on this dialogue and to further expand its "sustainable lending" supervision and inspection priority. A key issue will be the integration of the EBA Guidelines into existing lending standards and supervisory processes, with particular emphasis on comprehensive credit assessment, as envisaged by the EBA. For borrowers, credit scoring will focus on assessing their ability to repay the loan and help to understand whether they will be able to service the loan, taking into account all other financial obligations. This will help to prevent borrowers from taking out loans that they cannot afford and that could have a negative impact on their long-term financial health. For lenders, credit scoring helps them to manage risk at the time of the loan being granted and to ensure that the individual loans they grant and the entire loan portfolio match their risk appetite. Lending standards must therefore be in line with the bank's credit and risk policy. This also contributes to the financial stability of the sector as a whole.

The EBA Guidelines on loan origination and monitoring combine prudential, governance and conduct requirements. As an integrated supervisory authority that monitors

[3] *EBA Consumer Trends Report 2018–19.*
[4] *According to the International Monetary Fund (IMF), a loan is non-performing when payments of interest and/or principal are past due by 90 days or more (IMF: The Treatment of Nonperforming Loans).*
[5] *EBA/GL/2020/06.*

the Austrian financial market from all angles, the FMA is therefore positioned for their implementation and monitoring thanks to its well-established, joined-up approach to supervision.

SUSTAINABILITY

INCORPORATING SUSTAINABILITY RISKS INTO THE FMA'S SUPERVISORY ACTIVITY – THE ADVANTAGE OF AN INTEGRATED APPROACH TO SUPERVISION

The transition to a sustainable and, in particular, an environmentally sound and climate-neutral economy is an oft-discussed, key issue at international, European and national level. To achieve the 17 goals defined in the United Nations' 2030 Sustainable Development Agenda (Sustainable Development Goals – SDG)[1] and in the Paris Agreement, which Austria has ratified[2], the European Commission published its Action Plan: Financing Sustainable Growth[3] in March 2018. This Action Plan aims to redirect capital flows towards sustainable investments, to make sustainability an integral element of risk management, and to promote transparency and a long-term outlook in financial and economic activity.

With the publication of the European Green Deal[4], which sets out the roadmap for the creation of a sustainable EU economy, the European Commission announced its strategy for sustainable finance in December 2019. According to this strategy, annual investments of € 260 billion will be required between now and 2030 in order to achieve the EU's climate and energy goals. The aim is for the European Union to be climate-neutral by 2050. In its 2020–2024 government programme, the Austrian Fed-

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1 *Cf. United Nations, Sustainable Development Goals, https://www.un.org/sustainabledevelopment/sustainable-development-goals/.*

2 *Federal Law Gazette III No. 197/2016, as amended.*

3 *European Commission, Communication from the Commission to the European Parliament, the European Council, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions: Action Plan: Financing Sustainable Growth, COM(2018) 97 final, https://ec.europa.eu/transparency/regdoc/rep/1/2018/EN/COM-2018-97-F1-EN-MAIN-PART-1.PDF.*

4 *European Commission, Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions: The European Green Deal, COM(2019) 640 final, https://ec.europa.eu/info/sites/info/files/european-green-deal-communication_en.pdf.*

eral Government has set itself this goal for 2040.[5] According to the European Commission's published financing plan, the necessary funds will be sourced from both the public and private sectors. From April to May 2020, the European Commission held a consultation on the renewed sustainable finance strategy.
The financial sector will continue to play a key role on the path towards a sustainable, and in particular, an environmentally sound and climate-friendly economy and society. Sustainability risks encompass environmental, social and governance (ESG) risks.
This article looks at the relevance of sustainability risks in the financial sector. Firstly, initial regulatory measures at EU level that have specific aims and are binding on financial market participants across all sectors will be presented. In addition to the activities of the European Supervisory Authorities in joint working groups and committees, parallel activities will also be summarised. Furthermore, reference will be made to the activities of working groups and project groups at international and national level. Addressing sustainability risks is another area in which the strengths of integrated supervision are clear. The main areas covered by the FMA Guide for Managing Sustainability Risks, which is intended as a guide for all companies supervised by the FMA, are presented. Finally, the integration into operational supervisory activities and the sector-specific measures taken in the individual supervisory areas are discussed.

SUSTAINABILITY IN THE FINANCIAL SECTOR

Banks, insurance undertakings and pension funds are the main external sources of finance to the European economy and key players when it comes to channelling savings into (sustainable) investment. At the same time, however, assets or the asset, income and financial position of a company can be exposed to sustainability risks. The rise in weather-related natural disasters, for example, is generating higher costs for insurance undertakings. Banks must expect losses in instances where companies that are affected by climate change or dependent on dwindling natural resources become less profitable. Different financial companies can therefore play a key role within the scope of their respective activities, reorienting the financial system towards sustainability.
Failure to take proper account of sustainability risks not only has a negative impact on the performance of individual assets and financial market participants. In extreme cases, it can even threaten the stability of the financial markets as a whole.
International and European debate is currently focusing in particular on climate risks, with a distinction being made between physical risks and transition risks. Legal and reputational risks must also be taken into account in this context:

- **Physical risks** are those risks caused directly by the consequences of climate change.
- **Transition risks** are risks relating to the transition to a climate-neutral and resilient economy and society, with the resulting possibility of assets being devalued (e.g. outdated technologies, adjustments in consumer behaviour, changes in the basic parameters of the real economy).

[5] *Available (in German) at https://www.dieneuevolkspartei.at/Download/Regierungsprogramm_2020.pdf and https://gruene.at/themen/demokratie-verfassung/regierungsuebereinkommen-tuerkis-gruen.*

- Potential **legal and reputational risks** are increasingly evident in the worldwide increase in court cases in which injured parties or activists are taking legal action to attempt to bring about a change in the behaviour of individual economic operators or of authorities or governments. Risks on sales markets are also increasing with calls for consumer boycotts in order to take a stand against products that are considered harmful to the climate or that are produced under socially unacceptable conditions. Cases of greenwashing – the practice of marketing financial products as “green” or “environmentally friendly” even though they do not comply with basic environmental standards – are also the subject of growing publicity (and in some cases legal action).

INITIAL REGULATORY MEASURES

The international and European initiatives mentioned in the introduction have already produced a number of regulatory measures for the transition to a sustainable financial system; in particular, the standardisation of definitions and additional disclosure requirements, alongside efforts to embed the topic more firmly in financial advice.

TAXONOMY

One of the EU Action Plan’s priorities is the creation of a uniform classification system (or taxonomy) for a more sustainable economy. The aim is to foster a shared basic understanding and thus help to identify and promote environmentally sustainable investment opportunities by creating uniform definitions and reliable, comparable information. In this way, the Action Plan also aims to help prevent greenwashing. The taxonomy is to be integrated into additional legal provisions in future.

TRANSPARENCY

In the form of the Taxonomy Regulation[6], the Regulation on sustainability-related disclosures in the financial services sector[7] was extended in 2020. Information must now be disclosed on how and to what extent investments have been made in economic activity defined as being sustainable under the classification system.
These harmonised transparency obligations are designed to guarantee increased protection and an improved information basis for investors. To this end, information on the integration of sustainability risks must be published on the company’s own website and references to possible impacts are to be included in the pre-contractual information on financial products.
The scope of the transparency obligations, which apply across all sectors, and the uniform classification system will ensure that the disclosed information is harmonised and comparable.

BENCHMARKS

The development of “low carbon benchmarks” and of “positive carbon impact bench-

[6] *Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088.*

[7] *Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector.*

marks" means that new requirements are being made in terms of calculation methods and market transparency. The aim is to enable market participants to assess financial products appropriately. In Austria, compliance with the obligations of the Benchmarks Regulation[8] in general and the ESG disclosures and climate benchmarks[9] in particular is monitored by the FMA.

In the interests of collective consumer protection and its new supervisory powers, the FMA will therefore be focusing particularly strongly on the transparent presentation of sustainability strategies and how these are incorporated into investment funds' risk management.

THE INSTITUTIONAL FRAMEWORK

THE EUROPEAN SUPERVISORY AUTHORITIES

The work of the three European Supervisory Authorities (ESAs) – the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA) – in the area of addressing sustainability risks are coordinated by the Joint Committee of the European Supervisory Authorities to ensure coordination across the different sectors. The national authorities are involved in sustainable finance issues through Sustainable Finance Networks and project working groups. In addition, more Level 3 Committees are being set up, with representatives from the respective national competent authorities, in order to develop uniform positions across all of the sectors. Technical standards on the classification system and transparency obligations, for example, are elaborated in these joint working groups.

In its Action Plan: Financing Sustainable Growth, the European Commission called on the ESAs to evaluate how sustainability risks can be effectively addressed in the relevant EU financial services legislation. The Action Plan also highlights the need for convergence in the implementation of sustainability aspects in EU legislation. For their part, the EBA, EIOPA and ESMA have responded accordingly in their own action plans.[10]

Other initiatives involve reviewing how sustainability risks can be incorporated into institutions' approaches to risk management and integrated into supervisory regulations. Additionally, the specific supervisory treatment of risk exposures in relation to environmental and social objectives is being reviewed. The ESAs will also have an important role to play in developing a common EU methodology for relevant scenario analyses that can subsequently be developed into climate or environment stress tests.

NETWORK FOR GREENING THE FINANCIAL SYSTEM

The Network of Central Banks and Supervisors for Greening the Financial System

8 Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014.

9 Regulation (EU) 2019/2089 of the European Parliament and of the Council of 27 November 2019 amending Regulation (EU) 2016/1011 as regards EU Climate Transition Benchmarks, EU Paris-aligned Benchmarks and sustainability-related disclosures for benchmarks.

10 Available at https://eba.europa.eu/sites/default/documents/files/document_library//EBA%20Action%20plan%20on%20sustainable%20finance.pdf, https://www.eiopa.europa.eu/browse/sustainable-finance_en#EIOPA%E2%80%99sprojectsinsustainablefinance, https://www.esma.europa.eu/sites/default/files/library/esma22-105-1052_sustainable_finance_strategy.pdf.

(NGFS) currently has 77 supervisory authorities and central banks as members and 13 institutions as observers.[11] The common objective is to promote the smoothest possible transition to a sustainable economy. With this in mind, the NGFS provides a platform for exchanging experience, sharing best practice, and developing environmental and climate risk management methods for the financial sector. Its work includes, for example, analysis of sustainable financing. The Network also publishes documents relevant to the field of supervision, such as its "Guide for Supervisors: Integrating climate-related and environmental risks into prudential supervision". The ideas being developed in the NGFS are increasingly being picked up and taken forward by the European Commission, EBA and European Central Bank (ECB). The FMA has been a member of the NGFS since 20 May 2020.

Failure to take proper account of sustainability risks not only has a negative impact on the performance of individual assets and financial market participants. In extreme cases, it can even threaten the stability of the financial markets as a whole.

GREEN FINANCE FOCUS GROUP

One of the twelve main themes covered by #mission2030, the Austrian Federal Government's climate and energy strategy, is green finance. The Federal Ministry for Finance (BMF) and the Federal Ministry for Climate Action, Environment, Energy, Mobility, Innovation and Technology (BMK), together with private industry, have set up a Green Finance focus group, the remit of which is to develop a green finance agenda with specific measures and initiatives. The FMA has been a member of the group since the latter's creation in 2019.

THE FMA'S INTEGRATED APPROACH TO SUPERVISION – A SUCCESS STORY

Developments in Europe demonstrate the need for integrated, cross-sectoral cooperation between the different areas of supervision in order to ensure consistent supervisory practice and a level playing field across products and sectors. In particular, the area of sustainability risks is an integrated issue that affects all market participants that are active in the financial sector, therefore requiring uniform legal development and interpretation.

The FMA is an independent, autonomous and integrated supervisory authority faced with a strongly interwoven Austrian financial market, which it supervises comprehensively, applying uniform standards and a uniform interpretation of the law.

Similarly, with regard to sustainability risks, cross-sectoral micro and macro supervision guarantee a consistent analysis of the financial market, which is followed up with effective action. Sustainability risks can, for example, assume potentially systemic proportions if, due to the realisation of physical risks or transition risks among systemically relevant financial market participants (or a large number of participants), losses are so high that they pose a threat to financial market stability (e.g. due to an increase in non-performing loans among borrowers with carbon-intensive business models). Other risks that need to be taken into account include systemically relevant cluster risks arising from sustainability risks (e.g. regional/sectoral) or contagion risks between real economic sectors and between financial market participants (so-called second-round effects). The ongoing, direct exchange of information between micro

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[11] *Figures as at 23 November 2020.*

and macro supervisors creates synergy effects and enables an overall assessment of the situation.

How a company behaves towards its customers is one of the strongest confidence-building factors in the financial market and thus a cornerstone of financial stability. The development of uniform classification systems, and of information and transparency obligations with regard to sustainability risks and their consistent integrated implementation enable genuine product comparison and thus result in fair competition. The integration of both supervisory activities – prudential supervision and conduct supervision – under a single roof allows for a full and direct exchange of information to record the overall situation of a supervised company. This is the only way to ensure that risks can be effectively recorded and that coordinated supervisory measures are put into place, taking into account all causal relationships.

The debate around sustainability risks is a diverse one. The FMA is currently contributing to the shaping of regulatory developments at European and national level, with these being integrated into supervisory practice. Supervisory convergence begins as soon as national and international regulations are being prepared. This similarly applies not least to the area of non-financial reporting on the five most important issues: environmental, social and employee issues, respect for human rights, combating corruption and bribery. In the ESMA working group, the FMA actively participates in the discussion on the planned audit focus areas in enforcement, focusing in particular on making sure that the relevant non-financial reporting is also given adequate consideration in European and Austrian financial reporting enforcement. Helping to shape transparent uniform regulations in all sectors at national and international level is a key area in which integrated supervision contributes to strengthening confidence in the financial market.

The coordinated positioning on the basis of close cooperation between the different areas of the FMA is actively introduced at the level of the ESAs' working groups, as well as the NGFS and Austria's Green Finance focus group. This makes a significant contribution to the further development of the regulatory requirements in the field of sustainability risks and non-financial reporting, and ensures that Austrian interests are considered in the wider debate.

It is FMA policy to conduct an intensive dialogue with the industry and stakeholders in order to provide information on the latest developments and to discuss market-driven solutions, but specifically also to continue to raise awareness of the impact of sustainability risks.

THE FMA GUIDE FOR MANAGING SUSTAINABILITY RISKS

In its Guide for Managing Sustainability Risks published in July 2020, the FMA processed findings on the consideration of sustainability risks and made this knowledge available to the companies it supervises, as well as to other interested parties. The Guide was developed within the framework of the Green Finance focus group of the BMF and BMK in cooperation with Environment Agency Austria (UBA) and Oesterreichische Nationalbank (OeNB). It is intended to provide credit institutions, insurance undertakings, investment fund management companies, alternative investment fund managers, investment firms, *Pensionskassen* (pension companies) and corporate provision funds with an information resource and guide on how to incorporate sustainability risks into their business activities. In particular, the aim was to strengthen the common understanding between the FMA and the supervised companies across sectors and to ensure a level playing field for all. The Guide is also intended to help prepare supervised companies for regulatory developments.

As part of its operational supervisory activities, the FMA will use the explanations laid down in the Guide – within the scope of the rights and obligations defined by law – as a benchmark in the coming years. In supervising sustainability risks, the FMA will not only pursue an integrated regulatory and supervisory approach, but also adhere to the principles of risk orientation and proportionality. The respective approach must be tailored to the size and internal organisation of the supervised company as well as to the nature, scope and complexity of its business activities and, consequently, its risk structure.

The FMA Guide not only covers risk management in the narrower sense, but also deals with the handling of sustainability risks in the design of corporate strategy, internal governance and reporting. In order to ensure a common basic understanding, the Guide also includes an overview of frequently used terminology. Sustainability risks must be considered within the framework of the existing risk categories (including credit risks, market risks, liquidity risks, operational risks) and thus integrated into the existing risk management system. A clear internal distribution of roles and responsibilities is vital, as is appropriate human resources and knowledge management when dealing with sustainability risks.

The availability of valid, standardised and therefore comparable data is a basic prerequisite for identifying, assessing and integrating sustainability risks into risk management and for compliance with transparency obligations.

Supervised companies must develop, continuously apply and regularly update a consistent approach to reporting on sustainability risks that is in line with the nature and scope of their business activities. Reporting should describe the risk management approach to dealing with sustainability risks and address the process for assessing the materiality of sustainability risks for the company.

The Guide contains two comprehensive annexes:

- Annex A contains a demonstrative list of good practices, which are tools and methods for identifying, measuring and managing sustainability risks. However, the listed good practices should not prevent supervised companies from observing higher standards and better techniques or relevant methodological developments in dealing with sustainability risks and integrating them appropriately.
- Annex B lists sources of information on sustainability aspects, namely initiatives, tools and methods as well as climate-related facts and figures.

