



Banking Regulation 2026

13th Edition

Contributing Editors:

Peter Ch. Hsu & Daniel Flühmann

Bär & Karrer Ltd.

glg Global Legal Group

TABLE OF CONTENTS

Preface

Peter Ch. Hsu & Daniel Flühmann
Bär & Karrer Ltd.

Jurisdiction Chapters

- 1 Austria**
Clemens Völkl & Annika Sunzenauer
Völkl Rechtsanwälte GmbH
- 14 Brazil**
Bruno Balduccini, Rodolfo Pavanelli Menezes &
Sophia Helena Queirós de Assis e Silva
Pinheiro Neto Advogados
- 24 Canada**
Amanda Plastina, David Reynolds & Tamara Gutić
Miller Thomson LLP
- 35 Chile**
Diego Peralta, Fernando Noriega & Agustín Domínguez
Carey
- 46 Germany**
Jens H. Kunz & Klaudyna Lichnowska
Noerr PartGmbH
- 65 Ireland**
Josh Hogan, Martin O'Neill & Holly Draper-Spillane
McCann FitzGerald LLP
- 82 Japan**
Koji Kanazawa & Katsuya Hongyo
Chuo Sogo LPC
- 93 Liechtenstein**
Daniel Damjanovic, Sonja Schwaighofer & Antonia Wittwer-Tschohl
Marxer Attorneys
- 104 Luxembourg**
Andreas Heinzmann, Hawa Mahamoud & Eva Jean
GSK Stockmann SA
- 122 Malaysia**
Azman bin Othman Luk & Karen Foong Yee Ling
Rahmat Lim & Partners

- 134 Mauritius**
Assadullah Durbarry
Durbarry Chambers
- 142 North Macedonia**
Dragan Dameski & Milena Vachkova
Debarliev, Dameski & Kelesoska Attorneys at Law
- 151 Singapore**
Ting Chi Yen & Cheryl Eio Yi Yun
Joseph Tan Jude Benny LLP
- 162 South Africa**
Natalie Scott
Werksmans Attorneys
- 178 Switzerland**
Peter Ch. Hsu & Daniel Flühmann
Bär & Karrer Ltd.
- 198 Taiwan**
Robin Chang & James C. C. Huang
Lee and Li, Attorneys-at-Law
- 210 United Kingdom**
Alastair Holt & Simon Treacy
Linklaters
- 222 USA**
Benjamin Saul, Tarrian Ellis, Vito Arethusa & Nathaniel Sans
Steptoe LLP

Austria

Clemens Völkl
Annika Sunzenauer

Völkl Rechtsanwälte GmbH

Introduction

Due to its structural importance for the functioning of the economy, the banking sector is one of the most strictly regulated sectors in Austria. Detailed regulations at European and national level, as well as strict banking supervision by specialised authorities, are intended to ensure the proper functioning of the banking system.

As a result of these strict regulatory and supervisory measures, the Austrian banking sector is one of the most resilient in the world, as confirmed (for example) by S&P's Banking Industry Country Risk Assessment.¹

With regard to regulatory measures, the main impetus driving change in banking legislation is given by the European Union (EU). On the one hand, the EU co-legislators pass legal acts that are directly applicable in Austria (Regulations). On the other hand, the EU sets targets via Directives, which are then transposed into national law.

The high regulatory requirements applied to the Austrian banking sector and strict supervision measures are very challenging for the industry. As the banking structure in Austria is characterised by an above-average number of small and medium-sized credit institutions, which are more affected by bureaucratic burdens than large credit institutions, a consolidation of the market has been evident in the past and is expected to continue in the coming years.

However, the legal framework for credit institutions in Austria results in a very resilient industry that is well prepared for future crises. As the regulatory environment in the EU is becoming increasingly harmonised and the domestic banking sector is also well connected with decision-makers at national and European level (e.g., via business advocacy groups), it is unlikely that Austrian credit institutions will be at a competitive disadvantage compared to their European competitors.

Regulatory architecture: Overview of banking regulators and key regulations

Regulation

Legislation regarding the banking sector is primarily driven by the EU. Either the EU passes directly applicable Regulations or it sets out regulatory objectives via Directives, which are subsequently

transposed into national legislation by the Austrian Parliament (usually following a legislative proposal presented by the Austrian Government).

