

**Austria: Publication of Financial Sector Assessment Program Documentation—
Detailed Assessment of Basel Core Principles for Effective Banking Supervision**

This Detailed Assessment of Basel Core Principles for Effective Banking Supervision on Austria was prepared by a staff team of the International Monetary Fund as background documentation for the periodic consultation with the member country. It is based on the information available following the FSAP discussions that ended on April 30, 2013, with the officials of Austria. Based on the information available at the time of these discussions, the assessment was completed in September 2013. The related ROSC was published together with the FSSA on September 10, 2013.

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AUSTRIA

DETAILED ASSESSMENT OF OBSERVANCE

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BASEL CORE PRINCIPLES FOR EFFECTIVE BANKING SUPERVISION

Prepared By
**Monetary and Capital
Markets Department**

This Detailed Assessment Report was prepared in the context of an IMF Financial Sector Assessment Program (FSAP) mission in Austria during April 2013, led by Nicolas Blancher, IMF, and overseen by the Monetary and Capital Markets Department, IMF. Further information on the FSAP program can be found at <http://www.imf.org/external/np/fsap/fssa.aspx>

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Glossary

ABBA	Austrian Banking Business Analysis
AML/CFT	Anti-Money Laundering/Combating the Financing of Terrorism
ASA	Austrian Securities Authority
BCP	Basel Core Principles
BOSS	Banking On-site Supervision System
BMG/FMABG	Austrian Banking Act
BVK	Corporate Provision Fund
CBSG	Cross-Border Stability Group
CEBS	Committee of European Banking Supervisors
CESEE	Central and Eastern European Countries
CI	Credit Institution
CRD	Capital Requirements Directive
EBA	European Banking Authority
EEA	European Economic Area
EC	Essential Criterion
ESA	European Supervisory Authority
ESRB	European Systemic Risk Board
FATF	Financial Action Task Force on Money Laundering
FMA	Financial Market Authority
FMK	Financial Market Committee
GAAP	Generally Accepted Accounting Principles
IFRS	International Financial Reporting Standards
JRAD	Joint Risk Assessment Decision
LRMV	Liquidity Risk Management Regulation
MOF	Ministry of Finance
MOU	Memorandum of Understanding
NBG	National Bank Act
NPL	Non-Performing Loans
ONB/OeNB	Austrian Central Bank
SPOC	Single Point of Contact
SREP	Supervisory Review and Evaluation Process
UGB	Company Code
VAR	Value At Risk

INTRODUCTION

1. **This assessment of the current state of Austria’s implementation of the Basel Core Principles for Effective Banking Supervision (BCP) has been completed as part of the Financial Sector Assessment Program (FSAP) undertaken by the International Monetary Fund (IMF).** An assessment of the effectiveness of banking supervision requires a review of the legal framework, both generally and as specifically related to the financial sector, and a detailed examination of the policies and practices of the institutions responsible for banking supervision.
2. **It was undertaken over two-time periods—February 18–25 and April 3–18 April, 2013. The assessors were Arnoud Vossen (Central Bank of the Netherlands), Michael Deasy (Consultant) and Diane Marie Mendoza (IMF).** The Assessors would like to put on record their deep appreciation of the full cooperation and courtesy they received from the Austrian authorities both in the public and private sector.
3. **The grading for each Principle is based on the essential criteria (EC).** Additional criteria are commented upon but are not reflected in the grading.

INSTITUTIONAL AND MARKET STRUCTURE— OVERVIEW

4. **Austria’s supervisory environment is characterized by a dual supervisory system** with responsibilities shared by the Financial Market Authority (FMA), Austria’s independent, integrated financial supervisory authority, and the Central Bank of Austria (OeNB) for the banking sector, and the FMA’s sole responsibility for the supervision of the insurance and securities markets sectors. The Federal Ministry of Finance (BMF) is responsible for the development and definition of the legislative framework, which is then adopted by the Austrian parliament.
5. **The tasks of the supervisory system are governed by a range of separate laws,** for example, the Financial Market Authority Act, the National Bank Act, the Banking Act, the Insurance Supervision Act, the Pension Funds Act, the Stock Exchange Act, the Investment Fund Act, the Provision of Payment Act and the Capital Market Act.
6. **The FMA, as the integrated supervisory institution, is responsible for supervising all significant providers of financial services and functions.** It supervises credit institutions (CIs), financial institutions (e.g. payments institutions, e-money institutions), insurance undertakings, pension companies, corporate provision funds, investment firms and investment service providers, investment funds, financial conglomerates and stock exchanges.
7. **In the field of banking supervision, the OeNB is responsible for the execution of all on-site inspections on the basis of inspection orders issued by the FMA.** The OeNB also has the right to request audits or the expansion of inspection orders. Furthermore, the OeNB is responsible

for off-site analysis taking into account all the data which CIs are obliged to report. The FMA issues all the necessary rulings and considers all legal questions in the field of banking supervision. A key element of this cooperation is the sharing of all supervisory-related data held by both institutions in a single database. The OeNB is solely responsible for the oversight of payment systems in Austria.

8. Financial intermediation in Austria is dominated by the banking sector as CIs cover approximately 80 percent of financial market intermediation. In June 2012, consolidated total assets of the Austrian banking sector amounted to EUR 1,189 billion. With nearly 400 percent of GDP, the size of the banking sector in terms of total assets is large by international comparison, which also reflects the greater dependency of the Austrian economy on CI intermediation as opposed to other financial intermediaries or direct finance.

9. Nonbank financial intermediation via insurance companies, pension funds, etc. represented less than EUR 240 billion in terms of total assets as of end-2011. As of mid-2012, four financial conglomerates were subject to declaration in Austria. These conglomerates were mainly dominated by CIs.

10. The Austrian banking sector is characterized by a large number of CIs with 822 registered CIs as of mid-2012, mostly due to the prominent role of the decentralized sectors, i.e., local cooperative banks.

11. Since the outbreak of the financial crisis some Austrian CIs had to be nationalized as an ad hoc measure to prevent contagion effects and to preserve financial stability. Consequently, public ownership increased to more than 10 percent of total unconsolidated assets in June 2012. Over the years, the growing interconnectedness in the global and European financial industry fostered foreign ownership in the Austrian banking sector. In June 2012, foreign owned CIs represented over 20 percent of total assets, while at the same time Austrian CIs increased their activities in Central Eastern and South Eastern Europe (CESEE).

12. Bank capital ratios are improving but still lag behind other internationally-active banks. Austrian banks increased their core capital ratios during 2012 through a combination of retained earnings, liability management and high risk assets disposals. In relation to Basel III, the authorities estimate that Austrian banks will have to raise new capital in the range of EUR 8–13 billion. At the level of CESEE subsidiaries, capital ratios were mostly well above the regulatory minimum requirements set by host countries.

13. The consolidated non-performing loans (NPL) ratio of the Austrian banking system stood at 9.1 percent in mid-2012. While the development of the unconsolidated NPL ratio (i.e., domestic business in Austria) was almost flat over the last few quarters and stood at approximately 4.6 percent in June 2012, the NPL ratio of Austrian subsidiaries in CESEE accumulated to 15.8 percent, driven, in part, by above-average ratios for foreign-currency loans (19.7 percent).

14. Bank profits have been affected by low net interest income and risk provisioning reflecting higher NPL ratios. In 2012, net interest income continued to decline and provisioning

rates remain high but CESEE business supports the overall profitability of the Austrian banking system.

15. Austrian banks' funding structure is relative stable and financing conditions have improved since the peak of the crisis. Retail and corporate deposits represent a major source of funding for Austrian banks. Strong deposit growth in 2012, both in Austria (5.3 percent) has increased banks' funding resilience.

PRECONDITIONS FOR EFFECTIVE BANKING SUPERVISION

16. The sustainability of public finances and the general growth promoting policy mix in Austria has contributed to the generally healthy state of the banking industry. Also, due to several policy measures the Austrian housing market is characterized by a high share of rented accommodation thereby reducing price volatility in the real estate market.

17. On the question of financial stability policy, the OeNB's Financial Markets Analysis and Surveillance Division as part of the Financial Stability and Bank Inspections Department is responsible for identifying, monitoring and assessing the build-up of systemic risk. This would include stress testing on a number of levels. Also, the FMA and the OeNB participate actively in the bodies of the European System of Financial Supervision.

18. Austria has a highly developed system of business laws including corporate, bankruptcy, contract, consumer protection, and private property laws. Its legal and accounting regime are in keeping with a developed economy.

19. The OeNB oversees the functioning of payment systems.

20. In anticipation of the European adoption of the EU Commission's proposals for establishing a framework for the recovery and resolution of banks and investment firms, Austria has started a discussion on possible national measures and instruments on early intervention and bank resolution. As of 1st January 2014, legislation will come into force that will require credit institutions to set up recovery and resolution plans and will provide the FMA with a set of early intervention tools.

21. The Austrian deposit guarantee scheme mirrors the sectoral structure of the banking system with each of the five banking sectors (joint stock banks, saving banks, cooperatives, etc) operating a separate scheme, with each deposit/group of related deposits carrying a guarantee of up to EUR 100,000.

22. As an integrated supervisory authority, the FMA plays a major role in overseeing and monitoring market discipline. It monitors activities to ensure that trading in listed securities complies with legal requirements as well as with the principles of fairness and transparency. It

ensures that prospectuses relating to the public sale of securities explain appropriately the opportunities and risks of investments to the general public. It also seeks to ensure that the principles of sound company management and advise are upheld, that unauthorized trading and offering of financial services are prevented and punished.

23. The tasks, objectives and responsibilities in Austrian legislation with respect to macroprudential supervision are still under discussion, taking into account the ESRB

Recommendation of December 22, 2011 advising EU Member States to enshrine the responsibility for macroprudential policy in their national legislation. At the moment in practice both the FMA and the OeNB undertake activities in the area of macro prudential supervision, focused on systemic risk monitoring.

24. In response to the recent economic crisis, the Austrian authorities took a number of steps to support the banking system and to strengthen financial oversight. (Many of these were in line with the 2007 FSAP recommendations). They include:

Capital support measures and funding guarantees. The October 2008 “Austrian banking package” had three main components: (1) the “Financial Market Stabilization Act”, which provided an envelope of EUR 15 billion for bank recapitalization measures; (2) the “Interbank Market Reinforcement Act”, initially providing an amount of up to EUR 75 billion for bank funding guarantees and establishing the “Clearing Bank for Interbank Operations” (vested with a federal guarantee); and (3) the introduction of an unlimited deposit insurance for non-legal entities until end-2009 (with an overall envelope of EUR 10 billion). In addition, a special federal holding entity for the acquired government participations, in charge of monitoring the support measures and associated conditions, was also created. The only legal basis for bank crisis support still in place in 2013 is the “Financial Market Stabilization Act”, whose overall envelope is almost used up.¹

Foreign currency and liquidity risk management. In several steps, and most recently in early 2013, the authorities have introduced measures to contain FCL both domestically and in CESEE/CIS. In addition, a new reporting system was introduced by the OeNB in late 2008 to monitor individual banks’ liquidity and funding risk, and to encourage better foreign currency risk management practices (e.g., through lengthened funding maturities, counterparty and instrument diversification, and increased liquidity buffers).

Supervisory reforms. In early 2012, the authorities introduced new supervisory guidance for the three largest internationally-active Austrian banks. The guidance requires early implementation of Basel III capital requirements and the submission of group recovery and resolution plans, and encourages stable local funding for their foreign subsidiaries. In addition, cooperation between the FMA and

¹ The “Interbank Market Reinforcement Act” expired at end-2010. Guarantees extended on this basis fell from an end-year peak of 22 billion in 2010 to below 10 billion at end-March 2012 and will expire completely in 2014. The “Clearing Bank for Interbank-Operations” stopped any new business at end-2010 as well and its activities ran off shortly thereafter.

the OeNB was strengthened based on a clearer division of responsibilities and through the Financial Market Committee (FMK)

Cross-border collaboration. Austria has been an active participant in the Vienna Initiative aiming to coordinate sales of bank assets and avoid disorderly leveraging; accelerate NPL resolution in host countries and create new lending capacity; and enhance information sharing between home and host supervisors.

DETAILED ASSESSMENT

25. The assessment of compliance of each principle will be made based on the following four-grade scale: *compliant, largely compliant, materially noncompliant, and noncompliant.* A “not applicable” grading can be used under certain circumstances. While gradings in self-assessments may provide useful information to the authorities, **these are not mandatory** as the assessors will arrive at their own independent judgment.

- **Compliant:** a country will be considered compliant with a Principle when all essential criteria² applicable for this country are met without any significant deficiencies. There may be instances, of course, where a country can demonstrate that the Principle has been achieved by other means. Conversely, due to the specific conditions in individual countries, the essential criteria may not always be sufficient to achieve the objective of the Principle, and therefore other measures may also be needed in order for the aspect of banking supervision addressed by the Principle to be considered effective.
- **Largely compliant:** A country will be considered largely compliant with a Principle whenever only minor shortcomings are observed that do not raise any concerns about the authority’s ability and clear intent to achieve full compliance with the Principle within a prescribed period of time. The assessment “largely compliant” can be used when the system does not meet all essential criteria, but the overall effectiveness is sufficiently good, and no material risks are left unaddressed.
- **Materially non-compliant:** A country will be considered materially non-compliant with a Principle whenever there are severe shortcomings, despite the existence of formal rules, regulations and procedures, and there is evidence that supervision has clearly not been effective, that practical implementation is weak, or that the shortcomings are sufficient to raise doubts about the authority’s ability to achieve compliance. It is acknowledged that the “gap” between “largely compliant” and “materially non-compliant” is wide, and that the choice may be difficult. On the other hand, the intention has been to force the assessors to make a clear statement.

² For the purpose of grading, references to the term “essential criteria” in this paragraph would include additional criteria in the case of a country that has volunteered to be assessed and graded against the additional criteria.

- **Non-compliant:** A country will be considered non-compliant with a Principle whenever there has been no substantive implementation of the Principle, several essential criteria are not complied with, or supervision is manifestly ineffective.
- 26. In addition, a Principle will be considered not applicable when, in the view of the assessor, the Principle does not apply given the structural, legal and institutional features of a country.**
- 27. Unless the country explicitly opts for any other option, compliance with the Core Principles will be assessed and graded only with reference to the essential criteria.** As a second option, a country may voluntarily choose to be assessed against the additional criteria, in order to identify areas in which it could enhance its regulation and supervision further and benefit from assessors' commentary on how it could be achieved. However, compliance with the Core Principles will still be graded only with reference to the essential criteria. Finally, to accommodate countries that further seek to attain best supervisory practices, a country may voluntarily choose to be assessed and graded against the additional criteria, in addition to the essential criteria.
- 28. The detailed Principle-by-Principle self-assessment should provide a "description" of the system with regard to a particular Principle.** The template also includes spaces for a grading or "assessment," and a "comments" section, if the country opts to include a grade in its self assessment.
- **The "description" section of the template should provide information on the practice in the country being assessed.** It should cite and summarize the main elements of the relevant laws and regulations. This should be done in such a way that the relevant law or regulation can be easily located, for instance by reference to URLs, official gazettes, and similar sources. Insofar as possible and relevant, the description should be structured as follows: (1) banking laws and supporting regulations; (2) prudential regulations, including prudential reports and public disclosure; (3) supervisory tools and instruments; (4) institutional capacity of the supervisory authority; and (5) evidence of implementation and/or enforcement or the lack of it.
 - **The "assessment" section, if the country opts to include the grade in the self-assessment,** should contain only one line, stating whether the system is "compliant", "largely compliant", "materially non-compliant", "non-compliant" or "not applicable" as described above.
 - **The "comments" section will be used by the assessors to explain why a particular grading was given, in particular when a less than "compliant" grading was given.** This could be structured as follows: (i) reasons related to the state of the laws and regulations and their implementation; (ii) the state of the supervisory tools and instruments, for instance reporting formats, early warning systems and inspection manuals; (iii) the quality of practical implementation; (iv) the state of the institutional capacity of the supervisory authority; and (v) enforcement practices. In case of a less than "compliant" grading, this section will be used

to highlight which measures would be needed to achieve full compliance, or why, notwithstanding the system seems compliant based on laws, regulations and policies being in place, yet a less than “compliant” grading was given, perhaps due to weaknesses in procedures or implementation. Countries choosing not to include grades in the self assessment can use this section to introduce additional information, in particular make reference to planned initiatives aimed at amending existing practices, or legislation and regulation still in draft.

A. Supervisory Powers, Responsibilities and Functions	
Principle 1	Responsibilities, objectives and powers. An effective system of banking supervision has clear responsibilities and objectives for each authority involved in the supervision of banks and banking groups. ³ A suitable legal framework for banking supervision is in place to provide each responsible authority with the necessary legal powers to authorize banks, conduct ongoing supervision, address compliance with laws and undertake timely corrective actions to address safety and soundness concerns. ⁴
Essential criteria	
EC1	The responsibilities and objectives of each of the authorities involved in banking supervision ⁵ are clearly defined in legislation and publicly disclosed. Where more than one authority is responsible for supervising the banking system, a credible and publicly available framework is in place to avoid regulatory and supervisory gaps.
Description and findings re EC1	<p>According to Article 1 para. 1 of the FMABG <i>“for the purpose of banking [...] supervision, an autonomous institution under public law with its own legal personality shall be established under the name of Financial Market Authority (FMA). In performing its duties, it shall not be bound by any instructions.”</i> FMA is operating as a supervisory authority since April 1, 2002.</p> <p>The term “banking supervision” is defined in Article 2 para. 1 FMABG: <i>“The area of banking supervision involves performing the official tasks and exercising the powers which are assigned to the FMA and defined by the provisions in the respective laws:</i></p> <ul style="list-style-type: none"> • the Banking Act (<i>Bankwesengesetz—BWG</i>, Federal Law Gazette No. 532/1993, Article I), • the Savings Bank Act (<i>Sparkassengesetz—SpG</i>, Federal Law Gazette No. 64/1979), • the Building Society Act (<i>Bausparkassengesetz—BSpG</i>, Federal Law Gazette No. 532/1993, Article III),

³ In this document, “banking group” includes the holding company, the bank and its offices, subsidiaries, affiliates and joint ventures, both domestic and foreign. Risks from other entities in the wider group, for example non-bank (including non-financial) entities, may also be relevant. This group-wide approach to supervision goes beyond accounting consolidation.

⁴ The activities of authorising banks, ongoing supervision and corrective actions are elaborated in the subsequent Principles.

⁵ Such authority is called “the supervisor” throughout this paper, except where the longer form “the banking supervisor” has been necessary for clarification.

- the Regulation implementing the Mortgage Bank Act and Mortgage Bond Act (Einführungsverordnung zum Hypothekenbank- und zum Pfandbriefgesetz- Hypothekenbankgesetz - V über die Einführung, Reich Law Gazette 1938 I p. 1574),
- the Mortgage Bank Act (Hypothekenbankgesetz - HypBG, Reich Law Gazette 1899 p. 375),
- the Mortgage Bond Act (Pfandbriefgesetz - PfandbriefG, Reich Law Gazette 1927 I p. 492),
- the Act on Funded Bank Bonds (Bankschuldverschreibungsgesetz - FBSchVG, Imperial Law Gazette No. 213/1905),
- the Investment Fund Act 2011 (Investmentfondsgesetz 2011- InvFG, Federal Law Gazette I No. 77/2011, Article II),
- the Depository Act (Depotgesetz, Federal Law Gazette No. 424/1969),
- the Equity Funds Act (Beteiligungsfondsgesetz, Federal Law Gazette No. 111/1982),
- the Act on Electronic Money 2010 (E-Geldgesetz 2010 – E-GeldG, Federal Law Gazette I No. 107/2010),
- the Severance Fund Act (Betriebliches Mitarbeiter und Selbstständigenvorsorgegesetz – BMSVG, Federal Law Gazette I No. 100/2002),
- the Real Estate Investment Fund Act (Immobilien-Investmentfondsgesetz – ImmoInvFG, Federal Law Gazette I No. 80/2003),
- the Financial Conglomerates Act (Finanzkonglomeratengesetz – FKG; Federal Law Gazette I No. 70/2004),
- the Act Implementing EU Legislation on Ratings Agencies (Ratingagenturenvollzugsgesetz – RAVG, Federal Law Gazette I No. 68/2010) and
- the Payment Services Act (*Zahlungsdienstegesetz* – ZaDiG, BGBl I No. 66/2009).