THE INTEGRATION OF SUSTAINABILITY RISKS INTO THE FMA’S OPERATIONAL SUPERVISORY ACTIVITY

The FMA’s medium-term risk analysis for 2020–2024[12] has identified risks resulting from ESG factors as one of the major challenges facing the Austrian financial market in the coming years. Accordingly, the supervision and inspection priority of “sustainability” was derived from this.

Companies supervised by the FMA must take sustainability risks into account in accordance with the general legal provisions on risk management. Now, in a further step, checks are also needed to ensure that the new regulatory requirements of the European Commission, namely the classification system and the transparency obligations, are being applied.

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[12] *Austrian Financial Market Authority (FMA), Facts and Figures, Trends and Strategies 2020, https://www.fma.gv.at/en/publications/facts-and-figures-trends-and-strategies/.*

The following is an overview of how sustainability risks are incorporated into the individual sectors and current supervisory activities.

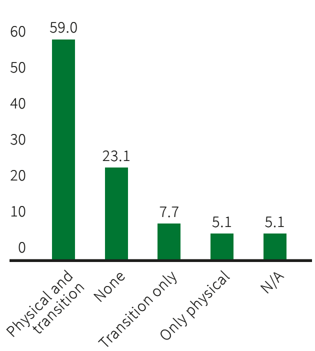
BANKING SUPERVISION

The increase in sustainability risks, especially climate risks, means that banks must address them accordingly in their business strategy, risk management and governance. In doing so, they must assess the extent to which they are currently exposed to climate and environmental risks and will be in the future.

In accordance with the generally applicable legal provisions, all relevant influencing factors must be taken into account in the risk assessment, including the ESG factors. The general due diligence obligations imposed on directors oblige them to keep themselves informed about the risks associated with banking business and banking operations. They are required to manage, monitor and mitigate these risks by means of appropriate strategies and procedures. They must also have in place plans and procedures for assessing capital adequacy. Sustainability risks must be subsumed under the administrative, accounting and control procedures to be implemented for this purpose within the existing risk categories (e.g. credit risk, market risk, operational risk) and thus be taken into account accordingly.

The ECB has already published its Guide on climate-related and environmental risks[13] for public discussion. It has been developed in the context of the Single Supervisory Mechanism (SSM) together with national banking supervisors. The 13 supervisory expectations specified in the guide relate to the consideration of climate and environmental risks in the business model and strategy, in internal governance and risk management, and the disclosure of environmental and climate risks.

Chart 8: *Climate risks as material risks (in %)*[15]



A survey of 39 banks conducted by the EBA[14] in May and June 2019 in cooperation with the ECB has collected information on current market practices in relation to the consideration and integration of sustainability risks in business and risk strategy, risk management and disclosure. The result shows that while institutions recognise the importance of taking into account physical and transition risks, integration into risk management has not yet been fully achieved and disclosure practices also vary widely *(> Chart 8).*

Positive developments in the approach to sustainability risks can already be observed in the Austrian banking sector. Those credit institutions that are leading the way in this area are already considering sustainability risks as part of their lending process. Occasionally, the Austrian Ecolabel (UZ49) for sustainable financial products, which was overhauled in 2020, is also applied to sustainable savings and current account products.

Within the framework of the supervisory review and evaluation process, the inclusion of sustainability risks, and climate risks in particular, in business and risk strategy as well as in risk management will now also be assessed. In addition, checks will be carried out to determine whether the requirements of the EBA Guidelines on loan origination and monitoring[16] are being applied.

13 *https://www.bankingsupervision.europa.eu/legalframework/publiccons/pdf/climate-related_risks/ssm.202005_draft_guide_on_climate-related_and_environmental_risks.en.pdf.*

14 *Findings available at https://eba.europa.eu/sites/default/documents/files/document_library/Sustainable%20finance%20Market%20practices.pdf.*

15 *As above.*

16 *EBA/GL/2020/06 – available at https://eba.europa.eu/sites/default/documents/files/document_library/Publications/Guidelines/2020/Guidelines%20on%20loan%20origination%20and%20monitoring/884283/EBA%20GL%202020%2006%20Final%20Report%20on%20GL%20on%20loan%20origination%20and%20monitoring.pdf.*

INSURANCE SUPERVISION

Under the Insurance Supervision Act 2016 (VAG 2016; *Versicherungsaufsichtsgesetz*), insurance undertakings are already required to set up an effective risk management system that includes all necessary strategies, processes and reporting procedures. This requires the identification, measurement, monitoring, management and reporting on an individual and aggregated basis of the risks incurred and potential risks, as well as of the interdependencies between these risks. In addition, insurance companies must develop their own risk indicators, which are to be used in the context of investment and include all material risk indicators.

Against the background of the European Commission's package of measures for sustainable finance and the preparation of an EIOPA Opinion on Sustainability within Solvency II[17], the FMA has examined how domestic insurers take ESG factors into account in their individual business processes.

As the results of this study show, the handling of sustainability risks in risk management is becoming increasingly professional: sustainability risks are either already systematically taken into account or at least monitored and measured by around 36% of insurance undertakings. A further 36% have at least begun work on a strategy. Consequently, only 28% have not yet given any consideration to sustainability risks at all *(> Chart 9)*.

In other words, almost three quarters of Austrian insurers already factor ESG risks into their corporate management or have at least begun to do so.

The importance of sustainability aspects becomes even more apparent in investment policy: around 32% of insurance undertakings have already integrated sustainability risks into their investment policies. 48% plan to include sustainability risks within the next three years *(> Chart 10)*.

SECURITIES SUPERVISION

Sustainable investment products are currently the fastest growing segment in the Austrian investment fund market. In particular, the Austrian Ecolabel for sustainable financial products (UZ49) is used as a sustainability label. This label is based on ecological and socio-ethical criteria and is awarded by the Federal Ministry for Agriculture, Regions and Tourism. The Austrian Consumers' Association (VKI) developed the guidelines for the award of the label on behalf of the Ministry.[18]

As at 30 June 2020 there were 76 Austrian funds in total *(> Chart 11)* that had voluntarily aligned their investment policy with the ecological and socio-ethical criteria of UZ49. On this date, they managed fund assets of € 12.5 billion, which corresponds to approximately 7% of the total Austrian fund market *(> Chart 12)*. In contrast to the market as a whole, sustainability funds thus grew by 18% or € 1.9 billion compared with the 2019 year-end. Only one single Austrian investment fund management company has not yet managed a sustainability fund under the Austrian Ecolabel.

From an investor's perspective, transparency rules are crucially important. Ultimately, only properly informed investors can make an informed investment decision based on their yield, risk and sustainability preferences. The transparency requirements that have already been published will therefore be fleshed out further. In the interests of

[17] *https://www.eiopa.europa.eu/content/opinion-sustainability-within-solvency-ii.*
[18] *For further details regarding Austria's UZ49 Ecolabel, see https://www.umweltzeichen.at/en/products/start.*

Chart 9: *Consideration of sustainability risks by insurance undertakings (in %)*

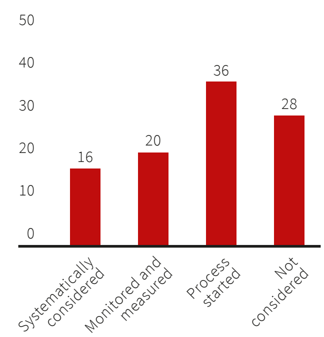


Chart 10: *Consideration of sustainability risks for insurers' investment (in %)*

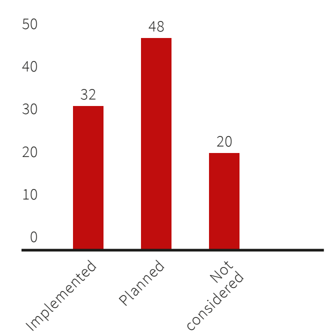


Chart 11: *Number of Austrian funds with Austrian Ecolabel*

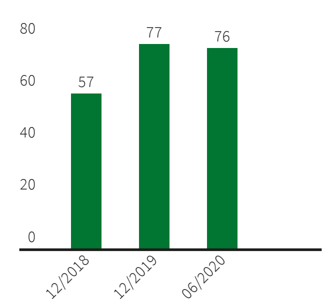
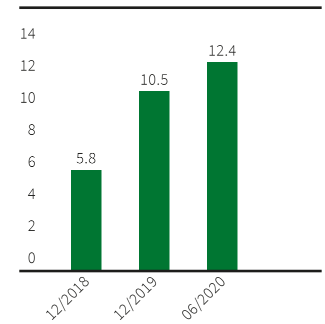


Chart 12: *Assets under management in Austrian Ecolabel funds (in € billions)*



collective consumer protection, the FMA will be focusing particularly strongly on the transparent presentation of sustainability strategies of investment funds and checking compliance on a spot check basis. Additionally, the implementation of the new disclosure requirements will be a focus of fund supervision activities.

FUTURE DEVELOPMENTS AND OUTLOOK

Current activities at national, European and international show that a cross-sectoral approach to sustainability risks is needed in order to develop uniform and consistent requirements. A common position, and the direct and timely coordination of these, can contribute to a shared understanding and uniform standards. The FMA will continue to exploit the synergies of integrated supervision to this end.

The FMA Guide for Managing Sustainability Risks aims to create a common understanding of sustainability risks among all stakeholders and to secure a level playing field. As approaches to sustainability risks are developing very dynamically from both a regulatory and a scientific perspective, the FMA Guide should be understood as a "living document", which will be adapted and updated as required.

It is FMA policy to conduct an intensive dialogue with the financial sector and all other stakeholders in order to provide information on the latest developments and to discuss market-driven solutions, but also to continue to raise awareness of the impact of sustainability risks. This helps to support financial market participants with the correct application of new regulations, ensuring that sustainability risks are appropriately applied in risk management.

The FMA will continue to play an active role at national, European and international level in the further development of regulations and supervisory practices that actively take account of sustainability risks and ESG factors. In doing so, it will make an important contribution to promoting and enforcing Austrian interests during the debate.

CLIMATE RISKS – RESILIENCE OF THE AUSTRIAN INSURANCE AND PENSION COMPANY SECTOR

The increasing impact of climate change poses many risks for the economy and society, the extent of which should not be overlooked. Companies subject to supervision by the FMA are also exposed to climate-related risks. In addition, environmental, social and governance (ESG) factors, sometimes also referred to as sustainability risks, may also have negative effects on them.

CLIMATE CHANGE – THE FACTS

The rapid increase in greenhouse gas emissions is considered one of the main causes of temperatures having risen since the middle of the 20th century and, according to the Intergovernmental Panel on Climate Change (IPCC), they are 95% to 99% man-made.[1] The average temperature during the past decade (2010–2019) was the highest on record. Every year since 1980 has been warmer than the one before, and the global mean temperature for 2019 was 1.1°C above the pre-industrial levels recorded between 1850 and 1900.[2]

According to the Global Risks Perception Survey, an annual survey conducted by the World Economic Forum (WEF), extreme weather events posed the top risk in terms of likelihood in 2020 for the fourth year in a row; climate action failure and natural disasters are the second and third most likely risk for the second time in a row. The top risk in terms of impact is climate action failure, for the first time since 2016.[3]

Most of the damage that has occurred worldwide since 1970 has not been insured. The shortfalls have amounted to an average 73%. In 2019, they were around 62%.

[1] *IPCC, see Environment Agency Austria – Climate Report 2020, p. 17.*
[2] *See the WMO's press release at World Meteorological Organization, https://public.wmo.int/en/media/press-release/wmo-confirms-2019-second-hottest-year-record*
[3] *World Economic Forum – The Global Risks Landscape 2020, The Global Risk Report 2020, 15th Edition, pp. 2–5.*

Chart 13: *Number of disasters worldwide 1980–2019 (FMA diagram based on data from Swiss Re)*

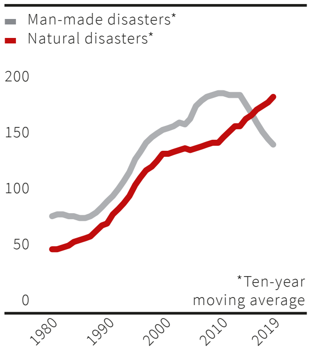


Chart 14: *Globally insured disaster losses 1980–2019 (FMA diagram based on data from Swiss Re)*[5]

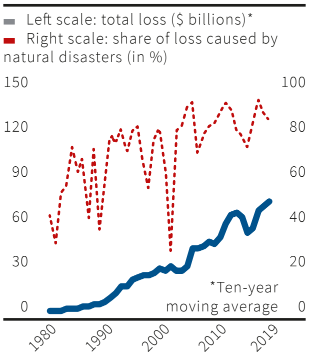
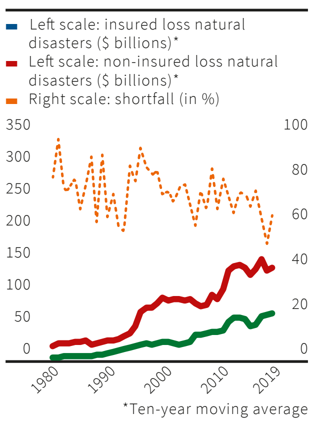


Chart 15: *Globally insured and non-insured natural disaster losses 1980–2019 (FMA diagram based on data from Swiss Re)*



Since 1970 there has been a steep increase in the number of disasters, both natural disasters and human-made environmental disasters. For the past ten years, the number of natural disasters has been consistently higher than the number of disasters directly caused by humans. The year 2019 saw 202 natural disasters and 115 man-made disasters *(> Chart 13).*

In terms of the globally insured losses from disasters, there has also been a significant increase. The total amount of insured losses from man-made disasters, insured losses from earthquakes/tsunamis and insured losses from weather disasters climbed from $ 6.2 billion in 1970 to some $ 59.7 billion in 2019. The highest value in this time series was around $ 151.4 billion in 2017. The ten-year moving average of total losses rose from around $ 7.3 billion in 1979 to around $ 77.3 billion in 2019 *(> Chart 14).* In the first half of 2020 alone, natural disaster losses accounted for $ 72 billion.[4]

However, most of the damage that has occurred worldwide since 1970 has not actually been insured. The shortfalls have amounted to between 49% and 95%, or 73% on average. In 2019, they stood at around 62% *(> Chart 15).*

CLIMATE CHANGE – THE ACTION

In an attempt to contain the impact of climate change, the European Commission has committed itself to achieving a climate-neutral Europe by 2050. Its goal is to keep the rise in temperatures well below 2°C.[6] To achieve this, greenhouse gas (GHG) emissions must be reduced. The aim was a reduction of 20% by 2020 compared with 1990 levels. At the same time, the aim has been to increase the share of renewable energy to at least 20% by 2020, and at least 30% by 2030.

By 2018 Austria had not succeeded in bringing down its GHG emissions to below 1990 levels. In fact, they had risen by 0.6%.[7] The reduction target has been met at EU level, however, with emissions in 2018 down 23.2% compared with 1990. In relation to the target of increasing the consumption of energy from renewable sources to 20% by 2020, the situation is reversed: in 2018, renewable energy represented 18.9% of energy consumed in the EU but approximately 34% in Austria.[8]

To reach these ambitious climate targets, the financial world will also have to make a major contribution: Europe has a huge amount of catching up to do given how far it lags behind in climate-related investments. According to estimates from the European Investment Bank (EIB), the overall investment gap in transport, energy and resource management infrastructure has reached a yearly figure of € 270 billion.[9] Overall, there is a general worldwide trend towards green bonds: climate bonds worth

4 *See www.versicherungsjournal.at – Erste Bilanz über Katastrophenschäden [First report on disaster losses] 2020 (available by subscription).*

5 *The cost of claims has been adjusted for inflation up until 2019. The most notable natural disasters were Hurricanes Katrina, Rita and Wilma (2005), earthquakes in Japan and New Zealand, floods in Thailand (2011) as well as Hurricanes Harvey, Irma and Maria (2017).*

6 *See Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank – A Clean Planet for all. A European strategic long-term vision for a prosperous, modern, competitive and climate-neutral economy. COM (2018) 773 final.*

7 *Environment Agency Austria – Climate Report 2020, p. 6.*

8 *See EIOPA – Financial Stability Report (July 2020), pp. 19–20*

9 *See Communication from the Commission to the European Parliament, the European Council, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions – Action Plan: Financing Sustainable Growth. COM(2018) 97 final.*

$ 257.5 were issued in 2019, with a volume of roughly $ 350 billion forecast for 2020. This equates to an increase of around 36% in the space of just one year.[10] This should help – as also described in the Commission's Action Plan – to reorient capital flows towards sustainable investment that incorporates environmental, social and governance (ESG) factors into investment decision-making.[11]

CLIMATE CHANGE – IMPLICATIONS FOR INSURANCE UNDERTAKINGS AND *PENSIONSKASSEN*

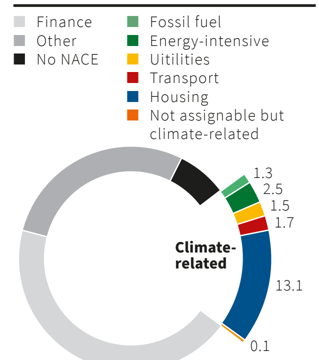
The FMA has performed various sector assessments in order to better understand the potential impact of climate change on the Austrian insurance and pension company sector. The NACE[12] sector analysis identifies those investments that carry a climate-related transition risk. This is a risk that may arise in the course of the transition to a low-carbon economy (stranded investments, additional investment costs etc.). The NACE codes were assigned to seven predefined sectors: fossil fuel, energy-intensive, utilities, transport, housing, finance and other. In this way, those investments that will depreciate as a consequence of the transition to a (more) carbon-neutral economy can be filtered out from the portfolio. Additionally, CIC[13] codes were also taken into account. Utilities, transport, energy-intensive activities and housing are marked as being climate-related since they make up the main GHG sectors, while fossil fuel causes high carbon emissions indirectly.[14]

Approximately 20.1% of the assets held by insurance undertakings is invested in climate-related sectors; at 13.1% the housing sector accounts for the largest share, equating to around two thirds of the total *(> Chart 16)*. For the market overall, insurers' assets totalling approximately € 125.14 billion were included.[16]

The FMA has also analysed climate risk in relation to government bonds. Specifically, it has assessed the impact of a shock on climate-sensitive sectors and potential fiscal losses for countries, and developed climate financial risk metrics (e.g. the Climate Spread) for government bonds' losses in value. The shock scenarios were derived from the LIMITS[17] (Low Climate Impact Scenarios and the Implications of Required Tight Emission Control Strategies) Scenario Database compiled by the International Institute for Applied Systems Analysis (IASA); data from Eurostat, the statistical office of the European Union, at NACE level was used for the GDP composition of climate-sensitive sectors in the individual countries; and, lastly, data from the Statistical Review of World Energy 2018 published by British Petroleum and the World Energy Outlook 2018 published by the International Energy Agency (IEA)[18].