The Austrian Financial Market Authority (FMA) itself plays a crucial role in banking regulation. It passes legally binding regulations that are based on national laws. Furthermore, the FMA frequently issues Circulars and Guidelines. These are not legally binding but set out the FMA's legal opinion on specific topics, thus ensuring a common understanding and predictability of decisions.

Supervision

Under the EU's Single Supervisory Mechanism, the supervision of banks in the euro area is a divided task. The European Central Bank (ECB) directly supervises banks that are deemed "significant institutions". By contrast, "less significant institutions" are supervised by authorities in the Member States. In Austria, this responsibility is shared between the FMA, the Austrian National Bank (OeNB) and the Austrian Ministry of Finance (MoF) under the supervision of the ECB:

- The FMA is the responsible authority for banking supervision and macroprudential supervision. It ensures that banks comply with the relevant rules. Furthermore, the FMA is the Austrian resolution authority.
- The OeNB observes the stability of the Austrian financial market. With regard to the supervision of banks, the OeNB is in charge of fact finding (i.e., it undertakes on-site inspections, analyses financial information and drafts reports).
- The MoF sets the applicable legal framework by drafting government bills and transposing relevant EU Directives.

In accordance with European Banking Authority (EBA) Guidelines, the ECB, the FMA and the OeNB cooperate to annually conduct a supervisory review and evaluation process (SREP), thus ensuring the sustained viability of credit institutions.

At the heart of this supervisory process are the following areas:

- business model assessment;
- governance and risk management assessment;
- assessment of risks to capital;
- assessment of risks to liquidity and funding; and
- assessment of compliance with all relevant regulations.

Taking into account the size and complexity of a specific credit institution, the SREP findings are used to compile an overall assessment, which results in concrete measures to be taken by the FMA.

The supervisory process relies on off-site analysis (key data sources used are, for example, credit institutions' regulatory reporting data, regulatory stress test results or recovery plans) as well as on-site inspections.

On-site inspections typically include an assessment of the relevant risk management systems and processes and the corresponding internal documentation as well as sample checks of individual transactions. The ECB, the FMA and the OeNB jointly elaborate annual inspection plans and inform credit institutions of upcoming inspections unless an advance notification is expected to affect the effectiveness of the review. In addition to planned supervisory measures, *ad hoc* on-site inspections can be performed for macroeconomic reasons or to investigate possible breaches of relevant regulations.

Depending on the size and complexity of a credit institution as well as the scope of examination, on-site inspections typically last a couple of weeks. Based on the inspection's outcome, a comprehensive report is compiled and transferred to the authority that requested the inspection (the ECB or the FMA) and the credit institution itself.

Key legislation

The majority of the applicable rules in Austria rely on EU Directives and Regulations. The following (main) legislative acts govern the banking industry in Austria:

- Austrian Banking Act (BWG);²
- E-Money Act 2010;³
- Payment Services Act 2018;⁴
- Federal Act on the Recovery and Resolution of Banks (BaSAG);⁵
- Deposit Guarantee Schemes and Investor Compensation Act (ESAEG);⁶
- Financial Market Authority Act;⁷
- Financial Conglomerates Act;⁸
- Alternative Financing Act;⁹
- Austrian Building Society Act;¹⁰
- Financial Markets Anti-Money Laundering Act (FM-GwG);¹¹
- Capital Market Act 2019;¹²
- STS Securitisation Enforcement Act;¹³
- Consumer Payment Account Act;¹⁴
- Savings Bank Act;¹⁵
- Austrian Investment Firms Act;¹⁶
- Consumer Credit Act;¹⁷
- Distance and Outward Transactions Act (FAGG);¹⁸
- Distance Financial Services Act (FernFinG);¹⁹
- Mortgage and Real Estate Credit Act;²⁰
- Consumer Payment Accounts Act;²¹
- Single Resolution Mechanism Regulation;²²
- Capital Requirements Regulation (CRR);²³
- Securities Supervision Act;²⁴ and
- Digital Operational Resilience Act (DORA).²⁵

Restrictions on the activities of banks

Entities that conduct “banking transactions” for commercial purposes require a specific banking licence issued by the competent supervisory authority. According to Article 1 para. 1 BWG, the following transactions are considered “banking transactions” and therefore require a licence:

- deposit business;
- current account business;
- lending business;
- discounting business;
- custody business;
- issuance and administration of payment instruments such as credit cards, bankers’ drafts and traveller’s cheques;
- trading for one’s own account or on behalf of others on specific markets or with certain instruments (e.g., money market instruments, futures and options, transferable securities);

- guarantee business;
- securities underwriting business;
- miscellaneous securities underwriting business;
- building savings and loan business;
- investment fund business;
- real estate investment fund business;
- capital financing business;
- factoring business;
- money brokering business on the interbank market;
- severance and retirement fund business; and
- exchange bureau business.

A banking licence is not issued for the provision of banking transactions in general, but for a clearly defined list of banking transactions that the respective company has applied for. In other words, licences may be limited to one or more of the types of transactions listed under Article 1 para. 1 BWG, and the scope of the licence may exclude parts of the individual types of banking transactions.

The scope of the licence(s) granted to an entity is publicly available in the FMA's company database.

Recent regulatory themes and key regulatory developments in Austria

The following topics represent current trends that influence banking regulation:

- resilience and stability;
- sustainability;
- digitisation;
- cybersecurity;
- consumer protection; and
- data protection.

As the following examples illustrate, these trends trigger specific legislative initiatives, some of which represent major challenges for the banking sector:

- the implementation of Basel IV and in particular the approaching limitation of banks' variability of capital levels computed by using internal models via the "output floor";
- the development of ESG policies and the "green book", which still pose many challenges to banks both legally and in terms of business implications;
- the EU Commission's retail investment package that places the consumers' interests at the centre of retail investing, which will empower "consumer investors" by allowing them to make investment decisions that are aligned with their needs and preferences;
- the EU Commission's legislative proposal establishing the legal framework for a possible digital euro as a complement to euro banknotes and coins; and
- DORA, which will ensure that banks and financial entities can withstand, respond to, and recover from ICT disruptions, such as cyberattacks or system failures.

Against the backdrop of current trends, challenges and risks, the FMA formulated six thematic areas as priorities for banking supervision and inspections in 2026:

- resilience and stability: further strengthening sector capitalisation and sustainably reducing non-performing loans (NPLs), including intensified examinations where NPL ratios are elevated;

- digitalisation, artificial intelligence (AI) and new business models: ensuring a level playing field for new business models and transparency for the use of AI in the financial sector;
- sustainability: to provide support to draw up robust transition plans and to integrate the physical risks arising from climate change as well as preventing greenwashing;
- collective consumer protection: safeguarding consumer interests in the digital distribution of financial products, with a particular focus on new market participants such as neo-brokers and crypto-asset service providers, as well as striving to combat investment fraud and unauthorised business operations in the area of digital sales;
- money laundering and sanctions: strengthening and securing Austria's status as a clean financial market, and leveraging synergies in national and international supervision to combat money laundering; and
- a modern and effective organisation: facing current challenges with an impactful organisational structure, a strong ICT framework, an integrated and data-based form of supervision, and an attractive working environment.

Bank governance and internal controls

In Austria, credit institutions must be established in the legal form of a joint-stock company (AG, GmbH or SE), a cooperative society or a savings bank (Article 5 para. 1, 1 BWG).

The FMA only issues a banking licence if the initial capital or initial endowment of the legal entity amounts to at least EUR 5 million and is freely available to the directors without restrictions or charges in Austria (Article 5 para. 1, 5 BWG).

Control environment

According to Article 39 paras 1 and 2 BWG, directors of a credit institution must obtain information on and control, monitor and limit the risks of banking transactions and banking operations using appropriate strategies and mechanisms. To this end, credit institutions are required to have administrative, accounting and control procedures in place to capture, assess, control and monitor risks arising from banking transactions and banking operations. These mechanisms must be appropriate to the type, scope and complexity of the banking transactions conducted. For those responsible (Article 9 Administrative Penal Act, VStG) at a credit institution, any breach of these obligations – provided that the act does not constitute a criminal offence falling within the jurisdiction of the courts – is punishable by a fine of up to EUR 5 million or up to twice the benefit derived from the breach. According to Article 99d BWG, the credit institution may also be fined for breaching these obligations.