A two thirds majority in the Austrian Parliament (National Assembly) is necessary for amendments and changes of Article 1 para. 1 FMABG.

The FMA is the only competent authority for regulatory supervision in Austria.

It is clearly defined that the tasks and powers assigned to the FMA are (only) such, which are conferred to it by the above mentioned or any future federal laws. This is in accordance with Article 18 Austrian Federal Constitution Law (*Bundesverfassungsgesetz—B-VG*), which states that the entire public administration has to be based on law, i.e., acts and statutes by the Parliament. It is forbidden that the FMA assigns its tasks and powers to other agencies or mandates them with those tasks and powers (Article 18 B-VG).

The objectives of the FMA are the monitoring of compliance with the provisions of the relevant laws, as specified in Article 69 Banking Act. This article stems from 1-1-2008. The Banking Act assigns non-regulatory banking supervision tasks and powers not only to the FMA, but also to other institutions, especially to the OeNB and the MoF.

In practice, since 2008 there is an extended operational involvement of the OeNB in the

supervision of the banking system. The OeNB is the Austrian central bank. It is a joint stock corporation, and organized according to the provisions of the Federal Act on the Oesterreichische Nationalbank, the National Bank Act (*Nationalbankgesetz*—NBG). All responsibilities of the OeNB in the field of technical banking supervision are clearly defined in the NBG and in the Banking Act, especially in Article 79 Banking Act that stems from 1-1-2010. In addition, the OeNB is charged with the oversight of payment systems (Article 44a NBG). When carrying out its tasks, the OeNB shall not be bound by any instructions (Article 79 para. 5 Banking Act).

The MoF is organized according to the Federal Ministries Act 1986 (*Bundesministeriengesetz* – BMG). It is in charge of drafting legislation in the field of banking supervision according to no. 3 of annex 2D to Article 2 para. 2 no. 2. BMG.

The following overview demonstrates the goals and tasks and also gives a description of tasks and competent bodies in the different fields of banking supervision in Austria:

	Regulatory Supervision	Technical Supervision	Legislation and Regulation
Competent	Financial Market Authority (FMA)	FMA, OeNB, external bank auditor, internal bank controls	MoF: primary legislation, FMA: secondary legislation
Goals	Monitoring compliance with the Banking Act and similar Acts.	Supporting the FMA in banking supervision	Making available adequate legal instruments for regulatory and technical supervision and international cooperation
Tasks	Execution of the relevant laws through regulations and rulings	Fulfillment of legally or contractually assigned duties	Preparation of adequate rules (Federal Laws and Memoranda of Understanding - MoUs)

	Description of tasks	<ul style="list-style-type: none"> • licensing • supervision of compliance with prudential framework • taking of remedial actions including imposing fines • “Travaux Préparatoires” for MoUs • bilateral meetings with foreign banking supervisors within the framework of MoUs • hosting of Colleges of Supervisors for EEA CIs with subsidiaries or significant branches in other EEA countries 	<ul style="list-style-type: none"> • operation, development and application of systems for analysis for supervisory purposes • reporting on macroeconomic relations and developments as well as on observations and findings of fundamental nature • ongoing off site analysis and risk assessment • participation in bilateral meetings with foreign banking supervisors within the framework of MoUs • rendering expert opinions (on risk management models etc) • on-site inspections upon mandate of the FMA (performed by the OeNB on its own accountability and in its own name) • information gathering and processing 	<ul style="list-style-type: none"> • implementation of EC-directives • preparation of autonomous federal laws • conclusion of MoUs • issuing of regulations and recommendations
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Description and findings re EC1 continued	<p>Banking business is exempt from the provisions of the Trade Act (<i>Gewerbeordnung—GewO</i>), as it is regulated by special legal provisions (see Article 2 para.1 FMABG).</p> <p>The Banking Act is the main act regulating the banking sector. It also describes the FMA’s role therein.</p> <p>The laws in place for banking and the banking supervisory agency cover the whole range of banking activities, and are fully applied and enforced in practice. For a further description of the cooperation between the FMA, the OeNB and the MoF, as well as a more detailed description of the establishment of the FMA see also the FMA’s annual reports (www.fma.gv.at/en/about-the-fma/publications/fma-annual-reports.html).</p>
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	<p>The supervisory reform in Austria that came into force on 1st January 2008 placed the cooperation and collaboration of FMA and the OeNB on a new foundation. While the supervisory system has remained a dual one, with responsibilities shared by the FMA, Austria's integrated financial supervisory authority, and OeNB, Austria's central bank, the reform improved the links between micro-and macroprudential supervision, that is, between supervision of individual institutions and supervision at the systemic level. As a consequence, the OeNB was assigned additional operational tasks in this field. In addition, based upon section 3 (2) of the FMABG, the FMA when taking prudential measures, will also take financial stability into consideration.</p> <p>In essence, the new supervisory structure can be split up into a fact-finding function (overall risk assessment) by the OeNB and a decision-making function (official decisions) by the FMA.</p> <p>The main features of the new division of responsibilities are as follows:</p> <ul style="list-style-type: none"> • The FMA has retained its status as integrated financial supervisor and remains the authority in charge of banking supervision. • The OeNB is in charge of conducting all on-site inspections (with the exception of KAGs and BVKs and the supervision of AML/CFT, for which a special unit of the FMA has been established). • As a basis for these inspections, the FMA and the OeNB define an audit plan stating the priorities of the on-site inspections for each institution and the respective starting dates. • In principle, the FMA continues to issue inspection mandates to the OeNB. • The OeNB is responsible for all off-site analyses of CIs. It is obliged to perform regular comprehensive analyses of data reported and of other relevant information for banking supervision purposes and for preparing preliminary investigations by the FMA. The OeNB is required to make all analysis results and any relevant information available to the FMA. These findings must contain a clear statement about whether there is a substantial change in the risk situation or any reason to suspect a violation of regulatory provisions. The OeNB is obliged to inform the FMA without delay if either one of these two conditions applies. On request of the FMA, the OeNB must carry out specific off-site analyses or provide further explanations of analysis results. • The OeNB operates a joint database with the FMA that ensures a high flow of information between both institutions. • Whenever possible, the FMA must pay attention to the OeNB's inspections, expert opinions and analyses and on the data available from the joint database. Unless it has reasons for justified doubts, the FMA may rely on the correctness and completeness of the OeNB's data. • Under the reformed framework, the OeNB also has to draw up expert opinions in approval procedures for all risk management models. Moreover, the OeNB has to assess the viability of CIs' business models and must be consulted by the FMA before
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credit institutions are granted approval to merge or split.

- The new distribution of responsibilities is reflected by the fact that the adoption of memoranda of understanding—which under Austrian constitutional law is the responsibility of the Federal Minister of Finance—is now based on a joint proposal by the FMA and the OeNB. Furthermore, the FMA may enter into cooperation agreements in connection with Colleges of Supervisors.
- The OeNB’s financial stability mandate was explicitly established in Article 44b NBG. Under this provision, the OeNB must, in the public interest and based on extended data access rights, monitor all circumstances that may have an impact on safeguarding financial stability in Austria. These enhanced competences entail the obligation that the OeNB informs the BMF and the FMA of any findings of a fundamental nature or of particular importance to financial stability. Upon request, the OeNB must produce the necessary technical explanations, make documents available and deliver expert opinions. This mandate however, is not as far reaching as the Recommendation of the ESRB in this respect, especially concerning the use of eg supervisory instruments.

The assessors have been informed that in practice, the reform has established a better allocation of responsibilities. The daily supervisory work is undertaken by a single point of contact (SPOC) in the FMA and in the OeNB for each individual credit institution. The measures taken to implement the reform, also provide for a more efficient and effective supervisory process and has improved the overall supervisory framework. In formal terms, supervisory competences remain shared among two institutions, but from the perspective of credit institutions - as the assessors have learned from them—there is a single, integrated supervisory process under reinforced joint responsibility.

For a further description of the cooperation between the FMA, the OeNB and the MoF, as well as a more detailed description of the establishment of the FMA see also the FMA’s annual reports (www.fma.gv.at/en/about-the-fma/publications/fma-annual-reports.html).

Besides the tasks and objectives of the micro prudential supervision, as outlined above, it is also relevant to have a clear distinction of responsibilities and objectives regards macroprudential supervision. In this context, the decision of 22 December 2011 of the General Board of the ESRB of which the OeNB is part of, is of specific importance, since it adopted a Recommendation regarding the design of policy frameworks that advises EU Member States to enshrine the responsibility for macroprudential policy in their national legislation. This Recommendation was subsequently published on 16 January 2012 (see www.esrb.europa.eu). In particular, the ESRB recommends “guiding principles” for a national macroprudential mandate in respect of the objective (Recommendation A), the institutional arrangements (Recommendation B); tasks, powers and instruments (Recommendation C); and transparency and accountability (Recommendation D). We understand that the mandate for macro prudential supervision and the implementation of this Recommendation in Austria is under discussion. At the moment in practice both the FMA and the OeNB undertake activities in the area of macro prudential supervision, in both

	cases focused on systemic risk monitoring.
EC 2	The primary objective of banking supervision is to promote the safety and soundness of banks and the banking system. If the banking supervisor is assigned broader responsibilities, these are subordinate to the primary objective and do not conflict with it.
Description and findings re EC2	<p>The objectives of the FMA are the monitoring of compliance with the provisions of the relevant laws as specified in Article 69 of the Banking Act. It mandates the FMA to assure market participants' compliance with banking regulations. Thereby, the FMA must consider the national economic interest in maintaining an efficient banking system and financial market stability.</p> <p>Taking into account the national economic interest when executing banking supervision, might endanger the primary objective to promote the safety and soundness of banks. In practice the assessors have not identified any circumstances whereby the national economic interest has impeded this primary objective.</p> <p>In this context, the assessors have evaluated the more specific supervisory objectives as identified by the FMA and OeNB, the discussions with management of both organisations about their drivers for their day-to-day operations and supervisory actions undertaken and the meetings with the industry in this regard, not leading to any indications concerning taking into account specific national economic interests in the supervisory decision making process. Please also see CP 2, EC 1.</p> <p>In addition, it should be mentioned that based upon article 1 (1) of the FMABG, the FMA is not only a banking supervisor but an integrated supervisor that is also mandated to undertake insurance supervision, market supervision and pensions supervision.</p> <p>There are a number of safeguards to guarantee that the execution of the banking supervision tasks is not hindered by these other tasks. Primarily, in both organizations these other tasks are organizationally separated from the banking supervision tasks. And secondly, a separate planning and resourcing process exists for banking supervision which ensures a sufficient prioritizing towards banking supervision. Also, it should be mentioned that separate budgeting takes place, since the banking supervisory tasks are financed by the institutions under supervision.</p> <p>Also, the assessors have not been informed about any possible conflicts that in practice have occurred, due to these different mandates allocated to the FMA</p>
EC3	Laws and regulations provide a framework for the supervisor to set and enforce minimum prudential standards for CIs and banking groups. The supervisor has the power to increase

	the prudential requirements for individual CIs and banking groups based on their risk profile ⁶ and systemic importance. ⁷
Description and findings re EC3	<p>The Banking Act as the general law for banking (and banking supervision) provides the following:</p> <ul style="list-style-type: none"> • Definition of credit institutions (hereinafter CI) licensed by the FMA due to Article 1 para. 1 Banking Act as well as financial institutions (hereinafter FI) pursuant to Article 1 para. 2 Banking Act; • Detailed requirements for the granting and detailed provisions for the revocation and the lapse of the license for the conduct of banking activities (Articles 4 to 6 Banking Act); • Provisions implementing the Freedom of Establishment of an EU-branch and the Freedom to Provide Services due to Articles 9 to 13 Banking Act; • Ownership provisions and approval procedures (for acquisition/reduction of qualifying holdings in CIs) due to Article 20 to 20b Banking Act; • Permits for mergers or splits of CIs (Article 21 Banking Act) and permits in the course of Basel II enforcement (Articles 21a to 21g Banking Act); • Detailed regulatory standards for: Minimum Capital Requirements (Article 22 Banking Act), Credit Risk (Standardized Approach to Credit Risk (Article 22a Banking Act), Internal Ratings Based Approach (Article 22b Banking Act), Credit Risk Mitigation Techniques (Article 22g Banking Act), Eligible Collateral (Article 22h Banking Act)), Operational Risk (Minimum Capital Requirement for Operational Risk (Article 22i Banking Act), Basic Indicator Approach (Article 22j Banking Act), Standardized Approach (Article 22k Banking Act), Advanced Measurement Approach (Article 22l Banking Act), Combined Approaches (Article 22m Banking Act)), and the Trading book (Positions in the Trading Book (Article 22n Banking Act), Risk Types in the Trading Book (Article 22o Banking Act), Internal Model for the Trading Book (Article 22p Banking Act), Simplified Calculation Method for the Trading Book (Article 22q Banking Act)) • Based on these articles, the Regulation on the Mapping of Credit Assessments and Credit Quality Steps (<i>Verordnung der FMA über die Zuordnung von Ratings anerkannter Rating-Agenturen zu Bonitätsstufen – MappingV</i>, Federal Law Gazette II No. 113/2007), and the Solvency Regulation (<i>Solvabilitätsverordnung – SolvaV</i>, Federal Law Gazette II No. 374/2006), which contains technical provisions for the calculation of capital requirements, have been issued.). • Definition and consolidation of own funds (Articles 23 and 24 Banking Act) • Liquidity (Article 25 Banking Act); three regulations further specifying the provisions of

⁶ In this document, “risk profile” refers to the nature and scale of the risk exposures undertaken by a bank.

⁷ In this document, “systemic importance” is determined by the size, interconnectedness, substitutability, global or cross-jurisdictional activity (if any), and complexity of the bank, as set out in the BCBS paper on *Global systemically important banks: assessment methodology and the additional loss absorbency requirement*, November 2011.

	<p>the Banking Act are in place (Regulation on Liquidity, Federal Law Gazette No. 771/1993; 5th Regulation on Liquidity, Federal Law Gazette No. 14/1999); Regulation on Liquidity Risk Management, Federal No. 338/210).</p> <ul style="list-style-type: none"> • Disclosure Obligations (Articles 26 and 26a Banking Act). Based on this paragraph, the Regulation on Disclosure Obligations by the FMA (<i>Verordnung der FMA zur Durchführung des Bankwesengesetzes betreffend die Veröffentlichungspflichten von Kreditinstituten—Offenlegungsverordnung—OffV</i>, Federal Law Gazette II No. 375/2006) contains the detailed disclosure requirements); • Large Exposures (Article 27 Banking Act) comprising: appropriate limitation of the particular banking risk, calculation and weighting, definition of group of connected clients, maximum amounts, adequate administrative, accounting and control procedures, prior approval by supervisory board; • Transactions with management and related parties (Article 28 Banking Act): for such transaction a unanimous resolution by all directors and the consent of the supervisory board is required; • Holdings (Article 29 Banking Act): qualifying participations in companies, which are neither conducting banking nor finance activities (Article 1 paras. 1 and 2 Banking Act) nor ancillary activities nor are contractual insurance or reinsurance undertakings are limited to 15 percent of the (consolidated) own funds to be taken into account each and 60 percent in total; exceeding participations must be covered by own funds; • Discretion to calculate regulatory standards on the basis of International Accounting Standards (Article 29a Banking Act); • Groups of CIs (Article 30 Banking Act); Article 30a Banking Act includes special provisions regarding credit institutions which are permanently affiliated to a central body which supervises them and which is established in the same Member State (<i>Kreditinstitute-Verbund i.e., network of CIs</i>). • Savings deposits and consumer protection provisions (Articles 31, 32 and 34 to 37 Banking Act): definition, provision of information to consumers, price display and advertising; • Banking Secrecy (Article 38 Banking Act): definition; exceptions; sanction for disclosure or exploitation of facts subject to banking secrecy (Article 101 Banking Act); this provision may only be changed with a two-thirds majority vote by the National Assembly; • General Due Diligence Obligations (Article 39 Banking Act); • Internal capital adequacy assessment process (Article 39a Banking Act); • Principles of Remuneration Policy and Practices / Remuneration Committee (Article 39b and 39c Banking Act); • Anti-Money Laundering Provisions (Articles 40 to 41 Banking Act): duty to register the identity of a customer, to keep records of transactions, to establish adequate control and communication procedures, to inform the authority in case of reasonable suspicion or certain activities; • Internal Audit (Article 42 Banking Act); • Regulations on accounting and external audit (Articles 43 to 65 Banking Act);
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- **Provisions regarding cover reserves** (Articles 66 to 68 Banking Act): Establishment and updating of a cover register for assets appertaining to a cover fund for savings deposits held in trust for wards (see also the Regulation on the Protection of Moneys Held in Trust for Wards, Federal Law Gazette No. 650/1993 as amended by Federal Law Gazette II No. 213/2003);
- **Supervision** (Articles 69 to 71 Banking Act): The objectives of the prudential supervision of CIs, the applicable laws and the institutions supervised by the FMA, as defined by the Banking Act (Article 69) have already been described. The allocation of costs of the supervision to the CIs is described in Article 69a Banking Act.;
- The **supervisory measures** available to the FMA in order to fulfill its duties imposed in Article 69 Banking Act are stated in Article 70 para. 1 Banking Act.
- There are numerous **notification requirements** (Article 73 Banking Act) and duties to **report** (Article 74 Banking Act) (ssee CP 9);
Based on Article 74 Banking Act the FMA has issued the following regulations:
 - Regulation on Asset, Income and Risk Statement (*Vermögens-, Erfolgs- und Risikoausweis-Verordnung*, VERA-V; BGBl II 2006/471);
 - Regulation on Regulatory Standards (*Ordnungsnormen-Ausweis-Verordnung*, ONA-V; BGBl II 2006/472);
 - Regulation on the Reporting of Loss Data (*Verlustdaten-Meldungs-Verordnung*, VTDM-B; BGBl II 2006/473);
 - Regulation of the Reporting of Master Data (*Stammdatenmeldungs-Verordnung*, STDV-M; BGBl II 2006/474);
 - Regulation on annual financial statements and consolidated financial statements (*Jahres- und Konzernabschluss-Verordnung*, JKAB-V; BGBl II 2006/470);
- Reports to the **Major Loan Register** (*Großkreditevidenz*—GKE) due to Article 75 Banking Act;
- The BMF has to appoint a **state commissioner** at CIs when the total assets exceed EUR 1 bn (Article 76 Banking Act); for certain types of CIs, e.g., Savings Banks, a state commissioner has to be appointed independently from the size of total assets;
- The Banking Act states the conditions for **information exchange** and cooperation with other competent authorities and data processing including **supervisory colleges** (Articles 77, 77a, 77b Banking Act);
- **Moratorium and International Sanctions** are regulated by Article 78 Banking Act;
- **Cooperation with the OeNB** (Article 79 and 80 Banking Act);
- Articles 82 to 91 Banking Act contain **Receivership and Insolvency Provisions**;
- **Structural Provisions** (Article 92 Banking Act): Savings banks, state mortgage banks and cooperatives may transfer their company into a stock corporation.
- **Deposit Guarantee and Investor Compensation** (Articles 93 to 93c Banking Act) (see also FSAP Questionnaire on Crisis Management and Resolution Framework, section F);

	<ul style="list-style-type: none"> • Protection of Designations (Article 94 Banking Act); • Procedural and punitive Provisions (Articles 96 to 101 Banking Act); • The Banking Act also provides for the transformation of participation capital into stock as well as the redemption of participation capital (Articles 102 and 102a Banking Act); • Transitional provisions (Articles 103 to 103e Banking Act). <p>The above mentioned provisions have been extended by numerous FMA regulations that set up a (minimum) framework of prudential standards that CIs have to meet at any time. In turn, they are complemented by various supervisory non-binding minimum standards (<i>Mindeststandards</i>—MS) as well as circulars (<i>Rundschreiben</i>—RS). Hard and soft law is fully applied in practice. From a prudential point of view, sectoral banks are treated equivalent to other banks, with the exception of the proportionality principle.</p> <p>There are different provision that provide the supervisor with the power to increase the prudential requirements for individual CIs and banking groups based on their risk profile⁸ and systemic importance.⁹ In practise, especially capital increases are used in this respect.</p> <p>It should also be noted that Austria as an EU Member State, applies the EU bank supervisory framework as agreed between the Member States. It has implemented the EU directives in the Banking Act and other applicable regulation. In practice, the CEBS/EBA guidelines are taken into account in the execution of banking supervision.</p>
EC4	Banking laws, regulations and prudential standards are updated as necessary to ensure that they remain effective and relevant to changing industry and regulatory practices. These are subject to public consultation, as appropriate.
Description and findings re EC4	<p>According to the Austrian Federal Constitutional Act, the legislative parliamentary organs "<i>Nationalrat</i>" (National Assembly) and "<i>Bundesrat</i>" (Federal Council) are responsible for the deliberation and adoption of federal laws.</p> <p>As regards laws and provisions concerning banking supervision, as mentioned above, most of them are driven by EU legislation. Instruments of the EU in this context are regulations and directives drawn up on the expertise of supervisory institutions and adopted by the EU Council and the European Parliament. EU directives and regulations are among others based on the Basel Core Principles and other internationally accepted regulatory standards and practices in the field of banking supervision. Thus, a harmonized standard based on internationally accepted regulatory and industry standards is assured concerning banking</p>

⁸ In this document, "risk profile" refers to the nature and scale of the risk exposures undertaken by a bank.