The FMA's analysis was based on the shock/spread matrix prepared by the European

***Chart 16:** Mapping of insurers' investments to the Climate Policy Relevant Sectors according to Battiston et al. (in %, FMA diagram)*[15]



[10] *See www.climatebonds.net.*

[11] *More information in S. Saria, Green Insurance: Versicherungsgeschäft in Zeiten des Klimawandels [Insurance in times of climate change], ZVers 2/2020, p. 69 onwards.*

[12] *NACE is derived from the French Nomenclature statistique des activités économiques dans la Communauté européenne and is the statistical classification of economic activities in the European Community, which is based on the UN's International standard industrial classification of all economic activities (ISIC).*

[13] *The Complementary Identification Codes (CIC) are a classification scheme for asset categories that has been developed by EIOPA.*

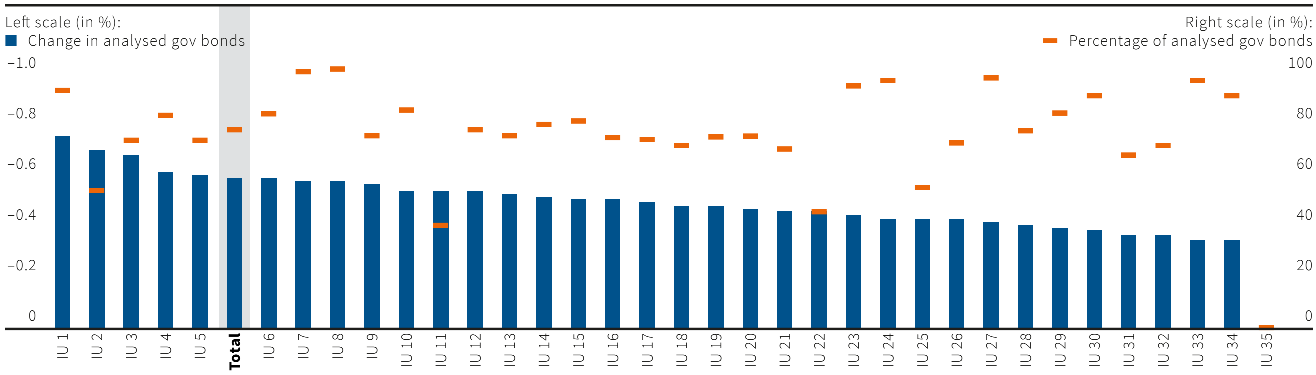
[14] *Approach developed by Battiston et al. (2016) and EIOPA Financial Stability Report (December 2018).*

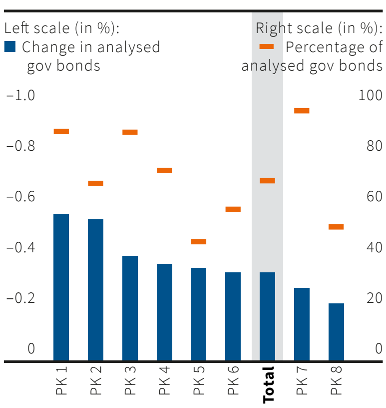
[15] *Not assignable" includes those values that cannot be assigned to a particular sector due to missing NACE or CIC codes.*

[16] *For more information, see the 2020 Report on the State of the Austrian Insurance Industry (available in German).*

[17] *See www.iiasa.ac.at.*

[18] *See www.iea.org.*





Impact of shock on government bonds per insurer according to Battiston (FMA diagram):
***Chart 17** (top): insurance undertakings*
***Chart 18** (below):* Pensionskassen

Insurance and Occupational Pensions Authority (EIOPA). The climate spread computed by EIOPA was used for all government bonds[19] giving each bond's loss in value by issuer and residual maturity.[20]

The FMA analysed around 75.66% or € 23.2 billion of the € 30.7 billion of government bonds held by insurance undertakings; the remaining 24.34% relates to issuers that are not included in EIOPA's table. This € 23.2 billion of bonds represents 18.56% of the total portfolio. Where there were investments in government bonds, the relative share of analysed government bond per insurer was between about 38.73% and 99.98%, and the losses in value between 0.3% and 0.73% *(> Chart 17)*. In the portfolio as a whole, losses amounted to about 0.56% or € 130.9 million.

The government bonds held in the portfolios of Austrian *Pensionskassen* would depreciate by around 0.32% or € 13 million in the shock scenario. The loss per *Pensionskasse* would vary between -0.2% and -0.55% *(> Chart 18)*. Out of the total of € 6.03 billion that *Pensionskassen* hold in government bonds, the FMA analysed around 68.4% or € 4.13 billion; the remaining 31.6% relate to issuers that are not included in EIOPA's table. This € 4.13 billion of bonds constitutes about 17.76% of the total portfolio.

The FMA has also analysed portfolios using the PACTA (Paris Agreement Capital Transition Assessment) tool. PACTA has been developed by the 2° Investing Initiative (2DII) think tank in cooperation with various institutions (e.g. scenario analysis carried out by the Bank of England, funding from Republic of Germany and the European Commission). The tool can be used to assess equity and corporate portfolios (with an existing ISIN[21]) across various sectors that are transitioning to a low-carbon economy. It also identifies the potential financial risk for portfolios in case of sudden, disorderly transitions.[22]

PACTA identified some $ 55.5 billion[23] in equities and corporate bonds in insurance undertakings' portfolios, $ 7.8 billion of which is invested in climate-relevant sectors *(> Chart 19, next page)*. The $ 7.8 billion equates to 5.6% of the total investments worth € 125 billion. The figure shows both the scope of the climate-relevant sectors

[19] *EIOPA – Financial Stability Report (December 2019), p. 89.*
[20] *Please note that the mapping table was prepared in 2019 before the COVID-19 outbreak. The underlying assumptions might therefore no longer be relevant to the current analysis.*
[21] *The International Securities Identification Number (ISIN) consists of twelve alphanumeric characters and allows unique international identification of securities that are traded mainly – but not exclusively – on the stock exchange.*
[22] *PACTA is provided free of charge and can be used at https://tool.transitionmonitor.com/participate by uploading the portfolio to be analysed as a CSV file in the format of "ISIN,MarketValue,Currency".*
[23] *All PACTA output is given in USD. Exchange rate as at Q4/2019.*

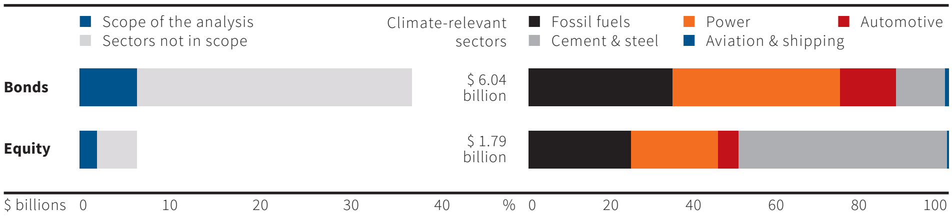


Chart 19: *Sectoral overview in relation to insurance undertakings, total portfolio (PACTA chart)*

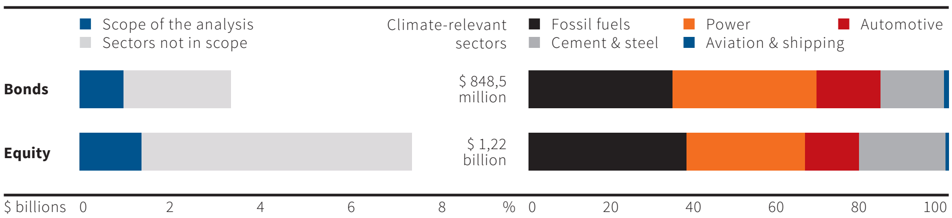
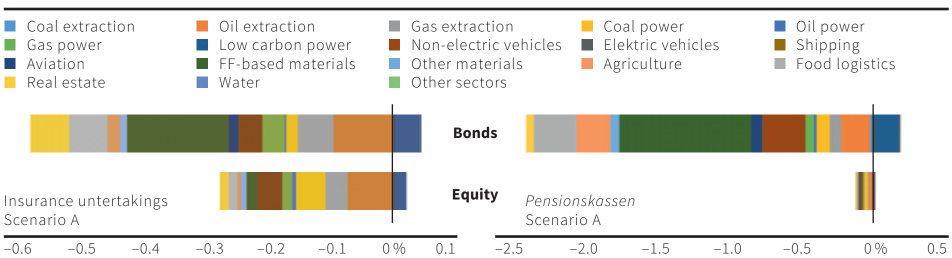
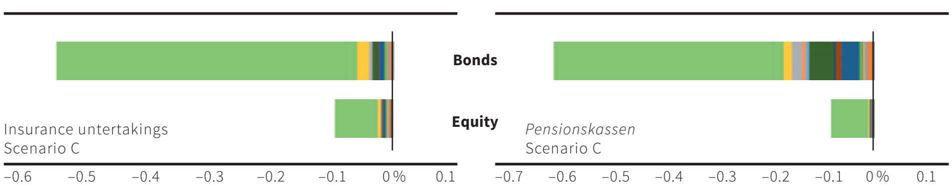


Chart 20: *Sectoral overview in relation to* Pensionskassen*, total assets (source: PACTA)*



Scenario A stress testing:
Chart 21 *(left): insurance undertakings, total portfolio*
Chart 22 *(right):* Pensionskassen*, total portfolio (PACTA chart)*



Scenario C stress testing:
Chart 23 *(left): insurance undertakings, total portfolio*
Chart 24 *(right):* Pensionskassen*, total portfolio (PACTA chart)*

and the total scope of the equities and corporate bonds (left) and the distribution of climate-relevant setors (right), made up of fossil fuels, automotive, aviation, shipping, power, cement and steel.

PACTA identified some $ 10.9 billion in equities and corporate bonds in the portfolios of *Pensionskassen*, with some $ 2.1 billion being invested in climate-related sectors *(> Chart 20).* This amount equates to 7.9% of total investments worth € 23.2 billion.

PACTA was also used for a stress test of the assets side in relation to equities and corporate bonds, depicting foreseeable losses in value upon various transitions to a low-carbon economy.

If the 2°C target is to be achieved by 2100, and based on the assumptions in the PACTA tool, the value of insurance undertakings' equities would be down 0.54% or $ 9.7 million and that of bonds by 0.28% or $ 16.9 million, in the case of *Pensionskassen* losses would amount to 2.25% or $ 27.5 million and 0.12% or $ 1 million respectively. Predicted losses are shown separately for equities and corporate bonds by subsector *(> Chart 21 and Chart 22).*

With no action taken, temperatures would rise by an average of 4°C and cause losses in the amount of 5.43% or $ 97.2 million in relation to insurers' equities and 0.91% or $ 55 million in their bond portfolios, the equivalent figures for *Pensionskassen* would be 6.24% or $ 76.1 million and 0.82% or $ 7 million respectively. Predicted losses are shown separately for equities and corporate bonds by subsector *(> Chart 23 and Chart 24).*

The FMA's analyses provide an initial impression of how heavily Austrian insurance undertakings and *Pensionskassen* are invested in climate-related assets and which potential risks they would be exposed to during a transition to a more carbon-neutral economy. They provide a valuable basis for further action, enabling the Austrian financial market to make its contribution to the achievement of national, European and global climate goals.

CLEAN FINANCIAL CENTRE

VASPS – BRINGING CERTAIN PROVIDERS OF VIRTUAL CURRENCIES UNDER THE ANTI-MONEY LAUNDERING REGIME

Virtual currencies and assets are easy to use and abuse for criminal purposes, particularly money laundering. They can be used anonymously and transferred via non-regulated platforms or providers, which makes it very easy to conceal the origin or destination of dirty money. Therefore, with its Fifth Anti-Money Laundering Directive[1] (AMLD5), the European Union included virtual asset service providers (VASPs) in its regulation and supervision regime to prevent money laundering and combat the financing of terrorism (AML/CTF).

REGISTRATION OF VASPs IN AUSTRIA

The AMLD5 was transposed into Austrian law through the Financial Markets Anti-Money Laundering Act (FM-GwG; *Finanzmarkt-Geldwäschegesetz*), under the terms of which VASPs have been required to comply with the AML/CFT due diligence requirements and reporting obligations since 10 January 2020. Compared with the European provisions, the FM-GwG greatly expanded the group of services related to virtual currencies that are subject to supervision: in addition to exchange platforms (virtual currencies for fiat currencies[2]) and custodian wallet providers, market participants that exchange one or more virtual currencies between one another, that transfer virtual currencies or that provide financial services for the issuance and sale of virtual currencies (for instance, as part of initial coin offerings [ICOs] or initial exchange offerings [IEOs]) are now also subject to the rules of the FM-GwG.

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[1] *Directive (EU) 2018/843.*
[2] *Fiat currencies is legal tender without intrinsic value, and is accepted as a means of exchange.*

VASPs that are active in Austria (i.e. are actively operating in the Austrian market) or provide their services from here are subject to supervision by the Austrian Financial Market Authority (FMA). They have been obliged to register with the FMA since 10 January 2020, with applications for registration being accepted since 1 October 2019.

CONTINUED AML/CTF SUPERVISION

The FMA continuously monitors the anti-money laundering (AML) and counter-terrorist financing (CTF) compliance of registered VASPs. These providers must notify the FMA about any changes to their registration information, such as changes regarding directors, beneficial owners, business model or AML/CTF policies and procedures.
Given the cross-border aspect, the FMA is obliged to publish registered VASPs in the Company Database on its website (www.fma.gv.at). Other market participants and supervisory authorities can thus easily check whether a VASP is registered with the FMA and subject to AML/CTF supervision.
The business models of providers of virtual currencies can vary greatly, and are sometimes difficult to compare. During the process of registration or notification of changes, the FMA therefore not only examines compliance with the FM-GwG provisions but also checks whether a financial service subject to licensing requirements is being provided. This is a broad area, and proves once more the advantages of the FMA's integrated approach to supervision through which the Authority supervises all of the financial market in Austria. The FMA's approach is to act proactively, i.e. to monitor consistently and rigorously that no providers are operating without the requisite licence, and that none of them extend the scope of their licence or breach regulatory provisions and due diligence obligations.
Where the FMA suspects that a provider of services related to virtual currencies is rendering those services without the necessary registration or offering services requiring a licence without such licence, it must prohibit the provision of that service without delay. A fine of up to € 200 000 may be imposed for failure to register as a VASP. Where there are signs that a VASP is not complying with the AML/CTF requirements and due diligence obligations, or where the personal reliability of the director or the natural person with a qualifying holding is in doubt, registration must be refused and any existing registration withdrawn.

THE VASP MARKET IN AUSTRIA

A total of 40 applications for registration have been filed with the FMA since 1 October 2019. Of these 40 applications from VASPs, 17 resulted in registration. In two cases, the application was turned down owing to the personal reliability of the director or the natural person with a qualifying holding being insufficient. In eight cases, the applicants withdrew their applications themselves.
The 17 VASPs that have so far been registered by the FMA include both large companies and small and medium-sized enterprises. They have their registered office in Austria and offer the following services within or, in some cases, outside Austria (but still within the EU):

- Services to safeguard private cryptographic keys (custodian wallet providers)
- Services to exchange (exchange platform) or operate machines to exchange virtual

currencies between one another or to exchange virtual currencies for fiat currencies and vice versa.

