

# FEDERAL ACT

on the Oesterreichische Nationalbank

Nationalbankgesetz 1984

(as at June 15, 2018)



FEDERAL ACT  
on the  
Oesterreichische Nationalbank  
(Nationalbankgesetz 1984 – NBG)

BGBl. (Federal Law Gazette) No. 50/1984  
as amended by BGBl. (Federal Law Gazette)  
Part I No. 37/2018

Unofficial consolidated version of the Act,  
as in force from June 15, 2018

Media owner and producer:  
Oesterreichische Nationalbank,  
Otto-Wagner-Platz 3, 1090 Vienna, Austria  
Published and produced in Vienna

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## **Chapter I**

### **General Provisions**

#### **Article 1**

The legal status of the Oesterreichische Nationalbank shall be governed by the Treaty on the Functioning of the European Union (TFEU), OJ No. C 83 of 30.03.2010 p. 47, the Protocol (No. 4) on the Statute of the European System of Central Banks and the European Central Bank (ESCB/ECB Statute), OJ No. C 83 of 30.03.2010, p. 230, and this federal act. The provisions of the Aktiengesetz (Stock Corporation Act) 1965, BGBl. (Federal Law Gazette) No. 98/1965, shall be applicable to the Oesterreichische Nationalbank unless otherwise provided for by the TFEU, the ESCB/ECB Statute or this federal act.

#### **Article 2**

(1) The Oesterreichische Nationalbank is a stock corporation; it is the central bank of the Republic of Austria and, as such, an integral part of the European System of Central Banks (ESCB).

(2) The Oesterreichische Nationalbank shall, in accordance with the provisions of the TFEU, the ESCB/ECB Statute, the directly applicable European Union (EU) legislation adopted thereunder, and this federal act, be obliged to work towards the achievement of the objectives and fulfillment of the tasks of the ESCB. Within the framework of EU law, in particular Article 3 of the Treaty on European Union (TEU), OJ No. C 83 of 30.03.2010 p. 13, and Article 127 TFEU, the Oesterreichische Nationalbank shall use all the means at its

disposal to maintain the objective of price stability. To the extent that this does not interfere with the objective of price stability, the needs of the national economy with regard to economic growth and employment trends shall be taken into account and the general economic policies in the European Union shall be supported.

(3) In accordance with Article 5 of the ESCB/ECB Statute, the Oesterreichische Nationalbank shall support the European Central Bank (ECB) in collecting the statistical information necessary to undertake the tasks of the ESCB.

(4) In accordance with the decisions taken by the ECB pursuant to Article 6.1 of the ESCB/ECB Statute on international cooperation, the Oesterreichische Nationalbank shall act in a representative capacity for the ESCB.

(5) In pursuing the objectives and performing the tasks set out in paragraphs 2 to 4, the Oesterreichische Nationalbank shall act in accordance with the guidelines and instructions of the ECB pursuant to Article 14.3 of the ESCB/ECB Statute; in doing so, neither the Oesterreichische Nationalbank nor any member of its decision-making bodies shall seek or take instructions from EU institutions or bodies, from any government of a Member State of the European Union, or from any other body.

### **Article 3**

Subject to the approval of the ECB, the Oesterreichische Nationalbank may participate in international monetary institutions.

## Article 4

(1) Furthermore, the Oesterreichische Nationalbank shall be empowered to effect transactions other than those covered by the remit of the ESCB unless the ECB Governing Council finds, by a majority of two thirds of the votes cast, that these interfere with the objectives and tasks of the ESCB. Such transactions shall be performed on the responsibility and liability of the Oesterreichische Nationalbank and shall not be regarded as being part of the functions of the ESCB.

(2) The Oesterreichische Nationalbank shall have the exclusive right in Austria to produce banknotes or to have banknotes produced that have the status of legal tender in Austria; the legal position of the ECB shall not be affected thereby. Furthermore, the Oesterreichische Nationalbank shall be empowered to produce securities, other stores of value and administrative forms that must meet special security requirements.

## Article 5

(1) The Bank's official signature shall consist of the Bank's official name "Oesterreichische Nationalbank," the addition "Direktorium" (Governing Board) and the signature of two members of the Governing Board. Such signature shall commit the Oesterreichische Nationalbank even in cases where the law prescribes special authorization.

(2) Without prejudice to paragraph 1, the Governing Board may decide that the actions of certain employees of the Oesterreichische Nationalbank, effected alone or together with certain other employees of the Oesterreichische Nationalbank, may authorize or commit the Oesterreichische

Nationalbank. In this event, the Governing Board shall determine in what form and in which cases the representative actions of these employees authorize or commit the Oesterreichische Nationalbank. It shall make this decision known by public notice displayed in the Bank's offices, together with a register of the signatures of the employees concerned.

(3) The Oesterreichische Nationalbank shall include in its seal the coat of arms of the Republic of Austria; it shall not be required to have its registered trade name and the members of its decision-making bodies recorded in the Commercial Register.

## **Article 6**

The Oesterreichische Nationalbank has its seat in Vienna, where the head office is located. Branch offices may be established in the capitals of the Bundesländer (Federal Provinces).

## **Article 7**

(1) Unless otherwise provided for in directly applicable EU legislation, the Allgemeines Verwaltungsverfahrensgesetz (Act on General Administrative Procedure) 1991, BGBl. (Federal Law Gazette) No. 51/1991, shall apply to the Oesterreichische Nationalbank's performance of public authority functions in matters relating to money, credit and banking; appeals against decisions of the Oesterreichische Nationalbank will be reviewed by the Bundesverwaltungsgericht (Federal Administrative Court).

(1a) Appeals against decisions taken by the Oesterreichische Nationalbank in enacting this law or regulations is-



sued on the basis of this law as well as requests of remittance shall not have suspensive effects. In the absence of overriding public interests and if implementing the Oesterreichische Nationalbank's decision would, all things considered, put the appealing party at an unreasonable disadvantage, the Federal Administrative Court shall on request allow by decision an appeal to have suspensive effect, following consultation of the Oesterreichische Nationalbank. If an appeal has been considered to have suspensive effect, enforcement of the contested decision is to be suspended and the respective orders are to be given. In the event of a substantial material change of the conditions that were decisive for granting suspensive effect, the Federal Administrative Court shall review its decision on request.

(2) Regulations issued by the Oesterreichische Nationalbank shall be published in the Bundesgesetzblatt (Federal Law Gazette). Terms and conditions governing services and systems within the remit of the Oesterreichische Nationalbank are legally binding as published on its website.

(3) Draft laws which contain provisions of importance for financial market policy or which otherwise affect the interests of the Oesterreichische Nationalbank shall, prior to being introduced before the legislative body, be submitted to the Oesterreichische Nationalbank for its opinion, with an appropriate time period being allowed for this purpose.

(4) With regard to data protection rules for data transfers, the Oesterreichische Nationalbank shall be deemed to be equivalent to a body with official authority as defined in Article 26 paragraph 1 of the Datenschutzgesetz (Data Protection Act), BGBl. (Federal Law Gazette) Part I No. 165/1999.

(5) The Oesterreichische Nationalbank shall have the right to process personal data as defined in Regulation (EU) 2016/679 to the extent this is necessary for the performance of tasks conferred upon the central bank under statutory rules, the Austrian State Treaty or EU law.

## **Chapter II**

### **Capital and Shareholder**

#### **Article 8**

(1) The capital of the Oesterreichische Nationalbank is 12 million euro and is divided equally into 150,000 shares.

#### **Article 9**

The Bund (Federation) is the sole shareholder of the Oesterreichische Nationalbank. The shareholder rights of the Bund (Federation) shall be exercised by the Federal Minister of Finance.

## **Chapter III**

### **General Meeting**

#### **Article 10**

(1) The ordinary General Meeting shall be held within the first six months of each financial year.

(2) At the written request of the Bund (Federation), an extraordinary General Meeting shall be convened within thirty days, unless this matter can be dealt with in the ordi-

nary General Meeting. This period shall commence with the receipt by the Oesterreichische Nationalbank of the relevant written proposal.

### **Article 11 to 14**

(deleted)

### **Article 15**

The chair at the General Meeting shall be taken by the President of the General Council or, in his absence, by his deputy.

### **Article 16**

The General Meeting shall be entitled:

1. to receive the report of the General Council on the conduct of business during the previous financial year;
2. to approve the annual accounts and discharge the General Council and the Governing Board from liability for the financial period after hearing the report of the external Auditor;
3. to decide on profit appropriation and to fix the dividend to be distributed;
4. (deleted);
5. to elect an external Auditor and an alternate external Auditor;
6. (deleted);
7. (deleted);
8. to fix the level of remuneration to be paid to the President and Vice President;
9. (deleted).