⁹ In this document, "systemic importance" is determined by the size, interconnectedness, substitutability, global or cross-jurisdictional activity (if any), and complexity of the bank, as set out in the BCBS paper on *Global systemically important banks: assessment methodology and the additional loss absorbency requirement*, November 2011.

	<p>law within the EU. Whereas EU regulations become effective after having been published in the Official Journal of the EU, directives have to be implemented into national law by the Member States.</p> <p>The room for purely national provisions in the banking sector has clearly decreased due to the harmonization process based on the EU principles of freedom of establishment and will further decrease by the ongoing harmonization in the context of Basel III.</p> <p>In Austria, the implementation of directives follows the constitutional legislative process whereby legislative proposals in the field of financial services are usually prepared by the MoF and submitted by the Federal Government to Parliament. Prior to the submission of the proposal for approval it is subject to a consultation process during which other ministries, the Banking Association, the Austrian Federal Economic Chamber, the FMA, the OeNB and frequently other parties that might be concerned are informed of items and objectives of the proposal. This consultation process is defined in the Act on the Austrian Federal Economic Chamber (<i>Wirtschaftskammergesetz 1998</i>). Within a period of three to six weeks the institutions concerned can communicate their opinion to the BMF, which draws up the final version of the proposal. The proposal, once accepted by the Council of Ministers, is passed as a government proposal to the <i>Nationalrat</i>, where it will follow the constitutional legislative procedure.</p> <p>The FMA may/has to issue regulations if the laws enacted by the Parliament contain respective authorizations/obligations. In some cases, the consent of the MoF is required for issuing an FMA regulation (e.g. on the exercise of national discretions). Also the FMA will undertake a consultation process on its regulations.</p> <p>The implementation of EU legislation is subject to a defined timetable. Thus, there are no discretionary possibilities for the national legislator to delay an update in regulation. Also the FMA, acting as secondary legislator by issuing regulations or as a prudential standards setter will take such international and national requirements into account.</p> <p>Besides the above mentioned parts of legislation, also soft law is being applied in practice. Especially one could mention standards (Mindeststandards), circular letters (Rundschreiben), guidance and FAQ's. In practice, FAQ's are not that often used.</p> <p>Also most of the parts of soft law are being consulted with the industry, especially with the Wirtschaftskammer Oesterreich (WKO), who legally represents the banking industry in Austria.</p>
EC5	<p>The supervisor has the power to:</p> <p>(a) have full access to banks' and banking groups' Boards, management, staff and records in order to review compliance with internal rules and limits as well as external laws and</p>

	<p>regulations;</p> <p>(b) review the overall activities of a banking group, both domestic and cross-border; and</p> <p>(c) Supervise the activities of foreign banks incorporated in its jurisdiction.</p>
Description and findings re EC5	<p>Article 70 para. 1 Banking Act regulates the possibilities of the FMA to have access to a CI's documents. This provision not only guarantees unfettered access to the CI's files, but furthermore, empowers the FMA as supervisor to have unlimited access to all relevant information on all business matters. The FMA may also require from the CI all information on a mixed activity holding company (as defined in Article 2 no. 26 Banking Act): a legal person or a company other than a CI, an investment firm or a financial holding company, the subsidiaries of which include at least one CI or one investment firm as the CI's parent company and its subsidiaries. These companies shall provide the CI with all documents and all information necessary to enable the CI to meet its information duty vis-à-vis the FMA.</p> <p>The unrestricted access to the files is further ensured by the possibility to audit CIs at any time through on-site inspections. Without prejudice to the powers conveyed to it by other provisions of the Banking Act, the FMA may, pursuant to Article 70 para. 1 no. 3 Banking Act, instruct the OeNB to conduct inspections of CIs, their branches and representative offices in Austria. The OeNB may also conduct on-site inspections in subsidiaries, branches and other undertakings within the group of CI outside Austria as well as of undertakings of CIs which are subject to supplementary supervision pursuant to Article 5 para. 1 Financial Conglomerates Act upon the FMA's request.</p> <p>On-site inspections on the CIs' premises are a significant source of information for the supervisory authority. These are either carried out routinely or in response to a particular occurrence. Since 2008, the OeNB has been principally responsible for conducting the on-site inspections in the area of banking supervision, in which case the OeNB acts on the basis of a formal inspection order issued by the FMA. To this end, every year the FMA and the OeNB jointly stipulate an audit plan for the following year (Article 70 para. 1b Banking Act). On-site inspections, alongside the reporting required by law, form an important basis of the analytical work carried out by the OeNB.</p> <p>In view of the significance of the CESEE region for Austrian CIs, on-site inspections of CIs in that region are being conducted with greater frequency within the framework of consolidated supervision. Such inspections take place in consultation with the competent authority of the particular EEA Member State or third country. In the latter case the relevant information is forwarded in accordance with a Memorandum of Understanding (MoU) concluded for this particular bilateral information exchange. Within the EEA information is passed in accordance with an agreement based on Article 131 Directive 2006/48/EC (CRD) relating to the facing up and pursuit of the business of CIs.</p> <p>In order to guarantee unfettered access to the relevant information Article 71 para. 1</p>

Banking Act states that the concerned CI (or the mixed activity parent company and/or its subsidiaries) shall be informed of on-site inspections with the initiation of examinatory acts. Advance notice may be given if it is not expected to defeat the purpose of the inspection and if due to organizational preparations by the CI such advance notice would facilitate and expedite the carrying out of the audit. The inspectors of the OeNB have to be granted access to the books / documents / data storage service. During normal business and working hours they have access to the business and work facilities at any time. They are entitled to request all information and business documents necessary for the inspection from the directors, employees that have been named by the directors, any person employed in the business who is responsible for the circumstances and examined.

The conclusions reached in the inspection shall be put in written form. The CI has to be provided with an opportunity to comment (Article 71 para. 6 Banking Act).

In addition to the reports and notifications received from the credit institutions (see CP 10), the FMA also actively approaches the supervised CIs. Pursuant to Article 70 para. 1 no. 1 Banking Act, the FMA may request information at any time from the supervised CI and inspect their business documents. More specifically, this article provides the FMA the power 'to require CI's as well as their governing bodies to provide information on all business matters'. This enables the authorities to acquire additional information and meet with senior management and Board members or to check the accuracy of reported data. Furthermore, the FMA obtains information not only from the CIs themselves but also from bank auditors and auditing associations, from protection schemes (deposit guarantee schemes) as well as from the state commissioners who regularly report to the FMA.

The FMA has full powers to supervise a foreign CI in its jurisdiction,. A foreign credit institution is thereby defined as an institution that is authorized in accordance with the legal provisions of its country of establishment to conduct banking business as defined in article 1 (1) of the Banking Act outside of the EU Member States. In as far these CI's want to operate in Austria by means of a branch, they would need a license and would be fully supervised. In as far such foreign credit institutions are from another EU Member State and operate a branch within Austria, no separate license would be needed and in accordance with the EU Second Banking Directive, group wide banking supervision would be exercised by the other EU Member State.

There were 331 instances of information being sought or of documentation being inspected in 2012 (Jan. – Oct.). This number also includes requests for statements concerning the issue of foreign currency loans, which was a special focus of supervisory attention in 2012. Regarding on-site inspections a total of 43 audit engagements pursuant to Article 70 para. 1 no. 3 Banking Act were issued to the OeNB in 2011. The 2011 audit plan focused on the topics of counterparty default risk and lending in foreign currencies.

OeNB on-site inspections pursuant to Article 70 para. 1 no. 3 Banking Act:

	<table border="1"> <thead> <tr> <th>2009</th> <th>2010</th> <th>2011</th> <th>2012</th> </tr> </thead> <tbody> <tr> <td>49</td> <td>39</td> <td>43</td> <td>48</td> </tr> </tbody> </table>	2009	2010	2011	2012	49	39	43	48
2009	2010	2011	2012						
49	39	43	48						
EC6	<p>When, in a supervisor's judgment, a bank is not complying with laws or regulations, or it is or is likely to be engaging in unsafe or unsound practices or actions that have the potential to jeopardize the bank or the banking system, the supervisor has the power to:</p> <p>(a) take (and/or require a bank to take) timely corrective action;</p> <p>(b) impose a range of sanctions;</p> <p>(c) revoke the bank's license; and</p> <p>(d) cooperate and collaborate with relevant authorities to achieve an orderly resolution of the bank, including triggering resolution where appropriate.</p>								
Description and findings re EC6	<p>According to article 70 para 4 of the Banking Act, the FMA may take a range of supervisory actions, in cases where the CI's licensing requirements or any provision of an applicable act are violated. More specifically, in such cases the FMA must:</p> <ul style="list-style-type: none"> • Instruct the CI to restore legal compliance which is appropriate in light of the circumstances, under threat of an initial penalty. • In cases of repeated or continued violations, completely or partly prohibit the directors from managing the CI and in such cases enforcing the penalty that has been initially imposed and setting a higher penalty in case the instruction would not be met. • Where other measures pursuant to the Banking Act cannot ensure the adequate functioning of the CI, as <i>ultima ratio</i> revoke the banking license <p>The penalties could be up to an amount of EUR 60,000 (Article 96, Banking Act).</p> <p>The assessors have been informed that only natural persons can be penalized for administrative and criminal offences, not the CI itself (please also see CP 11, EC 5).</p> <p>The FMA is not only competent to take supervisory actions but also competent to enforce its rulings. The Administrative Enforcement Act (<i>Verwaltungsvollstreckungsgesetz 1991 - VVG</i>, Federal Law Gazette No. 53/1991 as amended) applies (Article 22 para. 1 FMABG).</p> <p>In addition to these powers, the FMA also has powers to undertake corrective actions when a CI is in danger of failing to fulfill its obligations to its creditors, in particular with respect to the safety of the assets entrusted to it (see Article 70, Banking Act). In these cases the</p>								

FMA may issue administrative rulings (Bescheide) which:

- Completely or partly prohibit withdrawals of capital and earnings as well as distributions of capital and earnings
- Appoint an expert supervisor (normally an attorney at law or external auditor) who must prohibit the CI from undertaking any transaction which might exacerbate the danger as meant above and/or who only allows individual transactions to mitigate such danger in cases where the CI is completely or partly prohibited from continuing its business or transactions.
- Completely or partly prohibit directors of the CI from managing the CI, whereby the responsible body must re-appoint the corresponding number of directors within a month and the FMA must give its consent to these appointments in the context of the circumstances at hand.
- Completely or partly prohibit the continuation of business operations.

These administrative rulings would be effective for a limited period of time in order to avert the danger. This period might not exceed 18 months after going into effect (Article 70 para. 2 Banking Act).

Please note that in case directors of a CI do not fulfill the conditions of Article 5 para 1. Nos. b to 13 Banking Act concerning fit & properness, the FMA itself cannot directly take a supervisory measure against such a director and relieve the director out of his or her position but will have to make use of the procedure as outlined in Article 70 para 4. Banking Act. Please also see CP 11, EC 4.

A separate corrective action the FMA can undertake, is imposing a minimum capital requirement that is higher than the normal minimum capital requirement due to Article 70 para. 4a of the Banking Act. This extra capital add-on can be up to 150 percent of the minimum capital requirement. The measure is to be taken where a violation of the Banking Act leads to an inadequate limitation of the risks arising from banking transactions and operations of the CI and a proper capture and limitation of risks cannot be expected in the short term. This measure can be taken in conjunction with other measures. Other than setting these extra capital requirements, the FMA does not have the powers to directly intervene at an early stage—by prohibiting, limiting or setting other conditions of the business activities or exposures of the CI in question—when such risks are building up or are not properly captured. Please also see CP 11.

The FMA may also file for receivership proceedings according to Article 81 to 91 Banking Act (“Receivership and Insolvency Provisions”). The receivership procedure pursuant to Article 82 para. 2 Banking Act is a reorganization measure as defined in Article 2 of Directive 2001/24/EC. The receiver pursuant to Article 82 para. 3 Banking Act must be

issued a decree of appointment by the court. Please note that in receivership and bankruptcy proceedings concerning CI's, the FMA has the status of a party to the proceedings.

Except for the power mentioned above to file for receivership, the FMA has no specific powers with respect to triggering resolution. No specific powers exist concerning FMA's collaboration and cooperation with other authorities in the context of orderly resolution. Please also see CP 11 EC7.

Another corrective action the FMA can employ, is charging CIs interest in when they fail to meet certain regulatory requirements. This is laid down in Article 97 of the Banking Act. The interest charged need to be seen as a penalty for breaching certain regulatory limits. Examples are interest amounts to be paid in case the CI's level of own funds falls below its minimum level or in case the CI exceeds its large exposure limits.

The FMA can also punish CIs for various administrative offences of the CI, like a failure to notify an acquisition, the result of the election of a chairman of the supervisory board or a failure to submit certain reports. The maximum fine would be EUR 30,000 (see Article 98, para 1.).

In cases of unauthorized business activities, Article 22b to 22e FMABG grant the FMA certain tasks and powers: Article 22 para. b to d FMABG provide for a legal framework allowing the FMA to obtain the necessary information from natural and legal persons. Further, the FMA may provide information on or make public any measures or sanctions taken. Finally, the FMA can irrespective of the instigation of criminal proceedings issue a procedural order requesting the company which carries out suspicious business activities to restore the lawful situation within an appropriate period of time to be determined by the FMA. If a company requested to do so but does not comply within the period set, the FMA can order measures necessary for restoring the lawful situation, such as closing down parts of or the entire operation, by issuing an administrative ruling. (See also CP 4 EC 4.)

Concerning the actual application of these measures, the following can be mentioned:

- On one occasion in 2011, the FMA issued an administrative ruling as specified in Article 70 para. 2 Banking Act, in a case when the concerned CI was in danger of fulfilling its obligations to its creditors.
- In 2012, in one case the banking license was revoked due to Article 6 para. 2 no. 3 in conjunction with Article 70 para. 4 no. 3 Banking Act.
- On five occasions during 2011, the FMA ordered credit institutions, under threat of a coercive penalty, to establish compliance with statutory provisions within an appropriate period of time.

	<ul style="list-style-type: none"> No measures pursuant to Article 81 to 91 Banking Act (receivership and insolvency provisions) had been necessary since the establishment of the FMA. 																																
	<table border="1"> <thead> <tr> <th>Official measures pursuant to Articles 70 and 97 Banking Act 2007–2011</th> <th>'07</th> <th>'08</th> <th>'09</th> <th>'10</th> <th>'11</th> <th>'12</th> <th>Tota</th> </tr> </thead> <tbody> <tr> <td>Measures in case of danger to creditors pursuant to Article 70 para. 2 Banking Act</td> <td>0</td> <td>0</td> <td>3</td> <td>0</td> <td>1</td> <td>0</td> <td>4</td> </tr> <tr> <td>Measures to establish compliance with the statutory provisions pursuant to Article 70 para. 4 nos. 1 to 3 Banking Act</td> <td>4</td> <td>2</td> <td>27</td> <td>3</td> <td>5</td> <td>8</td> <td>49</td> </tr> <tr> <td>Charging of interest pursuant to Article 97 Banking Act</td> <td>34</td> <td>46</td> <td>51</td> <td>37</td> <td>32</td> <td>24</td> <td>224</td> </tr> </tbody> </table>	Official measures pursuant to Articles 70 and 97 Banking Act 2007–2011	'07	'08	'09	'10	'11	'12	Tota	Measures in case of danger to creditors pursuant to Article 70 para. 2 Banking Act	0	0	3	0	1	0	4	Measures to establish compliance with the statutory provisions pursuant to Article 70 para. 4 nos. 1 to 3 Banking Act	4	2	27	3	5	8	49	Charging of interest pursuant to Article 97 Banking Act	34	46	51	37	32	24	224
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Charging of interest pursuant to Article 97 Banking Act	34	46	51	37	32	24	224																										
EC7	The supervisor has the power to review the activities of parent companies and of companies affiliated with parent companies to determine their impact on the safety and soundness of the CI and the banking group.																																
Description and findings re EC7	<p>In addition to the obligation of CIs to report on a consolidated basis regularly to the FMA and the OeNB, the FMA can at any time in the interest of a continuous supervision of groups of CIs apply the measures according to Article 70 para. 1 Banking Act.</p> <p>For subsidiaries not included in consolidation, as well as mixed-activity companies and their subsidiaries, the FMA can also request from CIs and from superordinated CIs, reports exhibiting a certain form and structure (Article 70a Banking Act).</p> <p>Article 30 Banking Act deals with groups of CIs and provides detailed regulations on the companies included in consolidation and therefore falling within the scope of consolidated supervision.</p> <p>Depending on the legal structure of the superordinated enterprise, this provision differentiates between groups of institutions and financial holding groups. A group of CIs consists of an institution domiciled in Austria with subsidiaries that are themselves CIs, financial institutions, investment firms or ancillary services enterprises (Article 30 para. 1 Banking Act). See also CP 12.</p> <p>A financial holding company is defined as a legal person or a company, which is not a CI, whose main activity consists in acquiring or holding participations or, to conduct one or more of the activities set forth in nos. 2 through 12 of the Annex to the CRD; the subsidiary companies of which are either exclusively or mainly CIs, investment firms or financial institutions (Article 30 Banking Act); the rational in this assessment shall not be the number</p>																																

	<p>of subsidiary companies, but economic criteria, in particular balance sheet sum, amount of own capital and book value of the participation; the subsidiary companies of which include at least one CI or one investment firm and which is not a mixed financial holding company as defined in Article 2 para. 15 of the Financial Conglomerates Act (<i>Finanzkonglomeratengesetz—FKG</i>).</p> <p>As long as the group members are located in Austria, there are no factual obstacles for the FMA and OeNB in receiving information on the impact of non-bank group members. As regards cross-border groups, in practice FMA and OeNB are organizing supervisory colleges with other host authorities as an instrument of consolidated supervision.</p> <p>Alongside its collaboration in international organizations, the FMA also focuses on maintaining bilateral relations with foreign supervisory authorities. A key area for the bilateral contacts with sister supervisory authorities is in monitoring the activities of Austrian CIs in the CESEE region.</p> <p>Specifically, issues raised during continued supervision are discussed within the supervisory college and then brought together in an overall view, in which case the members of the college reach a joint risk assessment decision (JRAD).</p> <p>Within the scope of this coordinating role, the FMA, in the capacity of home supervisor, held a total of seven supervisory college sessions devoted to cross-border groups of CIs in 2012 (until 30 November 2012). Representatives of the competent EEA and third-country authorities as well as EBA staff members participated in the college meetings.</p>
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Assessment of Principle 1	Compliant
Comments	<p>EC 2: The FMA's mandate includes that it must consider the national economic interest in maintaining an efficient banking system and financial market stability. Taking into account the national economic interest when executing banking supervision, might endanger the primary objective to promote the safety and soundness of banks. This issue is further considered in the context of CP 2, EC 1.</p> <p>EC 6: The assessors view that a number of powers are lacking with respect to taking timely corrective actions, imposing sanctions to CI's, directly taking a supervisory measure against a director and on triggering resolution. This is further considered in the context of CP 11.</p>
Principle 2	Independence, accountability, resourcing and legal protection for supervisors. The supervisor possesses operational independence, transparent processes, sound governance, budgetary processes that do not undermine autonomy and adequate resources, and is accountable for the discharge of its duties and use of its resources. The legal framework for

	banking supervision includes legal protection for the supervisor.
Essential criteria	
EC1	The operational independence, accountability and governance of the supervisor are prescribed in legislation and publicly disclosed. There is no government or industry interference that compromises the operational independence of the supervisor. The supervisor has full discretion to take any supervisory actions or decisions on banks and banking groups under its supervision.
Description and findings re EC1	<p>The general provision on the operational independence of the FMA from any governmental or other authorities' interference is to be found in Article 1 para. 1 FMABG: "In performing its duties, it shall not be bound by any instructions."</p> <p>The reporting, supervisory and accountability system of the FMA consists of four elements, three of which (supervision by the supervisory board, supervision by and reporting requirements to the MoF and reporting to the National Assembly) are required by law and one (Internal Audit) is required by the supervisory board and is incorporated in the FMA's Rules of Procedure.</p> <p>The Supervisory Board of the FMA consists of the chairperson, the deputy to the chairperson, four additional members and two co-opted members. The chairperson, the deputy and the additional members of the Supervisory Board, except for the co-opted members, shall be appointed by the Federal Minister of Finance. The OeNB shall name persons for the function of deputy to the chairperson as well as two additional members of the Supervisory Board. In addition, the Supervisory Board shall co-opt two members named by the Austrian Federal Economic Chamber, without the right to vote. Only suitable and reliable persons who are not excluded from the right to be elected to the Austrian National Assembly may be appointed or co-opted as Supervisory Board members. This means that 50% of the voting members of the supervisory board are from the MoF whereas 50% are from the OeNB, and the MoF delivering the chair and the OeNB the vice chair. This mixed representation structure will in the assessor's view from the outset already balance the influence of either party.</p> <p>The tasks of the supervisory board are listed in FMABG, section 10 (1). These do not include tasks related to the direct execution of supervision, but rather with the business organization of the FMA. They include confirmation of the annual accounts, of the yearly finance plan, investment plan and HR plan, and of new investments during the year when this would exceed euro 75.000.</p> <p>A possible point of more direct influence is the confirmation of new staff at the second level, just below the level of the executive board, by the Supervisory Board. This risk of undue influence is however mitigated, because of the selection process which is exercised based upon needed skill and competences, rather than other considerations. Also in the</p>

interviews we had with the staff, we encountered a solely professional attitude towards their work, not influenced by political factors. However, to further mitigate this risk of undue influence by the stakeholders in the supervisory board, we recommend to have the second level staff decided upon solely by the executive board.