The registered providers engaged in exchange services between virtual currencies and fiat currencies render these services mostly through machines (referred to as ATMs or Bitcoin machines). A few of the registered VASPs also offer services in addition to those mentioned above, namely the issuance and sale of virtual currencies (within the scope of an ICO/IEO).

THE FMA'S SUPERVISORY PRINCIPLES

The FMA applies the principle of proportionality and pursues a risk-based approach to supervision, adapting its efforts according to the size of the company, the business model offered and the potential risk to be abused for money-laundering purposes. The objective is to ensure that the intensity of supervision corresponds to the size of the company and its business volume, as well as to the risk level of the service and business model.

In a first step, the Authority visits the companies, examining for example by way of on-site inspections whether they have the required AML/CTF policies and procedures in place as explained during the registration process. The focus of these inspections is to identify and consider potential risk factors. Specific risks include risks posed by cash-intensive services such as the exchange of fiat currencies for virtual currencies by way of ATMs or the exchange of anonymous virtual currencies (privacy coins, e.g. Monero) for non-anonymous virtual currencies (e.g. Bitcoin). Similarly, the use of various services such as mixing indicates a particularly high risk of the source of virtual currencies or the transaction history being concealed.

For anti-money laundering purposes, it is of utmost importance to ensure that VASPs trace all funds in accordance with the law, adequately monitor all transactions on the blockchain, and properly establish and verify the identity of their customers.

For anti-money laundering purposes, it is of utmost importance to ensure that VASPs trace all funds in accordance with the law, adequately monitor all transactions on the blockchain, and properly establish and verify the identity of their customers.

The insights gained by the FMA during the first twelve months of including VASPs in their regulation and supervision efforts to prevent money laundering and the financing of terrorism seem to indicate a positive trend in the market. The FMA's zero tolerance policy, embedded in its integrated approach to supervision, the ongoing exchange of experiences with supervisors from other Member States, as well as intensive work in international working groups such as the global standard setter in the field of fighting money laundering, the Financial Action Task Force (FATF), have all increased awareness among providers of virtual currencies and assets of how important compliance with due diligence requirements is and how pertinent AML/CFT rules are. This is significant in helping to avert the risks associated with virtual currencies and safeguarding Austria's status as a clean financial centre.

ANTI-MONEY LAUNDERING IN INTERNATIONAL CORRESPONDENT BANKING
INSIGHTS FROM THE FMA'S AUDITING ACTIVITIES

The world of today is one of tightly meshed international business and financial relationships. Globalisation has led to a surge in cross-border financial flows and transaction volumes. In Austria, with its export-oriented economy, many domestic banks and financial institutions provide services in international markets. They are part of and interconnected with international capital flows, and this is reflected in the high number of cross-border transactions handled every day by Austrian financial institutions.

THE CORRESPONDENT BANKING SYSTEM

To ensure cross-border transactions can be processed smoothly everywhere around the world, credit and financial institutions are establishing correspondent banking relationships in (foreign) markets in which they have no subsidiary bank or branch of their own to handle payments (or other transactions) directly from bank to bank. This way, they may offer financial services and transactions even in those markets where they do not normally operate.

Ultimately, a correspondent banking relationship is nothing other than an arrangement where one credit institution renders payment or banking services on behalf of another credit or financial institution: the "correspondent bank" offers to provide and process certain banking services for the "respondent bank".

Correspondent banking relationships play a vital role in today's global economy: they allow every bank to engage in financial transactions in even the remotest corners of the world, thereby forming the basis of global trading and giving access to different currencies.

RISK OF MONEY LAUNDERING

This global network of banking relationships and financial flows that crosses national borders and links markets, that is available 24 hours a day and 7 days a week is particularly susceptible to abuse for money-laundering purposes. International standard setters combating money laundering and the financing of terrorism have therefore focused their efforts in the past few years on the prevention of money laundering in correspondent banking relationships.

In these relationships, the correspondent bank processes transactions for the respondent bank's customers, which is why there is usually no direct business relationship between the respondent bank's customer and the correspondent bank. From the correspondent bank's perspective, the respondent bank is its customer. The correspondent bank therefore has very little information about the respondent institution's customer and also only limited information about the background to a transaction. It has to rely on the respondent bank's compliance with internationally binding AML standards.

The danger is that dirty money can be funnelled into international money flows, subsequently being moved around in multiple transactions that conceal the actual source of the funds and identity of the client and recipient. During the past few years money-laundering scandals involving billions of dollars have been revealed; these were facilitated by correspondent banking activities and show the high risks inherent in correspondent banking relationships. Some of the most well-known cases are:

The danger with correspondent banking relationships is that dirty money can be funnelled into international money flows, subsequently being moved around in multiple transactions that conceal the actual source of the funds and identity of the client and recipient.

- *Troika Laundromat:* A bank in Lithuania was used to channel billions of dollars from Eastern Europe to offshore centres. The bank was closed down by the supervisory authorities.
- *Danske Bank Estonia:* Between 2007 and 2015 billions of euros are said to have been moved out of Russia and former Soviet Republics through the Estonian branch of Danske Bank to be laundered in the financial system in the West.
- *Deutsche Bank:* This global player was linked to suspicious transactions amounting to several billions of dollars and was itself fined billions of dollars.
- *FinCEN files:* Documents and data held by the US Financial Crimes Enforcement Network (FinCEN), the authority in charge of combating money laundering in the USA, and leaked to journalists in 2020 show that the relevant international standards have been applied very differently by correspondent banks across the globe, and that cooperation or mutual control of these banks leaves much to be desired.

THE ROLE OF THE FMA AS AML SUPERVISOR

Efficient monitoring of international financial flows, and thus of cross-border correspondent banking relationships, is currently still highly dependent on national AML/CTF regulation and supervision in the home country of both the respondent and the correspondent bank. The European Commission writes in its Action Plan that the Union does not have in place sufficiently effective arrangements to handle AML/CFT incidents involving cross-border financial transactions. According to the Commission, monitoring can only be as strong as its weakest link. Failings in national implementation and application of the relevant rules or in just one national competent authority create risks for the whole of the single market. Supervision is handled very differently across the globe and within Europe too, which makes it practically impossible to monitor cross-border correspondent banking activities efficiently.

National and regional loopholes in AML regulation and supervision of the financial system mean that it is always possible to find a way to move ill-gotten gains around the world. Once the illegal money has been moved around within the correspondent banking network of credit and financial institutions, it can frequently no longer be distinguished from legal money. This is where supervision should come in: to examine the relationship to the respondent bank, and to monitor and verify the specific customer relationships and flows of money.

In its supervision and inspection priority of preventing money laundering in correspondent banking relationships, the FMA therefore concentrates on the general requirements for establishing a correspondent banking relationship, the auditing of specific correspondent banking relationships and analysis of individual transactions.

GENERAL REQUIREMENTS

First of all, the correspondent bank needs to establish and verify the identity of the respondent institution and its beneficial owner. In addition, it is required to gather sufficient information about the customer's business model to be able to understand the purpose and intended type of correspondent banking relationship. This includes information about the type of customers the respondent institution wishes to serve through the correspondent banking relationship and how it offers these services. Details are also needed about the expected scope of business, transaction volume, type of planned transactions and the extent to which the respondent institution associates them with high risk. The following information on the respondent institution is of particular relevance:

- **General information on the respondent institution** (type of financial institution, number of staff, supervision of the respondent institution etc.)
- **Information on the business model** (regional scope, products offered, customer base, correspondent banking activities by the respondent institution)
- **Processes in place to prevent money laundering and terrorist financing** (organisational precautions and details about the anti-money laundering officer, information about checks and procedures put down in writing, application of a risk-based approach, customer acceptance processes in relation to high-risk customers in particular, information on the tracing of the funds' source, monitoring of transactions within the correspondent banking relationship).

CONSISTENCY AND PLAUSIBILITY CHECKS

This general information about the respondent institution is used as the basis for performing a consistency and plausibility check of the respondent institution's actual transaction behaviour. The respondent institution's actual transactions are to be checked regularly and examined further if found to be suspicious.

CONTINUOUS MONITORING OF CORRESPONDENT BANKING TRANSACTIONS

The consistency and plausibility checks depend on efficient monitoring of the transactions at the correspondent bank. As transaction numbers handled within a correspondent banking relationship are usually high and as information about the real clients and recipients of transactions is usually not available, most cases require some sort of automated transaction monitoring to address the particularities inherent in correspondent banking relationships. The aim is to analyse certain transaction patterns and to identify any irregularities. These automated monitoring systems need to be calibrated with empirical values for effective monitoring. If the threshold values are set too it may well be nigh on impossible for the monitoring systems to produce a meaningful analysis.

The FMA has seen in the course of its on-site inspections that it is not unusual for correspondent banks to carry out transactions for their respondent institutions within the scope of existing correspondent banking relationships but with the respondent institution not being the client bank. Such nested correspondent banking relationships or transactions are particularly likely to be misused for money-laundering purposes. The correspondent bank should therefore include appropriate instruments in its system for the regular monitoring of transactions, enabling it to unearth such non-disclosed, nested transactions at the respondent institution and to take appropriate action. An efficient consistency and plausibility check of the respondent institution's transaction behaviour would not be possible otherwise.

The FMA's supervisory focus on correspondent banking has shown how important it is to regularly monitor such business relationships to prevent the misuse of correspondent banking networks for money laundering and terrorist financing. Given the lack of information on the client and recipient of correspondent banking transactions, it is even more important to continuously monitor the transactions processed in practice and to audit the respondent bank on the basis of the monitoring results.

The aim defined in the Financial Markets Anti-Money Laundering Act (FM-GwG; *Finanzmarkt-Geldwäschegesetz*) of preventing the abuse of the financial system for the purpose of money laundering and terrorist financing lies in each individual financial institution's interest, but also in the interest of Austria to ensure it maintains its status as a clean and reputable financial centre. The FMA will therefore consistently continue to pursue its successful zero tolerance policy towards money laundering, aiming to deter dubious customers from the outset and ensuring that credit and financial institutions do not come into contact with illegal money in the first place.

INTERNAL OBJECTIVES

THE FMA AND THE MOVE TO A FULLY DIGITAL FORM OF SUPERVISION

Digitalisation has unlocked a huge amount of development potential, some of it fundamental, in the financial market and in how that market is supervised. It can help make the delivery of financial services quicker, cheaper, better, more convenient, more secure and more transparent. At the same time, digitalisation means that supervisory activity can be made significantly more efficient and effective. The FMA must continuously evolve in response to this digital change process, both in terms of its internal structure and organisation and with regard to its interfaces to the financial market: it must optimise its external supervisory processes as well as its internal support tools on an ongoing basis, but it must also adapt how it selects and trains its staff, as well as the design of its work spaces and operational tools.

The FMA implemented its first major digitalisation projects soon after its foundation in 2002, including the conversion of its paper files to a fully electronic filing system, the ELAK. It also set up its Incoming Platform, through which supervised companies can comply with their reporting, information and transparency obligations digitally. Another new development is the Market Manipulation & Insider Tracer (MMIT), which is a tool for the continuous, automated monitoring of trades in listed securities using algorithms to ensure that the trading is being carried out properly. And these are just a handful of the FMA’s flagship projects as the Authority moves to full digitalisation.

The FMA also continues to initiate projects for the digitalisation and automation of its processes, optimising established workflows and supporting new ones. In the case of external processes, the focus is currently on projects for fully digitalised, integrated data exchange. Internally, one of the main priorities comprises projects that support the need to be able to work remotely at any time of day via the Internet. Another key area is digital tools that use AI and machine learning to improve the analysis of reporting data and big data, as well as tools that strengthen the links between and with financial market participants, for example through application programming interfaces (APIs).

The FMA has already made strong progress towards fully digitalised supervision.

DIGITALISED EXTERNAL PROCESSES

The exchange of information with the supervised entities and other institutions is now offered and implemented digitally and with continuity of media in both directions. The areas covered include:

- Incoming mail via electronic mailbox and electronic delivery of outgoing mail
- Secure ad hoc data exchange via a secure file transfer server
- Statutory notifications via web applications such as the Incoming Platform
- Regular and automated exchange of reporting data (structured data transfer).

TRANSFER OF STRUCTURED DATA

Supervised companies have access to reporting platforms for transferring large volumes of data simply and quickly to the FMA while also ensuring the maximum level of EU harmonisation. All processes are digitalised and automated from the data acceptance stage and basic data quality checks through to internal preparation for analysis.

The data making up these statutory notifications is stored in a central database across all departments, i.e. on an integrated basis. This offers the advantage that all applications are accessing the same data. It dispenses with the need for any duplicate manual data entry, which may be prone to errors.

An initial technical quality check with automatic error management (return of incorrect data records to the sender) is carried out by means of predefined integrated checking rules in the interface formats XML (eXtensible Markup Language) and XBRL (eXtensible Business Reporting Language). Additional checks take into account, for example, the uniform specifications of the European Securities and Markets Authority (ESMA)[1] and the European Insurance and Occupational Pensions Authority (EIOPA)[2]. FMA employees then carry out further computer-assisted checking and correction steps in order to sign off the final data quality.

Checked data, having been corrected if necessary and supplemented with internal information, is then available in the FMA database across all departments and in real time. Thus, the availability of high quality data is ensured almost immediately. The data often has to be analysed and interpreted across the individual supervision areas (where legally permissible). An appropriate system of clearly defined roles ensures that only authorised employees have access to data. Sensitive personal data is encrypted to provide an extra layer of protection and is only made available to authorised users.

Additionally, statutory provisions require the periodic forwarding of much of the data for further processing, analysis and evaluation by external institutions in Austria and

[1] *The European Securities and Markets Authority (ESMA) was established with effect from 1 January 2011 by means of Regulation (EU) No 1095/2010 (ESMA Regulation).*

[2] *The European Insurance and Occupational Pensions Authority (EIOPA) was established with effect from 1 January 2011 by means of Regulation (EU) No 1094/2010.*

abroad, such as the European Supervisory Authorities or the European Central Bank (ECB).

Examples of comprehensive data transfers include in particular:

- Solvency II reporting system in the area of insurance supervision (preparation of the data in a data cube and forwarding to EIOPA and ECB)
- MiFIR securities transaction reporting system (automated reporting system for the receipt of securities transactions, including processing and forwarding to other supervisory authorities in the prescribed reporting formats via ESMA).

Digitalisation makes the delivery of financial services quicker, cheaper, better, more convenient, more secure and more transparent.

EXCHANGE OF UNSTRUCTURED DATA

Supervised companies are provided with platforms for the transferring of unstructured data (including pdf documents, Office files and similar) so that subject-specific information can be sent to the FMA efficiently. The focus is always on the secure and traceable transmission of data. The transferred data is automatically forwarded to the relevant divisions in the downstream systems, e.g. the ELAK electronic filing system.

Examples include:

- **Incoming Platform:** data uploaded using defined forms and simple one-click file upload facility in accordance with certain statutory rules.
- **Secure file transfer platform:** platform for the secure, traceable exchange of documents.

INCOMING AND OUTGOING MAIL (ELECTRONIC DELIVERY)

To avoid changes in media format and to meet the statutory requirements in relation to electronic delivery options with effect from 1 January 2020, several measures were implemented in earlier years:

- Since the end of 2018 the FMA has provided a dual delivery option based on its electronic filing system. Official documents can now also be delivered electronically to the parties concerned. Recipients who are registered with a suitable delivery service receive a digital delivery. Otherwise, the outgoing document is automatically printed out, placed in an envelope and forwarded for posting.
- Since January 2015 it has been possible to send mail to the FMA electronically. This mail is treated in the same way as scanned (digitalised) post received on paper and is forwarded to the electronic filing system for further processing.
- Incoming post that is received as a hard copy is scanned by the incoming mail department and distributed internally in digitalised form for further attention. In this way, all incoming mail is available electronically internally.

DIGITALISED INTERNAL PROCESSES

REMOTE WORKING

For years now, all FMA employees have been able to use all of the FMA's IT services externally on their mobile devices (laptops or mobile thin clients) at any time and from any location that has Internet access, through a Virtual Private Network (VPN) or Citrix access. This enables staff to switch between working on site at the FMA and working from home or remotely at any time. During the COVID-19 pandemic, all employees were therefore able to seamlessly switch to working from home immediately.

COMMUNICATION SOLUTIONS

Being able to work anywhere needs flexible communication options that are not dependent on a particular location. The VoIP telephone system has a Softclient app that allows all employees to be reached on their direct-dial number regardless of their location and they can continue to use all services such as voicemail and messaging, call forwarding and call recording. In addition, all FMA employees can hold audio and video conferences with internal and external participants from any location, using Skype for Business and Webex in accordance with the FMA security policies.

DIGITALISATION IN HR MANAGEMENT

With regard to HR management, a single centralised software tool with a uniform user interface integrates all of the essential functions: HR master data and accounting, time and activity recording, seminar and training management, travel planning and accounting, as well as staff appraisals and evaluation. This avoids the need for interfaces between functions, improving the stability of the system and usability for all. Approval stages for various personnel processes, such as absence, travel or seminar applications, can be processed by managers within the same web portal, helping them to maintain an overview and offering easier evaluation.