## **Article 17 to 19**

(deleted)

## **Chapter IV**

### **Management and Administration of the Bank**

#### **A. General Council**

##### **Article 20**

(1) The General Council shall be charged with the supervision of all business not falling within the remit of the ESCB.

(2) The General Council shall advise the Governing Board in the conduct of the Bank's business and in matters of monetary policy. These joint meetings of the General Council and the Governing Board shall take place at least once every quarter.

##### **Article 21**

(1) The approval of the General Council shall be required to:

1. start and discontinue lines of business, with the exception of those set out in Chapter X;
2. establish and close down branch offices;
3. acquire and sell equity interests;
4. purchase, sell and mortgage real property;
5. appoint members of supervisory boards and executive bodies of companies in which the Oesterreichische Nationalbank is a shareholder;
6. appoint second-tier officials of the Oesterreichische Nationalbank itself.

(2) The General Council shall have exclusive right of decision on the following matters:

1. drawing up nonbinding tripartite proposals to the Federal Government for appointments to the Governing Board by the Federal President;
2. passing resolutions with regard to the conditions of employment applicable to the members of the Governing Board and the other employees of the Oesterreichische Nationalbank as well as with regard to the provisions governing remuneration and pensions of the foregoing, and concluding employment contracts with the members of the Governing Board;
3. defining general operational principles in matters relating to Article 4;
4. authorizing items of expenditure not provided for in the cost account and investment plan for the year in question;
5. approving the annual accounts for submission to the General Meeting and approving the cost account and investment plan for the next financial year;
6. laying down rules of procedure for the General Council and the Governing Board.

(3) Before drawing up tripartite proposals in accordance with paragraph 2 item 1, the positions in question shall be advertised by the Oesterreichische Nationalbank.

(4) The General Council may determine in its rules of procedure that, in preparation for decisions it has to take in accordance with paragraphs 1 and 2, committees shall be established. The chairs of such committees shall report in meetings of the General Council.

(5) The power of the General Council to take and approve decisions on matters set out in paragraphs 1 and 2 shall be restricted to the extent that decisions it takes shall not interfere with the performance of the tasks of the ESCB.

## **Article 22**

(1) The General Council consists of the President, one Vice President and eight other members.

(2) All members of the General Council are appointed.

(3) Only persons holding Austrian citizenship who are not debarred from voting in elections for the Nationalrat (National Council) may be members of the General Council. The Members of the General Council should be leading industry representatives or jurists or economists.

(4) No person who is in the active service of the Bund (Federation) or of a Land (Federal Province) or of one of the bodies of the European Union or who is a member of the Nationalrat (National Council), Bundesrat (Federal Council), a Landtag (Parliament of a Federal Province) or the European Parliament, the Federal Government or the government of a Land (Federal Province), or the European Commission may be a member of the General Council. The restriction with regard to persons in the active service of the Bund (Federation) shall not apply to university professors of law and economics. No more than three members of the General Council may be members of the management of credit institutions as their chief occupation; they may not be President or Vice President.

(5) The body representing the employees under the provisions of Article 40 of the Arbeitsverfassungsgesetz (Labor Charter), BGBl. (Federal Law Gazette) No. 22/1974, shall be

entitled to send a representative and an alternate representative to General Council meetings. In personnel, social and welfare matters, the staff representative and – in his absence – his alternate shall have the same rights and duties as the members of the General Council.

### **Article 23**

The President, the Vice President and eight further members of the General Council are appointed by the Federal Government for a term of five years. Persons holding office may be reappointed. During their term of office, those appointed may be removed from office by the Federal Government only if they no longer fulfill the conditions for holding office (Article 22 paragraphs 3 and 4) or if they are guilty of serious misconduct. The nonfulfillment of conditions for holding office shall also include being prevented from performing the duties of office for a period of more than one year. Should a member of the General Council resign during his term of office, the Federal Government shall appoint a new member for a term of five years.

### **Article 24**

The President and the Vice President shall receive remuneration for their services in proportion to the duties undertaken. The level of this remuneration shall be set by the General Meeting. The other members of the General Council perform the duties of office without remuneration. They shall be duly reimbursed out of the Bank's funds for travel expenses incurred in the performance of their duties.

## **Articles 25 to 27**

(deleted)

### **Article 28**

(1) The General Council shall be convened by the President, as a rule once a month.

(2) A meeting of the General Council must be called within eight days of a request in writing from three members of the General Council, or of a request from the Governor or the State Commissioner.

(3) All the members of the General Council and the State Commissioner shall be invited to the meetings of the General Council by a registered or personally delivered letter, which shall also notify them of the agenda.

### **Article 29**

(1) The President shall take the chair at meetings of the General Council. He shall monitor the implementation of the decisions of the General Council. Should the President be absent or unable to perform his duties, he shall be represented in all his functions by the Vice President. Should the latter also be unable to perform his duties, the General Council member with the longest term of office shall preside. If this applies to several members of the General Council, the oldest among them shall preside. The General Council shall undertake the continuous supervision of all business not falling within the remit of the ESCB.

(2) A member of the General Council may arrange to be represented by another member of the Council. An authorizing document shall be submitted in writing for each meeting.



No member of the Council may exercise more than two votes in addition to his own.

(3) The General Council shall be quorate if all its members have been invited in good time and if, including the chair, at least five members are present.

(4) Decisions shall be taken by simple majority vote. In case of a tie, the chair shall have the casting vote.

### **Article 30**

(1) The names of the members of the General Council present or represented and the decisions adopted shall be recorded in the minutes. Each member of the General Council who is present shall be entitled to have his opinion recorded in the minutes, should it dissent from the majority decision.

(2) The minutes shall be signed by the person chairing the meeting and by the Governor.

### **Article 31**

(1) If, in the matters set out under Article 21 paragraph 1 items 3 and 4 and paragraph 2 item 4, it becomes evident that an urgent decision is necessary, such action may be taken by decision of an executive committee composed of the President, the Vice President, the Governor and the Vice Governor. Meetings of this executive committee shall be convened by the President on his own initiative or on the basis of a proposal of one of its members. The executive committee shall be quorate if at least three members are present. It shall be chaired by the President or, should the President be unable to attend, by the Vice President. Decisions of the executive committee

shall be taken by majority vote. In case of a tie, the chair shall have the casting vote.

(2) The decisions adopted shall be made known to the General Council at its next meeting; the Council shall be entitled to adopt a new decision on the matter in accordance with Article 21.

## **B. Governing Board**

### **Article 32**

(1) The Governing Board shall be responsible for the overall running of the Bank and shall conduct the business of the Oesterreichische Nationalbank. In pursuing the objectives and tasks of the ESCB, the Governing Board shall act in accordance with the guidelines and instructions of the ECB. In matters other than those covered by the remit of the ESCB, the Governing Board shall take decisions independently, insofar as these do not relate to matters on which the General Council has exclusive right of decision, or to matters which require the approval of the General Council.

(2) The Governing Board shall submit regular – in general monthly – reports, orally or in writing, to the General Council on the course of business as well as on other significant occurrences which have a bearing on operations. Furthermore, a report shall be submitted to the President where there are important reasons for doing so. The Governing Board shall be entitled to submit proposals of any kind to the General Council.

(3) The Governing Board shall recruit the employees of the Oesterreichische Nationalbank, insofar as this is not reserved to the Federal President. The Governing Board shall

also be responsible for the retirement, notice or dismissal of employees recruited by it.

(4) The Governing Board shall represent the Bank both in courts of law and extrajudicially.

(5) The Governor and the Vice Governor shall report to the Finance Committee of the Nationalrat (National Council) at least twice a year on the measures taken in the field of monetary policy, while observing the obligation of professional secrecy laid down in Article 38 of the ESCB/ECB Statute.

### **Article 33**

(1) The Governing Board shall comprise the Governor, the Vice Governor and two further members.

(2) Members of the Governing Board shall be appointed by the Federal President on the basis of a proposal from the Federal Government. Each appointment shall be made for a term of six years. Persons holding office may be reappointed.

(3) Members of the Governing Board may only perform their function as their chief occupation and may only be persons who hold Austrian citizenship and whose right to vote in elections to the Nationalrat (National Council) has not been suspended. No person who is in the active service of the Bund (Federation) or of a Land (Federal Province) or of one of the bodies of the European Union or who is a member of the Nationalrat (National Council), the Bundesrat (Federal Council), a Landtag (Parliament of a Federal Province) or the European Parliament, the Federal Government or the government of a Land (Federal Province), or the European Commission may be a member of the Governing Board. Furthermore, the

members of the Governing Board may not be involved in any other activity which might interfere with their independence.