The presence of the industry in the supervisory board might also lead to extra influence on the activities of the Supervisory Board and consequently the execution of supervisory activities. First of all, this is mitigated because these members are chosen by representatives of the MoF and OeNB in the Supervisory Board. Secondly, they do not have voting rights in any circumstances. And thirdly, the industry has a legitimate interest since especially topics related to the budgeting of the organization are discussed, in which the industry has an interest, given their expected contribution. However, notwithstanding these factors, the industry representation in the supervisory board could impede the operational independence of the FMA. Therefore, it is recommended to create a separate industry forum or panel, not linked to the FMA's supervisory board.

The term of office for Supervisory Board members shall be five years; re-appointment shall be admissible. The function of a Supervisory Board member shall end upon the termination of office; upon resignation; or upon dismissal pursuant to Article 8 para. 4 FMABG. In the event of the second or third event a new member shall be immediately appointed or co-opted for the duration of the remaining term of office of the dismissed member; if a member named by the OeNB or the Austrian Federal Economic Chamber leaves prematurely, they shall immediately name a new member. Prior to the dismissal of a member named by the OeNB or the Austrian Federal Economic Chamber, the Federal Minister of Finance shall hear the institution concerned; however, in case of imminent danger, the Supervisory Board member concerned shall be immediately dismissed and the OeNB or the Austrian Federal Economic Chamber shall be notified thereof at the same time.

Currently, the supervisory board is composed as follows:

Delegated by the BMF	Delegated by the OeNB	Delegated by The Austrian Federal Economic Chamber
Alfred Lejsek (Chairman)	Ewald Nowotny (Deputy Chairman)	Franz Rudorfer
Gerhard Zotter	Andreas Ittner	Walter Knirsch
Gerhard Baumgartner	Friedrich Karrer	

The (voting) members of the supervisory board are appointed for the period until 31 August 2016. Given the rules laid down on the starting dates in combination with the length of the terms of the individual members of the supervisory board, normally all members of

the supervisory board would start and end their term at the same point in time, notwithstanding the situations that may temporarily arise as mentioned in section 8, points (2) and (3) FMABG. Given that the MoF will nominate the members of the supervisory board, this could be envisaged as appointments of supervisory board members along the lines of the political cycle. A staggered scheme for the starting and ending of the terms of the supervisory board members could be considered.

In addition, Article 16 paras. 1 and 2 FMABG lays down specific provisions for the oversight of the FMA by the Federal Minister of Finance. These provisions need to assure that the FMA will fulfill its legal tasks, that it will do so within the legal provisions and that it will not execute tasks beyond its remit. In the assessor's view, this framework is a typical accountability framework without any specific features.

Article 16 para. 3 FMABG describes the accountability towards the National Assembly and the MoF on an annual basis. The annual reports have to be submitted to the Finance Committee of the National Assembly, which in practice took place since the FMA's establishment in 2002. Thus, the FMA is subject to regular audits by the Austria Court of Audit (*Rechnungshof*—RH). Furthermore, the FMA might be subject to extraordinary parliamentary investigations (*parlamentarischer Untersuchungsausschuss*—UA) as it was the case in 2006. Especially this last feature is in the assessor's view an important pillar of the accountability framework, and has also been utilized in practice, as indicated.

The FMA has established an own division for Internal Audit (S2/Internal Audit). This division is directly subordinated to the Executive Board; it performs its tasks under the policies established by the Executive Board. The main duty of the Internal Audit is the ongoing and broad control of legality, order and expedience of the whole organization.

The Internal Auditor, acting as Head of Division S2, has been active since 1 March 2004. He is responsible for the drafting of an audit plan and its execution. The Internal Auditor regularly reports to the Supervisory Board.

It should be emphasized that it is important that not only regular reporting takes place to the Supervisory Board, but that it will also have an independent reporting line. We therefore recommend that Internal Audit would have direct access on topics it considers relevant.

Annually internal audit is reviewed by the bank auditor and periodically inspected by the Austrian Court of Audit. The Austrian Court of Audit review 2007 which was also mentioned in the IMF Financial Sector Assessment Program Update in April 2008, recommended for the internal audit to install a multi-year audit plan and to formulate an internal audit manual, which have been implemented. The internal audit manual contains detailed descriptions of organizational matters, responsibilities and audit processes. The Austrian Court of Audit confirmed the correct implementations of its suggestions in the follow-up-review 2009/10. In this follow-up-review, the Austrian Court of Audit also recommended to regularly control the dual-system of banking supervision by FMA and OeNB by means of

joint audits by both internal audit teams of the organizations. Also this topic was implemented in the last year. In the assessor's opinion, this organizational set up and implementation of the audit function of the FMA, both internally and externally, provides a sufficient framework. However, we have not been able to also assess the execution thereof as well as the actual scope of the audit activities, which should also include the FMA's risk management and compliance function.

In executing the law, the FMA and its staff are not bound by any governmental instructions. The Federal Minister of Finance has to exercise the oversight of the FMA within the limits of the legal framework of Article 16 FMABG. These rights do not include the right to issue instructions concerning the fulfilling of the duties by the FMA, with the only exception of Article 16 para. 4 FMABG. Pursuant to Article 16 para. 4 FMABG, the Federal Minister of Finance is authorized to commission the FMA with conducting on-site inspections. The Federal Minister of Finance does not have any influence on the conclusions of these audits or on the following legal measures, which have to be taken by the FMA, if such measures prove necessary. Effectively, this right of the MoF could potentially set the priorities for undertaking on-site inspection activities. So it should be assured that only in very rare circumstances this right is being used based upon clear supervisory considerations, because otherwise this could lead to undue influence. In the assessor's view, until now, this power has not lead to undue influences by the FMA. With a view to Article 16 para. 4 FMABG, the Federal Minister of Finance has commissioned so far one audit in 2006. The Executive Board thereon reported without any delay to the Supervisory Board. Upon completion, both the audit measures and the audit results were reported to the Federal Minister of Finance and to the Supervisory Board by the Executive Board. Since then the Federal Minister of Finance has not commissioned an audit according to Article 16 para. 4 FMABG. At a minimum it is recommended to clarify ex ante based upon which supervisory considerations and criteria the MoF could make use of Article 16 para 4.

Several provisions in the Banking Act stipulate that the FMA shall determine by regulations more detailed rules and must obtain the consent of the Federal Minister of Finance prior to issuing such a regulation. All other governmental instructions to the Executive Board or any other member of the staff of the FMA concerning the fulfilling of the duties by the FMA are illegal, void by law and must not be complied with. The MoF's role hereby is especially to determine whether the regulation set are within the mandate given and would not lead to activities by the FMA that are outside its scope. The regulations the assessor's have observed, are indeed on topics that further specify certain rules based upon the applicable legal framework that provided such mandate. To further improve the operational independence of the FMA on its regulatory function, the assessors recommend to have clarified ex ante that the MoF will always give its consent on a proposed FMA regulation, in case this regulations would fall within the scope of its mandate.

The MoF has the right to receive all the information from the FMA that in its view is necessary to effectively oversee the operations by the FMA. In practice, within the legal

	<p>framework of Article 16 FMABG, there is indeed a regular contact between the FMA and the Federal Minister of Finance. In case the frequency would be too high, this may have adverse effect on the independent operations of the FMA. In this context, we understood that only few queries for information have been made by the Federal Minister of Finance, mainly in case of complaints against the FMA. We recommend to consider a more limited and focused right for the MoF for receiving information in the context of overseeing the operations by the FMA, thereby fostering the independence of the FMA.</p> <p>In CP 1, the assessors already noted that FMA's objectives as defined by law prescribe that it must consider the national economic interest in maintaining an efficient banking system and financial market stability, when monitoring compliance with the provisions of the Banking Act. Taking into account the national economic interest when executing banking supervision, might endanger the primary objective to promote the safety and soundness of banks. It might also endanger its operational independence. In CP 1 we have mentioned that in practice the assessors have not identified any circumstances whereby the national economic interest has impeded the FMA's supervisory objectives. However, given its potential negative influence on FMA's operational independence, we recommend to clarify that considering the national economic interest might never impede FMA's supervisory considerations and might consequently not in any way negatively effect its operational independence.</p> <p>With regard to operational independence one can also mention the state commissioners which are appointed by the MoF and have a seat in the supervisory board of the CI's supervised with total assets exceeding euro 100 million, without a right to vote. We have been informed by the banks we visited that indeed they do not actively participate in possible decision making, but rather comment on the applicable banking regulation and if necessary point on possible breaches of banking law. The state commissioner would report about such breaches to the FMA. The FMA is independent in its subsequent decision making. From our visit to the MoF we understood that also within the MoF Chinese Walls exist with other departments, which will hinder the exchange of information. Please also see CP 8, EC 2.</p> <p>Also the way the authority is funded is of importance in the context of its independence. The main provision for the funding of the FMA is Article 19 FMABG. The FMA is mainly funded by the supervised entities which have to pay compensation for supervision costs. The Federal Government shall contribute a fixed amount of EUR 3.5 million to the FMA each financial year.</p>
EC2	<p>The process for the appointment and removal of the head(s) of the supervisory authority and members of its governing body is transparent. The head(s) of the supervisory authority is (are) appointed for a minimum term and is removed from office during his/her term only for reasons specified in law or if (s)he is not physically or mentally capable of carrying out the role or has been found guilty of misconduct. The reason(s) for removal is publicly disclosed.</p>

<p>Description and findings re EC2</p>	<p>Articles 5 and 7 FMABG set out the appointment and termination procedure for the Executive Board.</p> <p>The Executive Board of the FMA shall consist of two members who shall be appointed by the Federal President upon the proposal of the Federal Government; re-appointment shall be admissible. The term of office shall be five years. The term of office was amended in 2007 (Federal Law Gazette no. 108/2007). Before that it was three years in the case of a first time appointment as a member of the Executive Board and five years in case of re-appointment. According to the legislative explanations the term of office was amended upon the recommendation of the Austrian Court of Audit (<i>Rechnungshof</i>) in order to enhance the independence of the FMA, which view the assessors share.</p> <p>The assessors also have been informed that in the selection procedure of the members of the executive board the requirements are primarily based on professional experience and competence. More specifically, only such persons who are experts in at least one of the areas of supervisory activity listed under Article 2 FMABG and who are not excluded from the right to be elected to the National Assembly may be appointed as members of the Executive Board. They may exercise their function only on a full time basis. The details on the appointment procedure are laid down in Article 5 para. 3 FMABG. Prior to the appointment of members of the Executive Board, the Federal Minister of Finance shall issue a call for job tenders; the Staffing Act 1998 (<i>Stellenbesetzungsgesetz 1998</i> Federal Law Gazette no. 26/1998), shall be applied.</p> <p>Based on the results of the tender procedure, the following have to name persons from the group of applicants for the proposal of the Federal Government:</p> <ul style="list-style-type: none"> • for the appointment of the first Executive Board of the FMA, the Federal Minister of Finance and the OeNB shall name one person each; • for any further appointment of members of the Executive Board, the institution that named the Executive Board member whose termination of office (Article 7 FMABG) requires the appointment of a new Executive Board member shall name one person. <p>The Federal Minister of Finance shall be responsible for filing a motion to the Federal Government to adopt a resolution on the appointment of the persons to be proposed by it; with respect to the Executive Board member named by the OeNB, he shall be bound by the OeNB proposal.</p> <p>According to Article 7 para. 1 FMABG, the function of an executive board member of the FMA shall end upon the termination of office; with the Supervisory Board's consent to the resignation for substantial reasons; upon the dismissal pursuant to para. 3.</p> <p>According to Article 7 para. 3 FMABG the Federal Minister of Finance shall recall a member of the Executive Board if a substantial reason exists, such as in particular:</p>
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- an appointment condition is no longer fulfilled;
- it subsequently emerges that an appointment condition had not been fulfilled; or
- gross breach of duty; or
- permanent incapacity to work or if the member concerned is absent from work for a period of more than half a year due to illness, accident or an infirmity; or
- if breaches of duty have not or not lastingly been eliminated despite supervisory measures taken pursuant to Article 11 para. 2 FMABG.

The Federal Minister of Finance shall hear the OeNB prior to the dismissal of a member it named; however, in case of imminent danger, the Executive Board member concerned shall be immediately dismissed and the OeNB notified thereof at the same time. The duties of the Executive Board are regulated in Article 6 FMABG.

The reasons for dismissal of members of the Executive Board (Art. 7 para 3. FMABG) by the MoF are subject to judicial review by the Austrian Constitutional Courts and/or the Supreme Administrative Court. In case a decision of a dismissal would be contested, the decision would not be suspended by virtue of law (Art. 85 VfGG; Art. 30 VwGG). Upon request of the applicant, however, the Court in question is to issue a court order in favour of the applicant with suspensive effect, unless it would be contrary to mandatory public interest and after consideration of all interests affected.

There is no legal obligation to publicly disclose the reasons for the dismissal of a member of the Executive Board. Upon request the functionaries entrusted with Federal duties (i.e., Federal Minister of Finance), they have to provide information on issues in their sphere of competence to the National Assembly, if this information is not subject to professional confidentiality and in case of a dismissal conducted by the MoF, information on the case is subject to the general obligation of all governmental entities to give information according to the "Auskunftspflichtgesetz" (duty of information act).

The legal obligation mentioned above is seen as an important feature to ascertain that no undue influence is exercised in such a situation. We therefore recommend to introduce such a legal obligation.

Practically, Andreas Grünbichler and Kurt Pribil were appointed to serve as members of the FMA's Executive Board from 22 October 2001 to 21 October 2004. On 22 October 2004 Kurt Pribil was appointed to serve as member of the Executive Board from 22 October 2004 to 21 October 2009 and he was re-appointed on 22 October 2009 to serve as member of the Executive Board from 22 October 2009 to 21 October 2014. When Andreas Grünbichler left the Executive Board with the consent of the Supervisory Board for important personal reasons pursuant to Article 7 para. 2 FMABG, Heinrich Traumüller was appointed as a member of the Executive Board, at first for an interim period from 22 October 2004 to

	13 February 2005, and then from 14 February 2005 to 13 February 2008, followed by Helmut Ettl, appointed as a member of the Executive Board from 14 February 2008 to 13 February 2013. As of 14 February 2013, Helmut Ettl has been reappointed, whereas Klaus Kumpfmüller has been newly appointed for 5 years.
EC3	The supervisor publishes its objectives and is accountable through a transparent framework for the discharge of its duties in relation to those objectives. ¹⁰
Description and findings re EC3	<p>In accordance with Article 16 para. 3 FMABG, the FMA submits a report on the past calendar year to the Finance Committee of the National Assembly and the Federal Minister of Finance within four months after the end of each calendar year. The report contains the FMA Mission Statement, data on the financial market development, the FMA's role in international developments, legal developments, operational supervision for all supervisory areas, an overview of the FMA's legal and enforcement affairs as well as the strategic goals and perspectives for the near future. These annual reports are published via the FMA website in German and in English language. (http://www.fma.gv.at/en/about-the-fma/publications/fma-annual-reports.html)</p> <p>Objectives are shared with the public on a yearly basis by means of the annual report of the FMA.</p>
EC4	The supervisor has effective internal governance and communication processes that enable supervisory decisions to be taken at a level appropriate to the significance of the issue and timely decisions to be taken in the case of an emergency. The governing body is structured to avoid any real or perceived conflicts of interest.
Description and findings re EC4	<p>In handling official activities related to supervision, the FMA, as far as possible, draws on analysis and inspection results as well as the results of the expert opinions prepared by the OeNB during model approval procedures, in addition to using information from third parties (e.g. bank auditors) or from the respective CI. This collaborative setup calls for intensive, timely coordination between the two institutions.</p> <p>A single point of contact (SPOC) principle, by which one person on expert level within each of the two institutions is appointed as a contact for a given CI was introduced in the course of the reform of the Austrian supervisory framework in 2008. The FMA SPOCs and the correlating OeNB SPOCs exchange information frequently and are thus a key communication bridge between the two institutions. The SPOCs' tasks include harmonizing internal positions and obtaining authorizations of analysis (OeNB SPOC) or of supervisory action (FMA SPOC), scheduling and exercising appointments with CIs, contacting experts for special issues, coordinating investigations, exchanging information with other supervisory</p>

¹⁰ Please refer to Principle 1, Essential Criterion 1.

bodies internationally and conducting national as well as international research. Moreover, the SPOC serves as the first contact for urgent matters related to supervision. The assessors have been informed that for all supervised (groups of) entities SPOCS have been allocated by both institutions, so that on an ongoing basis staff would know with whom to interact. This is also facilitated by shared IT tools, that provide staff persons from both organisations access to all information concerning an individual institutions, whereas all relevant information to undertake supervision is stored therein, including eg short memo's or phone calls with the institution. The assessors have spoken to some of the SPOCS and indeed have the view that this mechanism for operational coordination of day-to-day work operates adequately. For their part, CIs may—additionally to the CIs' management, who serves as primary point of contact to the supervisor—also appoint a SPOC as a first contact and communication partner for the FMA and the OeNB and as a hub for prudential issues. When visiting the banks, we have also spoken to some SPOCS from the CI's who all indicated to be satisfied about the contacts. Also no comments were received from the banking industry on a possibly lack of coordination or slow decision making between both organisations involved in the process.

