Credit Servicers and Credit Purchasers Act (KKG; Kreditdienstleister- und Kreditkäufergesetz)

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

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TEXT

CHAPTER 1: SUBJECT MATTER, SCOPE AND DEFINITIONS

Subject matter

Article 1. This Federal Act determines common framework conditions and requirements for:

1. credit servicers of a creditor's rights under a non-performing credit agreement, or of the non-performing credit agreement itself, issued by a credit institution established in the European Union, who act on behalf of a credit purchaser;
2. credit purchasers of a creditor's rights under a non-performing credit agreement, or of the non-performing credit agreement itself, issued by a credit institution established in the European Union.

Scope

Article 2. (1) This Federal Act shall apply to the activity of:

1. credit servicers as defined in Article 1 para. 1, and
2. credit purchasers as defined in Article 1 2.

(2) In the case of credit agreements that fall in the scope of application of this Federal Act,

1. neither the principles under contractual law and civil law for the transferring of claims of a creditor arising from a non-performing credit agreement or the non-performing credit agreement itself
2. nor the consumer or borrower protection, especially under
   a. Regulation (EC) No 593/2008,
   b. Regulation (EU) No 1215/2012,
   c. the Consumer Protection Act (KSchG; *Konsumentenschutzgesetz*) published in Federal Law Gazette No. 140/1979,
   d. the Consumer Credit Act (VKrG; *Verbraucherkreditgesetz*) published in Federal Law Gazette I No. 28/2010,
   e. the Mortgage and Immovable Property Credit Act (HIKrG; *Hypothekar- und Immobilienkreditgesetz*), published in Federal Law Gazette I No. 135/2015, as well as
   f. other relevant legal regulations in relation to consumer protection and borrowers' rights,

shall be affected by this Federal Act.

(3) This Federal Act shall not affect the restrictions regarding the transfer of a creditor's rights under a non-performing credit agreement, or of the non-performing credit agreement itself, that is not past due, or is less than 90 days past due, or is not terminated in accordance with national civil law.

(4) This Federal Act shall not affect the requirements for the provision of credit servicing activities regarding the creditor's rights under a credit agreement or the credit agreement itself, where the

credit purchaser is a securitisation special purpose entity pursuant to Article 2 (2) of Regulation (EU) 2017/2402, provided that

1. the consumer protection level that is stipulated by this Federal Act is not compromised, and
2. the Austrian Financial Market Authority (FMA) has received the required information from the credit servicers.

The FMA shall define the necessary information by means of a Regulation and may also define certain specific formats, submission channels and methods by means of a Regulation as it sees fit..

(5) This Federal Act shall not apply to

1. the servicing of a creditor's rights under a credit agreement, or of the credit agreement itself, carried out by:
   a. a credit institution established in the European Union;
   b. an alternative investment fund manager (AIFM) that is authorised under the Alternative Investment Fund Managers Act (AIFMG; *Alternative Investmentfonds Manager-Gesetz*) published in Federal Law Gazette I no. 135/2013 or a management company under the Investment Funds Act 2011 (InvFG 2011; *Investmentfondsgesetz 2011*), published in Federal Law Gazette I no. 77/2011;
   c. non-credit institution that is subject to supervision by a competent authority of a Member State pursuant to Article 20 of Directive 2008/48/EC or Article 35 of Directive 2014/17/EU, if is active in that Member State;
2. the servicing of a creditor's rights under a credit agreement, or of the credit agreement itself, that was not issued by a credit institution established in the European Union except where the creditor's rights under the credit agreement, or the credit agreement itself, is replaced by a credit agreement issued by such credit institution;
3. the purchase of a creditor's rights under a non-performing credit agreement, or of the non-performing credit agreement itself, by a credit institution established in the European Union;
4. the transfer of a creditor's rights under a non-performing credit agreement, or the transfer of the non-performing credit agreement itself, which occurred prior to this Federal Act entering into force.

(6) This Federal Act shall not apply for the provision of credit servicing activities in relation to the claims of a creditor from the non-performing credit agreement or the non-performing credit agreement itself, conducted by notaries, bailiffs or attorneys within the scope of their professional activities.

Definition of Terms

Article 3. The following definitions shall apply for the purposes of this Federal Act:

1. credit institution: a credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013;
2. creditor: a credit institution that has issued a credit, or a credit purchaser;

3. borrower: a legal or natural person who has concluded a credit agreement with a credit institution, including its legal successors or assignees;
4. credit agreement: a credit agreement pursuant to Article 988 of the General Civil Code (ABGB; *Allgemeines bürgerliches Gesetzbuch*) published in the Collection of Juridical Texts (JGS; *Justizgesetzsammlung*) no. 946/1811, as well as a contract, in which a payment deferral or other form of financial accommodation is granted;
5. credit servicing agreement: a written contract concluded between a credit purchaser and a credit servicer concerning the services to be provided by the credit servicer on behalf of the credit purchaser;
6. credit purchaser: any natural or legal person, other than a credit institution, that purchases a creditor's rights under a non-performing credit agreement, or the non-performing credit agreement itself, in the course of its trade, business or profession, in accordance with applicable European Union and national law;
7. credit service provider: a third party used by a credit servicer to perform any of the credit servicing activities;
8. credit servicer: a legal person that, in the course of its business, manages and enforces the rights and obligations related to a creditor's rights under a non-performing credit agreement, or to the non-performing credit agreement itself, on behalf of the credit purchaser, and carries out at least one or more credit servicing activities;
9. credit servicing activities: one or more of the following activities:
    a. collecting or recovering from the borrower any payments due related to a creditor's rights under a non-performing credit agreement or the non-performing credit agreement itself (debt collecting);
    b. renegotiation of conditions with the borrower in relation to the creditor's rights under a non-performing credit agreement or the non-performing credit agreement itself in accordance with the credit purchaser's instructions, provided that the credit servicer is not a credit intermediary pursuant to Article 3 point f of Directive 2008/48/EC or Article 4 point 5 of Directive 2014/17/EU;
    c. complaint handling in relation to a creditor's rights under a non-performing credit agreement or the non-performing credit agreement itself;
    d. informing the borrower of any changes in interest rates or charges or of any payments due related to a creditor's rights under a non-performing credit agreement or to the non-performing credit agreement itself;
10. home Member State: the Member State in which a credit servicer has its registered office or, where the credit servicer has no registered office under its national law, the Member State in which its head office is situated, as well as the Member State in which the credit purchaser or its representative is domiciled, or its registered office is situated or, where the credit servicer or its representative does not have a registered office under its national law, the Member State in which its head office is situated;

11. host Member State: the Member State, other than the home Member State, in which a credit servicer has established a branch or where it provides credit servicing activities, and in any event where the borrower is domiciled, or its registered office is situated or, if under its national law it has no registered office, the Member State in which its head office is situated;
12. consumer: a consumer pursuant to Article 1 para. 1 no. 2 and para. 3 KSchG;
13. non-performing credit agreement: a credit agreement that is classified as a non-performing exposure pursuant to Article 47a of Regulation (EU) No 575/2013.