(4) The members of the Governing Board may be removed from office only if they no longer fulfill the conditions for holding office (paragraph 3) or if they should be guilty of serious misconduct. The nonfulfillment of conditions for holding office shall also include a member of the Governing Board being prevented from performing the duties of office for a period of more than one year.

### **Article 34**

(1) The Governor shall be a member of the Governing Council of the ECB (Article 283 paragraph 1 TFEU, Article 10 of the ESCB/ECB Statute) and of the General Council of the ECB (Article 45 of the ESCB/ECB Statute). The Governor and his deputy shall not be bound, in performing these functions, either by the decisions of the Governing Board or by those of the General Council, nor shall they be subject to any other instructions.

(2) The Governor shall submit to the General Council any proposals by the Governing Board referring to matters on which the General Council has exclusive right of decision or which require the approval of the General Council.

(3) The Governor shall inform the President of the General Council in good time of all proposals to be submitted by the Governing Board to the General Council.

(4) Should the Governor be absent or unable to perform his duties, he shall be represented by the Deputy Governor or, in the latter's absence, by the Governing Board member with the longest term of office. If this applies to several members of

the Governing Board, the oldest Governing Board member shall deputize.

### **Article 35**

(1) The business dealt with by the Governing Board shall be allocated to individual departments, each headed by an Executive Director. The individual Executive Directors shall be responsible for independently conducting the business for which they have been assigned competence by the rules of procedure laid down for the Governing Board or by decisions of the Governing Board.

(2) Members of the Governing Board shall be obliged to perform the business and duties entrusted to them to the best of their knowledge and belief, and to conduct this business in such a manner as enables the Oesterreichische Nationalbank to fulfill the tasks allocated to it under the terms of the TFEU and the ESCB/ECB Statute, the directly applicable EU legislation adopted thereunder and federal law.

(3) Should an Executive Director be temporarily unable to perform his duties, the Governing Board may appoint another member of the Board to deputize for him.

### **Article 36**

(1) The Governing Board shall be convened by the Governor whenever necessary and shall meet under his chairmanship. The President and the Vice President of the General Council shall have the right to attend these meetings in an advisory capacity.

(2) The Governing Board shall be quorate if at least two members of the Governing Board are present; one of these

members shall be the Governor or the Vice Governor. The rules of procedure for the Governing Board may provide for circular decisions to be taken.

(3) Each of the Executive Directors or, in the absence of an Executive Director, his deputy (Article 35 paragraph 3) shall have one vote each where votes are to be taken. Decisions shall be taken by simple majority vote. In case of a tie, the chair shall have the casting vote. Apart from his own vote, an Executive Director may have one additional vote as deputy.

(4) The members of the Governing Board shall take part in meetings of the General Council in an advisory capacity.

## **Chapter V**

### **External Auditor**

#### **Article 37**

(1) The General Meeting shall, in observance of Article 27 of the ESCB/ECB Statute, elect an external Auditor and an alternate external Auditor for a multi-year period of, at most, five years. The external Auditor and the alternate external Auditor may be elected from among the community of external Auditors or external auditing companies other than those who have certified an audit of the annual accounts of the Oesterreichische Nationalbank in line with Article 274 of the Unternehmensgesetzbuch (Commercial Code) during the previous five financial years; in cases of audits performed by external Auditors other than a natural person, this restriction also extends to the external Auditor in charge and to all signing

external Auditors. This rotation rule does not apply following an audit break of at least two consecutive financial years.

(2) The external Auditor shall audit the annual accounts and shall submit a written report on the results of the audit. He shall be entitled to ask the Governing Board for any information he requires for the performance of his tasks, and in particular he shall have the right to inspect the books of the Bank.

(3) The external Auditor shall be obliged to carry out the audit conscientiously and impartially and to observe confidentiality.

## **Chapter VI**

### **Staff of the Bank**

#### **Article 38**

(1) Employment by the Bank shall be governed by private law.

(2) The conditions of employment, the duties and rights of office as well as the remuneration and pensions of the Bank employees shall be subject to the provisions laid down by the General Council. The emoluments payable under these provisions shall, for purposes of tax and social security legislation, be treated in the same way as emoluments paid in accordance with statutory regulations.

(3) The employees of the Oesterreichische Nationalbank that are entitled to retirement and survivor's benefits (pensions) under the Bank's pension regulations shall be exempt

from participating in the accident, disability and employees' insurance (pension insurance).

(4) The provisions of the Federal Equal Treatment Act, BGBl. (Federal Law Gazette) No. 100/1993 apply to staff employed by the Oesterreichische Nationalbank.

(5) Without prejudice to paragraph 6, the Governing Board shall ensure the advertisement of second-tier positions at the Oesterreichische Nationalbank in line with the provisions of the Stellenbesetzungsgesetz (Public Appointments Act) BGBl. (Federal Law Gazette) Part I No. 26/1998, with the provisions for the appointment of board members to be applied *mutatis mutandis* to second-tier officials of the Oesterreichische Nationalbank. In the process of seeking General Council approval for the appointment of second-tier officials (Article 21 paragraph 1 item 6), the Governing Board shall inform the General Council in good time about the outcome of the recruitment process.

(6) In the following cases, the Governing Board may appoint second-tier officials without going through the motions of advertising the job:

1. An official is being appointed only for a short term, as a temporary replacement for a permanent official.
2. An official is being reappointed to a given second-tier position, having fitted the job profile defined for this position at all times during his or her previous term of office and having demonstrated a strong, consistent performance.

In any cases where the Governing Board considers reappointing second-tier officials without advertising the position in line with item 2, the Governing Board shall inform the General Council accordingly in advance, indicating why the



conditions allowing for vacancies to be filled without advertisement as specified in item 2 have been met.

### **Article 39**

The Governing Board shall be responsible for supervising the entire staff of the Bank and shall decide on taking disciplinary action against Bank employees. The method of conducting such disciplinary action shall be laid down in the conditions of employment adopted by the General Council.

## **Chapter VII**

### **State Commissioner**

### **Article 40**

The Federal Minister of Finance shall appoint a State Commissioner and a Deputy State Commissioner, who shall be entitled to participate in an advisory capacity in the General Meetings and the meetings of the General Council. The State Commissioner and his deputy shall receive no remuneration for their services.

## **Prohibition of Credit Facilities for Public Institutions**

### **Article 41**

(1) Overdrafts and any other type of credit facility with the Oesterreichische Nationalbank in favor of institutions or bodies of the European Union, central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of EU Member States shall

be prohibited under the terms of Article 123 TFEU together with Council Regulation (EC) 3603/93 of 13 December 1993 (OJ L 332/1 of 31 December 1993). The direct purchase by the Oesterreichische Nationalbank of debt instruments from such entities shall also be prohibited. This prohibition shall not apply to publicly owned credit institutions, which, in the context of the provision of central bank money, shall be given the same treatment as private credit institutions.

(2) Furthermore, the Bund (Federation), the Länder (Federal Provinces) and the Gemeinden (Municipalities) may not in any way, directly or indirectly, draw on the funds of the Oesterreichische Nationalbank for any purpose, without providing the countervalue of such funds in gold or foreign exchange.

## **Banking Transactions for Public Entities**

### **Article 42**

The Oesterreichische Nationalbank shall be obliged to carry out all banking transactions affecting the federal administration insofar as they are permitted under the terms of this federal act. No such transaction may involve the granting of any loan or credit by the Oesterreichische Nationalbank in accordance with Article 123 TFEU (Article 41 paragraph 1). The Oesterreichische Nationalbank may also carry out other transactions on a commission basis for account of the federal administration, and may act as a fiscal agent for the entities set out in Article 41 paragraph 1 first sentence. Article 41 paragraph 1 shall also apply to these transactions.

## **Chapter VIII**

### **Cooperation between Authorities and Obtaining Information**

#### **Article 43**

The Oesterreichische Nationalbank shall, for the purposes of fulfilling the objective set out in Article 127 paragraph 5 TFEU, provide support within its statutory purview to the supervisory authorities listed thereunder of Member States participating in the third stage of Economic and Monetary Union (EMU).

#### **Article 44**

(1) Subject to the provisions of EU law, the Oesterreichische Nationalbank shall be empowered, insofar as is required for the performance of the tasks assigned to it within the framework of the ESCB, to obtain and collect information and data from any source and to process and communicate such information and data. The right to obtain information and to collect data shall also include authorization to obtain documentation and to determine the deadline, form and breakdown of the returns to be submitted. In accordance with Article 129 paragraph 4 TFEU, the group of natural and legal persons subject to reporting requirements as well as the provisions on confidentiality shall be laid down by the Council of the European Union.