Also, the established fora in which basic prudential issues are coordinated between the FMA and the OeNB, namely the middle management-level forum (*Abteilungsleiterforum*—ALF) and the senior management-level coordination forum (*Kooperationsforum*—KOFO), were supplemented by a bank forum (*Einzelbankforum*—EBF) which provides a platform for handling issues at the individual CI level and ensures that all relevant facts and perspectives will be taken care of in the decision making process. This forum also ensures that broad agreement is reached on the approach chosen (at the middle or senior management level, depending on the issue). Also this reconciliation process is supported by a database, the joint information system. Various reporting data, relevant information available from the FMA's supervisory activities as well as data and results of the OeNB's analyses are filed in this database.

Although these structures might be seen as quite complex, we have been informed by the various staff members we interviewed, that the process works adequately and is effective. In the assessor's view they are also necessary, given that two independent organisations work together within one supervisory process, whereby the OeNB undertakes the technical supervision and the FMA the decision making.

Without frequent coordination of views and decision making at every level of both organizations and between those levels, there would be a risk that the supervisory process would become inefficient and ineffective. Also the high level of automation helps in this respect, whereby all supervisory information is shared amongst all staff members involved, with the strategy to store all information electronically and also provide workflow functionality that can further facilitate the effective coordination and decision making.

For more information on the different internal committees, please refer to CP 8, EC 5.

	<p>Ultimately, supervisory decisions are taken at the level of the FMA's executive board. The rules of procedure ('Geschäftsordnung') of the FMA's executive board governs at an executive level which matters, processes and tasks require the approval by the executive board and the requirement for two signatures of both of the two executive board members. The approval by the executive board takes place in the semi-monthly board meetings and—in urgent cases—can also be made in the way of a circular resolution. Excluded from decision-making in the board meeting are: the approval of the annual inspection plan of internal audit, decisions about individual personnel matters and the correspondence concerning legal supervision of the FMA (§ 16 FMABG), as well as the approval of holiday-, seminar- and business trip-applications of staff-, division- and business unit managers, which occur outside the board meeting. It might be that on an executive level there are different views between the FMA and OeNB. In as far with regard to individual banks, these would be discussed in the so-called bank forum, that has as objective to reach a common understanding on the supervisory measures to be taken. This cooperation however, fully respects the ultimate responsibilities of the OeNB and FMA for fact-finding and decision-taking respectively, whereby final decisions are made and legal enforcement is done by the FMA. Concerning decision making by the board of the FMA when there are divergent views, no specific rules of procedures have been agreed upon. So the risk exist, that in case the FMA's executive board members do not agree, a decision cannot be taken and would be postponed. However, we were informed that such cases are very unlikely and in case one would disagree, the MoF could exercise its power as stated in Art.16 to require the FMA to fulfill its legal obligation in exercising its supervisory tasks.</p> <p>The Financial Market Committee (<i>Finanzmarktkomitee</i>—FMK) is established due to Article 13 FMABG at the BMF to foster cooperation and the exchange of views, and to provide advice on financial market and financial stability issues. The FMK has one member from each the FMA, the OeNB and the BMF and meets at least once every quarter. The FMK discusses national legal and overall financial market policy issues, and Austrian positions on drafts of European legislation.</p> <p>Within the FMK, a contingency plan was established containing all relevant high-level contact details for timely decision taking (including out of office contact details). Moreover, the FMK also has a coordination role during financial crises; in this function, it acts as the domestic standing group established in line with the 2008 Memorandum of Understanding (MoU 2008) and organizes regular meetings of the Cross-border Stability Group (CBSG). The latter was established in 2011 based on the MoU 2008 for the region Austria, Bulgaria, Czech Republic, Hungary, Slovakia and Slovenia to discuss crisis management-related issues. The assessors did not specifically assess the functioning of this FMK, given its primarily policy oriented tasks.</p>
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EC5	<p>The supervisor and its staff have credibility based on their professionalism and integrity. There are rules on how to avoid conflicts of interest and on the appropriate use of information obtained through work, with sanctions in place if these are not followed.</p>
Description and findings re EC5	<p>One strategic goal of the FMA is to increase the quality of supervision and thus raise awareness for supervisory initiatives. To do this, the FMA intends to intensify talks with the industry, auditors, authorities and parliamentarians and to institutionalize a dialogue with judicial/enforcing institutions. In the talks the assessors had with the banks, the banks indicated that in their view the quality of supervision and thoroughness of their actions have increased. Examples include the quality of the findings of the model approvals, the findings following on-site examinations in eg market risk and the actions undertaken when a breach of law has been detected.</p> <p>The FMA's Executive Board members and staff members regularly attend events in a capacity as speakers or as discussion participants in order to communicate the FMA's duties and goals, as well as technical and specific issues, to selected target groups. At the same time, the FMA itself organizes a number of events on technical issues (e.g. BSCEE-Conference 2012 for Banking Supervisors from CEE).</p> <p>A focus of FMA's staffing strategy lies on the recruiting of highly specialized staff. The FMA has developed a recruiting process which aims at identifying the most fitting applicant for a certain position in respect to his/her education and professionalism as well as to his/her personal background. The FMA is an equal opportunity employer avoiding any kind of discrimination.</p> <p>Every new employee has to provide the FMA with an extract from the register of convictions proving that he/she has no criminal records ("<i>Strafregisterauszug</i>").</p> <p>The FMA expects that the people who work on its behalf act with integrity and with responsibility. It relies on its staff's ability to determine what course of action is not compatible with the tasks of a supervisory authority. The FMA has developed a compliance code which has to be signed and complied with by all employees including the members of the Executive Board and of the Supervisory Board. This compliance code is as stringent as comparable compliance manuals of the companies supervised by the FMA and meets all national and international criteria. This compliance code enshrines in writing the core principles that must be taken into account both in the conclusion of legal transactions and in conduct in relations with the general public. It contains ethical standards covering points such as proper conduct in general and regarding supervised entities in particular, invitations and gift taking etc. Furthermore, this compliance code contains rules on (insider) dealings with financial instruments of supervised companies by employees of the FMA and conflicts of interest in general.</p> <p>The Compliance Code is published on the FMA website in German language</p>

	<p>http://www.fma.gv.at/typo3conf/ext/dam_download/secure.php?u=0&file=64&t=1355151035&hash=f706b49ed3b9466940bf42f284131e77).</p> <p>The Compliance Officer is responsible to implement the Compliance Code. He is directly subordinated to the Executive Board; and performs his tasks under the policies established by the Executive Board. If the Compliance Code is not followed, sanctions are taken by the Executive Board and the human resources division, depending on the infringement. The Compliance Officer indicated that he did not have a reporting line to the supervisory board, for instance on compliance topics relating the Executive Board, which might however be considered.</p>
EC6	<p>The supervisor has adequate resources for the conduct of effective supervision and oversight. It is financed in a manner that does not undermine its autonomy or operational independence. This includes:</p> <ul style="list-style-type: none"> (a) a budget that provides for staff in sufficient numbers and with skills commensurate with the risk profile and systemic importance of the banks and banking groups supervised; (b) salary scales that allow it to attract and retain qualified staff; (c) the ability to commission external experts with the necessary professional skills and independence, and subject to necessary confidentiality restrictions to conduct supervisory tasks; (d) a budget and program for the regular training of staff; (e) a technology budget sufficient to equip its staff with the tools needed to supervise the banking industry and assess individual banks and banking groups; and (f) a travel budget that allows appropriate on-site work, effective cross-border cooperation and participation in domestic and international meetings of significant relevance (e.g., supervisory colleges).
Description and findings re EC6	<p>According to Article 14 para. 1 FMABG the Executive Board of the FMA is authorized by the FMA's Supervisory Board to hire the required number of personnel to fulfill the FMA's duties. Article 17 para. 1 FMABG stipulates that the Executive Board of the FMA has to draw up a financial plan including a separate staff plan each business year. The financial plan needs the consent of the FMA's Supervisory Board. The staff plan determines the possible numbers of employees for the next business year. Thus, the number of employees can be adjusted to necessities each year.</p> <p>As of 31 December 2010, the actual number of employees was 282,25 full-time equivalents (FTE). For the years 2011 and 2012, the Supervisory Board authorized the recruitment of up to 29,5 additional employees to reach a total of 326,85 FTE. The development of the human resources has shown a regular increase since 2003, from about 165 fte to 327 fte in 2012.</p>

Year	FTE
2002	136.8
2003	164.7
2004	195.1
2005	196.2
2006	199.98
2007	216,65
2008	219,20
2009	275,25
2010	282,25
2011	308,38
2012	326,85

One of the main goals of the introduction of the new FMA Salary Scheme in 2009 was to attract and retain qualified staff. In this new salary scheme, which has been decided upon autonomously by the FMA, employees are allocated to one of four salary levels (A, B, C or D) according to their level of qualification (function type) and can move up the salary scale annually at first and every two years subsequently. Additionally, two career paths—management careers and professional careers—are supported through a system of staggered bonuses. Employees must meet clearly defined criteria such as positive appraisals, participation in training or passing specific exams in order to move from one function type to another or to obtain a higher level within the professional career path.

In addition, the possibility to pay a market value allowance came into effect with the new salary scheme. This vehicle aims at attracting highly qualified professionals and can be used at the discretion of the directors in specific cases. This market value allowance is decreasing at half of the amount of the regular annual advancement and will thus be totally depreciated in the long run.

We have been informed by the industry that indeed as of the use of the new salary scheme, in their view the FMA is seen as a more attractive employer and that they are able to attract staff with other competencies and qualities. Also the new Akademie (see hereafter) helps in their view very much, which provides for an attractive extra education which is valuable in the industry.

As a means of retaining qualified staff, employee turnover is monitored actively and in

depth analysis is conducted in divisions with a higher than average turnover. This is to verify the causes and to take appropriate measures. In the assessor's view, the turnover rate is indeed an important indicator and in general for the last years on good levels.

The FMA is not commissioning external experts to conduct supervisory tasks on a regular basis. However, the FMA may do so in exceptional circumstances. The assessors were informed that for the last years, just two instances were known where very specialized staff has been commissioned.

There is an budget for the regular training of staff which is approved annually by the Supervisory Board. Given the activities that are funded by this budget, the assessors view this budget is sufficiently high. We didn't however assess the training budget itself.

The range of training and career development offered by the FMA is based on the following pillars:

- University Programme in Financial Market Supervision, offered in conjunction with the OeNB
- Management Curriculum
- FMA Academy
- International seminars, organized by supervisory authorities within and outside the EU
- Third-party seminars offered on an independent basis

Especially the first pillar and third pillar should be mentioned, since the industry mentioned it more than once as an important factor for the FMA to attract good personnel.

The University Programme in Financial Market Supervision represents the upgrading to university status of the previous existing in-house Financial Market Supervisor course, offered by the Academy of Supervision which is run jointly by the FMA and the OeNB. As a next step, starting in 2013, this University Programme in Financial Market Supervision will be recognized as specialization within an MBA programme.

A successful participation in the management curriculum is a prerequisite for reappointment as an executive under the FMA salary scheme (appointment period of five years). The programme is especially designed for executive functions such as Head of Division, Deputy Head of Division and team leader. Each training module comprises pre-learning, training and revision phases. The underlying concept is a values-based understanding of management that reflects the FMA mission and is explored in depth in special modules according to the specific target group. Especially that the condition of a successful participation is set on this program to advance internally to a new management level, is appreciated by the assessors.

The range of training offered by the FMA Academy consists both of basic seminars to help integrate new employees and courses in social and methodological skills, as well as

	<p>language and specialist training. Since 2009 the Academy's offerings have been closely integrated into the FMA salary scheme, which defines a specific range of training for each target group. Also this link between the training that have to be followed and the salary scheme, is in the assessor's view a good initiative to undertake permanent education and maintain the needed level of knowledge within the organization.</p> <p>The FMA actively participates in the annual training programmes of the ESA's and our employees take part in many seminars offered by the European Supervisory Authority (ESA) system without any budgetary restraint. The FMA's employees took advantage of these seminars, which are especially tailored to the needs raised by working in supervision and are available exclusively to employees of the Member States. These trainings are also by the assessors seen as an important feature to provide the foundations for a successful cooperation with foreign supervisory authorities, which is of special importance in the Austrian context, given their need to cooperate closely with foreign supervisors. Additionally, FMA employees are attending seminars offered by Non-EU Supervisors. Study visits and staff exchange is organized on an individual basis.</p> <p>The FMA's and OeNB's IT tools to effectively supervise the industry are a priority, aimed at a state-of-the art infrastructure. This is achieved by the use of modern hardware and software. Both for off-site analysis and on-site examinations IT-tools are available, as well as an easily accessible central credit register. Relevant data is available in time. With regard to data transmission there is a special emphasis on the security aspect. Furthermore, the FMA is developing specific software programmes for supervisory needs. The most important IT systems used have been presented by the OeNB and FMA to the assessors. Indeed, the assessors view is that the IT platform used are well-advanced. This also holds for the extensive IT-use which is made of the Central Credit Register.</p> <p>For many years the FMA's employees have been actively participating in supervisory colleges and other international and domestic meetings. The staff of OeNB conducts on-site inspections in accordance with an annually approved inspection plan. The assessors have discussed with the OeNB whether it has sufficient staff to undertake its off-site and on-site supervisory activities in the context of its task to undertake technical banking supervision. The assessors have not been informed of any specific problems in this area, both with respect to the available number of staff as well as on the needed expertises. The assessors however, did not undertake a review of the annual planning in terms of planned supervisory activities and needed human resources. Additionally the supervisory staff takes part in cross-border cooperation mainly with authorities from the CEE-region. Given the volume of the fully fledged colleges and the activities undertaken therein, the assessors assume that sufficient funds are provided for an active participation in cross-border cooperation and other related meetings. The assessors however, did not assess the budgets themselves.</p>
EC7	As part of their annual resource planning exercise, supervisors regularly take stock of existing skills and projected requirements over the short- and medium-term, taking into

	account relevant emerging supervisory practices. Supervisors review and implement measures to bridge any gaps in numbers and/or skill-sets identified.
Description and findings re EC7	<p>As part of the FMA's annual appraisal interviews supervisors and their directors assess their existing skills and plan for possible further education - if needed - to reach future requirements.</p> <p>Every year the FMA's projected requirements and needs for supervision are assessed by directors of every level. In a second step the FMA assesses the present skills of the FMA's supervisors. The assessment of skills is then set against the projected requirements on an aggregated basis by the heads of division. As a result of this gap-analysis specific trainings and seminars are developed in collaboration with the human resources-division (HR). These trainings will then be provided for either the management or the professional career paths. The appraisal interview as a major component of HR development was adapted in 2010 with regard to performance assessment. Performance assessment is based on the three following criteria:</p> <ul style="list-style-type: none"> • Specialized skills and knowledge • Personal and social skills = key success skills • Achievement of objectives <p>In addition to the annual appraisal interviews the FMA introduced mid-year appraisals in 2010 to further strengthen the FMA's process of achieving annual goals and objectives.</p> <p>In the context of its HR planning, the FMA assess in detail the consequences of important internal and external developments for the planning of supervisory activities and needed HR capacity in the coming year. Based upon this assessment of next year's activities, an HR capacity plan is developed, linked with next year's budget.</p> <p>The OeNB has a comparable system in place for its HR planning, development and evaluation. In addition, the assessors have been informed that both the FMA and OeNB would also undertake multi-year planning exercises.</p>
EC8	In determining supervisory programmes and allocating resources, supervisors take into account the risk profile and systemic importance of individual banks and banking groups, and the different mitigation approaches available.
Description and findings re EC8	Central is that the FMA and the OeNB jointly have a yearly audit plan. The central provision is Article 70 para. 1a to 1d Banking Act. Referring to Article 70 para. 1b Banking Act, the FMA and the OeNB must jointly define an audit plan for each upcoming calendar year. The audit plan must take the following into account: audits of system-relevant credit institutions; an appropriate frequency of audits of non-system-relevant institutions; resources for ad-hoc audits; thematic focuses of audits; the review of measures taken to remedy the defects identified.

	<p>The audit plan must define the focuses of audits and audit start dates for each specific institution. Where the OeNB determines that an on-site inspection is necessary in order to fulfill the criteria pursuant to items 1 to 5 above and such an on-site inspection is not defined in the joint audit plan, the OeNB is authorized and obliged to request that the FMA issues an additional audit engagement.</p> <p>According to Article 70 para. 1b Banking Act the OeNB is authorized to carry out on-site inspections pursuant to Article 70 para. 1 no. 3 for macroeconomic reasons without an audit engagement from the FMA, if the audits defined in the audit plan pursuant to Article 70 para. 1b Banking Act or other FMA audit engagements are not affected. The OeNB must inform the FMA of such inspections and indicate the reasons for the inspections by the time they begin.</p> <p>FMA and OeNB design annually, based on Article 70 para. 1a to 1d Banking Act, the on-site inspection plans. These plans follow a risk based approach and aim at employing the resources available in the most effective way. The off-site analysis follows a risk-based approach as well. The intensity of the analysis depends on the systemic risk of the CI but also on the individual risk profile of the CI. Both of these aspects are taken into account.</p> <p>The assessors have received the audit plan that indeed reflects the most important supervisory areas. In addition we have been given an overview of the activities per type of institution for both on-site and off-site. Besides this yearly planning cycle, the assessors recommend to consider developing a multi-year planning as well.</p> <p>For more information, we refer to CP 8, especially EC1 and EC2.</p>
EC9	<p>Laws provide protection to the supervisor and its staff against lawsuits for actions taken and/or omissions made while discharging their duties in good faith. The supervisor and its staff are adequately protected against the costs of defending their actions and/or omissions made while discharging their duties in good faith.</p>
Description and findings re EC9	<p>The Austrian legal system of public liability, which is generally defined in Article 23 Federal Constitutional Act (<i>Bundes-Verfassungsgesetz - B-VG</i>) implies that the Federal State is liable for all damages which the organs acting on its behalf in execution of the laws have culpably inflicted on whomsoever by illegal behavior.</p> <p>However, ArticleArt. 23 of the Federal Constitutional Law (B-VG) in its wording and “principles” as well as the detailed provisions in federal laws (AHG and FMABG) make a distinction between “culpable” behavior (Art. 23 para. 1 B-VG, Art 1 para. 1 AHG, Art. 3 para. 1 FMABG) and acts of “intent” or “gross negligence” (Art. 23 para. 2 B-VG, Art. 3 para. 1 AHG, Art. 3 para. 3 FMABG).</p>

The liability of the FMA and its staff is explicitly regulated in Article 3 FMABG.

Para. :1 The Federal Government shall be liable pursuant to the provisions of the Amtshaftungsgesetz (AHG; Liability of Public Bodies' Act), Federal Law Gazette No. 20/1949, for damage caused by the FMA's bodies and employees in the enforcement of the federal acts specified under Article 2. Damage as defined in the present provision is such that was directly caused to the legal entity subject to supervision pursuant to this federal act. The FMA as well as its employees and bodies shall not be liable towards the injured party.

Given the legal distinction between the functions of "statutory auditors appointed by the companies subject to supervision" (Art. 3 para. 5 FMABG) and the calling-in of an external expert (Art. 70 para. 1 no. 2a BWG) by an individual mandate, in both cases the issuance of a "separate order" (e.g. mandate for examination) is essential to constitute the performance of supervisory duties on behalf of the FMA. Otherwise the statutory auditor is not deemed a body of the FMA but acting in private capacity.

Article 3 para. 5 FMABG was inserted in the FMABG in 2005 (Federal Law Gazette No. 33/2005) after the Austrian Supreme Court had ruled that a bank auditor is to be regarded as a body of the Federal State when he is charged with supervisory tasks (OGH, 23 March 2003, 1 Ob 188/02g). This—in combination with the Court's regular ruling that the Banking Act protects third party interests—implied that if the bank auditor acts culpably and violates the law the Federal State is liable towards third parties for damage caused by his behavior. This ruling led to a legal uncertainty which was clarified by Article 3 para. 5 FMABG.

At the same time this law clarifies the liability of the Federal State in accordance with the AHG for damages caused by the FMA's bodies and employees while enforcing the federal acts within the competences of the FMA as laid down in Article 2 FMABG.

The financial liability for the performance of the duties of the FMA has been put on the Federal State solely for reasons of legal certainty, financial capacity and full accordance of the principles in Art. 23 B-VG with the implementing federal laws (AHG and FMABG). Meanwhile the Supreme Court (OGH 07.03.2006, 1 Ob 257/05h) however stated that the FMA as such (although being a public-law institution and exempt from instructions by a constitutional provision) does not qualify as a possible bearer of public liability (Rechts-träger) at all, because it has—unlike the Federal State, the Federal Lands, municipalities and self-governing bodies—no self-governed sphere of sovereign action (apart from the execution of federal laws assigned by the FMABG).