CHAPTER 2: CREDIT SERVICERS

SECTION 1: AUTHORISATION OF CREDIT SERVICERS

General requirements

Article 4. A credit servicer shall require an authorisation granted by the FMA for performing its activity.

Requirements for granting an authorisation

Article 5. (1) The authorisation pursuant to Article 4 shall be granted by means of an administrative decision subject to the following conditions:

1. the applicant is a legal person as defined in Article 54 of the Treaty of the Functioning of the European Union (TFEU) and has its registered office in Austria, or where it does not have a registered office, its head office in Austria makes the application;
2. the members of the applicant's management or administrative organ are of sufficiently good repute, in that members of the management or administrative organ prove that
   a. they have a clean police record or other national equivalent in relation to relevant criminal offences, in particular those relating to property, financial services and activities, money laundering, usury, fraud, tax crimes, and violation of professional secrecy or to physical integrity, as well as in relation to other offences under laws in relation to companies, bankruptcy, insolvency or consumer protection;
   b. the cumulative effects of minor incidents do not impinge on their good repute;
   c. they have always been transparent, open and cooperative in their past business dealings with supervisory and regulatory authorities;
   d. they are not subject to any ongoing insolvency procedure nor have previously been declared bankrupt unless reinstated in accordance with national law;
3. the applicant's management or administrative organ, as a whole, has adequate knowledge and experience to conduct the business in a competent and responsible manner;

4. the persons who hold qualifying holdings in the applicant pursuant to Article 4(1), point (36), of Regulation (EU) No 575/2013 are of sufficiently good repute, which is demonstrated by fulfilling the requirements set out in no. 2 lits. a and d of this paragraph;
5. the applicant shall have robust governance arrangements and adequate internal control mechanisms in place, including risk management and accounting procedures, which ensure respect for borrower rights and compliance with the laws governing a creditor's rights under a non-performing credit agreement, or the non-performing credit agreement itself, and with Regulation (EU) 2016/679;
6. the applicant shall have appropriate principles in place to ensure compliance with rules for the protection, and the fair and diligent treatment, of borrowers, including and in this regard takes into account their financial situation and, where available, the need for such borrowers to be referred to debt counselling or social services;
7. the applicant shall have adequate and specific internal procedures in place that ensure the recording and handling of complaints from borrowers;
8. the applicant shall observe the applicable national reporting and disclosure regulations.

(2) If the applicant fails to observe the conditions listed in para. 1, then the FMA shall refuse the authorisation listed in Article 4 by means of an administrative decision.

Ability to hold funds

Article 6. In providing credit servicing activities, credit servicers shall not be allowed to receive and hold funds from borrowers.

Procedure for authorisation of credit servicers

Article 7. (1) This Federal Act determines the authorisation procedure for credit servicers, by allowing an applicant to submit an application and to furnish all information that is required by the FMA for the latter to assess whether the applicant fulfils all the conditions listed in Article 5 para. 1.

(2) The applicant shall submit the following information and documentation along with their application to be granted an authorisation as a credit servicer:

1. evidence of the applicant's legal status and a copy of its act of incorporation and of the articles of incorporation;
2. the address of the head office, of the registered office, or of the applicant's registered office;
3. the identity of the members of the applicant's management or administrative organ and the persons who hold qualifying holdings within the meaning of Article 4(1) point 36 of Regulation (EU) No 575/2013;
4. evidence that the applicant fulfils the conditions laid down in Article 5 para. 1 nos. 2 and 3;
5. evidence that the persons who hold qualifying holdings pursuant to Article 4(1) point (36) of Regulation (EU) No 575/2013 fulfil the conditions laid down in Article 5 para. 1 no. 4;

6. evidence of the governance arrangements and internal control mechanisms referred to in Article 5 para. 1 no. 5;
7. evidence about the principles referred in Article 5 para. 1 no. 6.
8. evidence about the internal procedures referred to in Article 5 para. 1 no. 7.
9. any outsourcing agreement as referred to in Article 12 para. 1.

(3) The FMA shall review an application for authorisation for its completeness within 45 days of its receipt. If the FMA points out to the applicant that certain documents or information are obviously missing in the application for authorisation, then the final sentence of Article 13 para. 3 of the General Administrative Procedures Act (AVG; *Allgemeines Verwaltungsverfahrensgesetz*) shall not apply.

(4) The FMA shall decide within 90 days of receipt of a complete application or, if the application is considered incomplete, of receipt of the required information, where the authorisation is to be granted or refused, and shall provide reasons for refusal.

(5) The Federal Administrative Court (BVwG; *Bundesverwaltungsgericht*) shall decide on appeals against FMA decisions in relation to applications for authorisation pursuant to Article 5 para. 2 as well as for a breach of the obligation to reach a decision.

Withdrawal of the authorisation

Article 8. (1) The FMA shall hold the necessary supervisory, investigative and sanctioning powers pursuant to Article 21 to withdraw a credit servicer's authorisation by means of an administrative decision, where one of the following conditions pursuant to paras. 2 and 3 is met.

(2) The FMA may withdraw the authorisation, if the credit servicer:

1. does not make use of the authorisation within twelve months of it being granted, or
2. ceases to engage in the activities of a credit servicer for more than twelve months;

(3) The FMA shall withdraw the authorisation, if the credit servicer:

1. expressly renounces its authorisation;
2. has acquired an authorisation through false statements or other irregular means;
3. no longer fulfils the conditions set out in Article 5 para. 1 for granting an authorisation as a credit servicer;
4. has committed a serious breach of the applicable rules, including the provisions of this Federal Act, or of other consumer protection rules, including applicable rules of the host Member State and of the Member State where the credit was granted.

(4) Where an authorisation pursuant to para. 1, then in the case that the credit servicer provides services pursuant to Article 13, the FMA shall inform the competent authorities of the host Member State and the home Member State in which the credit was granted, where this state is different form the host and home Member State.

Register of authorised credit servicers

Article 9. (1) The FMA shall establish and manage a register all credit servicers authorised to provide services in Austria and those that provide services pursuant to Article 13.
(2) The FMA shall make the register stated in para. 1 publicly available and regularly update it via the FMA's website.
(3) In the event of the withdrawal of an authorisation granted pursuant to Article 8, the FMA shall update the register stated in para. 1 immediately.

Relationship with the borrower, communication of the transfer and subsequent communications

Article 10. (1) In their relationships to borrowers, credit purchasers and credit servicers shall:

1. act in good faith, fairly and professionally;
2. provide information to borrowers that is not misleading, unclear or false;
3. respect and protect the personal information and privacy of borrowers;
4. communicate with borrowers in a way that does not constitute harassment, coercion or undue influence.