(2) For the purpose of obtaining statistical information on behalf of the Bund (Federation) or in connection with statistical surveys of international organizations or in performing duties assigned to it under the terms of federal law, the

Oesterreichische Nationalbank shall be empowered to obtain, in accordance with Annex A of Council Regulation (EC) No. 2223/96 of 25 June 1996 (OJ No. L 310 of 30 November 1996) on the European system of national and regional accounts in the European Union, statistical data, information and documentation from credit and financial institutions and from financial corporations, to determine the deadline, form and breakdown of the returns to be submitted by them and to process these data in anonymous form. Should the information and documentation obtained not be adequate or should there be reasonable doubts as to the correctness or completeness of the information or documentation, the Oesterreichische Nationalbank shall be empowered to request appropriate explanations or substantiating evidence.

(3) The Oesterreichische Nationalbank shall be empowered, insofar as is required for carrying out the transactions pursuant to Article 47, to request information from enterprises recorded in the Commercial Register and to process these data in anonymous form.

(4) The Oesterreichische Nationalbank may use data which, in line with its mandate, have been reported by agents that are subject to reporting and information requirements based on this law or other federal laws or on a state treaty, on directly applicable EU legislation or on a regulation of a federal authority, for performing any of its other tasks mandated by federal laws, a state treaty or directly applicable EU legislation, unless such use is contradicted by directly applicable EU legislation or national laws or unless the respective data are subject to banking secrecy in line with Article 38 Austrian Banking Act (Federal Law Gazette 1993/532, as amended).

## **Payment Systems Oversight**

### **Article 44a**

(1) The Oesterreichische Nationalbank shall be in charge of performing payment systems oversight. Payment systems oversight involves monitoring the systemic safety of payment systems. The mandate of the Oesterreichische Nationalbank shall cover

1. operators of payment systems governed by Austrian law;
2. participants, established in Austria, in payment systems governed by Austrian law;
3. participants, established in Austria, in payment systems not governed by Austrian law.

(2) Systemic safety within the meaning of this federal act shall be any and all measures to be taken by operators of, and participants in, a payment system that serve to ensure a sound management of the legal, financial, organizational and technical risks associated with the operation of, or participation in, a payment system.

(3) According to paragraph 1 and with due regard to the tasks and scope of the payment systems concerned, the Oesterreichische Nationalbank shall be empowered to designate, by way of regulation, as legally binding in the field of supervision the content of recommendations of the ECB and the Basel Committee on Payment and Settlement Systems that constitute international principles applicable to the systemic safety of payment systems.

(4) A payment system within the meaning of this federal act shall be deemed to be any system in accordance with Article 2 of the Finalitätsgesetz (Finality Act), BGBl. (Federal Law Gazette) Part I No. 123/1999, as well as any commercial

framework for the electronic transfer of funds among at least three participants.

(5) A payment systems operator within the meaning of this federal act shall be deemed to be any person or entity engaged in commercial activities and assuming, for the purpose of making direct or indirect profits, the primary responsibility for the design of the payment system, its structures and processes as well as for its operational soundness and technical safety.

(6) Participants in a payment system within the meaning of this federal act shall be deemed to be any person or entity engaged in commercial activities and cooperating, for the purpose of making direct or indirect profits, in the transfer of funds within, from or to a payment system.

(7) The operators of a payment system shall provide the Oesterreichische Nationalbank, at its request, with information on:

1. the measures they have taken with a view to ensuring the systemic safety of the payment system, and
2. the type and volume of the payments processed through the payment system, and shall submit the relevant documentation. If the required information is not or only inadequately provided by an operator within an appropriate period, the Oesterreichische Nationalbank, threatening sanctions under paragraph 11, shall order the provision of information by setting a new deadline for submission.

(7a) The operators of a payment system are obligated to inform the Oesterreichische Nationalbank in writing of the launch or discontinuation of a payment system within a period of two weeks. Furthermore, the operators of a payment system are obligated to inform the Oesterreichische National-

bank in writing of the participants who have registered for their payment system and of any changes thereof within a period of two weeks.

(8) Participants in a payment system shall provide the Oesterreichische Nationalbank, at its request, with information on:

1. the measures they have taken with regard to a safe participation in the payment system, and,
2. in the case of participation in a payment system not governed by Austrian law, the type and volume of the payments processed by them through this payment system, and shall submit the relevant documentation.

(9) If the information collected under paragraphs 7 or 8 is inadequate or if there are reasonable doubts as to the correctness or completeness of the information and documentation, the Oesterreichische Nationalbank shall be empowered to request appropriate explanations and have its own auditors carry out on-site inspections, assisted by experts under Article 52 of the Allgemeines Verwaltungsverfahrensgesetz (Act on General Administrative Procedure). Without prejudice to the reasons for exclusion listed in Article 53 paragraph 1 of the Allgemeines Verwaltungsverfahrensgesetz (Act on General Administrative Procedure), such experts must not be engaged in any activities for operators of, or participants in, payment systems. In agreement with the Finanzmarktaufsicht (FMA – Financial Market Authority), on-site inspections may also be carried out by auditors of the FMA on behalf of and for the account of the Oesterreichische Nationalbank.

(10) If an operator or participant does not comply with the regulations issued by the Oesterreichische Nationalbank in

accordance with paragraph 3, the Oesterreichische Nationalbank, threatening sanctions under paragraph 11 or 12, shall call upon this operator or participant to remedy these shortcomings within an appropriate period.

(11) If the operator of a payment system does not comply with or only inadequately complies with the duty to provide information under paragraph 7 or if a request to remedy shortcomings in accordance with paragraph 10 is not or only inadequately complied with, the Oesterreichische Nationalbank may, with the consent of the FMA, prohibit the operation of the payment system or revoke the recognition of the system in accordance with Article 2 paragraph 1 item 3 of the Finalitätsgesetz (Finality Act), if this is deemed appropriate to the type and gravity of the violation and if the required lawful situation cannot be attained otherwise.

(12) If, notwithstanding a threat of sanctions, the participant of a payment system does not comply with or only inadequately complies with a request to remedy shortcomings in accordance with paragraph 10, the Oesterreichische Nationalbank may prohibit the participation in a payment system, if this is deemed appropriate to the type and gravity of the violation and if the required lawful situation cannot be attained otherwise.

(13) Participants in a payment system that are not domiciled in Austria are obligated to comply with the information duties only to the extent that this does not contradict the law of their country of domicile.

(14) The Oesterreichische Nationalbank shall be empowered to publish the content of a supervisory measure imposed under paragraphs 11 or 12 in the *Amtsblatt zur Wiener Zeitung*



(Official Gazette) or in another official publication circulating nationwide, if this is necessary in the interest of systemic safety or of payment system clients and justified by the type and gravity of the unlawful behavior.

(15) The Oesterreichische Nationalbank shall demonstrably take those organizational measures that are needed to avoid conflicts of interest due to its own economic activities. In particular, information stemming from supervisory activities shall be limited to the competent staff.

## **Article 44b**

(1) In the public interest, the Oesterreichische Nationalbank shall monitor all circumstances that may have an impact on safeguarding financial stability in Austria.

(2) The FMA shall make available to the Oesterreichische Nationalbank, on the latter's demand, data relating to all financial firms (Article 2 no. 7 Finanzkonglomeratengesetz – Financial Conglomerates Act, BGBl. (Federal Law Gazette) Part I No. 70/2004) and pension funds which the Oesterreichische Nationalbank needs in order to fulfill its tasks specified in paragraph 1. The Oesterreichische Nationalbank must record these data in a database as specified in Article 79 paragraph 4a Bankwesengesetz (Banking Act) and may process these data. Where appropriate, the database may be fed directly by the FMA. Should the data requested by the Oesterreichische Nationalbank not be available from the FMA, the FMA shall compile the corresponding data, add them to the database specified in Article 79 paragraph 4a Bankwesengesetz (Banking Act), and inform the Oesterreichische Nationalbank

accordingly. Required data that are not available from the FMA may also be compiled from credit institutions by the Oesterreichische Nationalbank directly; again, these data must be recorded in the database specified in Article 79 paragraph 4a Bankwesengesetz (Banking Act).