Article 42 paras 1 and 2 BWG stipulate that credit institutions have to set up an internal audit unit that reports directly to the directors and that serves the exclusive purpose of ongoing and comprehensive reviews of the legal compliance, appropriateness and suitability of the entire undertaking. This internal audit unit must draw up an annual auditing plan and carry out audits in accordance with that plan. In addition, the internal audit unit must also carry out unscheduled audits whenever necessary.

Certain control bodies must be set up if the respective credit institution exceeds certain thresholds. Credit institutions of any legal form, whose total assets exceed EUR 1 billion or which have issued transferable securities that are admitted to trading on a regulated market, must establish an audit committee consisting of at least three members of the supervisory body (Article 63a para. 4 BWG). This committee supervises the audit and issuance of financial statements, the internal control system, audit function and risk management system.

Credit institutions whose total assets on average have reached or exceeded EUR 5 billion at the relevant reporting dates of the past three completed business years are considered to be of significant relevance.

Such a credit institution of significant relevance must put in place the following control entities:

- a risk management department that is independent from operational business and that has direct access to the directors (Article 39 para. 5 BWG);
- a permanent, effective and independently operating compliance function with direct access to the directors (Article 39 para. 6 BWG);
- a nomination committee that, *inter alia*, considers applicants for the filling of managerial vacancies and proposes candidates to the supervisory board (Article 29 BWG);
- a remuneration committee whose duties entail the preparation of resolutions on subjects relating to remuneration as well as the monitoring of the remuneration policy, the remuneration practices and the incentive structures relevant to remuneration (Article 39c BWG); and
- a risk committee whose tasks comprise, *inter alia*, advising management on the credit institution's current and future risk appetite and risk strategy as well as monitoring implementation of that risk strategy (Article 39d BWG).

Composition of credit institutions' boards and senior management

A credit institution's board of directors has to consist of a minimum of two directors. Regarding each director's legal powers, the articles of association of the credit institution must rule out individual powers of representation, individual powers of commercial representation and individual commercial powers of attorney for the entire business operation (Article 5 para. 1, 12 BWG).

The BWG stipulates certain criteria that must be met by directors of credit institutions (according to Article 28a paras 3 and 5 BWG, similar criteria apply to the members of a supervisory board):

- stable financial situation (no bankruptcy proceedings have been initiated for the assets of a director) (Article 5 para. 1, 6);
- no conviction to a prison sentence of more than three months (Article 5 para. 1, 6);
- no facts are known that would raise doubts as to personal reliability, honesty and independence of mind (Article 5 para. 1, 7);
- possession of the professional qualifications and experience necessary for operating the credit institution (including sufficient theoretical and practical knowledge of banking transactions as well as management experience) (Article 5 para. 1, 8); and
- at least one director must have a command of the German language (Article 5 para. 1, 11).

To ensure the necessary level of skills, experience, and integrity, directors must undergo a dedicated fit and proper assessment conducted by the competent supervisory authority (either the FMA or the ECB). As part of this assessment, the supervisory authorities may review criminal records, organise hearings and seek references from previous employers or other relevant parties (see the FMA's Fit and Proper Circular published on 18 March 2023).

In addition to these fit and proper assessments, banks must provide ongoing training for their governing bodies and employees.

Directors must not practise another main profession outside the banking industry, outside insurance undertakings or "*Pensionskassen*", outside payment institutions or e-money institutions, or outside investment firms or investment service providers (Article 5 para. 1, 13 BWG).

Furthermore, they must dedicate sufficient time to the performance of their duties at the credit institution. Directors of credit institutions considered to be of significant relevance shall only be allowed to exercise one activity in a managerial function as well as an additional two activities as a supervisory board member (Article 5 para. 1, 9a BWG).

Remuneration rules

Articles 39, 39b and 39c BWG, the corresponding Circular last published by the FMA on 15 June 2022 as well as the EBA's Guidelines on sound remuneration policies provide the legal framework for remunerations paid by credit institutions in Austria.

The remuneration policy shall be consistent with and promote sound and effective risk management and shall not encourage risk-taking that exceeds the level of tolerated risk of the credit institution. It shall be in line with the business strategy, objectives, values and long-term interests of the credit institution, and shall incorporate measures to avoid conflicts of interest.