(2) Following any transfer of a creditor's rights under a non-performing credit agreement, or of the non-performing credit agreement itself, to a credit purchaser, and always in advance of the first debt collection, but also whenever requested by the borrower, the credit purchaser or, when appointed to perform credit servicing activities, the entity referred to in Article 2 para. 5 no. 1 lit. a or c, or the credit servicer, shall send a communication to the borrower, either in paper form or on another durable medium, that shall at least include the following:

1. information about the transfer that has taken place, including the date of transfer;
2. the credit purchaser's identification and contact details;
3. when a credit servicer or entity referred to in Article 2 para. 5 no. 1 lit. a or c is appointed, their identification and contact details;
4. when appointed, evidence about the credit servicer's authorisation pursuant to Article 7;
5. where applicable, the credit service provider's identification and contact details;
6. details displayed in a prominent way, about a contact person at the credit purchaser, or at the entity referred to in Article 2 para. 5 no. 1 lit. a or c, or the credit servicer, and where applicable at the credit service provider, from which information may be received when required;
7. information about the amounts due by the borrower at the time of the communication, breaking down what is due as capital, interests, fees and other permitted charges;
8. a statement to the effect that all relevant European Union and national law concerning in particular the enforcement of contracts, consumer protection, borrower's rights and criminal law continues to apply;
9. the name, address and contact details of the competent authorities of the Member State in which the borrower is domiciled, or its registered office stated in its articles of incorporation

or registered office is situated or, if under its national law it has no registered office stated in its articles of incorporation or registered office, the Member State in which its head office is situated and to which the borrower can submit a complaint.

(3) The communication provided for in para. 2 shall be written in language which is clear and understandable for the general public.

(4) The credit purchaser or, when appointed to perform credit servicing activities, the entity referred to in Article 2 para. 5 no. 1 lit. a or c, or the credit servicer, includes the information set out in para. 2 no. 6, except where it is the first communication following the appointment of a new credit servicer, in which case the information set out in para. 2 nos. 3 and 4 shall also be included.

(5) Any additional requirements for communications that are stipulated in other legislative acts enacted by either the European Union or the Federal Government, remain unaffected.

Contractual relationship between a credit servicer and a credit purchaser

Article 11. (1) In the event that a credit purchaser itself does not perform credit servicing activities, the appointed credit servicer shall provide its services in respect of the management and enforcement of a creditor's rights under a non-performing credit agreement, or of the non-performing credit agreement itself, on the basis of a credit servicing agreement with the credit purchaser.

(2) The credit servicing agreement pursuant to para. 1 shall contain:

1. a detailed description of the credit servicing activities to be provided by the credit servicer;
2. the amount of the remuneration of the credit servicer or details about how remuneration is calculated;
3. details about the extent to which the credit servicer may represent the credit purchaser towards the borrower;
4. a declaration by the parties in which they commit themselves to observe the creditor's rights arising from a credit agreement or the credit agreement itself, set out in legislative acts of the European Union and the respective Member States including all relevant consumer and data protection legislation;
5. a clause that stipulates that borrowers are to be treated in a fair and diligent manner.

(3) The credit servicing agreement pursuant to para. 1 shall contain a requirement that stipulates that the credit servicer shall be required to inform the credit purchaser prior to any outsourcing of one of its credit servicing activities.

(4) The credit servicer shall be required to keep and store the following records for a period of seven years from the day following the ending of the credit servicing agreement pursuant to para. 1:

1. the relevant correspondence with the credit purchaser and the borrower;
2. relevant instructions that the credit servicer itself has received from the credit purchaser under the conditions provided for under applicable national law in respect of a creditor's

rights under each non-performing credit agreement, or the non-performing credit agreement itself, that it manages and enforces on behalf of that credit purchaser;

3. the credit servicing agreement.

(5) The credit servicer shall make the records listed in para. 4 available upon request to the FMA, the competent authority of the host Member State and the competent authorities of the Member State in which the credit was granted.

Outsourcing by a credit servicer

Article 12. (1) A credit servicer that makes use of a credit service provider to perform any of the credit servicing activities, remains fully responsible for complying with all obligations arising from this Federal Act. The following conditions must be met for the outsourcing of such credit servicing activities:

1. the credit servicer and the credit service provider have concluded a written outsourcing agreement, under which the credit service provider is required to comply with the applicable legal provisions, including the provisions of this Federal Act, and the relevant European Union or national legislation of Member States applicable to a creditor's rights under a credit agreement, or the credit agreement itself;
2. the outsourcing of all credit servicing activities at the same time to a credit service provider is forbidden;
3. the contractual relationship between the credit servicer and the credit purchaser and the credit servicer's obligations towards the credit purchaser or towards borrowers are not altered by the outsourcing agreement with the credit service provider;
4. a credit servicer's compliance with the requirements for the granting of its authorisation as set out in Article 5 para. 1 shall not be affected by outsourcing some of its credit servicing activities;
5. the outsourcing to the credit service provider shall not prevent the FMA, the competent authorities in the host Member State and the competent authorities of the Member State in which the credit was granted, from supervising the credit service provider pursuant to Article 14 and Article 21;
6. the credit servicer is able to directly access all relevant information concerning the credit servicing activities that have been outsourced to the credit service provider;
7. the credit servicer continues to have the necessary expertise and skills to be able to provide the outsourced credit servicing activities even after the termination of the outsourcing agreement.

(2) The outsourcing of providing credit servicing activities shall neither be permitted to affect the quality of the credit servicer's internal control the robustness or continued providing of its service, nor the supervision of the credit servicer by the FMA regarding the requirements set out in this Federal Act.

(3) The credit servicer shall inform the FMA and, where applicable, the competent authority in the host Member State before outsourcing the providing of its credit servicing activities pursuant to para. 1.
(4) The credit service provider shall retain and maintain records in relation to relevant instructions to the credit service provider under the conditions determined in applicable national law, as well as to the outsourcing agreement listed in para. 1 for a period of seven years after the termination of the outsourcing agreement.
(5) The credit servicer and the credit service provider shall make the records listed in para. 4 available upon request to the FMA, the competent authority of the host Member State and the competent authorities of the Member State in which the credit was granted.
(6) The credit service provider is prohibited from receiving and holding financial means from borrowers.

SECTION 2: CROSS-BORDER CREDIT SERVICING ACTIVITIES

Freedom to provide credit servicing activities in a host Member State

Article 13. (1) A credit servicer that has been granted an authorisation in Austria or in another Member State in accordance with Article 4(1) of Directive (EU) 2021/2167 shall be allowed to provide the services covered by the authorisation throughout the entire European Union, although the authorisation for the cross-border provision of services by credit servicers from Austria shall include the confirmed or delayed unconfirmed submission of the information pursuant to para. 2 to the competent authority of the host Member State or the authorisation for credit servicers from other Member States shall include a submission confirmed by the FMA or delayed unconfirmed submission of the information pursuant to para. 2 by the home Member State authority. This shall apply irrespective of the restrictions and requirements that are determined in the host Member State's national law, including as applicable the prohibition on receiving and holding funds from borrowers, and are not associated with other authorisation requirements of credit servicers, or were determined irrespective of the restrictions and requirements that are necessary for renegotiating conditions in conjunction with the rights of the creditor from a credit agreement or the credit agreement itself.
(2) A credit servicer that holds an authorisation pursuant to Article 4 and which intends to provide its services in a host Member State, shall submit the following information to the FMA:

1. the host Member State in which the credit servicer intends to provide services and, where that information is already known to the credit servicer, the Member State where the credit was granted, when different from the host Member State or Austria;
2. where applicable, the address of the credit servicer's branch establishment in the host Member State;

3. where applicable, the identity and address of the credit service provider in the host Member State;
4. the identity of the persons responsible for managing the provision of credit servicing activities in the host Member State;
5. where applicable, details of the measures taken to adapt the internal procedures, governance arrangements and internal control mechanisms of the credit servicer to ensure compliance with the laws applicable to a creditor's rights under a credit agreement or to the credit agreement itself;
6. a description of the procedures established in order to comply with the anti-money laundering and counter terrorist financing rules, where the national legislation of the host Member State transposing Directive (EU) 2015/849 defines that credit servicers are obliged entities for the purpose of preventing and combating money laundering and terrorist financing, although the FMA only checks the completeness of the information that is required to be submitted, and does not conduct any substantive assessment of the described procedures;
7. that the credit servicer has appropriate means for communicating in the host Member State's language or in the language of the credit agreement;
8. whether or not the credit servicer is authorised to receive and hold funds from borrowers in its home Member State.