The FMA as well as its employees and bodies are not liable towards the injured party (Article 3 para. 1 last sentence FMABG). If the Federal State reimburses the damages it is entitled to demand reimbursement from the FMA's bodies or employees according to the provisions of the AHG.

The bodies of the FMA will have to reimburse the Federal State for damages it paid if they

have acted with gross negligence or intentionally (Article 3 para. 2 AHG). Liability for the discharging of duties in slight negligence is excluded.

Article 3 para. 2 FMABG explicitly stresses that the FMA has a certain administrative discretion in executing its duties by stating that “the FMA shall take any and all supervisory measures which are necessary, expedient and appropriate in each case after a due assessment of the circumstances. To this end, it shall take care to maintain financial market stability.” According to the explanatory notes to the amending Act of 2005 this aims at reducing the public liability of the Federal State.

When the competences of the FMA were extended in 2006 to combating unauthorized business activities (Article 22b to e FMABG), Article 22e FMABG was inserted stating that “by enforcing Articles 22b to 22d, the FMA acts in the public interest.” This implies a limitation of the liability of the Federal State regarding damage incurred to third persons when executing these new powers. After the IMF Financial Sector Assessment Program Update in April 2008 the second sentence of Article 3 para. 1 FMABG was inserted in the FMABG (Federal Law Gazette No. 136/2008) in 2008, clarifying that the Federal Government shall not be liable for damage indirectly caused to third parties, who were not subject to supervisory activities by the FMA. It has to be noted that this limitation of liability must not have retroactive effects according to the Austrian law and thus is not applicable to facts that occurred before the date of entry into force of the provision.

Following the explanations of the Federal Government to the amendment of Art. 3 para. 1 in 2008 (682 BlgNR 23. GP), public liability of the Federal Government remains untouched vis-à-vis all (licensed) supervised entities as well as other (unlicensed) legal persons or natural persons, against whom the FMA can directly execute supervisory powers. However the scope of public liability in special cases is subject to the ruling of the civil courts.

In accordance with the Liability of Public Organs Act (*Organhaftpflichtgesetz—OrgHG*) the bodies of the FMA are liable to the FMA also for slight negligence expect for excusable failures (Article 2 para. 2 OrgHG). The staff of the FMA is equally liable to the FMA for slight negligence, however according to the applicable rules of the Liability of Employees Act (*Dienstnehmerhaftpflichtgesetz—DNHG*) several circumstances have to be taken into account such as the scope of responsibility regarding the duties, level of education of the employee, danger of damaging and possibility of mitigation of damages (Article 2 para. 2 DNHG). Excusable failures neither imply liability for employees (Article 2 para. 3 DNHG). In this regard no changes in the law have been made over the past four years.

Sharply to be distinguished from the reimbursement scenario, the OrgHG is only applicable for damages that a natural person (body) has **directly** inflicted to the bearer of public liability (Rechtsträger) on whose behalf he is acting in the execution of his assigned sovereign duties / powers. If the natural person (body) does not act in execution of the laws but in private capacity, only the DNHG applies. The bodies and staff of the FMA and the OeNB (unlike the MoF) are not directly involved in dealing with the facilities, assets and

fortune of the bearer of public liability (Rechtsträger) on whose behalf they are acting in the execution of their assigned sovereign duties / powers. Therefore the OrgHG hardly seems applicable. Nevertheless the rules of the OrgHG are very similar to the DNHG in the private economy.

According to Article 14 para. 3 FMABG the FMA shall provide for appropriate legal protection of its employees entrusted with supervisory activities in the event that claims for damages are made against them as a consequence of their supervisory activities.

According to the explanatory notes to the FMABG, all employees of the FMA entrusted with supervision matters shall exercise their functions free from personal financial risks.

The provision demands adequate precaution and reasonable coverage of financial risks from compensation claims, in particular by a moderate insurance contract.

To this end the FMA has concluded a liability insurance contract (*Haftpflichtversicherung*) on behalf of the FMA, the Executive Board, the staff and other persons who are deemed bodies of the FMA. The FMA does not bear any retained amount upon own risk (*Selbstbehalt*). The FMA is insured against risk concerning all duties it has to perform concerning enforcement of the supervisory acts. The insurance covers the satisfaction of rightful claims as well as the defense against unrightful claims of third parties. It does not cover claims arising out of knowing violations of the law insofar the knowing violation of law was ascertained by judgment, administrative ruling, acknowledgment or settlement. The insurance further covers damages incurring out of public liability claims as well as costs of defense (for in or out of court-proceedings) against such claims. The insured amount encompasses a maximum of EUR 7.5 million yearly.

The assessors' view is that the current liability framework might protect the FMA and its employees sufficiently at the moment when acting in 'good faith'. However, this topic will become more important in case the FMA would eg receive recovery and resolution powers.

Moreover the FMA has concluded a defense and recovery insurance contract (*Rechtsschutzversicherung*) encompassing a maximum amount of EUR 225,000 yearly. Again no retained amount upon own risk is foreseen in this contract. This insurance contract covers the ensuring of legal interests of the FMA as well as the recovery of costs for damage claims the FMA intends. The insurance also covers costs for defense in penal proceedings in front of judicial or administrative bodies for criminal acts and omissions as well as in disciplinary proceedings. In case of a claim based upon an intentional crime, the insurance covers costs provisionally. In case of a final condemnation for intentional crime the insurance protection is retroactively inapplicable.

The present contracts became effective on 1 July 2008. They are permanent contracts, with the possibility of contracting out annually. The insurance protection is applicable upon the insured risk independently from the time when the cause for the insurance case incurred

	<p>(claims-made).</p> <p>Additionally, during the assessment a number of other weaknesses have been identified in consultation with the FMA and OeNB legal experts: (i) there is no cap on the liability of FMA/OeNB bodies and staff; (ii) there are no safeguards for FMA/OeNB bodies and staff to protect them against self-incrimination while assisting the Bundes Finanzprokurator; and (iii) FMA/OeNB bodies and staff are also held liable in cases where courts have found supervised financial institutions or their managers non-compliant with prudential rules.</p> <p>We recommend to remedy these weaknesses, especially in light of the envisaged resolution powers for the FMA, which are more intrusive and more publicly scrutinized than prudential measures</p>
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Assessment of Principle 2	Largely compliant
Comments	<p>EC 1: There is a number of findings that might endanger the operational independence of the supervisory authority :</p> <ul style="list-style-type: none"> • representatives of the industry are present in the supervisory board, although they do not have voting rights. • the supervisory board, with representatives from the MoF, the OeNB, the FMA and the industry, has to confirm new FMA staff that operate at the second level; • given the rules laid down on the starting dates in combination with the length of the terms of the individual members of the supervisory board, normally all members of the supervisory board would start and end their term at the same point in time. Given that the MoF will nominate the members of the supervisory board, this could be envisaged as appointments of supervisory board members along the lines of the political cycle. • Pursuant to Article 16 para. 4 FMABG, the Federal Minister of Finance is authorized to commission the FMA with conducting on-site inspections. Effectively, this right of the MoF could potentially set the priorities for undertaking on-site inspection activities and thereby endanger the FMA's operational independence, though in practice this right has only been used once. • The FMA must obtain consent from the MoF when issuing new regulations that are mandated by the Banking Act to the FMA.; in providing consent, the MoF would especially determine whether the FMA would continue to act within its scope of activities and the mandate provided, though it is not clear whether this would be the only consideration. • The MoF has the right to receive all the information from the FMA that in its view is necessary to effectively oversee the operations by the FMA. In case the frequency would be too high, this may have adverse effect on the independent operations of the FMA, though we have understood that to date only a few queries for information have

	<p>been made by the MoF.</p> <ul style="list-style-type: none"> In CP 1, the assessors already noted that FMA’s objectives as defined by law prescribe that it must consider the national economic interest in maintaining an efficient banking system and financial market stability, when monitoring compliance with the provisions of the Banking Act. Taking into account the national economic interest when executing banking supervision, might endanger the primary objective to promote the safety and soundness of banks and might also endanger its operational independence. In practice the assessors have not identified any circumstances whereby the national economic interest has impeded the FMA’s supervisory objectives. However, given its potential negative influence on FMA’s operational independence, it should be clarified that considering the national economic interest might never impede FMA’s supervisory considerations. <p>There is regular reporting from Internal Audit to the Supervisory Board. However, internal auditors do not have direct access to the Board.</p> <p>EC 2: There is no legal obligation to publicly disclose the reasons for the dismissal of a member of the Executive Board.</p> <p>EC 9: The following weaknesses have been identified in consultation with the FMA and OeNB legal experts: (i) there is no cap on the liability of FMA/OeNB bodies and staff; (ii) there are no safeguards for FMA/OeNB bodies and staff to protect them against self-incrimination while assisting the Bundes Finanzprokurator; and (iii) FMA/OeNB bodies and staff are also held liable in cases where courts have found supervised financial institutions or their managers non-compliant with prudential rules.</p>
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Principle 3	Cooperation and collaboration. Laws, regulations or other arrangements provide a framework for cooperation and collaboration with relevant domestic authorities and foreign supervisors. These arrangements reflect the need to protect confidential information. ¹¹
Essential criteria	
EC1	Arrangements, formal or informal, are in place for cooperation, including analysis and sharing of information, and undertaking collaborative work, with all domestic authorities with responsibility for the safety and soundness of banks, other financial institutions and/or the stability of the financial system. There is evidence that these arrangements work in practice, where necessary.

¹¹ Principle 3 is developed further in the Principles dealing with “Consolidated supervision” (12), “Home-host relationships” (13) and “Abuse of financial services” (29).

Description and findings re EC1	<p>There are adequate arrangements in place for the cooperation between the FMA as the integrated supervisory authority in Austria and the OeNB, who has specific responsibilities in the field of technical banking supervision. The assessors have based this view upon the interviews held with staff and management of the OeNB and FMA respectively, upon the working relationships described for cases we discussed and upon the positive reactions received from the industry.</p> <p>The responsibilities of the OeNB and the arrangements for cooperation are defined in the NBG and the Banking Act, especially Article 79.</p> <p>Article 79, amongst others sets out that a joint database of banking supervision analyses will be utilised, that FMA will mandate OeNB to undertake inspections at institutions, prepare expert opinions make individual bank analyses and that the FMA will rely on these inspections, opinions and analyses to the greatest possible extent in the execution of its supervision.</p> <p>Given that the FMA is an integrated supervisory authority, executing different supervisory objectives, the FMA should also have internal arrangements for cross-sector collaboration. Indeed such arrangements are in place, governed by some internal rules. On a case by case an evaluation is being done whether information can be exchanged. The compliance officer of the FMA will assess compliance.</p> <p>The FMA also has working relations with especially the Ministry of Finance and with the deposit guarantee schemes operating in Austria.</p> <p>Based upon article 13 FMABG, a specific cooperation framework exists between with the FMA, OeNB and the MoF. This cooperation takes place in the so called Financial Markets Committee. The main objective of this Committee is to exchange views in the context of the stability of financial markets. It could provide recommendations on questions related to financial markets.</p>
EC2	<p>Arrangements, formal or informal, are in place for cooperation, including analysis and sharing of information, and undertaking collaborative work, with relevant foreign supervisors of banks and banking groups. There is evidence that these arrangements work in practice, where necessary.</p>
Description and findings re EC2	<p>In general, the FMA has adequate arrangements in place for its cooperation with relevant foreign supervisors, although cross-border exchange of confidential information with the relevant supervisory authority is not always possible which hampers effective cooperation with these authorities (see below):</p> <p>The legal basis for the formal cooperation and for information sharing by the FMA with other supervisory authorities are to be found in the Articles 77 and 77a Banking Act.</p>

	<p>In practice, the FMA is an active participant in a wide network of European and international cooperation and information exchange. The FMA is part of the European System of Financial Supervision (ESFS) and as such participates in its structures. Also the OeNB would normally take part in most of the structures. Cooperation takes place, both on a multilateral level and a bilateral level.</p> <p>On a multilateral level, cooperation takes place within the context of the European Union (with the European Commission, the EBA, the ESAs joint committees and the ESRB), international forums like the Group of Banking Supervisors from Central and Eastern European Countries (BSCEE) and the International Conference of Banking Supervisors (ICBS), yearly meetings of German speaking countries (the so-called 4-Lander Treffen between supervisors from Germany, Switzerland, Liechtenstein and Austria), regular meetings within the 'Vienna' initiative and meetings in the context of the upcoming European Banking Union.</p> <p>On a bilateral level, the FMA together with the OeNB has regular contacts with its counterparts from other countries, based on concluded MoUs. These countries are: Bulgaria, Croatia, Czech Republic, Cyprus, France, Germany, Hungary, Italy, Liechtenstein, Malta, The Netherlands, Romania, Russia, Slovakia, Slovenia and the UK. An MoU with Switzerland is in the final stage of its negotiations. Further, because Austrian CIs are strongly engaged in CEEs and SEEs, bilateral contacts with those countries have been significantly intensified regardless whether MoUs have been concluded or not (yet). To this end, bilateral meetings are held with representatives of these countries at a senior management level. Recently such contacts took place with Bulgaria, Croatia, Hungary, Slovenia, Serbia, Russia and the Ukraine. Objectives of these contacts are not only to address strategic supervisory issues, but also to concentrate on more technical issues and to further facilitate operational and personal networking mechanisms. For this purpose, a concise strategy has been developed, apart from the already mentioned contacts, encompassing the following:</p> <ul style="list-style-type: none"> • Based on a risk mapping exercise (which in turn is based on an OeNB risk assessment map, comprising the most relevant country and institution specific risks), a risk oriented prioritization takes place as regards the need for increased cooperation with the respective authorities, with a special focus on risk management on a consolidated basis including group audit; • Negotiation of MoUs or Article 131 CRD Agreements (for instance with Serbia, Bosnia and Herzegovina, Moldavia, Macedonia, Kosovo) and - where such detailed negotiations/conclusion of MoUs or Article 131 CRD Agreements is not (yet) possible – at least efforts to intensify an exchange of views and enhance mutual understanding as regards the respective approaches and local legal frameworks, thus preparing the grounds for mutual trust and a further intensification of cooperation; • At the moment the FMA is focusing especially on the conclusion of Article 131 CRD Agreements (College Agreements) instead of general MoUs, since the Article 131 CRD-
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	<p>Agreements allow arrangements between the supervisors that are specifically tailored to the needs of supervising the respective banking groups operating within a certain country. For instance such an agreement has recently been concluded between the FMA and the Central Bank of Serbia for the subsidiaries of the three banking groups operating in Serbia; further agreements have been concluded for banking groups operating in Germany, France, Croatia, Slovakia, Slovenia and Malta;¹²</p> <ul style="list-style-type: none"> • A structured information exchange process within regular and ad hoc MoU meetings reflecting specific needs for immediate coordination between supervisors concerned was established in the last years; however, in the last 2 years the main focus was placed on Colleges to which also third country supervisors were invited. This includes especially the establishment of College Meetings within the framework of Article 129 CRD (cross-border risk management model validation and approval process) to which all concerned supervisors of EU and of third countries, in which the respective banking group is active, are invited;¹³ • Also as a result of the risk mapping exercise, joint on-site inspections are conducted or at least there is a participation in selected local on-site inspections; such joint on-site inspections are accompanied by a structured information exchange and aim at achieving a joint risk assessment of the whole banking group;¹⁴ • Co-ordinated supervisory measures with foreign supervisory authorities concerning major Austrian banking groups (also including supervisors of CEEs and SEEs);¹⁵ • Organization of conferences to which especially countries from CEE and SEE are invited (e.g. BSCEE-Conference 2012 in Vienna); • Providing technical assistance (the FMA has been involved in EU -Twinning Projects concerning Azerbaijan and Bulgaria); • Staff exchanges (secondment of a senior expert of the FMA to the National Bank of Russia, short term secondments of experts of the FMA to other EU banking supervisory authorities; e.g. BaFin, EBA, FSA, and one secondment to the SEC). <p>Also, bilateral talks and visits including general cooperation questions have been arranged with Non-EEA-Countries like Albania, Bosnia and Herzegovina, Belarus, Brazil, Dubai, Kazakhstan, Kyrgyzstan, Russia, South Korea, Ukraine, Turkey and USA and cooperation is arranged with other non-commercial financial institutions that have a responsibility for the stability of financial markets like the BIS and the EBRD.</p>
EC3	The supervisor may provide confidential information to another domestic authority or

¹² Please refer to CP 13 for more detailed information regarding Article 131 CRD-Agreements.

¹³ Please refer to CP 13 for a more detailed information regarding Colleges.

¹⁴ Please refer to CP 12 EC 4 and CP 13 EC 8 for more detailed information regarding on-site inspections.

¹⁵ Please refer to CP 13 for more detailed information.

	foreign supervisor but must take reasonable steps to determine that any confidential information so released will be used only for bank-specific or system-wide supervisory purposes and will be treated as confidential by the receiving party.
Description and findings re EC3	<p>In general, adequate safeguards exist for a confidential information exchange with the other domestic authorities or foreign supervisors.</p> <p>Within Austria, all functionaries of authorities as well as the staff of the OeNB must not disclose or make use of secrets which have been entrusted or made accessible to them solely from their professional activities. A disclosure of facts subject to banking secrecy is only permitted in the cases stipulated by Article 38 para. 2 Banking Act. For the staff of the FMA Article 14 para. 2 FMABG stipulates that the banking secrecy pursuant to Article 38 Banking Act applies and shall be kept as an official secret. For the staff of the OeNB, specific provisions are laid down in Article 45 NBG.¹⁶</p> <p>Furthermore, according to Article 14 para. 2 1st sentence of the FMABG, the employees of the FMA shall maintain secrecy vis-à-vis any person to whom they are not bound to report in an administrative context on all matters that have become known to them exclusively by virtue of their activity (and are not subject to banking secrecy), when maintaining secrecy is in the interest of preserving public peace, order and security, comprehensive state defense, external relations, in the economic interest of a public law corporation, required in the preparation of a decision or in the predominant interest of the parties. A release from the official secrecy may only be granted by the FMA Executive Board under conditions listed in the Civil Servants Labor Law (<i>Beamten-Dienstrechtsgesetz</i>).</p> <p>The members of the Financial Markets Committee (FMK) shall maintain secrecy vis-à-vis everybody on all matters that have become known to them exclusively by virtue of their activity in the FMK, when maintaining secrecy is in the interest of preserving public peace, order and security, comprehensive state defense, external relations, in the economic interest of a public law corporation, required in the preparation of a decision or in the predominant interest of the parties (Article 13 para. 4 FMABG).</p> <p>The FMA and its staff as well as the OeNB and its staff are subject to the same requirements of confidentiality pursuant to Article 38 Banking Act, Article 14 FMABG and Article 45 NBG. There are in practice no impediments in their collaboration in banking supervisory matters</p>

¹⁶ Article 45 NBG: The OeNB, its shareholders, the members of its decision-making bodies, its employees, other persons acting for the OeNB 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 para. 2 of the Banking Act. This confidentiality obligation shall continue to exist after the transfer of shares, after leaving office in one of the decision-making bodies of the OeNB, after the end of an employment relationship with the OeNB or after the end of any other service or function.

within Austria (see also Article 79 Austrian Banking Act).

With respect to the confidentiality of cross border information exchange, the most relevant provision for cooperation and information exchange is Article 77 para. 5 Banking Act, which deals with the provision of information and documents in the context of administrative assistance to competent authorities.

