

Austria

Raiffeisen-Holding Niederösterreich-Wien Stefan Frank
CHSH Cerha Hempel Spiegelfeld Hlawati Peter Knobl

1. REGULATORY FRAMEWORK – OVERVIEW

The relevant sources of law regulating banking activities in Austria are predominantly enacted as Austrian federal laws or as directly applicable EU regulations. Certain matters are addressed in regulations promulgated by the Austrian Financial Market Authority (FMA) and by the EU Commission adopting Binding Technical Standards (BTS) issued by the European Banking Authority (EBA) and in EBA Guidelines/Recommendations. FMA also published a number of minimum standards, circulars and other forms of soft law interpreting the main federal law enactments.

- The Austrian Banking Act (*Bankwesengesetz*) and the EU Capital Requirements Regulation (CRR) are the main sources of bank regulatory law. The Banking Act covers various regulatory matters, eg, the licensing of credit institutions and financial institutions (Article 1); the freedom of establishment and the freedom to provide services within the EEA (Article 9 *et seq*); ownership requirements (Articles 20 *et seq*); or rules on cover funds (*Deckungsstock*; Articles 66 *et seq*). Furthermore, the Banking Act provides for compulsory or impermissible contractual terms such as for savings deposits (Articles 31 *et seq*); or value date provisions exceeding the scope of those included in the Austrian Payment Services Act (Article 37). Other matters covered concern, eg, banking secrecy (Article 38), money laundering and counter-terrorism (Articles 39 *et seq*), or deposit protection and investor compensation (Article 93). The CRR (including the relating BTS) covers minimum regulatory capital requirements and quality criteria for CET 1, AT 1 and T2 capital instruments, limits on large exposures, new liquidity rules and limits on qualifying holdings outside the financial sector. Furthermore, the CRR introduces a leverage ratio and imposes disclosure requirements on credit institutions and investment firms.
- The Austrian Housing Construction Savings and Loan Associations Act (*Bausparkassengesetz*) regulates the operation and supervision of building savings bank (*Bausparkassen*).
- The Austrian Investment Fund Act (*Investmentfondsgesetz*) regulates the operation and management of investment funds and the Austrian Real Estate Investment Fund Act (*Immobilieninvestmentfondsgesetz*) in relation to real estate investment funds.
- The Austrian Alternative Investment Fund Management Act contains licensing and supervision of certain managers of collective investment undertakings.

- The Austrian Securities Supervision Act (*Wertpapieraufsichtsgesetz*) sets forth regulations on financial instruments trading and compliance.
- The Austrian Capital Market Act (*Kapitalmarktgesetz*) provides for rules on public offerings of securities and other capital investments.
- The Austrian Payment Services Act (*Zahlungsdienstegesetz*) regulates the performance of payment services in Austria.
- In addition, there are a number of Austrian federal laws implementing EU Directives such as the Austrian Remote Financial Services Act (*Fernfinanzdienstleistungsgesetz*), the Austrian Financial Collateral Act (*Finanzsicherheitengesetz*), the Austrian E-Money Act (*E-Geld Gesetz*) and the Austrian Consumer Loan Act (*Verbraucherkreditgesetz*).

EU bank supervisory laws have been implemented into Austrian laws, or apply directly as EU regulations, leaving little room for specific Austrian banking regulations.

2. AUTHORITIES, REGULATORS

2.1 Supervisory architecture – nature, characteristics

At the moment, responsibilities in Austrian banking supervision are shared between the FMA and Austria's central bank (Oesterreichische Nationalbank – OeNB). From November 2014, licensing matters for all credit institutions and the prudential supervision for significant Austrian credit institutions (assessed on a consolidated group-wide basis) will be transferred to the European Central Bank (ECB).

Currently, the FMA's responsibilities include the granting and withdrawal of banking licences, administrative measures and issuance of binding standards.

The OeNB is currently responsible for the ongoing supervision of credit institutions through an ongoing analysis of economic data provided by credit institutions licensed in Austria. To enable OeNB to fulfil its supervisory obligations, Austrian credit institutions have to provide monthly reports about their capital and certain other economic information relating to their risk exposure. OeNB may also conduct on-site audits at credit institutions. On the basis of the information OeNB receives, it continuously reports its audit results to the FMA that may take administrative steps.

2.2 Lead bank regulators

As described above under section 2.1 the lead bank regulators in Austria are FMA and OeNB. Under the Single Supervisory Mechanism (SSM), that has been implemented in the EU through the SSM Regulation, ECB will, in addition to the FMA and the OeNB, assume new banking supervision responsibilities from November 2014. In Austria, ECB will be responsible for the supervision of six significant credit institutions located in Austria.

The FMA is the competent authority for the supervision of credit institutions, insurance companies, pension funds, investment firms, investment management companies and payment services providers in Austria. The FMA may take official measures and pass certain regulations specifying supervisory obligations. The FMA is responsible for enforcing

its own administrative decisions with the exception of orders imposing administrative penalties. Administrative and penal decisions of the FMA may be appealed against at the Austrian Administrative Court of first instance.