(3) The FMA shall communicate this information to the competent authority of host Member State for immediate confirmation within 45 days of receiving all information listed in para. 2. The FMA shall rule by means of an administrative decision and inform the credit servicer about the date on which the information was communicated to the competent authority of the host Member State, and the date on which this competent authority confirmed receipt of the information. The FMA shall also communicate all information referred to in para. 2 to the competent authorities of the Member State in which the credit was granted, where other than the host and the home Member States.

(4) A credit servicer shall only be allowed to start providing services in the host Member State from the earlier of the following points in time:

1. as soon as the competent authorities in the host Member State's confirmation has been received regarding the communication referred to in para. 3;
2. after the expiry of two months from the date of submission of all information referred to in para. 2 to the competent authorities of the host Member State, where no communication referred to in no. 1 has been received.

(5) A credit servicer shall inform the FMA about any later changes to the information that is required to be submitted pursuant to para. 2. In such instances, the procedures listed in paras. 3 and 4 shall be required to be observed.

(6) The FMA shall immediately confirm receipt of information as defined in para. 2, that have been communicated to it as the authority in the host Member State by the authority of another Member State, to that authority. The FMA shall include credit servicers from other Member States authorised

to provide credit servicing activities in Austria and information about their home Member State in the register listed in Article 9.

Supervision of credit servicers active on a cross-border basis

Article 14. (1) The FMA as the competent authority of the home Member State shall supervise credit servicers pursuant to Article 4 that are active in a host Member State, whether they observe the requirements stated in this Federal Act regarding this activity.
(2) The FMA shall be permitted to supervise credit servicers with regard to the requirements stated in this Federal Act where they perform their credit servicing activities in a host Member State and in this context within the scope of the powers conferred upon them in Chapter 4 of this Federal Act is authorised to conduct investigations, impose administrative penalties and demand they take remedial measures.
(3) The FMA shall communicate the measures that it has taken in respect of the credit servicer to the competent authorities of the host Member State and, where appropriate, of the Member State where the credit was granted, when different from the host and the home Member States.
(4) In cases where a credit servicer performs credit servicing activities in a host Member State, the FMA and the competent authorities of the host Member State and, where appropriate, of the Member State where the credit was granted, when different from the host and the home Member States, shall cooperate closely in the performance of their functions and duties, in particular when carrying out checks, investigations and on-site inspections.
(5) In exercising the duties and obligations determined in this Federal Act, The FMA shall ask the competent authorities of the host Member State to provide assistance in carrying out an on-site inspection of a branch established, or an appointed credit service provider, in a host Member State. The on-site inspection of a branch or of a credit service provider shall be conducted in accordance with the law of the Member State where the inspection is carried out.
(6) The FMA as the competent authority of the host Member State shall decide about the most appropriate measures to be taken on a case-by-case basis in order fulfil the request for assistance made by the home Member State's competent authority.
(7) Where the competent authorities of the host Member State decide to conduct on-site inspections at premises on behalf of the FMA as the competent authority of the home Member State, they shall inform the FMA as the competent authority of the home Member State of the results of such inspections without delay.
(8) On their own initiative, the competent authorities of the host Member State may conduct checks, inspections and investigations in respect of credit servicing activities provided within their territory by a credit servicer authorised in a home Member State. The competent authorities of the host Member State shall provide the results of those checks, inspections and investigations to the FMA without delay.

(9) Where evidence exists that a credit servicer that provides credit servicing activities in Austria pursuant to Article 13 infringes the applicable rules, including obligations arising from the provisions of this Federal Act, the FMA as the competent authority of the host Member State shall, transmit that evidence to the home Member State authority and request that the latter takes appropriate measures, without prejudice to the supervisory, investigatory and sanctioning powers that the FMA has as the competent authority in the host Member State regarding the credit servicer under national law, especially those under the applicable law in relation to the credit or the credit agreement.

(10) If the credit was granted in Austria and Austria is neither the host or home Member State and where a credit servicer is proven to have breached obligations arising from this Federal Act or other national legislation regarding the non-performing loan or the non-performing credit agreement, the FMA shall inform the home Member State authority of this proof and instruct it to take appropriate measures, irrespective of its own supervisory and investigatory powers as well as its sanctioning powers.

(11) No later than two months from the date of a request referred to in para. 9, the FMA shall inform the competent authorities of the host Member State that communicated evidence pursuant to para. 9, about the details of all administrative or other procedures initiated based on the evidence from the host Member State, or any administrative penalties and remedial measures imposed on the credit servicer, or a reasoned decision why no measures were taken. Where a procedure has been initiated, then the FMA shall regularly inform the competent authorities of the host Member State about its status.

(12) Where a credit servicer continues to breach regulations including its obligations arising from the Federal Act, then after having informed the authority in the home Member State accordingly pursuant to para. 9, the FMA shall have the right irrespective of any remedial measures that have been ordered and sanctions imposed by the competent authority of the home Member State to impose administrative sanctions against the credit servicer and to order appropriate remedial measures, to ensure compliance with this Federal Act, if one of the following situations occurs:

1. the credit servicer has failed to take any adequate and effective steps to rectify the infringement in a reasonable time; or
2. the case is urgent and requires immediate action to address a serious threat to the collective interests of the borrowers.

(13) The FMA may at its discretion impose the administrative penalties and remedial measures referred to in para. 12, notwithstanding any administrative penalties and remedial measures that have already been imposed by the authority in the home Member State.

(14) In addition, the FMA may at its discretion prohibit further activities of a credit servicer that infringes the applicable rules, including its obligations under this Federal Act, until such time as an adequate decision is taken by the authority of the home Member State or the credit servicer takes remedial measures.

CHAPTER 3: CREDIT PURCHASERS

Right to information regarding a creditor's rights under a non-performing credit agreement or the non-performing credit agreement

Article 15. (1) A credit institution shall make the information about the rights of a creditor from a non-performing credit agreement or a non-performing credit agreement itself available to a prospective credit purchaser and any collateral that the prospective credit purchaser requires, in order prior to the conclusion of a contract to be able to assess for itself

1. regarding the transferring of the creditor's rights under the non-performing credit agreement;
2. regarding the value of the rights of the creditor from the non-performing credit agreement in transferring the non-performing credit agreement, or
3. the value of the non-performing credit agreement itself as well as the likelihood of recovery of the value of that agreement,

while ensuring the protection of information made available by the credit institution and of the confidentiality of business data.