Accordingly, the information exchange in the context of administrative assistance is possible with EEA-Member States, with third countries with which the EU has concluded a MoU, and with other third countries if the cooperation is in the interest of the Austrian supervisor and in compliance with international standards and, provided the following conditions are met:

- the provision of information is necessary to fulfill supervisory tasks (as stipulated in the mentioned articles of the CRD and the Financial Conglomerates Directive 2002/87/EC.
- (in case of third countries) there are rules on professional secrecy equivalent to those stipulated in Article 44 CRD in place (within EEA-Member States this is the case anyway); in order to assess this equivalence of the confidentiality obligations of a third country with the EEA requirement (second bullet above), so-called equivalence assessments are undertaken by the EBA. Such an assessment comprises of an analyses of the definition of confidential information, of the existence of professional secrecy obligations, of the use and restrictions on disclosing confidential information and of a possible breach of professional secrecy and disclosure requirements. (A number of countries have been assessed, amongst them Croatia and Serbia, countries in which Austrian CIs have subsidiaries.)
- if the information to be exchanged has been received from a supervisory authority of an EEA-Member States or of a third country with which the EU has concluded a MoU, and only if the respective authority has expressed its explicit consent to such forwarding of this information.

Specifically for the confidential information exchange within the ESFS (European System of Financial Supervisors) a different regime applies. According to Article 21a FMABG, the FMA is empowered and obliged to comprehensive mutual cooperation and information exchange with the European Supervisory Authorities (EBA, ESMA, EIOPA) and all other participants in the ESFS (competent supervisory authorities of the Member States and the European Systemic Risk Board). Upon request of the above mentioned authorities the FMA shall submit all information necessary for the fulfillment of the tasks of ESFS.

For all other cases, Article 77 para. 1 Banking Act will apply as a general clause. This provision states that the communication of official information by the FMA to foreign banking supervisory authorities is permitted:

- if the public order, other essential interests of the Republic of Austria, *banking secrecy* or confidentiality obligations under tax law are not violated,

- if it is ensured that the requesting government would fulfill an Austrian request of the same kind; and
- if a request for information of a similar nature by the FMA would be in line with the objectives of the Banking Act.

Based upon the criteria above, in order to exchange confidential information, in practice the FMA will be able to exchange confidential information with the following relevant foreign supervisors:

- those within the EEA
- those outside the EEA but with which the EBA has undertaken an equivalence assessment with a positive outcome (ic Croatia and Serbia);
- those outside the EEA with whom the FMA has concluded a bilateral MoU which also includes a mutual agreement clause on the exchange of confidential information. (ic Russia)

The assessors were informed that at the moment the FMA cannot undertake an effective confidential information exchange with all of the foreign supervisors for which Austrian CIs have establishments abroad. More specifically this would apply to supervisory authorities in the following countries: Bosnia Herzegovina, Republic Srpska, Albania, Ukraine, Montenegro, Kosovo and Belarus.

In such cases, the FMA will only exchange publicly disclosed information with the foreign supervisor. Furthermore the FMA will assess whether the CI can receive all relevant information from its establishment in the respective country in the context of its consolidated information requirement. When such information flow within the banking group would not be possible, the FMA will take measures that could include a measure addressed to the CI to close down of the operation of this establishment.

Note: during the pre-approval process of an acquisition of a CI in such a country, one of the criteria the FMA applies is whether it can accomplish effective group wide supervision. The FMA would consider it sufficient when the establishment in the foreign country could provide all relevant information to its parent, so that effective consolidated supervision could take place. The possibility to have a direct confidential information exchange with the foreign supervisory authority concerned would in itself not be a breach of said criterion. Also, the FMA will not pre-approve a greenfield operation by a CI in the country concerned. Also in this case, it would rather rely on the unconditioned information exchange within the banking group.

Within the EEA, Multilateral Cooperation Agreements exist between the Ministries of Finance, the supervisory authorities and the national central banks. These agreements provide a sufficient legal basis for confidential information exchange within the EEA between the signatories. No such arrangements exist with national banks and ministries of finance outside the EEA.

EC4	<p>The supervisor receiving confidential information from other supervisors uses the confidential information for bank-specific or system-wide supervisory purposes only. The supervisor does not disclose confidential information received to third parties without the permission of the supervisor providing the information and is able to deny any demand (other than a court order or mandate from a legislative body) for confidential information in its possession. In the event that the supervisor is legally compelled to disclose confidential information it has received from another supervisor, the supervisor promptly notifies the originating supervisor, indicating what information it is compelled to release and the circumstances surrounding the release. Where consent to passing on confidential information is not given, the supervisor uses all reasonable means to resist such a demand or protect the confidentiality of the information.</p>
Description and findings re EC4	<p>Generally, the amount of information sharing depends on the level of professional and banking secrecy to which the receiving party is bound to. The core provision is the provision of the banking secrecy in Article 38 Banking Act, as mentioned before: all functionaries of authorities as well as staff of the OeNB must not disclose or make use of secrets which have been entrusted or made accessible to them solely from their professional activities. The obligation to maintain secrecy applies for an indefinite period of time.</p> <p>For the bodies of the FMA and its employees Article 14 para. 2 2nd sentence FMABG stipulates that the banking secrecy pursuant to Article 38 Banking Act applies and shall be kept as an official secret. A release from the official secrecy may only be granted under the stringent conditions listed in Article 38 para. 2 Banking Act.</p> <p>Apart from that there are several other provisions set out in Austrian laws that imply a disclosure of facts subject to banking secrecy. Of main importance are the following:</p> <ul style="list-style-type: none"> • The FMA - as well as any other Austrian authority - is obligated to report facts that are subject to criminal prosecution and have been revealed to them as a consequence of their work to public prosecutors or the police (Article 78 Criminal Procedure Code; <i>Strafprozeßordnung—StPO</i>). • The FMA shall report to the Public Prosecutor as soon as it gains knowledge of any suspected abuse of inside information by a certain person (Article 48i para. 3 Stock Exchange Act, <i>Börsegesetz—BörseG</i>). • Should the FMA or the OeNB, in performing their duties of banking supervision, find reason to suspect that a transaction serves the purpose of money laundering or terrorist financing, they must report this to the Financial Intelligence Unit (Article 4 para. 2 of the Federal Office of Criminal Investigation Act (<i>Bundeskriminalamt-Gesetz</i>), Federal Law Gazette I No. 22/2002) without delay (Article 41 para. 5 Banking Act; a similar provision is stipulated in Article 91 para. 8 Securities Supervision Act, <i>Wertpapieraufsichtsgesetz 2007—WAG</i>). <p>The most important provisions that allow necessary exchange of information and documents in the context of administrative assistance to competent authorities are in the</p>

context of the cooperation with the European Supervisory Authority (Article 21a FMABG) and the International Cooperation and Data Processing (Article 77 and 77a Banking Act, Article 91 Securities Supervision Act).

Apart from that, the FMA may provide information on or make public any measures or sanctions taken in connection with the combat against unauthorized business under the following conditions (Article 22c FMABG):

- If an official act is performed during pending proceedings, the FMA shall not mention the names of the parties involved, unless they are already publicly known or the general public has a predominant interest in learning these names.
- If sanctions are imposed, the FMA may provide information on or make public the names of the persons or companies upon which the sanctions have been imposed, the names of those companies for which persons are responsible upon whom sanctions have been imposed as well as the nature of the sanctions imposed. Sanctions within the meaning of this provision shall be any legal acts issued by the FMA by means of an administrative ruling after proceedings have been completed.
- The FMA shall not provide information about or make public official acts if:
 - providing the information or making it public would pose a serious threat to the stability of financial markets; or
 - providing the information or making it public would lead to an out-of-proportion damage to an involved party affected by the information or the act of making it public; or
 - the conduct of proceedings or taking of measures which are in the interest of the public may be thwarted, hampered, delayed or jeopardized by providing information.

In practice, the cases in which the FMA may give way to a demand for confidential information are explicitly defined in law, as described above. In any other case the FMA has to decline any demand. Administrative assistance by the FMA for tax authorities is explicitly forbidden (Article 21 para. 3 FMABG).

According to Article 77 para. 5 of the Austrian Banking Act, the FMA will only disclose information received from a competent authority (EU or third country) with the prior consent of that authority.

In practice the exception of Article 38 para. 2 no. 1 Banking Act is relevant for the FMA. A decision by the Executive Board to exempt FMA employees from keeping the official secrecy due to Article 14 para. 2 FMABG will be based on a case by case assessment. Examples of such exemptions would be the necessary attendance in parliamentary hearings or when one is called as a witness in court proceedings.

Note that according to Austrian law penal proceedings for intentional fiscal violation are in

	<p>certain cases not punished by criminal courts but by special administrative authorities (tribunals). For a demand emanating from these authorities the same rules apply as for a demand from a criminal court.</p> <p>The Banking Act or other legal provisions in principle do not provide for an exception from the banking secrecy concerning requests of legislative bodies.</p> <p>Whereas the official secrecy is exempted in front of an Extraordinary Parliamentary Investigation of the National Assembly (<i>parlamentarischer Untersuchungsausschuss – UA</i>), the banking secrecy is to be upheld. As the records show, the legal guidelines of the president of the UA towards employees of the FMA who were called as witnesses explicitly point this out: “The banking secrecy which is protected by constitutional majority as well as the rights of third parties have to be granted. This applies also to information subject to the banking secrecy according to Article 38 para. 1 Banking Act as far as this information as regards content is to be assigned to the banking secrecy.” The FMA took care to preserve the banking secrecy this way when transmitting files to the UA.</p> <p>The conditions of Article 22c FMABG are carefully considered case by case before information is unveiled to the public.</p> <p>The FMA may only pass on confidential information that it has received with the express permission of the competent authority which communicated the information in question. Also making information public would in this respect be seen as passing on information (Article 77 para. 5 of the Banking Act).</p>
EC5	Processes are in place for the supervisor to support resolution authorities (e.g. central banks and finance ministries as appropriate) to undertake recovery and resolution planning and actions.
Description and findings re EC5	<p>As mentioned in EC 2, in Austria, the Financial Markets Committee coordinates activities and views, as a platform between the institutions involved in financial stability.</p> <p>No specific resolution authority exists, so no specific processes are in place for the supervisor at the moment to support such an authority.</p>

Assessment of Principle 3	Compliant
Comments	In general, the FMA has effective frameworks for cooperation and collaboration with relevant domestic authorities and foreign supervisors, and arrangements for protecting confidential information. Where this requirement is not met, only publicly available

	<p>information can be exchanged with the supervisory authority in question.</p> <p>In practice, with a limited number of foreign supervisory authorities outside the EEA that supervise subsidiaries of an Austrian parent CI, arrangements on confidential supervisory information exchange are absent, which means that confidential supervisory information cannot be exchanged.</p> <p>With regards to third-country competent authorities, with whom arrangements on confidential supervisory information exchange are not in place, it must be emphasized, that the main requirement to be able to conclude such arrangements is, that—according to Art 131a Directive (EC) 2006/48 (=CRD)—these third-country competent authorities are subject to confidentiality requirements that are equivalent, in the opinion of all the competent authorities, to Articles 44 to 52. According to Art 44 leg. cit., such confidentiality requirements must have an equivalent statutory official secrecy. Therefore, according to the European framework, the Austrian supervisor must not conclude arrangements on confidential supervisory information exchange with third-country competent authorities not being subject to an equivalent, statutory official secrecy.</p> <p>Please see the comments under BCP 13 Home-host relationships.</p>
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Principle 4	Permissible activities. The permissible activities of institutions that are licensed and subject to supervision as banks are clearly defined and the use of the word “bank” in names is controlled.
Essential criteria	
EC1	The term “bank” is clearly defined in laws or regulations.
Description and findings re EC1	<p>The Austrian legislation provides for a clear definition, whereby in conformity with the terminology used in the respective EU Directives, the term used for the addressee of the Austrian banking legislation is <i>Kreditinstitut</i> (CI) instead of <i>bank</i>, as evidenced for instance in the German versions of the Capital Requirements Directive where Article 1 (1) relates to the taking up and pursuit of the business of <i>Kreditinstitute</i>.</p> <p>In Article 4 (1a) of the EU Capital Adequacy Directive, the term CI means ‘undertakings whose business is to receive deposits or other repayable funds from the public and to grant credits for its own accounts’.</p> <p>In Article 1 (1) of the Austrian Banking Act, the term bank comprises this EU definition but is broader: ‘The term “credit institution” refers to an institution authorised to carry out banking transactions on the basis of Article 4 or Article 103 no. 5 of this federal act, or on the basis of special provisions under Austrian federal law. Banking transactions include the following activities if carried out for commercial purposes’, where after 23 different banking activities are mentioned, amongst which that of the acceptance of funds from other parties,</p>

current account business, lending, custody business, FX business, the issuance of mortgage bonds, municipal bonds, and covered bank bonds, the acceptance of building savings deposits, the management of investment funds and e-money business.

The Banking Act, furthermore, defines the term 'financial institution', which is not a credit institution as defined under article 1 (1) of the Banking Act but which is authorized to perform certain activities which are not seen as banking activities, but are related to banking activities. More specifically, Article 1 (2) of the Banking Act stipulates the following: 'The term "financial institution" refers to an institution which is not a credit institution as defined under para. 1 and which is authorized to conduct one or more of the following activities for commercial purposes if they are conducted as the institution's main activities:

- The conclusion of lease agreements (leasing business);
- The provision of advice to undertakings on capital structure, industrial strategy and related questions, as well as advice and services related to mergers and the purchase of undertakings;
- The provision of credit reporting services;
- The provision of safe deposit services.'

As stated in Article 1 (3), also a CI is allowed to perform one or more of the above mentioned activities. In addition, they are authorized to carry out exchange bureau business and remittance transfer business, and to 'carry out all other activities which are directly related to banking activities in accordance with the scope of the respective license or which constitute ancillary services to such banking activities; specific examples include the brokering of building savings plans, of undertakings and businesses, of investment fund shares and of equity shares, the provision of services in the field of automated data processing as well as the sale of credit cards. In addition, credit institutions are authorized to trade in coins and medals as well as gold bars within the limits of legal provisions applying to foreign exchange, and to rent out safe deposit boxes under joint access agreements. Credit institutions are also authorized to carry out the activities indicated in Article 3 (2) 1-3 of the Securities Supervision Act 2007.'

Furthermore, the Banking Act contains some other terms related to the term 'bank', which are also relevant, especially with respect to cross border banking activities. These terms are:

- *foreign CI* as defined in Article 2 (13): 'an institution authorized in accordance with the legal provisions of its country of establishment to conduct transactions as defined in Article 1 para. 1 outside of the Member States;
- *foreign financial institution* as defined in Article 2 (14): an institution authorized in accordance with the legal provisions of its country of establishment to conduct business as defined in Article 1 para. 2 outside of the Member States;
- *branch* as defined in Article 2 (16): a place of business which forms a legally dependent part of a CI, financial institution or investment firm and which carries out directly all or some of the transactions inherent in the business of CIs, financial institutions or

	<p>investment firms;</p> <ul style="list-style-type: none"> • <i>representative office</i> as defined in Article 2 (17): a place of business which forms a legally dependent part of a CI not authorized in Austria and which does not carry out transactions pursuant to Article 1 para. 1; • <i>non-bank</i> as defined in Article 2 (22): any undertaking, including its branches, which is neither a CI established in Austria nor a CI (as defined in Article 4 (1) CRD) authorized in another Member State or third country.
EC2	The permissible activities of institutions that are licensed and subject to supervision as banks are clearly defined either by supervisors, or in laws or regulations.
Description and findings re. EC2	<p>The permissible banking activities and ancillary activities of licensed CIs are clearly defined in the provisions of the Banking Act, especially in the Articles 1 (1) and 1 (2).</p> <p>CIs that hold a banking license for just certain specific banking activities are entitled to conduct only the respective banking business and certain ancillary (banking) activities.</p> <p>Examples of such business are the building savings and loan business, the investment fund business, the participation fund business and the severance payment business.</p>
EC3	The use of the word "bank" and any derivations such as "banking" in a name, including domain names, is limited to licensed and supervised institutions in all circumstances where the general public might otherwise be misled.
Description and findings re EC3	<p>The Banking Act provides for adequate protection of designations and sanctions in case of unauthorized use of protected designations, like the designation "Kreditinstitut" (see Article 94). For CIs, Article 94 (1) states that 'Unless otherwise provided for by law, the designations "Geldinstitut" (money institution), "Kreditinstitut" (credit institution), "Kreditunternehmung", "Kreditunternehmen" (credit undertaking), "Bank" (bank), "Bankier" (banker) or any designation containing one of those words may only be used by undertakings which are authorized to conduct banking transactions. However, undertakings which are authorized exclusively to provide remittance services pursuant to Article 1 para. 1 no. 23 must not use the designations indicated in the first sentence. Undertakings which are authorized exclusively to conduct exchange bureau business).' may only refer to themselves as "Wechselstuben" (exchange bureaus).</p> <p>Further protected designations are: "Sparkasse" (savings bank), "Finanzinstitut" (financial institution), "Finanz-Holdinggesellschaft" (financial holding company), "Wertpapierfirma" (investment firm), "Volksbank" (people's bank), "Bausparkasse" (building society), "Raiffeisen", "Landes-Hypothekenbank" (state mortgage bank) or any designation containing these words (Articles 94 (2) - (10) of the Banking Act).</p> <p>The FMA indicated that in practice there are only few cases of misuse of protected designations, usually occurring in connection with the unauthorized conduct of banking business and further criminal activities. This issue is addressed by a separate unit within the</p>

	<p>FMA, the Division of Combat against Unauthorized Business.</p> <p>There is an additional procedural safeguard for entering protected designations into the Commercial Register. Article 5 (2) of the Banking Act indicates that a company or branch with a name containing a protected designation in accordance with Article 94 of the Banking Act may only be entered into the Commercial Register if the corresponding administrative ruling by the FMA is presented to the competent court in original or certified copy. The competent court will in turn provide a written confirmation that it is entered into the Commercial Register to the FMA and the OeNB.</p> <p>Also derivations of the designatons mentioned above are protected.</p>
EC4	The taking of deposits from the public is reserved for institutions that are licensed and subject to supervision as banks. ¹⁷
Description and findings re EC4	<p>The acceptance of funds from other parties for the purposes of or as deposits constitutes a banking activity and requires a license, based upon which the institution concerned is a CI and supervised by the FMA. Please refer in this respect to Article 1 (1) no. 1 of the Banking Act.</p> <p>Given the broad definition of CI in Austria, there could also be CIs not taking deposits. For these institution that do not have a license for the deposit business, based upon Article 3 (2) of the Banking Act, most of the provisions on liquidity (Article 25 (3) to (14) and Article 74 (3) 3 no. 3) do not apply. Please note that acceptance of funds from <i>other parties</i> and not only from <i>the public</i> constitutes a banking activity. This means that also the acceptance of deposits from professional parties only constitutes a banking activity for which a license is necessary.</p> <p>Market intermediaries are not allowed to provide services involving the holding of clients' money, securities or other instruments, pursuant to Article 20 (1) no. 4 of the Securities Supervision Act (Wertpapieraufsichtsgesetz (WAG)). Consequently, a market intermediary is at no time debtor to the client. If a firm wants to provide such services, it has to apply for a banking license according to the provisions of the Banking Act (Article 1 and 4 et seq. Banking Act).</p> <p>Parties who conduct deposit taking without the required authorization, are guilty of an administrative offence. This is to be punished by the FMA with a fine of up to EUR 50,000, unless the act constitutes a criminal offence falling under the jurisdiction of the courts</p>

¹⁷ The Committee recognizes the presence in some countries of non-banking financial institutions that take deposits but may be regulated differently from banks. These institutions should be subject to a form of regulation commensurate to the type and size of their business and, collectively, should not hold a significant proportion of deposits in the financial system.