As supervisory authority for credit institutions in Austria, the FMA is required to act in line with the provisions of the Banking Act and the CRR and applicable EBA guidelines and recommendations and with due attention to financial stability, the smooth functioning of the banking system and creditor protection. With regard to supervision of credit institutions, the core competences and duties of the FMA include the licensing of credit institutions, the performance of supervisory procedures, the supervision of intra-bank models, the ordering of OeNB to carry out on-site inspections, monitoring of measures taken by credit institutions to remedy shortcomings, the interpretation of supervisory laws concerning credit institutions, collecting and analysing information relating to credit institutions, the sanctioning of credit institutions and participating in international bodies concerning banking supervision. The FMA is also the competent authority for Austrian credit institutions that want to provide cross-border banking services by way of freedom to provide services or freedom of establishment. Credit institutions which are authorised and established in a member state may carry out the financial activities listed in Annex I to Directive 2013/36/EU by the establishment of a branch or under the freedom to provide services, if the credit institution's authorisation covers such activities and a corresponding notification has been made.

The OeNB is the central bank of the Republic of Austria and, as such, an integral part of both the European System of Central Banks (ESCB) and the Eurosystem. In the public interest, the OeNB contributes to monetary and economic policy decision making in Austria and in the Euro area. In line with the Austrian Act on the *Oesterreichische Nationalbank (Nationalbankgesetz – NBG)*, the OeNB is established as a stock corporation. Given its status as a central bank, it is, however, governed by a number of special provisions.

The main tasks of the OeNB focus on contributing to a stability-oriented monetary policy within the Eurosystem, safeguarding financial stability in Austria and supplying the general public and the business community in Austria with high-quality, ie counterfeit-proof, cash. In addition, the OeNB manages reserve assets, ie gold and foreign exchange holdings, with a view to backing the euro in times of crisis, draws up economic analyses, compiles statistical data, is active in international organisations and is responsible for payment systems oversight.

The SSM Regulation which entered into force on 3 November 2013 confers on the ECB both micro-prudential supervisory tasks and macro-prudential supervisory tasks. The SSM is the system of financial supervision composed of the ECB and the national competent authorities (NCAs) of participating member states. Within the SSM, the ECB will be responsible for the direct supervision of significant credit institutions. A credit institution may be classified significant if the total value of its assets exceeds EUR 30 billion, if it is important for the economy of the relevant member state (ie in case of total assets of more than EUR 5 billion and the assets represent more than 20 per

Austria

cent of the GDP), if its cross-border activities on a group level are significant (ratio of its cross-border assets to its total assets is above 10 per cent), in case of a request for or the receipt of direct public financial assistance from the European Stability Mechanism (ESM) and in case the credit institution is one of the three most significant credit institutions in a participating Member State. In Austria BAWAG P.S.K. Bank für Arbeit und Wirtschaft und Österreichische Postsparkasse AG, Erste Group Bank AG, Raiffeisenlandesbank Oberösterreich AG, Raiffeisenlandesbank Niederösterreich-Wien AG, Raiffeisen Zentralbank Österreich AG and Österreichische Volksbanken-AG will be directly supervised by ECB. The ECB will also be responsible for the effective and consistent functioning of the SSM. In this context, ECB will assume competence for licensing of credit institutions and will also assess the acquisition of qualifying holdings in credit institutions. Furthermore, ECB will become competent regarding the cross-border provision of services and for the right of establishment of credit institutions envisaging to expand to non-participating EU member states. ECB will also be able to address general instructions to national competent authorities regarding the supervision of less significant supervised entities and will retain investigatory powers over all supervised entities.

The EBA is an independent EU authority which works to ensure effective and consistent prudential regulation and supervision across the European banking sector. The main task of the EBA is to contribute to the creation of the European Single Rulebook in banking which objective is to provide a single set of harmonised prudential rules for financial institutions throughout the EU.

2.3 Other authorities

For credit institutions with total assets in excess of EUR one billion, the Austrian Minister of Finance must appoint a state commissioner and a deputy state commissioner for a maximum term of five years. The commissioners have to be invited by the credit institution to general meetings, to meetings of the members of the supervisory board, to the audit committees and executive meetings of the supervisory board. The state commissioner and the deputy are obliged to object to resolutions that violate administrative decisions of the Federal Minister of Finance or the FMA, they have inspection rights and they must immediately report facts to the FMA which become known to them and on the basis of which the credit institution's fulfilment of its obligations to creditors - and especially the security of the assets entrusted to the credit institution - are no longer ensured.

The Austrian Control Bank (*Oesterreichische Kontrollbank AG* – OeKB) is Austria's main provider of financial and information services to the export industry and the capital market. In particular, issuers of securities and fund companies can fulfil their reporting and disclosure obligations by using the OeKB's electronic reporting platforms.

2.4 Role of Central Bank

Please see above section 2.2.