Fixed and variable components of total remuneration shall be appropriately balanced. The remuneration policy shall make a distinction between criteria for fixed and variable remuneration components:

- Criteria for determining fixed remuneration components include the person's professional experience and the specific activity performed, taking into account the associated level of responsibility.
- Criteria for determining variable remuneration components comprise sustainable and risk-adjusted performance and performance that extends beyond the stipulated performance objectives.

These and more detailed rules stipulated in the annex to Article 39b BWG apply to all employees whose professional activities have a material effect on the credit institution's risk profile, including, in any case, remunerations of directors, members of the supervisory board, members of senior management, staff members with managerial responsibility for control duties or material business lines and, under certain circumstances, staff members having a claim to remuneration of at least EUR 500,000 (Article 39b para. 2 BWG).

Credit institutions must disclose on their websites the manner and means by which they comply with the remuneration policies described above (Article 65a BWG).

Outsourcing of functions

Article 25 BWG and the corresponding annex define rules that must be observed if a credit institution plans to outsource material operational tasks. The EBA's revised Guidelines on outsourcing arrangements must also be taken into account, as well as DORA and its amending Regulations applicable since 17 January 2025. In any case, entrusting a service provider with material operational tasks must not be detrimental to the quality of the credit institution's internal control mechanisms nor the FMA's ability to supervise the credit institution. When concluding, implementing or terminating an agreement in relation to the outsourcing of material tasks, credit institutions must proceed with due required professionalism and diligence. In particular, the division of rights and obligations between the credit institution and the service provider must be clearly stated in the form of a written agreement (Article 25 para. 1 BWG).

Among the conditions to be observed by credit institutions that intend to outsource certain material tasks (see annex to Article 25 BWG) are:

- the service provider shall possess the relevant qualifications, capacity, as well as all authorisations required by law to perform the outsourced tasks, services, or activities in a reliable and professional manner;
- the service provider shall perform the outsourced services efficiently. The credit institution shall determine methodologies to assess the service provider's performance;
- the service provider shall duly monitor the performance of the outsourced tasks and reasonably control any risks associated with such outsourcing;
- the service provider shall cooperate with the FMA and the OeNB with regard to the outsourced activities; and
- the service provider shall protect all confidential information about the credit institution and its customers.

Under certain circumstances, the outsourcing of material tasks is prohibited by Article 25 para. 3 BWG:

- senior management tasks must not be delegated;
- the relationship and obligations between a credit institution and its business partners/customers as set out by the BWG must not be altered; and
- compliance with a series of legal acts relevant to the banking industry (as listed in Article 69 BWG) must not be prevented or impeded.

DORA imposes additional requirements on the use of third-party ICT service providers that support critical and important functions of the credit institution:

- financial entities shall inform the competent authority in a timely manner about any planned contractual arrangement on the use of ICT services supporting critical or important functions as well as when a function has become critical or important (Article 28 para. 3 DORA);
- financial entities shall, prior to concluding the arrangements, take due consideration of the use, by third-party ICT service providers, of the most up-to-date and highest quality information security standards (Article 28 para. 5 DORA);
- financial entities shall put in place, maintain and periodically test appropriate ICT business continuity plans, notably with regard to critical or important functions outsourced or contracted through arrangements with third-party ICT service providers (Article 11 para. 4 DORA); and
- for ICT services supporting critical or important functions, financial entities shall put in place exit strategies (Article 28 para. 8 DORA).

Bank capital requirements

After the banking and financial crisis that hit the markets in 2008 and the years that followed, the Basel Committee on Banking Supervision (BCBS) elaborated a set of international standards for bank capital adequacy, stress testing, and liquidity requirements in order to increase credit institutions' level of resilience. The FMA is represented in the Basel Conference, which is part of the BCBS.

The BCBS standards primarily influence the regulatory framework in Austria via the EU, which implements these standards. On the one hand, the CRR is directly applicable in Austria. On the other hand, the Capital Requirements Directive (CRD) was transposed by Austria into national law.