DATA EVALUATION AND ANALYSIS

ANALYSIS AND INFORMATION SEARCHES IN LARGE POOLS OF UNSTRUCTURED DATA

The FMA uses special programs for the automated analysis of a large amount of unstructured data. Connecting information in this way means that links can be detected and targeted searches carried out to find specific information. In an initial stage the data for analysis is:

- pre-filtered (using for example criteria such as Office documents or a defined time period),
- cleansed (e.g. by removing duplicated files) and
- transferred to a form that is suitable for analysis (for example by using OCR to extract text from image files and pdf documents).

The prepared data is then fed into the analysis software. Using "learned" patterns (machine learning), any links and dependencies are picked up, both in terms of content and chronology within the data pool. Users can navigate quickly through the content by accessing charts and tables, implementing targeted searches for specific pieces of information.

ANALYSIS AND EVALUATION OF STRUCTURED DATA

Verified reporting data can also be processed in downstream applications. The results can be displayed in list or graphic form, customised using selection, grouping and sorting parameters, and then used for data analysis. The underlying data is provided by a relational database and a data cube.

DATA CUBES

For reasons of comparability, periodically recurring evaluations are often hard-coded

so that they cannot be changed and are made available when manually requested by the user or on an automated basis.
Where the data within a data pool needs to be filtered and analysed on the basis of certain criteria, a dynamic report is the only choice. In this case, the reports are created in a flexible way such that the data is queried using a range of selection parameters and visualised using various presentation techniques (sorting, grouping).
The use of data cubes to extend the relational database ensures fast and dynamic data evaluation, particularly when dealing with large quantities of highly numerical data. By creating multiple dimensions, the data can be retrieved and analysed from a number of perspectives, such as time series.
Particularly in insurance and pension company supervision, digital data cubes are used to provide evaluations and analysis quickly and dynamically. Using data slices, this can be done from different perspectives, producing flexible reports as well as static information. The cubes are filled automatically from standardised interfaces to the FMA database. Because cube data and analyses can even be integrated into MS Excel, this format guarantees easy access and simple interoperability with other data sources.

MMIT – MARKET MANIPULATION & INSIDER TRACER

With MMIT, its digital Market Manipulation & Insider Tracer, the FMA has developed a data-driven market monitoring tool (alarm system) with integrated documentation function, which also has its own analysis and query tools for investigations. Using algorithms, the trading data is continuously monitored and analysed, and the system also includes all information available to markets and exchanges supervision in the analysis in order to be able to detect market abuse in a targeted manner. Investigators are thus provided with the information and data in a pooled and structured form.

EMIR, MIFIR AND CSDR REPORTING DATA ANALYSIS

For the purposes of the systematic and ongoing analysis of the data received on the basis of reporting obligations imposed by the European Market Infrastructure Regulation (EMIR)[3] (Article 9), the Markets in Financial Instruments Regulation (MiFIR)[4] (Article 26) and the Central Securities Depositories Regulation (CSDR)[5] (Article 9), the FMA has developed its own internal digital tool. The aim is to guarantee the level of data quality needed for market monitoring. This system has therefore been used to implement fully automated evaluations with an integrated communication interface to the entities subject to reporting obligations.

PRIIPS KID ANALYSIS AND AUTOMATED REPORTING

The FMA must continuously monitor the proper preparation of all Key Information Documents (KIDs) for Packaged Retail Investment Products (PRIIPs). The approxi-

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[3] *Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories. This Regulation governs OTC trading in derivatives and is designed to curb systemic risks in the European derivatives market.*

[4] *Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012. This Regulation is intended to improve transparency around trade in financial instruments, thereby reducing the risk of a financial crisis in the future.*

[5] *Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012. The aim of the CSDR is to increase the safety and efficiency of securities settlement and the settlement infrastructure in the EU.*

mately 6 000 to 10 000 PRIIPs KIDs found on the Austrian market daily are identified on key dates as part of an automated process using a specially developed web crawler. They are then downloaded from the websites of the respective Austrian credit institutions. Each KID is subject to an automated digital evaluation and analysis, before an individual expert judgement from an FMA employee completes the automatically generated report.

AZP SCREENING

In the Annex to the Audit Report (AzP), an auditor in their capacity as bank auditor must present a brief description of the economic situation of the credit institution on the basis of the audited annual financial statements, outlining the main strengths, weaknesses, risks and any acute problem areas. To this end, the auditor must also answer a large number of precisely worded, standardised supervisory questions. These findings of the bank auditor are automatically screened in certain audit modules. Any findings are extracted and presented in a topic-specific manner and subsequently fed into the ELAK fact file and assigned to individual AzPs.

The FMA's aim is to use its resources even more efficiently and in an even more targeted manner by digitalising its supervisory and administrative work ever more intensively, thus further improving the quality of the supervision.

ESEF TOOL

Annual financial reports of issuers for financial years with closing dates later than 31 December 2020 must be published in the European Single Electronic Format (ESEF) on the basis of a Regulatory Technical Standard (RTS) developed by ESMA. Issuers with consolidated IFRS financial statements must therefore – in addition to producing a human-readable version of their annual financial report in xHTML format – electronically mark up (tag) the numerical values in their primary financial statements in XBRL format so that the IFRS financial statements that they contain become machine-readable. While the RTS-compliant tagging of the individual values has to be checked manually by a person with detailed knowledge of the taxonomy to be applied, the technical requirements for the design of the reporting package (a *.zip folder containing further folders and files) can be checked by computer using a customised program (validation tool), and any errors can be identified.

As demonstrated by all of these examples and flagship projects, the FMA is making consistent progress in its transition to fully digital supervision. Its aim is to use its resources even more efficiently and in an even more targeted manner by digitalising the FMA's supervisory and administrative work ever more intensively, thus further improving the quality of the supervision. This also makes a significant contribution to strengthening the stability of the Austrian financial market and boosting the confidence of all concerned in its proper functioning.

LEGAL DEVELOPMENTS

LEGAL DEVELOPMENTS
MAJOR CHANGES IN NATIONAL, EUROPEAN AND INTERNATIONAL LAWS

NATIONAL LEGISLATION

AMENDMENTS TO EXISTING LAWS DURING THE REPORTING PERIOD

Announcement by the Federal Minister for Finance on entry into force of the SFT Enforcement Act, Federal Law Gazette I No. 89/2019

Regulation (EU) 2015/2365, the Securities Financing Transactions Regulation (SFTR), aims to enhance the transparency of securities financing transactions (SFTs). The FMA may in future only impose administrative penalties pursuant to Article 3 of the SFT Enforcement Act *(SFT-Vollzugsgesetz)* for breaches of Article 4(1) of Regulation (EU) 2015/2365 if the offence in question was committed by the relevant counterparty after the date on which Article 4(1) of the Regulation entered into force with regard to that counterparty.

The FMA's power to impose administrative penalties pursuant to Article 3 of the SFT Enforcement Act for breaches of Article 4(1) of the SFTR enters into force on a staggered basis depending on the type of counterparty between 11 April 2020 and 11 January 2021.

Tax Administration Reform Act (FORG; *Finanz-Organisationsreformgesetz*), Federal Law Gazette I No. 104/2019

The FORG changes the way Austria's federal tax administration is organised. To this end, 87 federal acts had to be amended, three federal acts had to be issued, and one federal act as well as five regulations appealed.

- Following an amendment to the Federal Fiscal Code (BAO; *Bundesabgabenordnung*), a fiscal authority for large companies has been established, with competence for all companies that are subject to the FMA's supervision in accordance with the laws listed in Article 2 of the Financial Market Authority Act (FMABG; *Finanzmarktaufsichtsbehördengesetz*) (Article 61 para. 1 no. 5 of the BAO as amended). Furthermore, the FMA is obliged pursuant to Article 61 para. 6 BAO to electronically submit to this fiscal authority information about any approvals (licences, authorisations etc.) existing within the meaning of Article 2 FMABG. The Federal Minister for Finance is authorised to determine the content and means of such electronic submission by way of a regulation.

The mentioned amendments entered into force on 1 July 2020.

COVID-19 Act, Federal Law Gazette I No. 12/2020

The COVID-19 Act enacted the Federal Act on the establishment of the COVID-19 crisis management fund (COVID-19-FondsG; *COVID-19-Krisenbewältigungsfonds*) as well as the Federal Act on preliminary measures to prevent the spread of COVID-19 (COVID-19 Measures Act; *COVID-19-Maßnahmengesetz*) and amended the Statutory Provisional Budget 2020 *(Gesetzliches Budgetprovisorium)*, the Federal Financial Framework Act 2019-2022 (BFRG; *Bundesfinanzrahmengesetz*), the ABBAG Act *(ABBAG-Gesetz)*, the Labour Policy Financing Act (AMPFG; *Arbeitsmarktpolitik-Finanzierungsgesetz*), the Public Employment Service Austria Act (AMSG; *Arbeitsmarktservicegesetz*) and the Employment Contract Law Adaptation Act (AVRAG; *Arbeitsvertragsrechts-Anpassungsgesetz*). The COVID-19 Act touches on many different areas of law, but only those relevant to the FMA are dealt with here.

- The amendment to the ABBAG Act authorises ABBAG, the holding company owned by the government and established to oversee orderly wind-downs and to manage the federal assets in wind-down entities, to grant financial support to distressed companies. The Federal Government is required to provide the necessary financial means. Companies are eligible for support if they operate in Austria to a significant extent. Support will be granted to companies where it is needed to maintain solvency or to bridge liquidity difficulties related to the economic effects of the COVID-19 pandemic. For instance, bridging loans and working capital facilities can be provided to cover current costs for the duration of restrictions on business activity. The Federal Minister for Finance appoints either Oesterreichische Kontrollbank AG (OeKB) or another credit institution to act in the capacity of authorised representative for the Federal Government and to handle requests for support, which includes an assessment of the applicant's creditworthiness, preparation of the financing agreements as well as out-of-court assertion of ABBAG's rights. The Federal Minister for Finance must also issue a regulation providing more detailed guidelines on the granting of support, with companies having no legal entitlement to it.
- The COVID-19-FondsG, effective until 31 December 2020, establishes a management fund in the amount of € 4 billion at the Federal Ministry for Finance, which is to be used to make financial allocations to the individual federal ministries. This should allow for an efficient and flexible financing mechanism for measures taken in Austria in response to the COVID-19 crisis. Funding can be used for immediate coronavirus relief (specifically measures related to public healthcare, the maintenance of public order and fulfilment of requirements for educational institutions)

but may also be granted in connection with the social impact of the COVID-19 pandemic (specifically measures related to stimulating the labour market, mitigating shortfalls in income and stimulating the economy).

The COVID-19 Act entered into force on 16 March 2020.

Second COVID-19 Act, Federal Law Gazette I No. 16/2020

The Second COVID-19 Act amended 38 federal acts and issued three new ones.

- The amendment to the General Civil Code (ABGB; *Allgemeines bürgerliches Gesetzbuch*) addresses restrictions on entering business premises according to the COVID-19 Measures Act. Employees who cannot carry out their work because of these restrictions are still entitled to their salaries (Article 1155 ABGB applies). At the employer's request, however, annual leave and any entitlement to time off in lieu must be used up. This applies to a maximum of eight weeks' holiday and two weeks of the employee's holiday entitlement for the current year.
  The amendments entered into force on 22 March 2020 and will expire on 31 December 2020.
- The amendment to the Public Charges Act 1957 (GebG; *Gebührengesetz*) exempts documents and official acts that are directly or indirectly related to COVID-19 measures from public charges and federal administration fees.
  The amendments entered into force retroactively on 1 March 2020 and will expire on 31 December 2020.
- The adoption of a Hardship Fund Act *(Härtefallfondsgesetz)* is designed to provide a safety net for one-person companies, freelancers pursuant to Article 4 para. 4 of the General Social Insurance Act (ASVG; *Allgemeines Sozialversicherungsgesetz*), non-profit organisations pursuant to Articles 34 to 47 of the BAO and micro-entities. An amount of € 1 billion has been earmarked for grants to be awarded by the Federal Economic Chamber (WKO), which acts within a delegated sphere of competence and is therefore bound by instructions from the Austrian Government.
  The amendments entered into force on 22 March 2020.
- The Federal Act on accompanying measures relating to COVID-19 in administrative proceedings, in proceedings before administrative courts and proceedings before the Supreme Administrative Court and the Constitutional Court (COVID-19-VwBG) adapts judicial proceedings to reflect the new framework conditions, which have changed as a consequence of the COVID-19 pandemic. In all proceedings to which either the General Administrative Procedure Act (AVG; *Allgemeines Verwaltungsverfahrensgesetz*), the Administrative Penal Act (VStG; *Verwaltungsstrafgesetz*) or the Administration Enforcement Act (VVG; *Verwaltungsvollstreckungsgesetz*) apply, all deadlines triggered by events taking place after the entry into force of this federal act and all deadlines that have not yet expired will be interrupted until 30 April 2020. Excluded from this provision are maximum deadlines stipulated in the Constitution and deadlines pursuant to the Epidemics Act 1950 (EpiG; *Epidemiegesetz*). The authority may depart from this provision and set other appropriate deadlines in its proceedings. The period between the Act entering into force and 30 April 2020 is not included in the deadline to submit a request to institute proceedings (Article 13 AVG). For the duration of coronavirus-related restrictions to freedom of movement, any oral proceedings and non-audiovisual interrogations must only be carried out where absolutely necessary. The Federal Chancellor is being given far-

reaching authority to issue regulations, which he may use, among other things, to prolong or shorten the general interruption of deadlines.
The amendments entered into force on 22 March 2020 and were originally due to expire on 31 December 2020. The COVID-19-VwBG has, however, been amended several times, latterly by Federal Law Gazette I No. 59/2020 (see below).

- The amendments to the Insolvency Act (IO; *Insolvenzordnung*) and the Enforcement Act (EO; *Exekutionsordnung*) clarify that epidemics and pandemics constitute force majeure, with the deadline for submitting an insolvency petition therefore being extended from 60 to 120 days, and executions also being required to be postponed if the examination of proportionality is positive.
  The amendments entered into force on 22 March 2020.
- The amendment to the Process of Service Act (ZustG; *Zustellgesetz*) facilitates the serving of documents with proof of delivery by courts and administrative authorities. Documents are considered to have been delivered to the recipient from the time at which they are deposited in the relevant deposit facility (Article 17 para. 2) at the delivery point or left at the delivery point. Where this is possible without endangering the health of the person delivering the documents, the recipient must be informed of the delivery by written, oral or phone message, either themselves or via individuals who can be assumed to be able to contact the recipient. Delivery is considered as failed where the recipient could not become aware of the delivery process in due time because of their absence from the delivery point; in this case, delivery will become effective on the day following the recipient's return to the delivery point. Delivery must be recorded by the person delivering the documents on the proof of delivery. Article 22 para. 4 applies subject to the proviso that electronic recording may be carried out by the person delivering the item rather than by the recipient.
  The amendments entered into force on 22 March 2020 and will expire on 31 December 2020.
- The COVID-19 Company Law Act (COVID-19-GesG; *Gesellschaftsrechtliche COVID-19-Gesetz*) specifies that for the duration of measures to prevent the spread of COVID-19 meetings of shareholders and corporate bodies of corporations, partnerships, cooperative societies, private foundations, (small) mutual associations and associations may be held without participants needing to be physically present in accordance with the regulation issued pursuant to Article 1 para. 2 COVID-19-GesG. In this context, the Federal Minister for Justice may issue new rules by regulation. By way of derogation from Article 104 para. 1 of the Stock Corporation Act (AktG; *Aktiengesetz*), the annual general meeting of an AG (joint stock company) must be held within the first twelve months (instead of the first eight months) of the respective company's financial year.
  The amendments entered into force on 22 March 2020 and will expire on 31 December 2020.

Third COVID-19 Act, Federal Law Gazette I No. 23/2020

- The amendment to the Financial Market Authority Act (FMABG; *Finanzmarktaufsichtsbehördengesetz*) allows for all deadlines specified in FMA supervisory laws to be extended by the FMA individually by administrative decision or generally by regulation. Apart from requirements to make submissions to the FMA, this also

applies to deadlines to be adhered to in connection with other public bodies (e.g. OeNB, Vienna Stock Exchange), companies' disclosure requirements and requirements to inform other market participants. Applications for extension should be submitted electronically, where reasonable. The FMA may also stipulate more detailed provisions for such applications in the form of a regulation. The power to issue regulations was subsequently used and the FMA Deadline Extensions Regulation 2020 (FMA-FriVerV 2020; *FMA-Fristenverlängerungsverordnung*) issued by publication in Federal Law Gazette II No. 181/2020.
The amendment entered into force on 5 April 2020 and will expire on 31 December 2020.