(2) Credit institutions and branches of EEA credit institutions that are active in Austria, which transfer the rights of a creditor from a non-performing credit agreement or the non-performing credit agreement itself to a credit purchaser, are required to communicate the following information to the FMA as well as the competent authorities of the host Member State pursuant to Article 21 (3) of Directive (EU) 2021/2167 immediately following the end of each calendar half-year, unless a shorter interval has been set on the basis of para. 3:

1. the Legal Entity Identifier (LEI) of the credit purchaser, or where applicable its representative pursuant to Article 18, or if such an identifier does not exist:
    a. the identity of the credit purchaser or the identity of the members of the applicant's management or administrative organ as well as of the persons who hold qualifying holdings within the meaning of Article 4(1) point 36 of Regulation (EU) No 575/2013, and
    b. the address of the credit purchaser or, where applicable, of its representative designated in accordance with Article 18, as well as
    c. other information required for reliably identifying the persons listed in lits. a and b;
2. the aggregate outstanding balance of the creditor's rights under the non-performing credit agreements, or of the transferred non-performing credit agreements;
3. the number and size of the creditor's rights under the non-performing credit agreements or of the transferred non-performing credit agreements;
4. information whether the transfer includes the creditor's rights under the non-performing credit agreements, or the non-performing credit agreements themselves, concluded with consumers, as well as information about the types of assets securing the non-performing credit agreements, when applicable.

(3) As it sees fit, the FMA may determine the content and format for the information pursuant to para. 2 as well as quarterly reporting interval for submissions by means of a Regulation and may stipulate that reports shall be submitted exclusively to the *Oesterreichische Nationalbank* (OeNB), insofar as it is not prevented from performing its duties in accordance with this or other Federal Acts by doing so. The FMA shall be guided by the principles of economy and expedience, taking into consideration European practices in this area.
(4) The FMA shall communicate all material information in accordance with the transposing legislation of the home Member State of the credit institution in relation to Article 15 (2) and (3) of Directive (EU) 2021/2167 that it receives at the competent authority of the host Member State while not being the competent authority of the home member state of the credit purchaser, and any other such information that it considers necessary for the performance of its functions and duties in accordance with the aforementioned Directive to the competent authority of the credit purchaser without delay.
(5) Paras. 1 to 4 shall be applied in accordance with Regulation (EU) 2016/679 and Regulation (EU) 2018/1725.
(6) Credit institutions shall apply the implementing technical standards issued by the European Commission pursuant to Article 15 of Regulation (EU) 1093/2010 to the transfer of a creditor's rights under a non-performing credit agreement, or of the non-performing credit agreement itself, to other credit institutions. The credit institutions shall use the data templates for communicating information between credit institutions in cases where there is a transfer of only one creditor's rights under a non-performing credit agreement, or of the non-performing credit agreement itself.

Obligations of credit purchasers

Article 16. (1) A credit purchaser

1. that is domiciled in the European Union, or
2. that has its registered office in the European Union, or
3. that does not have a registered office in the European Union, but which has its head office in the European Union,

shall designate a legal entity pursuant to Article 2 para. 5 no. 1 lit. a or c or a credit servicer, to perform credit servicing activities in respect of a creditor's rights under a non-performing credit agreement or the non-performing credit agreement itself, concluded with consumers.
(2) In the case of a credit purchaser

1. that is not domiciled in the European Union, or
2. that does not have its registered office in the European Union, or
3. that does not have its registered office in the European Union under national law, and does not have its head office in the European Union,

it shall designate a legal entity pursuant to Article 2 para. 5 no. 1 lit. a or c or a credit servicer as its representative pursuant to Article 18, unless the representative itself is a legal entity listed under

Article 2 para. 5 no. 1 lit. a or c or a credit servicer, to provide credit servicing activities in relation to the rights of a credit servicer from a non-performing credit agreement or the non-performing credit agreement itself, that was concluded with a natural person, including consumers pursuant to Article 1 para. 1 no. 2 KSchG and the self-employed, or with micro, small and medium-sized enterprises as defined in Article 2 of the Annex to Recommendation 2003/361/EC concerning the definition of micro, small and medium-sized enterprises, OJ L 124, 20.05.2003 p. 36.

(3) A credit purchaser shall not be subject to any additional requirements for the purchase of a creditor's rights under a non-performing credit agreement, or of the non-performing credit agreement itself, other than those contained in the provision of this Federal Act or the provisions of applicable consumer protection law, contract law, civil law or criminal law. The relevant legislation of the European Union and the government, especially relating to the enforcement of contracts, consumer protection, borrowers' rights, granting of credit, the provisions on banking secrecy requirements pursuant to Article 38 of the Austrian Banking Act (BWG; Bankwesengesetz) published in Federal Law Gazette no. 532/1993; and criminal law, shall also apply for the credit purchaser following the transferring of the rights of the creditor under a non-performing credit agreement or the non-performing credit agreement itself to the credit purchaser. The level of protection provided under European Union and national law to consumers and other borrowers, as well as insolvency rules, shall not be affected by the transfer of the creditor's rights under the non-performing credit agreement, or of the non-performing credit agreement itself, to the credit purchaser, without prejudice to national and international rules on promissory notes and bills of exchange.

(4) Powers regarding credit registers, including the power to require information from credit purchasers regarding a creditor's rights under a non-performing credit agreement, or the non-performing credit agreement itself, and its performance, shall remain unaffected by this Federal Act.

(5) The appointed credit servicer or the legal entity appointed for the credit purchaser listed in Article 2 para. 5 no. 1 lit. a or c shall be required to meet the obligations of a credit purchaser pursuant to para. 3 and the requirements pursuant to Articles 17 and 19. In the event that no credit servicer or legal entity referred to in Article 2 para. 5 no. 1 lit. a or c is appointed, the credit purchaser or its representative shall remain subject to those obligations.

Use of credit servicers or other legal entities

Article 17. (1) Where the credit purchaser or, where applicable, its representative designated in accordance with Article 18 appoints a legal entity referred to in Article 2 para. 5 no. 1 lit. a or c, or a credit servicer, to perform credit servicing activities in relation to the transferred creditor's rights under a non-performing credit agreement, or the non-performing credit agreement itself, then the credit purchaser or its representative shall inform the FMA of the identity and address of the legal entity referred to in Article 2 para. 5 no. 1 lit. a or c, or of the credit servicer, at the latest on the date on which the credit servicing activities start.

(2) Where the credit purchaser or, where applicable, its representative designated in accordance with Article 18 appoints an entity other than the one notified under para. 1, then the credit purchaser shall notify the FMA at the latest on the date of this change and shall indicate the identity and address of the new legal entity that it has appointed to perform credit servicing activities in relation to the transferred creditor's rights under a non-performing credit agreement or the non-performing credit agreement itself.
(3) The FMA shall transmit the information pursuant to paras. 1 and 2 to the competent authorities of the host Member State, the competent authorities of the Member State in which the credit was granted, and to the competent authorities of the home Member State of the new credit servicer, without unnecessary delay.