Capital adequacy requirements are stipulated in Article 92 CRR as well as in Article 22 *et seqq.* BWG. According to these rules, credit institutions shall at all times ensure a Common Equity Tier 1 capital ratio of 4.5 per cent, a Tier 1 capital ratio of 6 per cent and a total capital ratio of 8 per cent. In addition, credit institutions shall also hold a capital conservation buffer made up of Common Equity Tier 1 equal to 2.5 per cent of the total risk exposure amount as well as a countercyclical capital buffer and – if applicable – a capital buffer for Global Systemically Important Institutions, which may vary in scope.

With regard to liquidity requirements, the CRR adopts two liquidity standards to ensure that financial institutions are stable:

- Liquidity Coverage Ratio (LCR): credit institutions are required to hold liquid assets at all times, the total value of which equals, or is greater than, the net liquidity outflows that might be experienced under stressed conditions over a short period of time (30 days) (Article 412 CRR).
- Net Stable Funding Requirement (NSFR): financial institutions are required on an ongoing basis to raise stable funding (equity and liability financing expected to remain stable over a one-year time horizon) at least equal to their stable assets or illiquid assets that cannot be easily turned into cash over the following 12 months (Article 413 CRR).

The observance of capital requirements by credit institutions is monitored by the FMA. If a credit institution does not observe the capital adequacy requirements, Article 70 BWG empowers the FMA to take various measures, including:

- an instruction to restore legal compliance under threat of a coercive penalty;
- imposing additional reporting obligations or shorter reporting intervals;
- a request requiring credit institutions to use net profits to strengthen own funds;
- in cases of repeated or continued violations, completely or partly prohibiting directors from managing the credit institution; and
- a revocation of the credit institution's banking licence (which entails the dissolution of the credit institution) in cases where other measures cannot ensure the functioning of the credit institution.

Rules governing banks' relationships with their customers and other third parties

The Austrian legal system does not provide a dedicated law applicable to banks' dealings with third parties. Rather, the Civil Code (ABGB) represents the legal framework governing banks' relationships with clients and other third parties.

When establishing their contractual relationships with business partners and customers, banks typically use general terms and conditions that must comply with the strict clause control mechanisms enshrined in the ABGB and, if applicable, the Austrian Consumer Protection Act (KSChG).

For specific banking transactions, the ABGB is supplemented by a large number of accompanying laws, most of which pursue consumer protection objectives. Among these specific laws are the Consumer Credit Act, the Mortgage and Real Estate Credit Act, the FernFinG, the Consumer Payment Account Act, the KSChG, as well as individual consumer protection provisions in the BWG or the Payment Services Act.

Typically, laws that aim at consumer protection are unilaterally binding, i.e., it is not possible to deviate from specific provisions to the detriment of consumers.

Legal enforcement

In the banking sector, there are a number of dispute resolution mechanisms that can be invoked voluntarily prior to legal enforcement actions via ordinary courts.

Firstly, customers may directly contact the respective credit institution. Article 39e BWG stipulates that credit institutions shall establish transparent and adequate procedures for processing of complaints by customers and business partners, in order to be able to identify, analyse and remedy risks. Credit institutions are obliged to provide information about the complaints process. Furthermore, they must accept a complaint and respond to it without undue delay. If the request that was the reason for the complaint is rejected, this must be justified.

If complaints management is not satisfactory, the FMA can be called upon to examine whether a specific credit institution is complying with its obligations regarding the complaints procedure. However, the FMA is not an arbitration body and cannot make binding decisions on individual disputes.

To proactively solve a dispute, customers may contact the Ombudsman of the Austrian Bankers' Association. This body is a neutral mediator that offers free assistance to retail customers of member banks, helping them to clarify banking issues and cases of disagreement. Procedures mediated by the Ombudsman of the Austrian Bankers' Association focus on clarifying matters or achieving consensual agreement between customers and banks. They do not, however, result in binding decisions.

Similarly to the aforementioned Ombudsman, the Independent Joint Arbitration Body of the Austrian Banking Industry supports the consensual settlement of disagreements between customers and credit

institutions. The Joint Arbitration Body can submit a concrete proposal for a solution. Both parties may accept or reject this proposal. Regardless of whether the parties reach an agreement or not, they have the possibility of taking the matter to the ordinary courts, which is the final remedy to enforce parties' rights. Parties may take action before the competent ordinary court themselves. Additionally, with regard to many consumer rights, there is the possibility of legal enforcement by certain associations such as the Chamber of Labour (AK) or the Association for Consumer Information (VKI). This procedure is also referred to as the "Austrian-style class action". In addition, since July 2024, it has been possible to bring a class action for injunctive relief (e.g., injunctive relief against the use of general terms and conditions clauses) or for remedial measures, whereby claims of at least 50 consumers can be asserted against a business on the basis of essentially similar facts. Qualified entities under the Qualified Entities Act (QEG) (e.g., VKI, Federal Economic Chamber (WKO)) are actively legitimised for this purpose.