- Following an amendment to the Beneficial Owners Register Act (WiEReG; *Wirtschaftliche Eigentümer Registergesetz*), the fixed time limits for reporting data to the register as well as for threatening and imposing coercive penalties will restart from 1 May 2020. The Federal Ministry for Finance may stipulate additional measures by regulation.
The amendment entered into force on 5 April 2020 and will expire on 31 December 2020.
- Following an amendment to the Federal Act establishing a government-owned holding company for wind-down purposes (ABBAG Act), the COVID-19 Finanzierungsagentur des Bundes GmbH (COFAG) was established as a subsidiary of ABBAG. The federal financing agency will grant liquidity assistance to companies allowing them to maintain their solvency and to bridge liquidity difficulties resulting from the economic effects of the COVID-19 pandemic. It is the Federal Government that is responsible for providing COFAG with the necessary financial funds, allowing it to grant aid up to a maximum amount of € 15 billion. Owing to the Federal Government's obligation to fund COFAG, the agency qualifies as a public sector entity. With COFAG being classed as a "public sector entity", credit institutions pursuant to Article 116(4) of Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms may treat exposures covered by COFAG in the same way as exposures to the Federal Government from a risk-weighting perspective. The Federal Minister for Finance is required to reach an agreement with the Vice-Chancellor on the issuing of guidelines for granting financial aid and the appointment of the ABBAG managing director.
The amendment entered into force on 5 April 2020.

Fourth COVID-19 Act, Federal Law Gazette I No. 24/2020

- The amendment to the Federal Act on accompanying measures relating to COVID-19 in administrative proceedings, in proceedings before administrative courts and proceedings before the Supreme Administrative Court and the Constitutional Court (COVID-19-VwBG) specifies the manner in which deadlines are to be extended. When calculating a deadline counted in days pursuant to Article 32 para. 1 AVG 1991, 1 May 2020 is deemed to be the day or date of the relevant event on which the start date depends. With deadlines counted in weeks, months or years pursuant to Article 32 para. 2 AVG, 1 May 2020 is regarded as the day on which the time limit started. Fixed time limits that cannot be interrupted appropriately in this way should not be interrupted. Furthermore, in contrast to an interruption (time limit starts anew), a suspension of certain deadlines (time limit does not continue to run

during the period of suspension) is specified for all authorities. Such a suspension applies to deadlines to submit a request to institute proceedings, to decision-making periods and to periods of limitation. Decision-making periods will be extended by six weeks at the most or, where the decision-making period itself is shorter than six weeks, by the duration of that period. The deadline by which anonymous penalty notices and summary penalty notices issued during the period from 22 March to 30 April 2020 must be paid is six weeks and four weeks respectively.
The amendments entered into force retroactively on 22 March 2020.

- With the amendment to the COVID-19-GesG, savings banks are included in the legal forms of companies for which meetings of shareholders and corporate bodies may be held without their physical presence. This already applied to AGs (joint stock companies), GmbHs (limited liability companies), cooperative societies, private foundations, associations and (small) mutual associations, and was extended for all companies to also cover deadlines for meetings stipulated in articles of association. The 2020 annual general meeting of AGs, GmbHs and cooperative societies may be held any time during the year (rather than being required within the first eight months). If supervisory board meetings of AGs, GmbHs and cooperative societies are not held until 30 April 2020, this will not constitute a breach of the rules. For the joint submission of annual financial statements and accounting documents of corporations, cooperative societies and associations, a submission deadline of nine months after the end of the financial year applies in cases where submission was not possible within the five months ordinarily prescribed. The disclosure pursuant to Article 277 of the Corporate Code (UGB; *Unternehmensgesetzbuch*) of the annual financial statements and related documents must be carried out within twelve months of the balance sheet date.
  The amendments entered into force on 22 March 2020 and apply to all accounting documents, the deadline for which had not yet expired, pursuant to Article 222 para. 1 UGB, on 16 March 2020. The provision will expire at the end of 31 December 2020 and is to be applied for the last time to accounting documents with balance sheet dates earlier than 1 August 2020.
- The Second COVID-19 Justice Accompanying Act (COVID-19-JuBG 2; *2. COVID-19-Justiz-Begleitgesetz*) regulates moratoria on the repayment of loans granted to consumers and micro-entities. Lenders' claims in relation to consumer loans or loans to micro-entities (fewer than 10 employees, annual turnover and total assets of less than € 2 million) falling due between 1 April and 30 June 2020 will be deferred for three months from their due date if the reasonable livelihood of the borrower or their dependents is threatened or if repayment is otherwise unreasonable due to a loss of income as a result of coronavirus. The granting of this payment holiday will not mean that the borrower is considered to have defaulted on repayment. The validity of security that was provided for any claims that have been deferred will also be extended by three months. Lenders should offer consumers the chance to discuss mutually acceptable arrangements and support measures. During this payment holiday, the loan agreement cannot be terminated by the lender on the grounds of default or a material deterioration in financial circumstances. As at 30 June 2020 the duration of the agreement was extended by three months and the respective due date of all contractual obligations equally postponed, unless otherwise agreed.

If the borrower defaulted on payments that were due between 1 April and 30 June 2020 (application of the moratorium does not constitute default but is limited to consumer loans and business loans to micro-entities) due to their economic circumstances being considerably impeded by the impact of the COVID-19 pandemic, the interest payable will be limited to the statutory default rate of 4% p. a.; costs for out-of-court debt collection and recovery measures will not have to be paid by the borrower. Contractual penalties will also not be applied, including with regard to failure to make payments due after 30 June 2020. Unsecured monetary loans to corporations that are granted for a duration of up to 120 days between this Act entering into force and 30 June 2020 do not count as capital-replacing loans within the meaning of the Capital Replacement Act (EKEG; *Eigenkapitalersatz-Gesetz*).

The general interruption of time limits in civil proceedings no longer applies to insolvency proceedings. In reaction to the measures to prevent the spread of COVID-19 it seems expedient to complete insolvency proceedings as quickly and promptly as possible in the interests of all parties involved. Time limits in relation to insolvency cases should therefore no longer be interrupted. Time limits that had been interrupted in accordance with Article 1 of the First COVID-19-JuBG, Federal Law Gazette I No. 16/2020, should be resumed. In individual cases, courts may extend procedural deadlines by up to 90 days. The deadline for acceptance of a recovery plan is extended from 90 to 120 days. In the instance of excessive indebtedness arising between 1 March and 30 June 2020, insolvency proceedings are only being instituted at the obligor's voluntary request for now, with the relevant application being filed by the obligor no earlier than September 2020; the rules applying to the opening of insolvency proceedings in case of insolvency (obligor's obligation to file an application, creditor's right) remain unaffected. Instalment payment plans may be deferred by up to nine months in light of the COVID-19 pandemic.

The amendments entered into force on 5 April 2020 and will expire on 31 December 2020, unless otherwise ordered. The Second COVID-19-JuBG was amended by publication in Federal Law Gazette I No. 58/2020.

Amendment to the Insurance Supervision Act 2016
(VAG 2016; *Versicherungsaufsichtsgesetz*), Federal Law Gazette I No. 38/2020

The amendment implements an adjustment of the threshold for the risk-corrected country spread, as already enshrined in EU law.

The amendment entered into force on 1 June 2020.

Amendment to the Payment Services Act 2018 (ZaDiG 2018; *Zahlungsdienstegesetz*) and repeal of the Mortgage Bond Division Act (PfBrStG; *Pfandbriefstelle-Gesetze*) Federal Law Gazette I No. 39/2020

The amendment brings the administrative penal provisions into line with the amended Regulation (EC) No 924/2009 on cross-border payments in the Community (SEPA Regulation). In addition, the PfBrStG is repealed.

The amendments entered into force on 6 May 2020.

Twelfth COVID-19 Act, Federal Law Gazette I No. 42/2020

The Twelfth COVID-19 Act introduces amendments to the COVID-19 Accompanying Act on Administrative Law (COVID-19-VwBG). The principle according to which oral pro-

ceedings and interrogations in administrative matters were only to be conducted if absolutely necessary given the current situation has been repealed. Instead, the Act stipulates that all official acts should only be carried out with physical distancing of at least one metre between the individuals present. Officials in charge must ensure that all individuals present stay at least one metre apart. Individuals who are not wearing a face covering may be excluded from the official act. Authorities may also conduct oral proceedings, interrogations, judicial inspections, the taking of evidence and similar by audio and video transmission. Parties to proceedings who do not have access to the necessary technical equipment to participate remotely must be given the opportunity to exercise their rights and to take part in ascertaining the facts of the case by providing them with a record or otherwise enabling them to do so. The record may be signed either physically or electronically by the official in charge. Authorities are also obliged to communicate with individuals orally again where necessary. Where reasonable, however, parties may be requested to make written submissions by a stipulated deadline.
The Act entered into force on 15 May 2020. The COVID-19-VwBG was re-amended by publication in Federal Law Gazette I No. 59/2020.

Eighteenth COVID-19 Act, Federal Law Gazette I No. 44/2020
An amendment to the Payment Balance Stabilisation Act (ZaBiStaG; *Zahlungsbilanzstabilisierungsgesetz*) authorises the Federal Minister for Finance to make federal contributions of up to € 650 million, in coordination with other EU Member States, to the European guarantee fund established in response to the COVID-19 crisis. The Federal Minister for Finance may also assume liability for the Federal Government in the form of guarantees of up to € 720 million plus interest and other costs, which are intended to secure loans from the EU budget used to provide temporary support to mitigate unemployment risks in an emergency (SURE), a European instrument created to tackle the economic impact of the COVID-19 crisis. Furthermore, any bans on transferring claims imposed by ABBAG are binding and effective in relation to third parties. This concerns bans on transferring claims as part of agreements granting financial support from ABBAG in accordance with Article 2 para. 2 no. 7 of the ABBAG Act. Additionally, with some financial support measures, e.g. when ABBAG assumes liability for a subsidiary, simplified form requirements apply (electronic image of the handwritten signature). The Eighteenth COVID-Act also establishes a COVID-19 Grant Auditing Act (CFPG; *COVID-19-Förderungsprüfungsgesetz*), which makes tax offices responsible for auditing the award of grants pursuant to the ABBAG Act and the Hardship Fund Act, as well as short-time work aid and government guarantees. This federal act should ensure that support measures are efficiently monitored retroactively through an external audit, with the tax offices submitting their audit reports to the relevant body.
The Act entered into force on 15 May 2020.

Communal Investment Act 2020 (KIG 2020; *Kommunalinvestitionsgesetz*), Federal Law Gazette I No. 56/2020, and amendments to the SME Support Act *(KMU-Förderungsgesetz)* and the Guarantee Act 1977 *(Garantiegesetz)*, Federal Law Gazette I No. 57/2020
The amended SME Support Act and Guarantee Act 1977 extend the period during which the Federal Minister for Finance may assume liability for COVID loans extended by

Austria's promotional bank AWS (Austria Wirtschaftsservice GmbH) and Austria's tourism bank ÖHT (Österreichische Hotel- und Tourismusbank GmbH) until the end of the year. Loans granted up until the end of the year may now be deferred without affecting the Federal Government's guarantee. With the enactment of the KIG 2020, the Federal Government is earmarking a total of € 1 billion from the COVID-19 Crisis Management Fund for municipalities and communal investment projects.
The KIG 2020 entered into force on 1 July 2020. The amendments to the SME Support Act and the Guarantee Act 1977 entered into force on 3 July 2020.

Amendment to the COVID-19-JuBG 2, Federal Law Gazette I No. 58/2020
The amendment to the Second COVID-19-JuBG extends the moratorium for loans to consumers and micro-entities, which was originally put in place for the period between 1 April and 30 June 2020, by four months until 31 October 2020. This payment holiday applies when the reasonable livelihood of the borrower or their dependents is threatened or repayment is otherwise unreasonable due to a loss of income as a result of coronavirus. Loan repayments in the case of fully affected loans will therefore be deferred for the entire period from 1 April to 31 December 2020, with the loan term being extended accordingly. The period during which the obligation to file an insolvency petition in case of excessive indebtedness is suspended is also extended from 30 June to 31 October 2020. This means that obligors are no longer obliged to file a petition in case of excessive indebtedness (although they are still allowed to file one voluntarily) and the creditor is no longer entitled to file one; applications for reasons of actual insolvency have not changed due to the coronavirus pandemic. Finally, the time period during which unsecured loans to corporations with a maximum term of 120 days do not count as capital-replacing loans is also extended from 30 June to 31 October 2020. The other measures in the Second COVID-19-JuBG that were also limited to 30 June (moratorium on rents, restrictions on default interest and collection costs, exclusion of contract penalties) were not extended and have therefore expired.
The amendments entered into force on 3 July 2020.

Amendment to the COVID-19-GesG, Federal Law Gazette I No. 58/2020
As a consequence of this amendment, Societas Europaea (SE) may now also hold their 2020 annual general meeting by the end of the year; equivalent provisions have already applied to other forms of companies.
The amendment entered into force retroactively on 28 May 2020 and will expire on 31 December 2020.

Amendment to the COVID-19-VwBG, Federal Law Gazette I No. 59/2020
In accordance with the COVID-19-VwBG, a minimum physical distance of one metre had to be maintained during oral proceedings, interrogations, the taking of evidence and similar, with face coverings also to be worn. The amendment repealed this rule. Instead, the official in charge of the official act must now ensure that all participants (with the exception of official bodies) comply with the general rules applicable in accordance with Article 2 no. 1 of the COVID-19 Measures Act (cf. COVID-19 Relaxation Regulation – *COVID-19-Lockerungsverordnung*) at the place where those official acts are being carried out.
The amendment entered into force on 3 July 2020.

Amendment to the Trade Act 1994 (GewO; *Gewerbeordnung* – Anti-Money Laundering Amendment 2020), Federal Law Gazette I No. 65/2020, the Senior Accountant Act 2014 (BiBuG 2014; *Bilanzbuchhaltungsgesetz*), Federal Law Gazette I No. 66/2020, and the Auditing, Tax Advising and Related Professions Act 2017 (WTBG 2017; *Wirtschaftstreuhandberufsgesetz*), Federal Law Gazette I No. 67/2020

These amendments implement the Fifth Anti-Money Laundering Directive. The trade authority is now entitled to exchange information about insurance intermediaries with the FMA for the purpose of preventing money laundering and terrorist financing, with due regard for professional confidentiality obligations. According to Article 33 para. 6 no. 7 of the Financial Markets Anti-Money Laundering Act (FM-GwG; *Finanzmarkt-Geldwäschegesetz*), the FMA had already been entitled to exchange information with the trade authorities.

The rule on the exchange of information entered into force on 22 July 2020.

Amendment to the Financial Market Authority Act (FMABG; *Finanzmarktaufsichtsbehördengesetz*), Federal Law Gazette I No. 89/2020

This amendment creates a legal basis for the establishment of a regulatory sandbox at the FMA. The sandbox is a supervisory concept allowing businesses to try out their innovative business models. The business models must be based on information and communication technology and be subject to the FMA's supervision. In the sandbox they are then tested under market conditions with some restrictions, such as limited market access. Regulatory or supervisory requirements must be fully met. Admission to the sandbox is only possible with business models developed by licensed companies or by companies that are to be licensed (this also applies to other forms of authorisations, approvals, registrations etc.) or by licensed companies working closely with companies that are not subject to licensing requirements. If a company that is not yet licensed is admitted to the sandbox, it may only carry out its activities subject to licensing requirements after a licence (possibly with a limited scope, depending on the case) has been granted. Participation in the sandbox can be divided into four phases: admission, pre-support, test under market conditions and exit from the sandbox. Sandbox participation is limited to a maximum term of two years.

The Act entered into force on 1 September 2020.

AMENDMENTS TO REGULATIONS DURING THE REPORTING PERIOD (NON-FMA)

Amendment to the Delivery Form Regulation (ZustFormV; *Zustellformularverordnung*), Federal Law Gazette II No. 374/2019 and to the Delivery Services Regulation (ZustDV; *Zustelldiensteverordnung*), Federal Law Gazette II No. 375/2019

The amendment to the ZustG, published in Federal Law Gazette I No. 104/2018 and reforming electronic delivery, requires technical changes and the transfer of responsibilities from the Federal Chancellery (BKA) to the Federal Ministry for Digital and Economic Affairs (BMDW) in the mentioned regulations.

The amendment to the ZustFormV adapts Form 7 (in German, Croatian, Slovenian and Hungarian), which is used to inform recipients about the holding of an official document. The ZustDV is amended in relation to the admission requirements for electronic service providers, with some editorial changes also being made.

Both regulations were issued by the BMDW and entered into force on 4 December 2019.

Regulation of the Federal Minister for Justice regulating company-law meetings without the physical presence of participants and decision-making by other means (COVID-19 Company Law Regulation – COVID-19-GesV), Federal Law Gazette II No. 140/2020

This regulation supplements Article 1 of the COVID-19 Company Law Act, according to which company-law meetings may be held without participants being physically present for the duration of measures to prevent the spread of COVID-19 pursuant to the COVID-19 Measures Act. The regulation specifies that such virtual meetings must allow for participants to be connected in real time by way of a two-way audio and video connection. All participants must use audio transmission, and at least half of the participants must also be connected by video. General meetings of AGs, cooperative societies and associations do not have to be conducted via a two-way connection, participants must only be able to follow the meeting and make requests to speak by other means. Where necessary, general meetings of these legal forms may also be conducted by way of written votes.