Representatives of third-country credit purchasers

Article 18. (1) A credit purchaser

1. that is not domiciled in the European Union,
2. that does not have its registered office in the European Union, or
3. that does not have its registered office in the European Union under national law, and does not have its head office in the European Union,

when concluding an agreement on the transferring of the rights of the creditor under a non-performing credit agreement or the non-performing credit agreement itself, shall appoint a representative in writing, that is domiciled in the European Union or has its registered office, or where under its own national law does not have a registered office has its head office in the European Union.
(2) The representative pursuant to para. 1 is the point of contract for the competent authorities pursuant to Article 21 (3) of Directive (EU) 2021/2167 in addition to the credit purchaser or instead of the credit purchaser regarding all issues in relation to the ongoing compliance with this Directive and is fully responsible for meeting the obligations imposed upon the credit purchaser under the provisions of this Federal Act.

Transfer of a creditor's rights under a non-performing credit agreement, or of the non-performing credit agreement itself, by a credit purchaser and notification to the competent authority

Article 19. (1) A credit purchaser or, where applicable, its representative designated in accordance with Article 18, that transfers a creditor's rights under a non-performing credit agreement, or the non-performing credit agreement itself, shall inform the FMA on a biannual basis of the legal entity identifier (LEI) of the new credit purchaser and, where applicable, of its representative designated in accordance with Article 18 or, where such identifier does not exist, of:

1. the identity of the new credit purchaser or, where applicable, its representative designated pursuant to Article 18, or of the members of the management or administrative organ of the new credit purchaser or its representative pursuant to Article 18, and the persons who hold

qualifying holdings in the new credit purchaser or its representative pursuant to Article 18 as defined in point 36 of Article 4(1) of Regulation (EU) No 575/2013;

2. the address of the new credit purchaser or, where applicable, of its representative pursuant to Article 18, as well as
3. other information required for reliably identifying the persons listed in lits. a and b;

(2) In addition, the credit purchaser or its representative pursuant to Article 18 shall also inform the FMA about the following:

1. the aggregate outstanding balance of the creditors' rights under the non-performing credit agreements, or of the transferred non-performing credit agreements;
2. the number and size of the creditor's rights under the non-performing credit agreements or of the transferred non-performing credit agreements;
3. information whether the transfer includes the creditor's rights under the non-performing credit agreements, or the non-performing credit agreements themselves, concluded with consumers, as well as information about the types of assets securing the non-performing credit agreements, when applicable.

(3) The FMA may at its discretion determine the content and structure for the information pursuant to paras. 1 and 2 by way of a Regulation and set a quarterly reporting interval for its submission in order to be able to better monitor a high number of transfers, which might occur during a crisis. The FMA shall be guided by the principles of economy and expedience, taking into consideration European practices in this area.

(4) The FMA shall transmit the information pursuant to paras. 1 and 2 to the competent authorities of the host Member State and to the competent authorities of the home Member State of the new credit servicer, without unnecessary delay.

CHAPTER 4: SUPERVISION, ADMINISTRATIVE SANCTIONS, AND OTHER MEASURES

SECTION 1: SUPERVISION

Competent authority

Article 20. (1) As the competent authority, irrespective the tasks conferred upon it under other Federal Acts, the FMA shall monitor compliance with the regulations contained in this Federal Act

1. by the credit servicers and credit service providers, to whom credit servicing activities have been outsourced pursuant to Article 12;
2. with regard to the observance of Article 10 and the requirements determined in Articles 16 to 19 by credit purchasers of by their representatives pursuant to Article 18;
3. regarding the observance of Article 15 by credit institutions.

(2) The FMA shall take into account European convergence in respect of supervisory tools and supervisory procedures in the enforcement of this Federal Act. For this purpose, the FMA shall apply the Guidelines, Recommendations and other measures decided upon by the European Banking Authority (EBA). The FMA may deviate from the guidelines and recommendations, provided that justified grounds exist to do so, in particular where they conflict provisions set out under national law.

Supervision

Article 21. (1) The FMA shall be authorised at all times in relation to the monitoring of the observance of the regulations contained in this Federal Act irrespective of the powers conferred upon it in other provisions set out under national law:

1. to request the submission of corresponding documentation and data, as well as to determine the way and manner in which such documentation is to be submitted;
2. to request information, as where applicable to issue a summons and question a person for the purpose of gaining such information; and
3. to permit the conducting of audits or investigations by external auditors and external auditing companies, or other experts.

(2) In exercising its responsibilities pursuant to Article 20 para. 1, the FMA has the following powers:

1. to grant or refuse an authorisation pursuant to Article 5;
2. to withdraw an authorisation pursuant to Article 8;
3. to prohibit certain credit servicing activities;
4. to inspect books, documents and data carriers as well as conducting of pre-announced or unannounced investigations including on-site inspections by the FMA;
5. to impose sanctions under administrative law and other measures pursuant to Article 27;
6. to review outsourcing agreements concluded between credit servicers and credit service providers pursuant to Article 12;
7. to order the credit servicer under threat of a coercive penalty to dismiss the members of the management or administrative organ, where they fail to meet the requirements set forth in Article 5 para. 1 no. 2;
8. under threat of a coercive penalty, to order the credit servicer to modify or update its internal governance arrangements and internal control mechanisms in order to effectively ensure respect for borrowers' rights in accordance with the laws governing the credit agreement;
9. under threat of a coercive penalty, to order a credit servicer to modify or update its policies adopted to ensure the fair and diligent treatment of borrowers, and the recording and handling of complaints from borrowers;
10. to request further information pertaining to the transfer of a creditor's rights under the non-performing credit agreement, or of the non-performing credit agreement itself.

11. to instruct the credit servicer, credit service provider or credit purchaser or its representative pursuant to Article 18, under threat of a coercive penalty, to restore legal compliance within an appropriate period of time considering the circumstances;

The powers that are conferred upon the FMA on the basis of under provisions set out under national law remain unaffected.

(3) Within the scope of a risk-based approach to supervision pursuant to Article 69 para. 2 BWG, the FMA shall analyse at least on an annual basis to what extent a credit servicer supervised by the FMA as the home Member State authority meets the requirements of Article 5 para. 1 nos. 5 to 8.

Cooperation

Article 22. (1) The FMA is authorised and obliged to engage in broad and mutual cooperation with the competent authorities of other Member States pursuant to Article 21 (3) of Directive (EU) 2021/2167 as necessary for the exercise of supervisory duties within the scope of this Federal Act as well as Directive (EU) 2021/2167. It shall coordinate its measures with the competent authorities from other Member States pursuant to Article 21 (3) of Directive (EU) 2021/2167 to avoid duplication of work and overlaps in the exercising of its supervisory powers on a cross-border basis and the imposing of administrative sanctions and remedial measures.