Compensation schemes for bank failures

In Austria, the ESAEG entered into force on 15 August 2015. According to this law, every credit institution with its registered office in Austria that takes deposits from customers is required to be affiliated to a statutory deposit guarantee scheme. If a credit institution does not belong to any deposit guarantee schemes, its licence to take deposits expires (§ 8 ESAEG).

The established deposit guarantee schemes ensure that customers' deposits are protected in general up to EUR 100,000 per customer and bank at all times (higher amounts can apply in certain cases). In case of a payout event (e.g., if a bank is placed into insolvency or becomes illiquid), depositors are repaid by the deposit guarantee scheme (§ 13 ESAEG).

In Austria, deposit guarantee schemes are not funded by the Government. Instead, potential payouts are financed by a deposit insurance fund, to which the member banks of the respective deposit guarantee scheme make annual contributions. In other words, credit institutions, and not the public sector, must bear the financial consequences of payout events (§§ 18 and 21 ESAEG).

Currently, the following three deposit guarantee schemes coexist in Austria: Einlagensicherung AUSTRIA Ges.m.b.H.; Österreichische Raiffeisen-Sicherungseinrichtung eGen; and Sparkassen-Haftungen GmbH.

Regulatory framework on anti-money laundering

Credit institutions in Austria must comply with specific anti-money laundering legislation to prevent the abuse of the financial market and the financial system for disguising and channelling of assets of illegal origin as well as the financing of terrorist activities.

In this context, the FM-GwG and the Beneficial Owners Register Act (WiEReG) form the backbone of Austria's anti-money laundering legislation. Both national legal acts rely on EU legislation, in particular the 5th Anti-Money Laundering Directive and the Regulation on information accompanying the transfer of funds and certain crypto-assets.

The FM-GwG obliges credit institutions to implement measures to detect and prevent money laundering and terrorist finance. They must report suspicious transactions to the authorities without delay. Furthermore, credit institutions have to maintain records of all transactions for at least five years. The scope of the FM-GwG was extended on 14 December 2024. The new rules relate to the prevention of non-implementation and evasion of targeted financial sanctions in conjunction with the financing of proliferation and correspond to the recommendations issued by the Financial Action Task Force (FATF). Obligated entities are required to implement targeted financial sanctions pursuant to Article 2 no. 24 FM-GwG and to establish policies, controls and procedures to mitigate and control the risk of non-implementation and evasion of targeted financial sanctions. Within the scope of its supervision, the FMA monitors observance of these rules.

According to the “know-your-customer principle”, credit institutions are obliged to verify the identity of their customers according to certain standards and to assess the potential money laundering and terrorist financing risks associated with the respective customer before carrying out a banking transaction with the person in question.

The WiEReG contains provisions relating to beneficial ownership. According to this law, legal entities domiciled in Austria have to determine and verify their beneficial owners once a year. Legal entities must report their beneficial owners within four weeks of their initial entry into the respective master register. In addition, legal entities must, within four weeks of the due date of the annual review, report any changes identified during the review or confirm the reported data.

Compliance with anti-money laundering legislation is supervised by the FMA.

Regulatory framework on international sanctions

The legal framework is set out in the Sanctions Act 2024 (SanktG 2024), which replaced the Sanctions Act 2010 and has applied since February 2025. In addition, sanctions law is primarily shaped by European legislation.

Obligated financial market participants must, *inter alia*, put in place appropriate internal organisation to ensure implementation of sanctions (including screening, freezing and reporting processes) (Article 7 SanktG 2024). These must be approved by a management body of the respective financial market participant, established, adapted if necessary, and applied on an ongoing basis.

Since 1 January 2026, the FMA has taken over responsibility for monitoring and enforcing financial sanctions in the Austrian financial sector from the OeNB.