**Applicable from September 1, 2018 (BGBl. (Federal Law Gazette) Part I No. 150/2017)**

(2) The FMA shall make available to the Oesterreichische Nationalbank, on the latter's demand, data relating to all financial firms (Article 2 item 7 Finanzkonglomeratengesetz – Financial Conglomerates Act, BGBl. (Federal Law Gazette) Part I No. 70/2004) and pension funds which the Oesterreichische Nationalbank needs in order to fulfill its tasks specified in paragraph 1. The Oesterreichische Nationalbank must record these data in a database as specified in Article 79 paragraph 4a Bankwesengesetz (Banking Act) and may process these data. Where appropriate, the database may be fed directly by the FMA. Should the data requested by the Oesterreichische Nationalbank not be available from the FMA, the FMA shall compile the corresponding data, add them to the database specified in Article 79 paragraph 4a Bankwesengesetz (Banking Act), and inform the Oesterreichische Nationalbank accordingly. Required data that are not available from the FMA may also be compiled from the institutions named in the first sentence by the Oesterreichische Nationalbank directly; again, these data must be recorded in the database specified in Article 79 paragraph 4a Bankwesengesetz (Banking Act).

(3) The Oesterreichische Nationalbank shall, in the field of financial stability, report observations and findings of a

fundamental nature or of special significance to the Federal Minister of Finance and to the FMA, and upon request it shall provide any factual explanations which appear necessary as well as relevant documents and opinions.

## **Maintenance of Financial Stability**

### **Article 44c**

- (1) Without prejudice to Article 44b, the Oesterreichische Nationalbank contributes to maintaining financial stability and reducing systemic and procyclical risk in Austria, in particular
1. by analyzing the financial market facts relevant for maintaining financial stability and reducing systemic risk and by identifying threats to financial stability;
  2. by reporting observations and findings of a fundamental nature or of special significance to the Financial Market Stability Board and, on request, by providing any factual clarifications that appear necessary as well as relevant documents, and by drafting opinions;
  3. by proposing to the Financial Market Stability Board recommendations and risk warnings to be submitted to the FMA (Article 13a of the Financial Market Authority Act (FMABG), BGBl. (Federal Law Gazette) No. 97/2001);
  4. by analyzing implementation measures of the FMA and presenting its assessment to the Financial Market Stability Board;
  5. by drawing up an annual financial stability report on the situation and the development of financial stability and providing it to the Financial Market Stability Board in order for the latter to fulfill its reporting obligation under Article 13 paragraph 10 FMABG.

(2) The Oesterreichische Nationalbank may publish the following general information on the Internet and provide regular updates thereof:

1. specifications that guide the Oesterreichische Nationalbank when conducting analyses and drafting opinions on systemic and procyclical risk;
2. criteria and parameters that are considered when identifying and measuring systemic and procyclical risk, and the weights attached to these criteria and parameters;
3. thresholds and indices that serve as indicators for risk levels and thus as reference values;
4. risk types that are suited to serve as a basis for quantitative and qualitative assessments of systemic and procyclical risk levels; and
5. references to specifications, guidelines and recommendations by the Financial Market Stability Board, the European Banking Authority, the European Systemic Risk Board, the European Commission, the ECB or the Single Resolution Board (Article 2 item 18a Bundesgesetz über die Sanierung und Abwicklung von Banken, BaSAG – Federal Act on the Recovery and Resolution of Banks) that were considered in publications pursuant to items 1 to 4.

## **Technical Reporting Format**

### **Article 44d**

(1) With a view to the reports that reporting agents as defined in Article 44 paragraph 2 above are required to transmit to the Oesterreichische Nationalbank based on Council Regulation (EC) No. 2533/98 concerning the collection of statistical information by the European Central Bank, OJ L 318

of November 27, 1998, p. 8, as amended by Council Regulation (EC) No. 951/2009 concerning the collection of statistical information by the European Central Bank, OJ L 269 of October 14, 2009, p. 1; based on Article 6 of the Austrian Foreign Exchange Act 2004, BGBl. (Federal Law Gazette) Part I No. 123/2003; and based on Articles 44 and 44b paragraph 2 last sentence above, the Oesterreichische Nationalbank may issue a regulation requiring the use of a technical reporting format (i.e. an integrated data model) that is adequate for submitting the required reports in a standardized electronic manner.

**Applicable from September 1, 2018 (BGBl. (Federal Law Gazette) Part I No. 150/2017)**

(1) With a view to the reports that reporting agents as defined in Article 44 paragraph 2 above are required to transmit to the Oesterreichische Nationalbank based on Council Regulation (EC) No. 2533/98 concerning the collection of statistical information by the European Central Bank, OJ L 318 of November 27, 1998, p. 8, as amended by Council Regulation (EC) No. 951/2009 concerning the collection of statistical information by the European Central Bank, OJ L 269 of October 14, 2009, p. 1; based on Article 6 of the Austrian Foreign Exchange Act 2004, BGBl. (Federal Law Gazette) Part I No. 123/2003; based on Articles 74 and 75 of the Bankwesengesetz (Banking Act); and based on Articles 44 and 44b paragraph 2 last sentence above, the Oesterreichische Nationalbank may issue a regulation requiring the use of a technical reporting format (i.e. an integrated data model) that is adequate for submitting the required reports in a standardized electronic manner.

(2) In such regulation, the Oesterreichische Nationalbank shall establish the required reporting dates; the intervals, scope, form, substance, breakdown and granularity of the reports; and material technical specifications for the coordinated and combined collection of reporting attributes defined in the data model, which are adequate for meeting the reporting purposes named in paragraph 1. To the extent that further information is in the interest of harmonized reporting and supports the reporting agents, the Oesterreichische Nationalbank shall publish more detailed technical specifications as well as guidance on interpretation issues on its website.

(3) The reporting agents specified in Article 44 paragraph 2 are required to use the data model (paragraph 1) in order to meet their reporting requirements to the Oesterreichische Nationalbank.

## **Chapter IX**

### **Confidentiality Obligation**

#### **Article 45**

The Oesterreichische Nationalbank, its shareholder, the members of its decision-making bodies, its employees, other persons acting for the Oesterreichische Nationalbank as well as the State Commissioner and his deputy shall be obliged to observe confidentiality with regard to all confidential facts which become known to them as a direct consequence of their service or function. This shall apply unless information about such facts is to be provided as a consequence of an obligation to provide information within the framework of the ESCB or as a

consequence of the existence of circumstances as set out in Article 38 paragraph 2 of the Bankwesengesetz (Banking Act). This confidentiality obligation shall continue to exist after leaving office in one of the decision-making bodies of the OeNB, after the end of an employment relationship with the Oesterreichische Nationalbank or after the end of any other service or function.

## **Article 46**

(deleted)

## **Chapter X**

### **Business of the Oesterreichische Nationalbank**

## **Article 47**

In order to achieve the objectives and carry out the tasks of the ESCB, the Oesterreichische Nationalbank shall be empowered, in accordance with the general principles established by the ECB,

1. to operate in the financial markets by buying and selling outright (spot and forward) or under repurchase agreement and by lending or borrowing claims and marketable instruments, whether in EU or in non-EU currencies, as well as precious metals;
2. to conduct credit operations with credit institutions and other market participants, with lending being based on adequate collateral.

## **Article 48**

In order to conduct operations within the framework of the ESCB, the Oesterreichische Nationalbank shall be empowered to open accounts for credit institutions, public entities and other market participants and to accept assets, including book-entry securities, as collateral.

## **Article 49**

The Oesterreichische Nationalbank shall be empowered to use other operational methods of monetary control, provided and to the extent that this has been decided by the Governing Council of the ECB in accordance with Article 20 of the ESCB/ECB Statute. In doing so, the Oesterreichische Nationalbank shall respect the definitions laid down by the EU Council in accordance with Article 20.2 of the ESCB/ECB Statute.

## **Article 50**

The Oesterreichische Nationalbank may provide suitable facilities to ensure efficient and sound clearing and payment systems within the European Union and with other countries.

## **Article 51**

Furthermore, the Oesterreichische Nationalbank shall be empowered:

1. to establish relations with central banks and financial institutions in third countries and, where appropriate, with international organizations;



2. to conduct all types of banking transactions in relations with third countries and international organizations, including borrowing and lending operations;
3. to acquire, sell, hold and manage, spot and forward, all types of foreign exchange assets, securities, precious metals and other assets, in whatever form.

## **Article 52**

(1) Subject to the regulations laid down by the Governing Council of the ECB on the basis of Article 19 of the ESCB/ECB Statute, the institutions referred to in Article 19 of the ESCB/ECB Statute shall be obliged to hold minimum reserves on accounts with the ECB or with the Oesterreichische Nationalbank. In case of noncompliance with the minimum reserve requirements, the ECB shall be entitled to levy penalty interest and to impose other sanctions with comparable effect.

(2) The basis for the minimum reserves, the maximum permissible ratios between those reserves and their basis, as well as the appropriate sanctions in cases of noncompliance shall be laid down by the Council of the EU.