(2) The FMA shall make essential information available to the competent authorities of other Member States pursuant to Article 21 (3) of Directive (EU) 2021/2167 upon request that is necessary for the exercise of supervisory duties within the scope of this Federal Act as well as Directive (EU) 2021/2167. Under the same conditions and for the same purposes the FMA may also request information on its own initiative from the competent authorities of other Member States pursuant to Article 21 (3) of Directive (EU) 2021/2167.

(3) The transmission of information to the authorities of third countries that perform duties that correspond to the FMA's duties in accordance with this Federal Act, shall be permissible where required for these duties, provided that the transmitted information is subject to professional secrecy that corresponded to the professional secrecy pursuant to Article 14 FMABG, or where these authorities have obliged themselves to observe such professional secrecy and the submission of information is in line with Chapter V of Regulation (EU) 2016/679.

(4) For the purposes of cooperation and exchange of information in accordance with the proceeding paragraphs, the FMA may, provided this is necessary for performing duties in relation to financial market supervision that correspond to the FMA's duties and that the authority making the request would also meet such a comparable request for cooperation and exchange of information, and would also only make use of its powers exclusively for the purposes of such a cooperation in relation to legal and natural persons.

Costs

Article 23. The FMA's costs from its activity as the competent authority under this Federal Act shall be considered as costs of the sub-accounting group to be formed pursuant to Article 69a para. 1 BWG in the accounting group banking supervision (Article 19 para. 1 no. 1 of the Financial Market Authority Act (FMABG; *Finanzmarktaufsichtsbehördengesetz*) published in Federal Law Gazette I no. 97/2001). credit servicers and credit service providers in Austria, to whom credit servicing activities have been outsourced pursuant to Article 12, shall be liable to pay costs; Article 69a BWG shall apply subject to the proviso that by way of derogation from para. 2 and 3 of that article credit servicers and credit service providers shall be prescribed fees of EUR 5 000.

Electronic Transmission

Article 24. (1) The FMA may

1. prescribe by means of a Regulation that notifications, reports, submissions and communications, for the purpose of bringing items to its attention and for submission pursuant to Article 12 para. 3, Article 13 paras. 2 and 5 as well as Article 17 paras. 1 and 2 may only be submitted in electronic form, and shall be required to correspond to specific formats, minimum technical requirements and modalities for transmission.
2. following consultation of the OeNB, prescribe by means of a Regulation that notifications pursuant to Article 19 paras. 1 and 2 may only be made only in electronic form and shall be required to conform with specific formats, technical minimum requirements and procedures for transmission.

(2) In so doing, the FMA shall be guided by the principles of economy and expediency, ensuring that the data is available in electronic form to the FMA and the OeNB at all times and supervisory interests are not compromised. The FMA shall take appropriate arrangements to allow those making submissions or, where applicable, those responsible for submitting the reports on their behalf, to verify over an appropriate period of time whether the reporting data submitted by them or by the person responsible for submitting the reports on their behalf is correct and complete.

SECTION 2: PROCEDURAL AND PENAL PROVISIONS

Penal provisions

Article 25. (1) Any person who, as the person responsible (Article 9 Administrative Penal Act (VStG; *Verwaltungsstrafgesetz 1991*), published in Federal Law Gazette No. 52/1991) of a credit servicer,

1. breaches the requirements in relation to the contractual relationship between a credit servicer and a credit purchaser pursuant to Article 11,
2. breaches the conditions and requirements in relation to the outsourcing of credit servicing activities pursuant to Article 12,

3. does not have any governance rules or sound governance rules in place and does not have any internal control procedures or appropriate ones pursuant to Article 5 para. 1 no. 5 in place;
4. breaches the obligation pursuant to Article 11 para. 2 no. 4 to submit a declaration of compliance with the applicable legal regulations;
5. does not have any principles or appropriate principles pursuant to Article 5 para. 1 no. 6 in place, that ensure the observance of provisions on protection and the fair and prudent treatment of borrowers;
6. does not have any or appropriate special internal procedures pursuant to Article 5 para. 1 no. 7 in place, that ensure that complaints by borrowers are recorded and handled;
7. appoints members of the management or administrative organ who do not meet the requirements set out in Article 5 para. 1 no. 2;
8. has failed to establish any procedures or any effective, appropriate and transparent procedures for the processing of customer complaints pursuant to Article 29 para. 1;
9. breaches the prohibition to receive and hold funds pursuant to Article 6,

commits an administrative offence and shall be punished by the FMA, depending on which amount is higher, with a fine of up to EUR 150 000 or up to double the amount of the gain arising from the breach, where this amount is able to be determined.

(2) Any person who, as the person responsible (Article 9 VStG) of a credit service provider, to whom credit servicing duties have been outsourced, breaches the requirements in relation to the outsourcing of credit servicing activities pursuant to Article 12, commits an administrative offence and shall be punished by the FMA, depending on which amount is higher, with a fine of up to EUR 150 000 or up to double the amount of the gain arising from the breach, where this amount is able to be determined.

(3) Any person who, as the person responsible (Article 9 VStG) of a credit institution, a credit purchaser or its representative pursuant Article 18, breaches the requirements or obligations pursuant to Articles 15 to 19, commits an administrative offence and shall be punished by the FMA, depending on which amount is higher, with a fine of up to EUR 150 000 or up to double the amount of the gain arising from the breach, where this amount is able to be determined.

(4) Any person who, as the person responsible (Article 9 VStG) of a credit purchaser, credit servicer or one of the legal entities listed in Article 2 para. 5 no. 1 lit. a or c breaches the requirements or obligations pursuant to Article 10, commits an administrative offence and shall be punished by the FMA, depending on which amount is higher, with a fine of up to EUR 150 000 or up to double the amount of the gain arising from the breach, where this amount is able to be determined.

(1) Anyone performing credit servicing activities pursuant Article 3 no. 9 without the necessary authorisation, commits an administrative offence and shall be punished by the FMA with a fine of up to EUR 250 000.

(6) Fines imposed by the FMA pursuant to paras. 1 to 5 shall be passed on to the Federal Government.

Penal provisions with regard to legal persons

Article 26. (1) The FMA may impose fines against legal persons, if natural persons who acted individually or as part of a body of a legal person, and who – even though they are not allocated the function of a person responsible pursuant to Article 9 VStG – have a managerial role within the legal person on the basis of:

1. a power of representation of the legal person,
2. an authority to take decisions on behalf of the legal person, or
3. an authority to exercise control within the legal person

have breached the provisions listed in Article 25 para. 1.

(2) Legal persons may also be held responsible for breaches of the provisions listed in Article 25 paras. 1 to 5, if such breaches by a natural person acting for the legal person were made possible by a lack of supervision or control by one of the persons referred to in para. 1.

(3) The fine pursuant to para. 1 or para. 2 shall be:

1. up to EUR 150 000,
2. up to twice the amount of the benefit derived from the breach where that benefit can be determined, or
3. up to 10 % of total annual net turnover pursuant to para. 4,

depending on which amount is higher.