The regulation entered into force retroactively on 22 March 2020 and will expire on 31 December 2020.

Regulation of the Federal Minister for Finance pursuant to Article 3b para. 3 of the ABBAG Act on guidelines for the granting of liquidity assistance measures required to allow companies to maintain their solvency and to bridge liquidity difficulties connected with the spread of the SARS-CoV-2 virus and the related economic effects, Federal Law Gazette. II No. 143/2020

The guidelines are to be observed by COFAG (COVID-19 Finanzierungsagentur des Bundes GmbH) when granting financial assistance to support companies' solvency and liquidity. Companies subject to financial market supervision are not eligible for support. All other companies may be supported by COFAG, particularly in the form of direct grants, direct loans and guarantees. In this context, reference is made to the Regulation of the Federal Minister for Finance pursuant to Article 3b para. 3 of the ABBAG Act on guidelines for the granting of support by COFAG to cover fixed costs, Federal Law Gazette II No. 225/2020, which specifies the details. Guarantees and direct loans should help bridge any liquidity shortfalls, allowing companies to meet their payment obligations during the relevant time frame (originally March to September 2020). The funds must only be granted if the company was not yet experiencing financial difficulties at the beginning of the year and the funds are likely to be repaid within a reasonable period of time. Companies must undertake to grant COFAG the right to demand information and carry out inspections at any time, and agree not to pay out any dividends (until March 2021), inappropriate bonuses or other inappropriate remuneration. Eligible companies can file their applications for guarantees and direct loans with a body named by COFAG (usually OeKB or AWS) through the credit institution that will be extending the subsidised loan. The credit institution must confirm that it has identified and verified the company in accordance with the Financial Markets Anti-Money Laundering Act (FM-GwG; *Finanzmarkt-Geldwäschegesetz*).

The regulation entered into force on 9 April 2020.

Regulation of the Federal Minister for Finance on the determination of the liability framework for the Guarantee Act 1977 to overcome the COVID-19 crisis *(Garantiegesetz 1977 COVID-19-HaftungsrahmenV)*, Federal Law Gazette II No. 135/2020
This regulation authorises the Federal Minister for Finance to assume obligations (guarantees, indemnity letters or other hedging transactions) for the purpose of maintaining the business activities or bridging any temporary liquidity shortfalls of companies with their registered office or permanent establishment in Austria in connection with the coronavirus crisis. The Federal Minister for Finance is entitled to do so up to a total capital amount of € 2 billion plus interests and costs. The obligations may be assumed for a period of three months after the regulation's entry into force.
The regulation entered into force on 8 April 2020.

AMENDMENTS TO FMA REGULATIONS DURING THE REPORTING PERIOD

Amendment to the FMA Cost Regulation 2016 (FMA-KVO 2016; *FMA-Kostenverordnung*), Federal Law Gazette II No. 241/2019
This amendment implements the principle laid down in Regulation (EU) No 600/2014, the Markets in Financial Instruments Regulation (MiFIR), that institutions subject to reporting obligations with neither a registered office nor a branch in Austria are not liable to pay costs here.
The regulation entered into force on 1 September 2019.

Amendment to the Regulation on Calculation Parameters for *Pensionskassen* (PK-RPV; *Pensionskassen-Rechnungsparameterverordnung*), Federal Law Gazette II No. 262/2019
In accordance with Article 20 para. 2a of the *Pensionskassen* Act (PKG; *Pensionskassengesetz*), the FMA is required to set one or several maximum permissible percentages for the assumed interest rate and the technical surplus both for new pension company contracts and for new beneficiaries (entitled) in existing pension company contracts. Calculating the technical provision according to the prudent person rule set out in Article 20 para. 2a PKG is an important prerequisite for ensuring that the pension payments promised to the beneficiaries can actually be made. In the interests of legal security, the FMA is required to determine at least every three years whether the rates are still appropriate; they were last set with effect from 1 July 2016. This amendment lowers the assumed interest rate from 2.50% to 2.00% and the technical surplus from 4.50% to 4.00%.
The amendment was promulgated on 30 August 2019 and is to be applied to financial years ending after 31 December 2019.

Fifth Amendment to the CRR Supplementary Regulation *(5. CRR-BV-Novelle),* Federal Law Gazette II No. 305/2019
With the CRR Supplementary Regulation, the FMA exercises the supervisory discretions specified in Regulation (EU) No 575/2013, the Capital Requirements Regulation (CRR). The amendment extends the pre-authorisation for the redemption of called cooperative shares, which has been in effect since 2016, for another year (until the end of 2020). On this basis, credit cooperatives may redeem deposits of former mem-

bers in the amount of up to 1% of their eligible Common Equity Tier 1 capital without having to seek authorisation from the FMA in each individual case.
The amendment entered into force on 1 January 2020 and applies to redemptions from the 2020 calendar year onwards.

Amendment to the Regulation on the Annex to the Audit Report (AP-VO; *Verordnung über die Anlage zum Prüfungsbericht*), Federal Law Gazette II No. 306/2019

The AP-VO specifies rules governing the form and structure of the annex to the audit report for credit institutions. Firstly, Part VII on risk structure and asset quality has been deleted as the data covered by this section is already covered by other reports. In addition, the economic and normative perspectives that are of vital importance to significant institutions (SIs) are also considered for internal capital adequacy assessments, which is a practice that has already been used for the audit reports submitted for SIs.
The amendments apply for the first time to financial years ending after 30 December 2019.

Amendment to the Regulation on the Key Investor Information Document (KID-V; *Verordnung über das Kundeninformationsdokument*), the Fourth Derivatives Risk Measurement and Reporting Regulation (DeRiMV 4; *Derivate-Risikoberechnungs- und Meldeverordnung*) and the Alternative Investment Fund Managers Reporting Regulation (AIFMG; *Alternative Investmentfonds Manager-Meldeverordnung*), Federal Law Gazette II No. 351/2019

This cumulative amendment changes three fund-related regulations to reflect findings from the FMA's supervisory practice. In future, the ongoing charges for hedge funds should only be given as a total figure, and not for the target funds, in the key investor information document for undertakings for collective investment in transferable securities (UCITS). Quarterly reports are also to be drawn up for UCITS that were dissolved within the reporting period. Finally, the reporting obligation for alternative investment funds (AIFs) does not take effect with the granting of the marketing licence but upon the AIF being issued.
The amendments entered into force on 1 January 2020.

Amendment to the FMA Fee Regulation (FMA-GebV; *FMA-Gebührenverordnung*), Federal Law Gazette II No. 352/2019

The amendment to the FMA-GebV defines a new case for charging fees in relation to the registration of virtual asset service providers. Additionally, the charges in relation to prospectus law are also adjusted to reflect the approval of simplified prospectuses for secondary issuances and EU Growth prospectuses in several individual documents, as well as the approval of supplements to simplified prospectuses.
The amendments entered into force on 1 January 2020.

Amendment to the Life Insurance Information Requirements Regulation 2018 (LV-InfoV 2018; *Lebensversicherung Informationspflichtenverordnung*), Federal Law Gazette II Nos. 353/2019 and 227/2020

The amended LV-InfoV 2018 changes the provisions relating to the pre-contractual information required for endowment life insurance. The percentages used in the specimen calculation for unit-linked and index-linked insurance have been adapted to

reflect a broader range of possible scenarios (from 2%, 0% and –2% to 3%, 0% and –3%). If the effective guaranteed rate of return for an endowment life insurance is negative, this must be expressly pointed out. The amendments were originally scheduled to enter into force on 1 June 2020. Due to the coronavirus outbreak, a transition period was introduced by publication in Federal Law Gazette II No. 227/2020. Accordingly, between 1 June and 31 July 2020, insurance undertakings were allowed to continue to apply the former provisions if they were able to credibly explain that they needed to make use of the transition period due to the coronavirus outbreak.
With the transition period having ended, the changed specimen calculation entered into force for all insurance undertakings on 1 August 2020.

Insurance Undertakings Reporting Regulation 2020 (VU-MV 2020; *Versicherungsunternehmen Meldeverordnung*) and amendment to the FMA Regulation on the Incoming Platform (FMA-IPV; *FMA-Incoming-Plattformverordnung*), Federal Law Gazette II No. 411/2019

The VU-MV 2020 replaces the former reporting regulation (Federal Law Gazette II No. 217/2015, as amended by the regulation published in Federal Law Gazette II No. 389/2017) and prescribes more detailed requirements for annual and quarterly reports. The most significant change relates to the requirement that reports should now be submitted directly to the FMA and no longer sent via the Austrian Insurance Association (VVO). Furthermore, overlapping content in national and European reports is eliminated and redundant national reporting requirements have been abolished. With the amended FMA-IPV taking effect, reports about assets transferred from the balance sheet group of life insurance or health insurance to another balance sheet group must be submitted via the Incoming Platform.
The amendments apply to reports required to be submitted from 1 January 2020.

Amendment to the Granular Credit Data Collection Regulation 2018 (GKE-V 2018; *Granulare Kreditdatenerhebungs-Verordnung*), Federal Law Gazette II No. 27/2020

With the GKE-V 2018, the FMA uses its power to issue regulations pursuant to Article 75 para. 4 of the Austrian Banking Act (BWG; *Bankwesengesetz*), and details the design of reports of granular credit data and master data of counterparties. The amendment eases the reporting requirements and clarifies technical matters relating to Annexes 1B, 2A and 2B to the regulation. Core issues are: the counter-exception in Article 4 para. 3 GKE-V 2018 requiring partnerships to report the group of connected clients to which an obligor belongs and with which they are economically interconnected is repealed, and eased requirements for non-recourse factoring introduced for identifying the composition of the group of connected clients with regard to obligors. Additionally, as from the reporting date of 31 March 2020 and until 30 June 2021, the submission date pursuant to Article 6 para. 1 GKE-V 2018 is postponed from the 16th to the 20th banking day following the reporting date. This is being done in order to find out whether the data quality submitted by the institutions subject to reporting obligations could be measurably improved (and the OeNB's workload reduced). To implement the postponed submission date, the OeNB amended its AnaCredit Supplementary Regulation 2017 *(AnaCredit-Begleitverordnung)*, which was promulgated on 11 February 2020 by way of publication in Federal Law Gazette II No. 26/2020.
The amendments entered into force on 30 March 2020.

Amendment to the Master Data Reporting Regulation 2016 (StDMV 2016; *Stammdatenmeldungsverordnung*), Federal Law Gazette II No. 39/2020

The amendment clarifies and tidies up Annex 1 (company data) and Annex 3 (equity interest reporting). Furthermore, the requirement to report the accounting standard for foreign subsidiaries in Annex 1 is changed (new requirement to report the non-consolidated accounting standard), in order to comply with Article 28(2) of the ECB Guideline (EU) 2018/876 as amended. Additionally, to allow for communication by electronic means, the email addresses of chairpersons, managing directors and permanent representatives of branches within the meaning of Article 9 BWG as well as those of their deputies must be provided.

The amendments entered into force on 30 March 2020.

Regulation of the Financial Market Authority (FMA) on the restriction of short selling of certain financial instruments in an exceptional situation, Federal Law Gazette II No. 106/2020, and amendment to the aforementioned regulation, Federal Law Gazette II No. 157/2020

This regulation was issued in response to the threats posed by COVID-19, temporarily prohibiting all net short positions in shares that are admitted to the official market of the Vienna Stock Exchange and for which the FMA is the competent authority. Only market-maker transactions are excluded from the ban, provided they are executed by market makers included in the ESMA list. In addition, transactions creating a financial gain in case of reductions in the price and value of shares admitted to the official market of the Vienna Stock Exchange and carried out to circumvent the ban are prohibited. However, excluded from this prohibition were those transactions that lead to an indirect net short position by way of index derivatives, derivative contracts relating to securities baskets or exchange traded funds (ETFs), where shares on the official market of the Vienna Stock Exchange contribute less than 50% of the value in that index, basket or ETF.

The regulation entered into force on 18 March 2020, with its original version being scheduled to expire at the end of 18 April 2020 but instead being amended in the second quarter of 2020 and prolonged with changes (see below on Federal Law Gazette II No. 157/2020).

Amendment to the Regulation on the restriction of short selling of certain financial instruments in an exceptional situation, Federal Law Gazette II No. 157/2020

This amendment extended and modified the ban on the short selling of shares that are listed on the Vienna Stock Exchange as well as the prohibition on holding net short positions until 18 May 2020. While short selling was formerly prohibited in relation to each individual transaction, the amended regulation is geared towards net short positions in general. Immaterial direct net short positions making up less than 50% in value as well as market-maker transactions continue to be excluded from the ban. The amendment was prepared and harmonised in consultation with the European Securities and Markets Authority (ESMA).

The amendment entered into force on 16 April 2020, and the regulation expired at the end of 18 May 2020.

Amendment to the Burial Costs Regulation 2016 *(Beerdigungskostenverordnung)*, Federal Law Gazette II No. 161/2020

The amendment increases the maximum amount for customary burial costs as defined in Article 92 para. 7 of the Insurance Supervision Act 2016 (VAG 2016; *Versicherungsaufsichtsgesetz*) by € 5 000 to € 15 000 to take account of the increase in customary burial costs. Pursuant to Article 159 para. 4 of the Insurance Contract Act (VersVG; *Versicherungsvertragsgesetz*), this maximum amount is of relevance for life insurance policies taken out on the life of another person. If the agreed benefit exceeds the customary burial costs, the written consent of that other person is required pursuant to Article 159 para. 2 VersVG for the policy to be valid.
The regulation entered into force on 1 May 2020.

Amendment to the Online Identification Regulation (Online-IDV; *Online-Identifikationsverordnung*), Federal Law Gazette II No. 169/2020

For the purposes of preventing money laundering and the financing of terrorism in accordance with the FM-GwG, the Online-IDV lays down the requirements for the video-based online identification of customers. The amendment specifies that, to prevent the spread of COVID 19, customer identification may also be carried out by the obliged entity's employees while they work from home or their technical service providers, provided that adequate safeguards are met, until 30 September 2020.
The regulation entered into force on 22 April 2020.

FMA Deadline Extensions Regulation 2020 (FMA-FriVerV 2020; *Fristenverlängerungsverordnung*) and amendment to the FMA Cost Regulation 2016 (FMA-KVO 2016; *FMA-Kostenverordnung*), Federal Law Gazette II No. 181/2020

Article 1 of the Federal Law Gazette enacts the FMA-FriVerV 2020 to extend the deadlines specified in supervisory laws. These are maximum deadlines for necessary cases, and only apply to deadlines that would have expired in 2020 without extension by regulation. The FMA-FriVerV 2020 is issued as a temporary COVID-19 measure and will therefore expire at the end of 31 December 2021.
Article 2 adapts the FMA-KVO 2016 to bring it in line with the FMA-FriVerV 2020, specifying for 2020 that the basis for costs in the accounting groups 2 and 4 (insurance and pension supervision) may be reported at a later date if they are to be reported by a deadline that was extended by the FMA-FriVerV 2020. Similarly, corrective reports relating to the basis for costs in accounting group 1 (banking supervision) may be reported up to four months later if a deadline extension pursuant to the FMA-FriVerV 2020 is applied.
The regulation entered into force on 28 April 2020.

Amendment to the Maximum Interest Rate Regulation for Insurance Undertakings (VU-HZV; *Versicherungsunternehmen-Höchstzinssatzverordnung*), Federal Law Gazette II No. 186/2020

The amendment prescribes that the reference interest rate must be calculated on the basis of the average of the annual value of the average government bond yield weighted by outstanding amounts (UDRB) over the last five years (previously, the reference interest rate was based on the annual UDRB). The reference interest rate is used to calculate the additional interest provision (ZZR). This smoothing underlines

the long-term character of ZZR, with the prudent person principle being taken into account.
The regulation entered into force on 30 April 2020.

Amendment to the Regulation on Asset, Income and Risk Statements (VERA-V; *Vermögens-, Erfolgs- und Risikoausweis-Verordnung*), the Payment Institution and Electronic Money Institution Reporting Regulation (ZEIMV; *Zahlungs- und E-Geld-Institute-Meldeverordnung*) and the Regulation on Financial Statements and Consolidated Financial Statements (JKAB-V; *Jahres- und Konzernabschluss-Verordnung*), Federal Law Gazette. II No. 328/2020
The VERA-V implements the EBA Guidelines on COVID-19 reporting and disclosure (EBA/GL/2020/07) for institutions that are less significant on a consolidated basis in the Austrian reporting system, with extensive use being made of the options for waiving the requirement to report. The regulation is also adjusted in relation to complaints-handling to bring it into line with the Guidelines on complaints-handling for the securities and banking sectors issued by the Joint Committee of the European Supervisory Authorities on 4 October 2018 (JC 2018 35). In addition, the reporting of plan items relating to the balance sheet, income statement and own funds is included in standardised regulatory reporting, and eased requirements introduced to the reporting of financing plans. Reporting requirements are harmonised in all of the above regulations: to avoid rounding differences, amounts must in future be given to the nearest euro cent.
The amendments will enter into force on 31 December 2020, with the exception of the VERA-V amendments implementing the EBA Guidelines on COVID-19 reporting and disclosure (EBA/GL/2020/07), which entered into force on 22 July 2020.