## **Articles 53 to 60**

(deleted)

## Chapter XI

### Banknotes

#### Article 61

(1) Subject to the approval of the ECB, the Oesterreichische Nationalbank shall be empowered to issue banknotes denominated in euro. The banknotes denominated in euro which are issued by the Oesterreichische Nationalbank, the ECB and the national central banks of the other Member States participating in the third stage of EMU shall have the status of legal tender.

(2) The banknotes referred to in paragraph 1 must be accepted at their full nominal value without restriction, unless a liability is to be met by an otherwise specified means of payment.

#### Article 62

(1) The Oesterreichische Nationalbank shall be obliged, upon demand, to exchange banknotes which are legal tender in Austria against banknotes of other denominations which are legal tender in Austria.

(2) Banknotes may not be declared void, nor may any reservation or prohibition be placed on them.

(3) The Oesterreichische Nationalbank shall be obliged, subject to its stock, to exchange banknotes against fractional coins, fractional coins against other fractional coins and, to an unlimited extent, fractional coins against banknotes.

## **Article 63**

The withdrawal of banknotes shall be regulated by the ECB.

## **Articles 64 to 66**

(deleted)

## **Chapter XII**

### **Accounting**

## **Article 67**

(1) The financial year of the Oesterreichische Nationalbank shall commence on January 1 and end on December 31.

(2) The rules established by the Governing Council of the ECB in accordance with Article 26.4 of the ESCB/ECB Statute shall be taken into consideration in drawing up the balance sheet and the profit and loss account. The foregoing financial statements shall close on December 31 every year. Furthermore, the balance sheet and the profit and loss account shall be drawn up according to the principles of generally accepted accounting practice.

(3) The provisions of the third volume of the Unternehmensgesetzbuch (Commercial Code) (dRGBI. (German Reich Law Gazette) p. 219/1897) shall be applicable only insofar as they are compatible with this federal act. In particular, Articles 199, 225 paragraphs 3 and 6, 227, 237 paragraph 1 item 5 and 244 to 267b of the Unternehmensgesetzbuch (Commercial Code) shall not apply.

## Article 68

(1) No later than May 31 of the calendar year following the financial year in question, the Governing Board shall present to the General Council for approval a report on the preceding financial year as well as the annual accounts expanded by means of an appendix and audited by the external Auditor.

(2) After approval by the General Council, the report and the annual accounts shall be submitted to the General Meeting for adoption.

(3) With the exception of paragraph 2 last sentence and paragraph 3 items 1, 2 and 5, the provisions of Article 243 paragraphs 1 to 3 of the Unternehmensgesetzbuch (Commercial Code) shall apply to the report.

(4) Information on direct or indirect equity interests, in particular on share capital and voting rights held and on the amount of share capital issued, is to be shown separately in the annual report.

## Cost Accounting and Investment Plan

### Article 68a

(1) Before the start of each financial year, the Governing Board shall undertake a cost accounting exercise and develop an investment plan, and seek General Council approval for both.

(2) After the end of each financial year, the Governing Board shall assess the actual cost and investment performance against plan. The performance-against-plan report shall be submitted to the General Council, together with the audit opinion of the external Auditor, as soon as possible.

## Article 69

(1) From the total annual income of the Oesterreichische Nationalbank, derived in observance of the provisions of Articles 32 and 51 of the ESCB/ECB Statute and the provisions of Article 33 of the ESCB/ECB Statute on the allocation of net profits and losses of the ECB, the following sums shall, irrespective of the operating profit, be deducted and not recognized as profit:

1. (deleted);
2. the earnings from the assets in which the pension reserve, i.e. the reserve fund serving to meet the pension claims of the Bank's employees, has been invested, and which shall be paid into that reserve fund;
3. the amounts of interest which, pursuant to the agreement between the Oesterreichische Nationalbank and the ERP Fund concluded in accordance with Article 3 paragraph 4 of the ERP-Fonds-Gesetz (ERP Fund Act) BGBl. (Federal Law Gazette) No. 207/1962, were credited during the year to the temporary reserve account for ERP loans extended by the Oesterreichische Nationalbank;
4. the earnings from the assets in which the Fund for the Promotion of Scientific Research and Teaching set up by the Bank is invested, and which shall be appropriated to this Fund.

(2) From the profit of the year in accordance with paragraph 1, up to 10% shall be transferred to the pension reserve until the pension reserve is adequately funded, according to actuarial calculations, to meet the pension claims of the staff of the Oesterreichische Nationalbank. If the pension reserve is

significantly overfunded, the differential shall be released and accounted for in the profit and loss account.

(3) Of the remaining profit, the Bund (Federation) shall first receive 90%. Of the then remaining retained earnings, the shareholder shall, by decision of the General Meeting, receive a dividend of up to 10% of his share of the capital. The portion then remaining shall be appropriated as decided by the General Meeting.

## **Article 70**

(deleted)

## **Chapter XIII**

### **Special Rights of the Bank**

## **Article 71**

Legal regulations limiting the level of interest rates shall not be applicable to the Oesterreichische Nationalbank.

## **Article 72**

(1) The operating profit of the annual accounts drawn up pursuant to Article 67 and in accordance with Article 69 paragraph 1 shall be considered income within the meaning of Article 22 paragraph 1 of the Körperschaftsteuergesetz (Corporation Tax Act) 1988 and shall form the basis of taxation. Corporation tax shall not be taken into account with respect to income.

(2) Legal transactions undertaken or documents produced by the Oesterreichische Nationalbank in fulfillment of its

ESCB-related tasks or otherwise in the public interest shall be exempt from stamp duties and legal dues. Furthermore, the legal transactions based on and regulated in this federal act shall be exempt from taxes on capital transactions.

(3) Furthermore, the Bank shall be exempt from payment of the foreign trade promotion dues with regard to the import and export of gold.

(4) Moreover, the Bank shall be completely exempt from payment of postal charges for monies sent between its offices and in connection with business transacted with public cash offices and agencies.

### **Article 73**

The books of the Bank and extracts therefrom bearing the Bank's signature shall have the same evidentiary force as public documents.

### **Article 74**

(deleted)

### **Article 75**

(1) Actions against the Bank may be brought only at the Handelsgericht (Commercial Court) in Vienna. In disputes relating to the fulfillment of obligations of the Oesterreichische Nationalbank set out in the TFEU or the ESCB/ECB Statute, the European Court of Justice shall be the competent body.

(2) For the purpose of annulling securities or other documents issued by the Bank, the Landesgericht für Zivilrechtssachen (Provincial Court for Civil Law Cases) in Vienna shall have jurisdiction.

## Article 76

(1) Rights to forbid payment, rights of lien, or rights of execution with regard to monies or securities deposited with the Oesterreichische Nationalbank, or with regard to claims against such monies and securities may be granted only without prejudice to any rights of the Oesterreichische Nationalbank and the ECB to said assets.

(2) If such rights are asserted, the Bank shall be entitled to deposit in court the monies or securities, or the amount claimed, at the expense of the owner or the rightful claimant.

(3) If the owner of the monies or securities deposited with the Bank is declared bankrupt or dies, the person representing the estate of the bankrupt or deceased person shall be responsible for informing the Bank thereof through the competent court and for notifying the Bank of the persons who are authorized to dispose of said monies and securities. In the absence of such information, the Bank shall not be liable for any loss resulting therefrom to the estate of the bankrupt or deceased person.

(4) If the delivery of the monies or securities deposited with the Bank has been made contingent on the return of documents issued in connection therewith, such monies or securities shall in all cases be delivered only against surrender of these documents, even to judicially authorized third parties.

## Article 77

(1) The Bank shall have an unconditional preferential right to use any monies, bills of exchange or other valuables or stores of value in its possession in settlement of its own claims or as collateral for such claims.



(2) The Bank shall enjoy this preferential right not only for such monies, bills of exchange and other valuables as have been delivered to it for the purpose of securing its claims, but without discrimination for all movable property of its debtor that has come into the possession of the Bank at whatever time and for whatever purpose.

(3) The Bank shall be entitled to obtain payment out of the abovementioned resources in such manner as it may think fit, without the authorization or intervention of any court and even independently of any insolvency proceedings that may have been instituted in respect of the debtor's property; the Bank may not be restrained or hindered in the exercise of this preferential right by any claim of a third party, not even by ownership claims or other previously acquired rights, provided that the Bank accepted the monies, bills of exchange or valuables as property belonging to the debtor and that the abovementioned ownership claims or other claims of other persons were not clearly apparent to the Bank at the time of acceptance.

(4) The preferential right accorded to the Oesterreichische Nationalbank shall not apply to deposits held with the Bank as minimum reserves.

## **Chapter XIV**

### **Liquidation of the Bank**

#### **Article 78**

(1) The Oesterreichische Nationalbank may be liquidated only by federal law.