In the event of a breach of an obligation under the SanktG 2024, the FMA is able to impose administrative penalties.



Endnotes

- 1 <https://www.spglobal.com/ratings/en/research/articles/230330-sector-and-industry-variables-criteria-financial-institutions-banks-banking-industry-country-risk-assess-101574829>
- 2 <https://www.fma.gv.at/wp-content/plugins/dw-fma/download.php?d=468&nonce=a7c180ba23b177dc>
- 3 <https://www.fma.gv.at/wp-content/plugins/dw-fma/download.php?d=2259&nonce=a4aa21f67349f535>
- 4 <https://www.fma.gv.at/wp-content/plugins/dw-fma/download.php?d=3569&nonce=4b5622e4191c0bd5>
- 5 <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20009037>
- 6 <https://www.fma.gv.at/wp-content/plugins/dw-fma/download.php?d=469&nonce=8ce3e7ff725de25d>
- 7 <https://www.fma.gv.at/wp-content/plugins/dw-fma/download.php?d=2144&nonce=e8c3a7987f639cf3>
- 8 <https://www.fma.gv.at/wp-content/plugins/dw-fma/download.php?d=5763&nonce=b768d31cfe5394b1>
- 9 <https://www.fma.gv.at/wp-content/plugins/dw-fma/download.php?d=3733&nonce=c03a0922b5d435a6>
- 10 <https://www.fma.gv.at/wp-content/plugins/dw-fma/download.php?d=3284&nonce=67538e03bbaa5aff>
- 11 <https://www.fma.gv.at/wp-content/plugins/dw-fma/download.php?d=2701&nonce=73a47561c259b08e>
- 12 <https://www.fma.gv.at/wp-content/plugins/dw-fma/download.php?d=2103&nonce=8f31f08fd5b45f3>
- 13 <https://www.fma.gv.at/wp-content/plugins/dw-fma/download.php?d=4128&nonce=6c6dcfe3f83db1f2>
- 14 <https://www.fma.gv.at/wp-content/plugins/dw-fma/download.php?d=2277&nonce=deb7a82eec7303f7>

- 15 <https://www.fma.gv.at/wp-content/plugins/dw-fma/download.php?d=3187&nonce=b00d1ab530a649ce>
- 16 <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20012143>
- 17 <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20006780>
- 18 <https://www.ris.bka.gv.at/geltendefassung.wxe?abfrage=bundesnormen&gesetzesnummer=20008847>
- 19 https://www.ris.bka.gv.at/Dokumente/Erv/ERV_2004_1_62/ERV_2004_1_62.pdf
- 20 <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20009367>
- 21 <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20009550>
- 22 <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0806>
- 23 <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0575>
- 24 <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20009943>
- 25 <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2022:333:FULL>

**Clemens Vökl**

Tel: +43 1 93 46 068 / Email: c.voelkl@voelkl.partners

Clemens Vökl is the founding partner and advises in the areas of banking and banking supervision law, professional and liability law, company law and corporate governance, insurance and insurance supervision law.

He is a university lecturer at the Institute for Civil and Corporate Law at the Vienna University of Economics and Business, a lecturer at, among others, the United Nations Economic Commission for Europe and the Lawyers' Academy, and the author of numerous specialist books and over 50 articles in specialist journals.

IFLR1000, *Leaders League* and *Benchmark Litigation* rank Clemens Vökl among the best lawyers in litigation and banking law.

**Annika Sunzenauer**

Tel: +43 1 93 46 068 / Email: a.sunzenauer@voelkl.partners

Annika Sunzenauer studied business law at the Vienna University of Economics and Business. Before joining Vökl Rechtsanwälte in 2023, she gained practical experience at several law firms.

Vökl Rechtsanwälte GmbH

Neutorgasse 12/9, 1010 Vienna, Austria

Tel: +43 1 93 46 068 / URL: www.voelkl-partners.at



Global Legal Insights – Banking Regulation

provides in-depth analysis of laws and regulations across 18 jurisdictions, covering:

- Regulatory architecture: Overview of banking regulators and key regulations
- Recent regulatory themes and key regulatory developments
- Bank governance and internal controls
- Bank capital requirements
- Rules governing banks' relationships with their customers and other third parties

globallegalinsights.com