EUROPEAN LEGISLATION

REGULATIONS AND DIRECTIVES ADOPTED DURING THE REPORTING PERIOD

As part of its regular lawmaking procedures, the European Union adopted the following legal acts of particular relevance to the FMA's scope of enforcement:

Regulation (EU) 2019/2115 amending Directive 2014/65/EU (MiFID II) and Regulations (EU) No 596/2014 (MAR) and (EU) 2017/1129 (Prospectus Regulation) as regards the promotion of the use of SME growth markets
This Regulation amends the Markets in Financial Instruments Directive (MiFID II), the Markets Abuse Regulation (MAR) as well as the Prospectus Regulation to simplify the rules applicable to the SME growth markets by way of the following measures, among others:

- Insider lists: Issuers are in future only obliged to include persons who have regular access to inside information in their mandatory insider lists.
- Disclosure: The deadline for disclosing managers' transactions to issuers is extended to five days in total. In case of delayed disclosure of inside information, an explanation must now only be provided upon the competent authority's request.

- Prospectuses: Issuers whose equity securities have been admitted to trading on either a regulated market or an SME growth market continuously for at least the last 18 months and that wish to issue securities giving access to equity securities fungible with equity securities previously issued are allowed to draw up a simplified prospectus in future. Similarly, companies in the SME growth market that are moving to the regulated market also benefit from a simplified disclosure regime under certain conditions.
- Liquidity contracts: Contracts between an issuer and a financial intermediary (a bank or investment firm) relating to the buying and selling of the issuer's shares on its behalf are now subjected to a harmonised regime throughout the EU.

Publication in the Official Journal of the European Union: 11 December 2019, applicability: 1 January 2021 for MAR amendments and 31 December 2019 for MIFID II and Prospectus Regulation amendments.

Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector (Disclosure Regulation) and Regulation (EU) 2019/2089 amending Regulation (EU) 2016/1011 as regards EU Climate Transition Benchmarks, EU Paris-aligned Benchmarks and sustainability-related disclosures for benchmarks (Benchmarks Regulation) – Sustainable Finance Package

With its sustainability package the EU is trying to involve the financial market in its efforts to fight climate change. Private investments in particular are to be channelled towards sustainable activities.

The Disclosure Regulation specifies transparency requirements for financial market participants and financial advisors in relation to their consideration of sustainability risks. Specifically, they need to disclose any negative impact of investment decisions and incorporate sustainability factors into their advisory process. In addition, specific disclosure requirements with regard to sustainable investments are defined, which should make it easier for investors to incorporate sustainability aspects into their investment decisions.

The Benchmarks Regulation is supplemented by a Climate Transition Benchmark and an EU Paris-aligned Benchmark.

Publication in the Official Journal of the European Union: 9 December 2019, applicability: 10 March 2021 for the Disclosure Regulation and 30 April 2020 for Benchmarks Regulation amendments.

Regulation (EU) 2019/2033 on the prudential requirements of investment firms and Directive (EU) 2019/2034 on the prudential supervision of investment firms

This amendment overhauls the prudential supervision of investment firms, dividing them into three classes. Depending on the allocated class, investment firms must meet varying prudential requirements in relation to capital and liquidity, reporting, governance and remuneration:

Class 1 comprises systemic investment firms or firms that have a risk profile similar to credit institutions, whose consolidated total assets exceeds € 15 billion and that deal on own account in financial instruments or underwrite financial instruments. They are subject to the same prudential requirements as credit institutions. The supervisory authority may require an investment firm engaging in banking activities and posting consolidated total assets between € 5 billion and € 15 billion to apply the same rules as credit institutions. Investment firms with consolidated total assets exceeding € 30 billion are deemed credit institutions; they must comply with all requirements relevant to credit institutions and are directly supervised by the European Central Bank (ECB).

Class 2 is made up of non-systemic investment firms that exceed one of the following thresholds: assets managed of € 1.2 billion, € 100 million per day of client orders in cash trades or € 1 billion per day of client orders in derivatives, balance sheet of € 100 million including off balance-sheet items, total gross annual revenues of € 30 million. A tailor-made prudential system (so-called "K-factors") will apply to investment firms in class 2, which sets capital requirements proportionate to the size, nature and complexity of the firm.

Class 3 comprises small and non-interconnected investment firms that do not exceed the thresholds applicable to class 2, present little risk to financial stability and only have to meet the minimum requirements. The minimum own funds requirement for class 3 investment firms applies if they have own funds equal to the higher of their permanent minimum capital requirement or a quarter of their fixed overheads in the preceding year.

Publication in the Official Journal of the European Union: 5 December 2019, applicability/implementation deadline: 26 June 2021.

Directive (EU) 2019/2162 on the issue of covered bonds and covered bond public supervision and Regulation (EU) 2019/2160 amending Regulation (EU) No 575/2013 as regards exposures in the form of covered bonds

Directive (EU) 2019/2162 specifies general core elements of covered bonds, provides for a common definition of covered bonds and defines the structural features of this instrument. This should ensure that the cover pool is only made up of high-quality assets. Furthermore, tasks and responsibilities are set out for national supervisors of covered bonds and the label "European Covered Bond" is protected for those instruments that comply with the requirements defined in the Directive.

Regulation (EU) 2019/2160 amends the Capital Requirements Regulation (CRR) with the aim of tightening the conditions for granting regulatory preferential treatment.

Publication in the Official Journal of the European Union: 18 December 2019, implementation deadline for Directive (EU) 2019/2162: 8 July 2021, applicability of Regulation (EU) 2019/2160: from 8 July 2022.

Regulation (EU) 2020/852 on the establishment of a framework to facilitate sustainable investment (Taxonomy Regulation)

The Taxonomy Regulation provides a legal framework for the classification of sustainable activities. To this end, six environmental objectives are determined (climate change mitigation, climate change adaptation, water, circular economy, environmental pollution prevention and ecosystems) to ensure harmonised criteria to assess environmental sustainability. The uniform taxonomy should form a feasible basis for developing standards and labels for sustainable financial products both at national and EU level.

Publication in the Official Journal of the European Union: 26 June 2020, applicability: from 12 July 2020 (on a staggered basis until 2023).

Regulation (EU) 2020/873 amending Regulations (EU) No 575/2013 and (EU) 2019/876 as regards certain adjustments in response to the COVID-19 pandemic
To ensure that credit institutions can continue to grant loans to support businesses and mitigate the economic impact of the COVID-19 pandemic, a number of measures is being introduced:

- In relation to the application of the International Financial Reporting Standards (IFRS), the transitional arrangements that phase in the impact of IFRS 9 on banks' own funds are extended since the economic downturn could lead to a sudden significant increase in expected credit loss provisions and impact negatively on banks' lending capacity. The extended transitional period will enable institutions to work on calibrating a new regime, which allows them to include some of the provisions in their Common Equity Tier 1 capital again, over the period between 2020 and 2024.
- Public guarantees provided in the context of the COVID-19 pandemic should be treated more favourably in relation to provisioning requirements, in line with the current treatment of guarantees granted by official export credit agencies.
- The date of application for the leverage ratio buffer requirement for global systemically important institutions (G-SIIs) is deferred by one year to 1 January 2023, in light of the COVID-19 pandemic and in line with the implementation timeline revised by the Basel Committee on Banking Supervision (BCBS).
- The abolition of the obligation to deduct prudently valued software assets from own funds becomes effective with the corresponding EBA standard and not only after a one-year transition period (as laid down in the revised Capital Requirements Regulation, CRR II).
- The more favourable treatment of certain loans granted to pensioners or employees with a permanent contract, as set out in the CRR II, has been brought forward.
- The SME supporting factors provided for in the CRR II allow for a more favourable treatment of certain exposures to SMEs and infrastructure to incentivise institutions to cautiously increase lending. The date of application of the supporting factors is therefore being brought forward.

Publication in the Official Journal of the European Union: 26 June 2020, applicability: from 27 July 2020.

INTERNATIONAL STANDARD SETTERS

In addition to European and Austrian legislation, other publications by standard setting bodies are also relevant to the financial market. Although these publications are not legally binding as such, they are frequently used as standards, guidelines or benchmarks when binding legislation is being adapted at national or EU level. The aim is to harmonise supervisory practice on a global level. The publications from such international standard-setting bodies that are most relevant to the FMA are outlined below.

BASEL COMMITTEE ON BANKING SUPERVISION (BCBS) OF THE BANK FOR INTERNATIONAL SETTLEMENTS (BIS)

Targeted revisions to the credit valuation adjustment risk framework (July 2020)
The credit valuation adjustment (CVA) risk framework replaces an earlier version of the standard as published in December 2017. The revisions include an overall recali-

bration of the standardised approach CVA as well as the basic approach CVA and aim to align the rules with the new market risk framework (Fundamental Review of the Trading Book – FRTB).
The revised framework enters into force on 1 January 2023.

Sound management of risks related to money laundering and financing of terrorism: revisions to supervisory cooperation (July 2020)
The Basel Committee has amended its Guidelines "Sound management of risks related to money laundering and financing of terrorism" (AML/CTF) and introduced new guidelines on cooperation and information exchange among prudential and AML/CFT supervisors for banks. Consistent with the standards issued by the Financial Action Task Force (FATF) and principles published by the Basel Committee, the revisions should improve the effectiveness of the supervision of AML/CFT risk management.

Margin requirements for non-centrally cleared derivatives (April 2020)
This framework is a revision of the 2019 framework. The Basel Committee and the International Organization of Securities Commissions (IOSCO) extended by one year the final two implementation phases for introducing the margin requirements for non-centrally cleared derivatives. With this extension, the final implementation phase will take place on 1 September 2022. The extended timeline is to provide additional operational capacity for firms to respond to the COVID-19 pandemic.

FINANCIAL ACTION TASK FORCE (FATF)

FATF Best Practices on Beneficial Ownership for Legal Persons (October 2019)
In this document the FATF describes cases and gives examples of the types of information on beneficial ownership to be collected, where and how to keep this information and how all of this is put into practice in different jurisdictions.

FATF Consolidated Processes and Procedures for Mutual Evaluations and Follow-Up (Universal Procedures) (October 2019)
This document sets out the universal procedures and principles to be used for country assessments conducted by international institutions such as the FATF, IMF, World Bank and also by FATF-style regional bodies (e.g. Council of Europe's MONEYVAL) to prevent money laundering and terrorist financing.

FATF Guidance on Digital Identity (March 2020)
This Guidance deals with the options available to ensure that a digital ID is appropriate for use for customer due diligence in accordance with the FATF Recommendations.

COVID-19-related Money Laundering and Terrorist Financing Risks and Policy Responses (May 2020)
The FATF describes in this paper the challenges and potential responses to new money laundering and terrorist financing threats and vulnerabilities arising from the COVID-19 crisis.

Money Laundering and the Illegal Wildlife Trade (June 2020)
In this report, the FATF deals with the issue of money laundering in connection with proceeds from the illegal trade of wild animals and plants.

12-month Review of Revised FATF Standards on Virtual Assets and VASPs (June 2020)
This report is the FATF's analysis of the first twelve months of regulating virtual asset service providers (VASPs).

FATF Report to G20 on So-called Stablecoins (June 2020)
This report considers the anti-money laundering and counter-terrorism financing risks and threats relating to virtual assets designed as so-called stablecoins. It also clarifies the application of the FATF Recommendations on stablecoins.

INTERNATIONAL ORGANIZATION OF SECURITIES COMMISSIONS (IOSCO)

FR06/2020 – Good Practices on Processes for Deference
Based on the 2019 report "Market Fragmentation and Cross-Border Regulation", this report lists measures to tackle market fragmentation in wholesale securities and derivatives markets within the scope of eleven Good Practices for deference assessments. Deference processes comprise all types of processes conducted to recognise third country service providers for national regulation. The Good Practices regulate the objectives, arrangements and considerations to be used for deference determinations.

OR/02/2020 – IOSCO Statement on Importance of Disclosures about COVID-19
In light of the manifold uncertainty resulting from the COVID-19 pandemic, this document highlights the importance of ensuring high-quality (reliability, timeliness, transparency and completeness of information) reports irrespective of type (annual and interim financial reports, annual audits).

FR04/2020 – Sustainable Finance and the Role of Securities Regulators and IOSCO
This report provides an overview of current initiatives, both by regulators and the industry, and an analysis of the most relevant ESG-related international initiatives. It highlights three recurring themes, namely multiple and diverse sustainability frameworks and standards, a lack of common definitions of sustainable activities, and greenwashing, and other challenges to investor protection.

IOSCO Statement on Application of Accounting Standards during the COVID-19 Outbreak
This statement calls for application of the IFRS 9 requirements as a principles-based framework considering the myriad hardships arising from the COVID-19 outbreak. Government support measures, debt payment holidays and moratoria will also need to be considered accordingly based on appropriate criteria and information.

INTERNATIONAL ORGANISATION OF PENSION SUPERVISORS (IOPS)

IOPS Statement on pension supervisory actions to mitigate the consequences of the COVID-19 crisis (26 May 2020)
The statement outlines some of the most important consequences of the COVID-19

pandemic on the pension sector and summarises pension supervisory actions to mitigate those outcomes.

INTERNATIONAL ASSOCIATION OF INSURANCE SUPERVISORS (IAIS)

IAIS ComFrame and Holistic Framework (November 2019)
The IAIS adopted a comprehensive reform of its frameworks for the supervision of internationally active insurance groups (IAIGs) at the end of 2019, which should contribute to effective group-wide supervision and global financial stability. These frameworks comprise the Common Framework for the Supervision of Internationally Active Insurance Groups (ComFrame), the Insurance Capital Standard (ICS) Version 2.0, which is part of ComFrame and aims to provide a globally comparable risk-based measure of capital adequacy of IAIGs, and the Holistic framework for the assessment and mitigation of systemic risk in the global insurance sector (Holistic Framework).

LIBOR Report (July 2020)
This report outlines the key findings from a survey on the supervisory issues related to LIBOR transition, conducted by the Financial Stability Board (FSB) in December 2019, and the recommendations made to the G20 finance ministers in relation to transition strategies and preparations for transitioning away from LIBOR. The Annex includes specific recommendations associated with benchmark transition for the insurance sector.

Register of Internationally Active Insurance Groups (July 2020)
On 1 July 2020, the IAIS published a register of internationally active insurance groups, which were identified by their group-wide supervisors based on ComFrame criteria.

Peer Review of ICPs 4, 5, 7 and 8 (June 2020)
This report provides the results from the IAIS Peer Review Process on the thematic topic of Corporate and Risk-Governance, in which a total of 70 international insurance supervision authorities participated. In the course of assessing the implementation of the standards, useful practices were also drawn up as guidance.

IAIS Executive Committee takes steps to address impact of COVID-19 on the insurance sector (27 March 2020)
Under this heading, the IAIS published information on how it would proceed with its major projects scheduled for 2020 in light of the COVID-19 outbreak and on the steps it would be taking to safeguard the well-being of its staff. The measures relate to the timelines for the ICS monitoring period, the Global Monitoring Exercise and implementation of the Holistic Framework.

FSB members take action to ensure continuity of critical financial services functions (2 April 2020)
The IAIS refers to the above FSB statement on continuity of critical functions during the COVID-19 pandemic, specifically in relation to outsourced cross-border service providers that are key to the continuous settlement of claims.

IAIS facilitates global coordination on financial stability and policyholder protection during COVID-19 crisis (7 May 2020)
The IAIS published a press release on policyholder protection and financial stability. Particular attention is paid to the treatment of policyholders whose contracts exclude insurance cover for losses arising from the COVID-19 pandemic. Imposing the requirement on insurers to retroactively cover COVID-19 related losses could create material solvency risks and ultimately threaten policyholder protection and financial stability.

Financial policymakers discuss responses to COVID-19 with the private sector (26 May 2020)
International standard setters in the financial sector and the industry discussed the key consequences of the COVID-19 pandemic on the global financial sector and explored financial policy measures to contain the crisis.

FINANCIAL STABILITY BOARD (FSB)

Key Attributes Assessment Methodology for the Insurance Sector (August 2020)
The Financial Stability Board (FSB) discusses topics of basic systemic relevance to the global financial system. On numerous occasions, the FSB has done the groundwork for further development by the respective sectoral standard setters (BCBS, IAIS, IOSCO etc.). On 25 August, the FSB adopted the Methodology for Assessing the Implementation of the Key Attributes of Effective Resolution Regimes for Financial Institutions in the Insurance Sector (the Key Attributes were originally adopted in 2011 and supplemented in 2014). The paper comprises key criteria for the assessment of national resolution regimes in relation to systemically important insurers, thereby placing the focus on the insurance sector. Particular emphasis is placed on the principle of proportionality: resolution regimes should be proportionate to the size, structure and complexity of the jurisdiction's insurance system. The assessment methodology was developed by the International Monetary Fund (IMF), the World Bank and other relevant standard setting bodies and reviewed in the context of a Financial Sector Assessment Program (FSAP) in 2019.