(2) In the event of liquidation, the paid-up capital shall be repaid to the shareholder. Otherwise the assets and liabilities of the Bank shall be transferred to such institution as shall take over the function of the central bank. In particular, this institution shall also take over the staff of the Bank with all their rights and duties as well as the Bank's pension commitments.

(3) A closing balance sheet must be drawn up as per the date of takeover.

## **Chapter XV**

### **Procedural and Penal Provisions**

#### **Article 79**

(1) The professional cash handlers named in items 1 to 5 below shall have the obligation to ensure that all euro banknotes and euro coins which they have received and which they intend to put back into circulation are checked for authenticity:

1. credit institutions as defined in Article 1 Bankwesengesetz (Banking Act);
2. credit and financial institutions resident in other Member States (Articles 9, 11, 13 Bankwesengesetz – Banking Act), which operate branch offices in Austria or operate in the

- Austrian financial market under the freedom to provide services;
3. other payment services providers (Article 1 paragraph 3 Zahlungsdienstegesetz 2018 (Payment Services Act 2018); as well as
  4. other agents (Article 1 of the Unternehmensgesetzbuch – Commercial Code)
    - engaged in the processing and distribution to the public of banknotes and coins, as a professional activity, including cash-in-transit companies,
    - including establishments whose activity consists of exchanging banknotes or coins of different currencies,
    - including entities which are, as a service ancillary to their main business, involved in processing and distributing banknotes because they operate cash dispensers;
  5. public cash offices.

Euro banknotes shall be checked for authenticity under Article 6 paragraph 1 of Regulation (EC) No. 1338/2001 in line with the procedures laid down by the ECB.

(2) The Oesterreichische Nationalbank, Münze Österreich Aktiengesellschaft, public cash offices and all other professional cash handlers named in paragraph 1 shall be obliged to withhold for examination against a certificate of receipt any euro banknotes and euro coins received by them which they know or have sufficient reason to believe to be counterfeit, in order to check them for genuineness. The authority competent to undertake or arrange such an examination shall be, in the case of coins which are legal tender in Austria, Münze Österreich Aktiengesellschaft and, in the case of other coins and of banknotes, the Oesterreichische Nationalbank.

(3) Banknotes and coins which are found, as a result of this examination, to be counterfeit or to have been falsified shall be held for the criminal courts to take further action. The authorities competent to hold banknotes and coins in this way shall be, in the case of coins which are legal tender in Austria, Münze Österreich Aktiengesellschaft and, in the case of other coins and of banknotes, the Oesterreichische Nationalbank. The Oesterreichische Nationalbank and Münze Österreich Aktiengesellschaft shall submit a written report on the outcome of the examination to the Federal Minister of Internal Affairs, and shall make this information known to the person from whom the banknotes or coins were withheld.

(4) The criminal courts shall decide on the return of and further action to be taken with regard to the banknotes and coins held. Banknotes which are counterfeit or have been falsified as well as coins from nonprecious metals which are counterfeit or have been falsified shall not be returned. Returns of coins of precious metals or precious metal alloys which are counterfeit or have been falsified shall be permitted, provided that such coins are rendered unfit for circulation. The Oesterreichische Nationalbank and Münze Österreich Aktiengesellschaft shall be empowered to return the banknotes and coins which are found to be counterfeit or to have been falsified, after holding them for ten years, to the criminal courts for them to take further action, unless a shorter holding period was determined by the criminal courts.

## **Article 79a**

(1) Whoever, contrary to Article 79 paragraph 1, fails to ensure that euro banknotes or euro coins are checked for

authenticity in line with the applicable rules, shall be deemed to have committed an administrative offense which shall be punishable by the Bezirksverwaltungsbehörde (District Administrative Authority) by a fine of up to 10,000 euro, unless the act constitutes a criminal offense falling into the jurisdiction of the courts or another administrative offense punishable by a higher fine.

(2) Whoever, contrary to Article 79 paragraph 2, fails to withhold and submit to the Oesterreichische Nationalbank or Münze Österreich Aktiengesellschaft any banknotes or coins which are fit for circulation and are suspected of being counterfeit or having been falsified, shall be deemed to have committed an administrative offense which shall be punishable by the Bezirksverwaltungsbehörde (District Administrative Authority) by a fine of up to 10,000 euro, unless the act constitutes a criminal offense falling into the jurisdiction of the courts or another administrative offense punishable by a higher fine.

## **Article 80**

The counterfeiting or falsifying of documents issued by the Oesterreichische Nationalbank shall be punishable under the terms of the Strafgesetzbuch (Penal Code) in the same manner as the counterfeiting or falsifying of public documents.

## **Article 81**

The issue and use for payments of banknote imitations denominated in euro and intended for circulation shall constitute an administrative offense which shall be punishable by a fine of up to 3,000 euro by the Bezirksverwaltungsbehörde

(District Administrative Authority), unless the act constitutes a criminal offense falling into the jurisdiction of the courts or constitutes another administrative offense punishable by a higher fine.

## **Article 82**

(1) Infringements of the obligations laid down in Article 44 paragraph 1 shall be punishable by the ECB or by agencies empowered by it in accordance with the EU law provisions passed for this purpose.

(2) Whoever fails to comply with the requests of the Oesterreichische Nationalbank based on Article 44 paragraph 2 or whoever deliberately gives incomplete or incorrect information shall be deemed to have committed an administrative offense which shall be punishable by a fine of up to 1,000 euro, unless the act is punishable in accordance with paragraph 1 or constitutes a criminal offense falling into the jurisdiction of the courts.

## **Article 82a**

(1) Whoever fails to comply or complies only inadequately with the information, reporting and presentation duties laid down in Article 44a shall be deemed to have committed an administrative offense which shall be punishable by a fine of up to 2,000 euro, unless the act constitutes a criminal offense falling into the jurisdiction of the courts.

(2) Whoever, notwithstanding the prohibition contained in Article 44a paragraph 11, operates a payment system or, notwithstanding the prohibition in Article 44a paragraph 12, participates in a payment system shall be deemed to have com-

mitted an administrative offense which shall be punishable by a fine of up to 7,000 euro, unless the act constitutes a criminal offense falling into the jurisdiction of the courts.

### **Article 82b**

(1) Unauthorized destruction of euro banknotes and euro coins worth more than 15,000 euro shall constitute an administrative offense which shall be punishable by a fine of up to 2,000 euro by the Bezirksverwaltungsbehörde (District Administrative Authority), unless the act constitutes a criminal offense falling into the jurisdiction of the courts or constitutes another administrative offense punishable by a higher fine.

### **Article 82c**

Whoever fails to comply or complies only inadequately with the request for disclosure of data by the Oesterreichische Nationalbank in line with Article 44b paragraph 2 or whoever knowingly provides incorrect information in this context commits an administrative offense which shall be punishable by a fine of up to 2,000 euro.

## **Chapter XVI**

### **Transitional and Final Provisions**

### **Article 83**

(1) To facilitate the financing of ERP investment loans, the Oesterreichische Nationalbank may discount three-month finance bills up to the maximum amount laid down in Article 3

paragraph 2 of the ERP-Fonds-Gesetz (ERP Fund Act) BGBl. (Federal Law Gazette) No. 207/1962.

(2) The bills must bear the signatures of the borrower and of a credit institution duly authorized in accordance with Article 13 of the ERP-Fonds-Gesetz (ERP Fund Act). Discounts of these bills may be renewed until the credit made available has been repaid or converted into some other form of finance.

(3) The Oesterreichische Nationalbank may finance loans to be granted by the ERP Fund subject to the provision of adequate collateral. Such loans are subject to the provisions of Article 3 paragraph 5 of the ERP-Fonds-Gesetz (ERP Fund Act; Federal Law Gazette No. 207/1962) regarding the Fund's obligation to cover losses and of Article 12 of the ERP Fund Act regarding the right of the Fund to set the rate of interest.

## **Article 84**

Insofar as this federal act makes reference to the provisions of other federal acts, these shall, unless expressly otherwise provided for, be applicable as amended.

## **Article 85**

Insofar as this federal act gives gender-related designations only in their masculine form, they shall relate equally to both women and men. With regard to specific persons, the respective gender form shall be used.

## **Article 86**

The Federal Minister of Justice shall be charged with the implementation of Article 79 paragraph 3 and Article 80 of this federal act; the Federal Minister of Finance shall be



charged with the implementation of all other provisions of this federal act.

## **General Transitional Provisions**

### **Article 87**

(items 1 to 5 deleted).