(4) The total annual net turnover pursuant to para. 3 no. 3 shall be determined on the basis of the annual turnover stated in the most recently adopted annual financial statement. In the case of credit institutions, the total annual net turnover is the total of the returns listed in nos. 1 to 7 of Annex 2 to Article 43 BWG less the expenses for these items. Where the legal person is a parent undertaking or a subsidiary of a parent undertaking, which is required to prepare consolidated financial statements in accordance with Article 22 of Directive 2013/34/EU, then the total annual net turnover shall be determined on basis of the proceeds of the annual revenues of the corresponding type of income in accordance with the relevant accounting Directives according to the last available consolidated accounts adopted by the competent management body of the ultimate parent undertaking. Where the FMA is unable to determine or calculate the bases for the total annual net turnover, then it shall estimate them. In so doing, all relevant circumstances shall be taken into account that are relevant for the estimate.

(5) Fines imposed by the FMA pursuant to paras. 1 to 3 shall be passed on to the Federal Government.

Other measures under administrative procedural law

Article 27. In the case of one of the breaches listed in Article 25, the FMA may as it sees fit take the following measures under administrative procedural law by means of an administrative decision irrespective of other powers that it has under other administrative law:

1. withdrawal of the authorisation as a credit servicer (Article 8);

2. to order that the credit servicer or credit purchaser or its representative pursuant to Article 18 addresses the breach and to cease and desist from its conduct.

Exercising of supervisory powers to impose administrative sanctions and measures

Article 28. Irrespective of other provisions under administrative procedural law, the FMA shall, when determining the type of administrative sanctions or measures to be enforced for breaches against the provisions of this Federal Act as well as in calculating the amount of a fine, where appropriate, in particular consider the following circumstances:

1. the severity and duration of the breach;
2. the degree of responsibility of the natural or legal person responsible for the breach;
3. the financial strength of the natural or legal person responsible for the breach, in particular, as indicated by the total net revenues of the responsible legal person or the annual income of the responsible natural person;
4. the amount of the gains realised or losses avoided by the responsible natural or legal persons, provided that these amounts can be determined;
5. the losses caused to third parties by the breach, insofar as they can be determined;
6. the willingness of the responsible natural or legal persons to cooperate with the FMA;
7. previous breaches by the responsible natural or legal person; and
8. all actual or potential systemically-relevant effects of the breach.

SECTION 3: SAFEGUARDS

Complaints

Article 29. (1) Credit servicers shall establish effective, appropriate and transparent procedures for processing complaints by borrowers. Credit servicers shall respond to complaints by borrowers in paper form or on another durable medium. The credit servicer shall not be allowed to charge a fee for processing complaints by borrowers.

(2) Borrowers may submit complaints to the FMA against credit purchasers, credit servicers or credit service providers for alleged breaches of the provisions in this Federal Act. The FMA shall publish about the possibility to submit the complaint and the procedure for doing so to ensure it is processed rapidly on its website. The FMA shall refer borrowers to the possibility of submitting a complaint to the mediation panel pursuant to Article 4 of the Alternative Dispute Resolution Act (AStG; *Alternative-Streitbeilegung-Gesetz*), published in Federal Law Gazette I No. 105/2015.

Protection of personal data

Article 30. The processing of personal data within the meaning of this Federal Act shall be permissible in accordance with Regulation (EU) 2016/679 and Regulation (EU) 2018/1725.

CHAPTER 5: FINAL PROVISIONS

Gender-neutral use of language

Article 31. Where expressions in this Federal Act relating to persons are given only in the masculine form, they shall refer equally to all genders. The applicable gender-specific form shall be used when applied to specific persons.

References and Regulations

Article 32. (1) Where reference is made in this Federal Act to other Federal Acts, then such references shall apply to the version currently in force.

(2) Where references are made in this Federal Act to European Union Regulations, they shall be applicable, unless instructed otherwise, in the following version:

1. Regulation (EC) No 593/2008 on the law applicable to contractual obligations (Rome I), OJ L 177, 04.07.2008, p. 6;
2. Regulation (EU) No 1215/2012 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters, OJ L 351, 20.12.2012 p. 1, in the version in Delegated Regulation (EU) 2015/281, OJ L 54, 25.02.2015 p. 1;
3. Regulation (EU) 2017/2402 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012, OJ L 347, 28.12.2017, p. 35, in the version amended in Regulation (EU) 2021/557, OJ L 116, 06.04.2021, p. 1
4. Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, OJ L 176, 27.6.2013, p. 1, as amended by the Regulation (EU) no. 2021/1043, OJ L 225, 25.06.2021, p. 52;
5. Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119, 04.05.2016, p. 1, in the version of the corrigendum OJ L 74, 04.03.2021, p. 35;
6. Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Decision 2009/78/EC, OJ L 331, 15.12.2010, p. 12, in the version of Regulation (EU) 2023/1114, OJ L 150, 09.06.2023, p. 40;
7. Regulation (EU) 2018/1725 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ L 295, 21.11.2018, p. 39.

(3) Where references are made in this Federal Act to European Union Directives, they shall be applicable, unless instructed otherwise, in the following version:

1. Directive 2008/48/EC on credit agreements for consumers and repealing Council Directive 87/102/EEC, OJ L 133, 22.05.2008, p. 66, in the version of Directive (EU) 2021/2167, OJ L 438, 08.12.2021, p. 1;
2. Directive 2014/17/EU on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010, OJ L 60, 28.02.2014, p. 34, in the version of Directive (EU) 2021/2167, OJ L 438, 08.12.2021, p. 1;
3. Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 and repealing Directive 2005/60/EC and Directive 2006/70/EC, OJ L 141, 05.06.2015, p. 73, in the version of Directive (EU) 2024/1640, OJ L 284, 19.06.2024, p. 1;
4. Directive (EU) 2021/2167 on credit servicers and credit purchasers and amending Directives 2008/48/EC and 2014/17/EU, OJ L 438, 08.12.2021, p. 1;
5. Directive 2013/34/EU on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC and repealing Directives 78/660/EEC and 83/349/EEC, OJ L 182, 29.06.2013, p. 1, most recently amended by Directive 2024/1306/EU, OJ L 1306, 08.05.2024, p. 1;

Transposition Note

Article 33. The Federal Act published in Federal Law Gazette I No. 6/2025 transposes Directive (EU) 2021/2167 on credit servicers and credit purchasers and amending Directives 2008/48/EC and 2014/17/EU, OJ L 438, 08.12.2021 p. 1.

Enforcement

Article 34. The following bodies shall be responsible for the enforcement of this Federal Act:

1. the Federal Minister for Justice regarding Article 6, and
2. the Federal Minister of Finance regarding all other provisions.

Entry into force

Article 35. (1) This Federal Act enters into force at the end of the day on which it was announced.
(2) Credit servicers that have already provided credit servicing activities prior to the entry into force of this Federal Act, are entitled to conduct this activity in Austria without an authorisation pursuant to Article 4 KKG for a maximum period of five months from the entry into force of the KKG, provided that they submit an application for authorisation within two weeks of the KKG entering into force and provided that a legally final decision has not been reached prior to the expiry of the five month period starting from the entry into force of the KKG.