6. (concerning Article 63)

- a) Schilling banknotes issued by the Oesterreichische Nationalbank prior to the date of first issue for euro banknotes determined under Community law and not yet called in for withdrawal shall cease to be legal tender upon expiry of a day laid down specifically by federal law. They may be exchanged for legal tender with the Oesterreichische Nationalbank for an unlimited period after this date.
- b) During the period from the first day of Austria's participation in the third stage of EMU until the date laid down by federal law after which schilling banknotes which are in circulation shall cease to be legal tender, the Oesterreichische Nationalbank shall be empowered to call in for withdrawal schilling banknotes which are in circulation by setting a withdrawal period which does not end after the date given above. These banknotes shall cease to be legal tender upon expiry of the withdrawal period. They may be exchanged for legal tender with the Oesterreichische Nationalbank for an unlimited period after this date.
- c) With regard to those banknotes already called in for withdrawal prior to Austria's participation in the third stage of EMU, the duration of the withdrawal period

and of the exchange period (Articles 63 and 66 as amended by federal law, BGBl. (Federal Law Gazette) No. 532/1993), shall be unaffected insofar as these periods have not yet expired. Articles 63 and 66 as amended by federal law, BGBl. (Federal Law Gazette) No. 532/1993, shall continue to apply to such banknotes. However, withdrawal periods which have not yet expired on the date laid down by federal law upon expiry of which schilling banknotes in circulation cease to be legal tender shall end upon expiry of this date.

7. a) Without prejudice to regulations to the contrary issued by the ECB, the Oesterreichische Nationalbank shall exchange incomplete schilling banknotes the exchange period of which has not yet expired for legal tender if those parts of one and the same banknote submitted are larger than one half of a banknote of the denomination and form in question or if evidence can be provided that the missing part of the note has been destroyed.
- b) The Oesterreichische Nationalbank shall not be obliged to replace schilling banknotes which have been destroyed or lost. It shall also be empowered, without prejudice to regulations to the contrary issued by the ECB, to confiscate without compensation schilling banknotes which have been altered in their external form, in particular banknotes which have been written on, overprinted, painted over, stamped, perforated or where additions have been attached using adhesive. In cases where alterations are neither willful nor result

from gross negligence, the Oesterreichische Nationalbank shall be entitled to exchange such banknotes against payment of a fee to cover expenses.

8. (deleted).
9. The number of General Council members shall be reduced gradually to twelve members by December 31, 2013, and to ten members by December 31, 2015. The terms in office of General Council members elected by the General Meeting shall expire in due course.
10. (concerning Article 37) This clause shall become applicable with the start of the financial year 2013.

## **Provisions Applicable until Participation in the Third Stage of EMU**

### **Article 88**

(deleted)

### **Article 89**

(1) Article 67 paragraphs 1 and 3, Article 69 paragraph 1 item 1, paragraphs 3 and 4, the title above Article 88 and Article 88 paragraph 1 as amended by federal law, BGBl. (Federal Law Gazette) Part I No. 60/1998, shall enter into force on January 1, 1998. Article 69 paragraph 1 item 1, paragraphs 3 and 4 as amended by federal law, BGBl. (Federal Law Gazette) Part I No. 60/1998, shall be first applicable to the annual accounts of the financial year 1997.

(2) Article 6, Article 8 paragraphs 2 and 3, Article 9, Article 10 paragraph 2, Article 16 item 4, Article 22 paragraph 4, Article 32 paragraph 3, Article 33, Article 34 paragraphs 1 and 4, Article 35 paragraph 3, Article 41, Article 83 paragraph 3,

Article 84, Article 85, Article 87 item 3 and Article 88 paragraph 2 as amended by federal law, BGBl. (Federal Law Gazette) Part I No. 60/1998, shall enter into force upon expiry of the day on which the Council meeting in the composition of the Heads of State or Government confirms which Member States fulfill the necessary conditions for the adoption of a single currency in accordance with Article 109j paragraph 4 of the EC Treaty.

(3) Article 1, Article 2, Article 3, Article 4, Article 5, Article 7 paragraphs 1 to 3, Article 8 paragraph 1, Article 10 paragraph 1, Article 14 paragraph 1, Article 15, Article 16 items 2, 5, 6, 7, 8 and 9, Article 18 paragraph 1, Article 20, Article 21, Article 22 paragraphs 1 and 2, Article 23, Article 24, the deletion of Articles 25 to 27, Article 28, Article 29 paragraph 1, Article 30 paragraphs 1 and 2, Article 31 paragraph 1, Article 32 paragraphs 1, 2 and 5, Article 34 paragraphs 2 and 3, Article 35 paragraphs 1 and 2, Article 36, Article 37 paragraph 1, Article 39, the title above Article 40, Article 40, Article 42, Article 43, Article 44, Article 45, the deletion of Article 46, Article 47, the deletion of the title above Article 48, Article 48, Article 49, Article 50, the deletion of the title above Article 51, Article 51, Article 52, the deletion of Articles 53 to 60, Article 61, Article 62, Article 63, the deletion of Articles 64 to 66, Article 67 paragraph 2, Article 68, the introductory sentence to Article 69 paragraph 1, Article 69 paragraph 2, the deletion of Article 70, Article 72 paragraph 2, the deletion of Article 72 paragraph 3 and the redesignation of paragraphs 4 and 5, the deletion of Article 74, Article 75 paragraph 1, Article 76 paragraph 1, Article 77 paragraph 4, Article 79, Article 80, the deletion of Article 81,

Article 82, Article 83 paragraph 1, Article 86 and Article 87 items 1 and 2 and items 4 to 8 as amended by federal law, BGBl. (Federal Law Gazette) Part I No. 60/1998, shall enter into force on the day on which Austria participates in the third stage of EMU without derogation within the meaning of Article 109k of the EC Treaty.

(4) Article 44a and Article 82a as amended by federal law, BGBl. (Federal Law Gazette) Part I No. 97/2001, shall enter into force on April 1, 2002.

(5) Article 68 paragraph 3 as amended by federal law, BGBl. (Federal Law Gazette) Part I No. 161/2004, shall enter into force on January 1, 2005.

(6) Article 44b as amended by federal law, BGBl. (Federal Law Gazette) Part I No. 108/2007, shall enter into force on January 1, 2008.

(7) Article 1, Article 2 paragraph 2, Article 2 paragraph 5, Article 7 paragraph 1, Article 7 paragraph 4, Article 8, Article 9, Article 10 paragraph 1, Article 10 paragraph 2, Article 10 paragraph 3, Article 11, Article 12, Article 13, Article 14, Article 16 item 3, Article 16 item 4, Article 16 item 5, Article 16 item 6, Article 16 item 7, Article 16 item 9, Article 17, Article 18, Article 19, Article 21 paragraph 2 item 4, Article 21 paragraph 2 item 5, Article 22 paragraph 2, Article 22 paragraph 3, Article 22 paragraph 4, Article 22 paragraph 5, Article 23, Article 28 paragraph 2, Article 29 paragraph 3, Article 33 paragraph 2, Article 33 paragraph 3, Article 34 paragraph 1, Article 35 paragraph 2, Article 37, Article 41 paragraph 1, Article 42, Article 43, Article 44 paragraph 1, Article 44 paragraph 2, Article 45, Article 47 item 1, Article 49, Article 50, Article 52 paragraph 2, Article 68 paragraph 4, Article 68a,

Article 69 paragraph 1 item 1, Article 69 paragraph 3, Article 69 paragraph 4, Article 75 paragraph 1, Article 78 paragraph 2, Article 79, Article 79a, Article 82 paragraph 1, Article 82b, Article 87 item 9, Article 87 item 10, Article 88 as amended by federal law, BGBl. (Federal Law Gazette) Part I No. 50/2011 shall enter into force on August 1, 2011.

(8) Article 7 paragraphs 1 and 1a as amended by federal law, BGBl. (Federal Law Gazette) Part I No. 64/2013, shall enter into force on January 1, 2014.

(9) Article 38 paragraph 4 and Article 44c as amended by federal law, BGBl. (Federal Law Gazette) Part I No. 184/2013, shall enter into force on January 1, 2014.

(10) Article 67 paragraph 3 and Article 68 paragraph 3 as amended by federal law, BGBl. (Federal Law Gazette) Part I No. 68/2015, shall enter into force on July 20, 2015.

(11) Article 38 paragraphs 5 and 6 as amended by federal law, BGBl. (Federal Law Gazette) Part I No. 150/2017, shall enter into force on January 3, 2018. Article 44b paragraph 2 and Article 44d paragraph 1 as amended by federal law, BGBl. (Federal Law Gazette) Part I No 150/2017, shall enter into force on September 1, 2018.

(12) Article 79 paragraph 1 item 3 as amended by federal law, BGBl. (Federal Law Gazette) Part I No. 17/2018, shall enter into force on June 1, 2018.

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