	<p>leading to a criminal proceeding.</p> <p>In addition, according to Article 4 (7), the FMA is authorized to inform the public in individual cases that a specifically named undertaking is not authorized to conduct certain banking transactions. It is to be announced in the Official Gazette of the <i>Wiener Zeitung</i> or in another publication medium that is distributed nationwide, eg the FMAs website.</p> <p>Enforcement is done by a special unit within the FMA, the division for the Combat against Unauthorized Business.</p> <p>The assessors have been informed that at the time of the assessment about 150 proceedings were outstanding pursuant to Article 98 (1) of the Banking Act. Most proceedings were related to the acceptance of deposits from other parties without having a proper license. Information about such cases were mostly coming from complaints from the public via the complaints department of the FMA. An example would be a retailer in consumer goods attracting money from its customers via a specific payment scheme.</p>
EC5	The supervisor or licensing authority publishes or otherwise makes available a current list of licensed banks, including branches of foreign banks, operating within its jurisdiction in a way that is easily accessible to the public.
Description and findings re EC5	<p>The supervisor makes information about the current list of banks available via internet.</p> <p>According to Article 4 (8) of the Banking Act, the FMA has to compile a database containing information on the current scope of existing licenses issued to CIs and to enable queries of these data via the website. Since 2004, this database has been in effect.</p> <p>The assessment team experienced that the database is easily accessible. This can be done via the homepage of the FMA (http://www.fma.gv.at/en/companies/search-companies.html).</p>
Assessment of Principle 4	Compliant
Comments	

Principle 5	Licensing criteria. The licensing authority has the power to set criteria and reject applications for establishments that do not meet the criteria. At a minimum, the licensing
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	process consists of an assessment of the ownership structure and governance (including the fitness and propriety of Board members and senior management) ¹⁸ of the bank and its wider group, and its strategic and operating plan, internal controls, risk management and projected financial condition-(including capital base). Where the proposed owner or parent organization is a foreign bank, the prior consent of its home supervisor is obtained.
Essential criteria	
EC1	The law identifies the authority responsible for granting and withdrawing a banking license. The licensing authority could be the banking supervisor or another competent authority. If the licensing authority and the supervisor are not the same, the supervisor has the right to have its views on each application considered, and its concerns addressed. In addition, the licensing authority provides the supervisor with any information that may be material to the supervision of the licensed bank. The supervisor imposes prudential conditions or limitations on the newly licensed bank, where appropriate.
Description and findings re EC1	The FMA is the licensing and the supervisory authority, pursuant to Article 4 (1) and Article 69 (1) of the Banking Act as well as Articles 1 and 2 FMABG.
EC2	Laws or regulations give the licensing authority the power to set criteria for licensing banks. If the criteria are not fulfilled or if the information provided is inadequate, the licensing authority has the power to reject an application. If the licensing authority or-supervisor determines that the license was based on false information, the license can be revoked.
Description and findings re EC2	<p>The licensing criteria are set by law. The FMA has no specific powers to set itself criteria for licensing banks. It also didn't issue any recommendation on the licensing criteria, nor did it develop any internal guidance. The FMA merely applies the criteria set forth in the Banking Act, which are interpreted for the specific case at hand. These criteria are quite detailed. In practice, they have not hindered a thorough examination of an application.</p> <p>The criteria are set in Article 5 (1) no 1 to 14 of the Banking Act. They are the following:</p> <ul style="list-style-type: none"> • the undertaking is to be established as a credit institution in the legal form of a joint-stock company, a cooperative society or a savings bank with its place of establishment

¹⁸ This document refers to a governance structure composed of a board and senior management. The Committee recognizes that there are significant differences in the legislative and regulatory frameworks across countries regarding these functions. Some countries use a two-tier board structure, where the supervisory function of the board is performed by a separate entity known as a supervisory board, which has no executive functions. Other countries, in contrast, use a one-tier board structure in which the board has a broader role. Owing to these differences, this document does not advocate a specific board structure. Consequently, in this document, the terms "board" and "senior management" are only used as a way to refer to the oversight function and the management function in general and should be interpreted throughout the document in accordance with the applicable law within each jurisdiction.

	<p>and head office located in Austria.</p> <ul style="list-style-type: none"> • the articles of association do not contain any provisions which would not ensure the security of the assets with which the credit institution is entrusted and the proper execution of transactions pursuant to Article 1 (1); • the persons who hold qualifying participations in the credit institution meet the requirements stipulated in the interest of sound and prudent management of the credit institution, and no facts are known which would raise doubts as to the personal reliability of those persons; if such facts are known, then the license may only be issued if the doubts are proven to be unfounded; • the FMA is not prevented from fulfilling its supervisory duties by the credit institution's close links to other natural or legal persons; and is not prevented from fulfilling its monitoring duties by the laws, regulations or administrative provisions of a third country governing a natural or legal person with close links to the credit institution, or by difficulties involved in the enforcement of those laws, regulations or administrative provisions; • the initial capital or initial endowment amounts to at least EUR 5 million and is freely available to the directors without restrictions or charges in Austria; • no reasons for exclusion as specified in Article 13 paras. 1 to 3, 5 and 6 Trade Act 1994 (e.g. fiscal offences, court conviction, insolvency proceedings) are identified with regard to any of the directors, and bankruptcy proceedings have not been initiated for the assets of any of the directors or any entity other than a natural person on whose business a director has or has had a decisive influence, unless a reorganization plan was agreed upon and fulfilled in the bankruptcy proceedings; this also applies to comparable situations which have arisen in a foreign country; • the directors find themselves in an orderly economic situation and no facts are known which would raise doubts as to their personal reliability as required for conducting transactions pursuant to Article 1 para. 1; if such facts are known, then the licence may only be issued if the doubts are proven to be unfounded; • on the basis of their prior education, the directors possess the professional qualifications and experience necessary for operating the credit institution. The professional qualifications of the directors require that they possess sufficient theoretical and practical knowledge of the transactions applied for pursuant to Article 1 para. 1 as well as management experience; professional qualification for the management of a credit institution is to be assumed if the directors have carried out management activities in a company of comparable size and business type for at least three years; • with regard to a director of a credit institution who is not an Austrian citizen, no reasons for exclusion as specified above exist in the director's country of citizenship; this must be confirmed by the banking supervisor in the director's home country; however, if such a confirmation cannot be obtained, the director in question must provide credible evidence of this, certify the absence of the named reasons for exclusion and submit a declaration stating whether any of the named reasons for exclusion exist; • the centre of at least one director's vital interests lies in Austria and at least one director has a command of the German language;
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- the credit institution has at least two directors and the articles of association rule out individual powers of representation, individual powers of commercial representation and individual commercial powers of attorney for the entire business operation, or, in the case of credit cooperatives, the management of the business is restricted to the directors;
- and none of the directors have another main profession outside of the banking industry or outside of insurance undertakings or pension funds;

If these criteria are met, pursuant to Article 5 (1) of the Banking Act, a license shall be granted.

Applications are made for one or a number of banking activities. If an applicant does not plan to carry out any activity itself, a license cannot be granted. This would for instance be the case for a holding or a shell bank.

Before issuing a license to a CI, the FMA will consult the OeNB and at the same time notify the MoF. The notification to the MoF must also include the license application as well as any enclosures to the application and any supplementary information received at a later point in time. The MoF could raise concerns to the FMA. Amongst others, the MoF will check the application against the records it has on file about the period that itself was responsible for banking supervision, which was up to 2002. Legally the FMA does not need to take up the concerns raised by the MoF. If the license application includes the authorization to accept deposits or to provide investment services subject to guarantee obligations, the FMA must also consult the 5 protection schemes before issuing the license (see Article 4 para. 6 of the Banking Act). Also the DGS could raise concerns, and also here the FMA need not follow up on the concerns from a legal point of view. In practice, the FMA has never issued a license when the MoF or a DGS provided a negative view.

In practice, the OeNB has a “double function” concerning the licensing process. Firstly it may raise any concerns and remarks during the consultation process, as stipulated above, pursuant to Article 4 para. 6 of the Banking Act. Secondly the OeNB is asked by the FMA for an expert analysis of the application, whereby OeNB will focus on economic aspects. The legal basis for this expert analysis is found in Article 79 para. 4 Banking Act, based upon which the FMA will rely on this analysis to the greatest possible extent. Practically, the OeNB replies to the FMA in one single analysis providing remarks in the consultation process and an expert analysis. The FMA will subsequently take a decision, taking into account the information received.

Furthermore, the assessors have been informed that close cooperation with other foreign banking supervisors is sought when foreign CIs, which are supervised by other authorities, are involved in the licensing procedure or if there are other relevant items which might be of (common) interest. Article 4 para. 4 Banking Act contains specific information requirements in case a foreign CI from outside the EEA applies for a license to operate a branch in Austria. Amongst others, this includes a written declaration by the supervisory authority at the seat

	<p>of the head office of the company, stating that it has no objections to the establishment of a branch of the company in Austria (see Article 4 para. 4 nos. 1 to 5 Banking Act).</p> <p>For branches within the EU, the EU passport facility applies, meaning that a mere notification from the foreign home authority would suffice for the establishment of the branch.</p> <p>If a license is intended to be issued to a CI whose application has been issued by a foreign CI, or a direct or indirect subsidiary of such a CI, the foreign competent authority will be informed. No specific additional criteria are laid down in law for such applications. However, the authority concerned may raise comments on the suitability of the persons holding qualified participations in or of the directors of these foreign entities. The FMA will take the information received into account in its decision.</p> <p>Despite that there are no other criteria than those contained in the Banking Act or supplementary banking laws for the licensing of CIs, the FMA has informed the assessors that it may nonetheless use all information provided by other authorities and agencies in its assessment of the application. Practically, information received would always fit within the criteria mentioned in the Banking Law. FMA has no legal limitation as to how it gathers the information it deems necessary in order to fully assess whether and under which conditions a license is granted or not.</p> <p>As concerns the criteria for the assessment of the owners of the CI that applies for a license, the same criteria are applied as in case of a transfer of ownership.</p> <p>The Banking Act describes the information and documents that must be enclosed by the applicant for the assessment of the application. According to Article 4 para. 3 nos. 1 to 7 Banking Act the applicant has to enclose the following information:</p> <ul style="list-style-type: none"> • the place of establishment and legal form of business organisation; • the articles of association; • the business plan, which must indicate the nature of the planned business, the organisational structure of the credit institution, the planned strategies and procedures for monitoring, controlling and limiting business risks and operational risks in banking pursuant to Article 39 as well as the procedures and plans under Article 39a; this business plan must include budget calculations for the first three business years; • the amount of initial capital freely available to the directors without limitations or charges in Austria; • the identity of and the amount contributed by owners who possess a qualifying participation in the credit institution, an indication of the group structure if those owners belong to a group of companies, as well as the information required for the purpose of assessing the reliability of the owners, the legal representatives and any of the owners' personally liable members; • the names of the designated directors and their qualifications for operating the undertaking
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- the identity and address or place of establishment of all those natural or legal persons used by the credit institution outside of its place of establishment in the provision of remittance services (agents).

If a foreign CI (according to Article 2 no. 13 Banking Act, i.e., a CI outside the EEA) applies for a license to operate a branch in Austria, it has – in addition to the information required by Article 4 para. 3 nos. 1 to 3 and 5 to 7 Banking Act – to provide specific additional information:

- the last three annual financial statements of the foreign undertaking,
- the transactions conducted by the foreign undertaking as well as the locations at which those transactions are conducted
- the amount in euros of the initial endowment freely available to directors
- the decision making powers granted to management of the branch as well as those of the head office whose consent is required for certain internal decisions and
- a written declaration from the supervisory authority responsible for the undertaking's head office that it has no objections to the establishment of such a branch.

In practice, at first the application's completeness will be examined. If an applicant does not provide the required information or documents the FMA will ask to hand them in within a certain time frame. If the applicant fails to do so, the application will be rejected for formal reason according to Article 13 para. 3 General Administrative Procedure Act (*Allgemeines Verwaltungsverfahrensgesetz—AVG*).

As soon as the applicant has handed in all the information required, the application will be examined. If the above mentioned criteria are not or not entirely met for all the planned banking activities the FMA has to fully or partially reject the application and will not or only partially grant the application. In addition, the FMA could set conditions and requirements for granting the license (Article 4, para.2). In practice, if the FMA would conclude in the course of its proceeding that a license cannot be granted, it will inform the applicant accordingly. In such cases, applicants sometimes prefer to withdraw their application rather than have it rejected by a formal ruling of the FMA.

If the criteria stipulated in the Banking Act are fulfilled, an applicant has the right to be granted a license. In case of licensing a branch of a foreign CI outside the EEA in Austria, the FMA conveys a copy of the administrative ruling to the supervisory authority at the seat of the CI's head office (Article 5 para. 3 Banking Act).

In case the applicant is of the opinion that his application has been rejected unlawfully, he may file a complaint against the FMA's ruling rejecting his application with the Administrative Court (*Verwaltungsgerichtshof—VwGH*).

The FMA has to revoke the license if it was granted on the basis of incorrect statements or deceptive conduct or was otherwise fraudulently obtained (Article 6 para. 2 no. 1 Banking

	Act). Furthermore, if the license was unknowingly based on false information, but the applicant (by error or any other reason) provided false information or the FMA obtained wrong information in the course of the licensing proceeding, the FMA will revoke the license. The Banking Act does not differentiate whether the wrong information was knowingly provided or not, but demands that all licensing criteria are fulfilled from the beginning and on ongoing basis. Furthermore, a license of a branch of a foreign CI (i.e., a CI outside the EEA) has to be revoked if the license of the head office has been revoked (Article 6 para. 3 Banking Act).
EC3	The criteria for issuing licenses are consistent with those applied in ongoing supervision.
Description and findings re EC3	<p>From time to time the FMA will assess in its ongoing supervision whether the different criteria of the license are still being met. This also holds for the possible conditions that accompanied a new license. Examples of such conditions are that the ownership structure may not change or that deposits may only be taken from professional parties.</p> <p>According to Article 70 para. 4 of the Banking Act, the FMA has to take corrective action in order to reestablish lawful conditions if the criteria for the granting of the license pursuant to Article 5 para. 1 nos. 1 to 14 or pursuant to Article 5 para 4 Banking Act no longer exists after the license has been granted (or if a CI violates provisions of the banking laws or a regulation or ruling passed on the basis of the Banking Act).</p> <p>As <i>ultima ratio</i> the license will be revoked by the FMA pursuant to Article 70 para. 4 no. 3 Banking Act.</p>
EC4	The licensing authority determines that the proposed legal, managerial, operational and ownership structures of the bank and its wider group will not hinder effective supervision on both a solo and a consolidated basis. ¹⁹ The licensing authority also determines, where appropriate, that these structures will not hinder effective implementation of corrective measures in the future.
Description and findings re EC4	<p>The assessors have been informed that the FMA, in its cooperation with the OeNB, for every application assesses the proposed structures of the bank and its wider group, necessary to undertake effective supervision. It will do so especially for institutions that are part of a foreign group.</p> <p>In case the FMA could not exchange confidential information with a foreign supervisor, the FMA will also assess that the CI in the third country will exchange all necessary information to the CI in Austria for the fulfillment of its information requirements to the FMA.</p> <p>The criteria set for the application and the information to be received from the applicant,</p>

¹⁹ Therefore, shell banks shall not be licensed. (Reference document: BCBS paper on shell banks, January 2003.)

	<p>provide for an adequate evaluation of the proposed legal, managerial, operational and ownership structure.</p> <p>In addition, extra criteria are set to be able to exercise effective supervision. More specifically, the following provisions could in this respect be mentioned:</p> <ul style="list-style-type: none"> • Pursuant to Article 5 para. 1 no. 1 Banking Act, a CI must be established in the legal form of a stock corporation (<i>Aktiengesellschaft</i>—AG) or of a limited liability company (<i>Gesellschaft mit beschränkter Haftung</i>—GmbH), a cooperative or savings bank or a Societas Europaea (<i>Europäische Aktiengesellschaft</i>—SE). This already ensures a clearly defined structure of the undertaking. • The articles of association must not contain any provisions that qualify to impede the orderly conduct of business (Article 5 para. 1 no. 2 Banking Act). • Furthermore, Article 5 para. 1 no. 4 Banking Act stipulates that the effective exercise of the FMA’s supervisory function must not be impeded by close links of the CI with other natural or legal persons. Close links (as defined in Article 2 no. 28 Banking Act) shall mean a situation in which two or more natural or legal persons are linked by: <ul style="list-style-type: none"> ○ <i>The direct ownership of a participation;</i> ○ <i>The existence of a parent-subsidiary relationship; in this context, all subsidiaries of subsidiary undertakings are also considered subsidiaries of the undertaking that is their original parent; or</i> ○ <i>A relationship between natural or legal persons in which each of those persons is linked (as defined in Article 2 no. 2 Banking Act) to the same third person;</i> • Pursuant to Article 5 para. 1 no. 4a Banking Act, a license must not be granted if the laws, regulations and administrative provisions of a third country governing a natural or legal person with close links to the CI, or difficulties in enforcing these provisions prevent the FMA in the effective exercise of its supervisory function.
EC5	The licensing authority identifies and determines the suitability of the bank’s major shareholders, including the ultimate beneficial owners, and others that may exert significant influence. It also assesses the transparency of the ownership structure, the sources of initial capital and the ability of shareholders to provide additional financial support, where needed.
Description and findings re EC5	<p><i>Note that in Austria a dominant legal form is the stock corporation (Aktiengesellschaft) whereby the shareholders have only limited influence, as the management of the company is operationally independent and is not subject to orders or directives from the shareholders’ meetings. Furthermore, it is the supervisory board, which nominates the directors. The supervisory board itself is appointed by the shareholders’ meeting..</i></p> <p>Persons holding qualifying participations—directly or indirectly—are assessed against the</p>

	<p>requirements stipulated in the interest of sound and prudent management of the CI, and that no facts are known which would raise doubts as to the personal reliability of those persons (Article 5 para. 1 no. 3). The definition of a qualifying participation hereby is a person holding 10 percent or more of capital or voting rights or the possibility to exercise a significant influence over the management of that undertaking (see Article 2 no. 3 Banking Act):</p> <p>Also persons acting jointly and exerting significant influence would be assessed. This is especially the case where there are contracts concerning a coordinated controlling of the CI between minor shareholders. In such cases, although each of them has less than 10 percent of shares or voting rights, their shares are added up. In case that their combined shares are then above the threshold of 10 percent, also these persons are subject to ownership control procedures.</p> <p>The FMA would always base its assessment on the ultimate beneficial owner(s). Illustrated by some examples, the FMA outlined its practice in this regard.</p> <p>Information about the identity of the owners and their contribution must be provided together with the application (Article 4 para. 3 no. 5 Banking Act). The assessment of owners takes place in conformity with the process as described in CP 6.</p> <p>An owner needs to have the financial capability to sustain a CI in case of a future need to do so. This capability will be considered as part of the licensing process. It might eg be, that in case a direct owner would not be not able to cover losses, a letter of comfort from its parent would be required. This criterion is also assessed on an ongoing basis. Normally both the FMA and OeNB would in practice undertake such an assessment of the financial soundness of the parent.</p> <p>Highly complex ownership structures, especially an (intermediary) ownership carried out by companies in off-shore destinations may hinder effective supervision and thus be a reason to reject the application according to Article 5 para. 1 no. 4 in Banking Act (see also EC 4 above).</p> <p>If shareholders fulfill all the criteria of Article 5 para. 1 no. 3 (and 4 to 4a) Banking Act and the required initial capital is at the directors' disposal pursuant to Article 5 para. 1 no. 5 Banking Act, the license will be granted.</p>
EC6	A minimum initial capital amount is stipulated for all banks.
Description and findings re EC6	<p>CIs must have an initial capital or endowment of minimum EUR 5 million at the free and unlimited disposal of the directors in Austria (Article 5 para. 1 no. 5 Banking Act).</p> <p>Less minimum capital applies to certain specialized CIs like investment fund management companies (Article 3 para. 4 Banking Act in conjunction with Article 6 para. 1 no. 5</p>

	Investment Funds Act 2011— <i>InvFG</i> 2011), real estate investment fund management companies (Article 3 para. 4a Banking Act in conjunction with Article 9 para. 2 WAG) or CI that are authorized to conduct corporate provisions fund business (Article 3 para. 7 Banking Act).
EC7	The licensing authority, at authorization, evaluates the bank's proposed Board members and senior management as to expertise and integrity (fit and proper test), and any potential for conflicts of interest. The fit and proper criteria include: (i) skills and experience in relevant financial operations commensurate with the intended activities of the bank; and (ii) no record of criminal activities or adverse regulatory judgments that make a person unfit to uphold important positions in a bank. ²⁰ The licensing authority determines whether the bank's Board has collective sound knowledge of the material activities the bank intends to pursue, and the associated risks.
Description and findings re EC7	<p>The FMA conducts a fit and proper test concerning the proposed directors, which are defined in Article 2 no 1 of the Banking Act as:</p> <ul style="list-style-type: none"> • Those natural persons authorized by law or the articles of association to manage the business of and legally represent the credit institution or financial institution; • In the case of credit cooperatives: natural persons entrusted with managing the business and appointed as directors by the management board, supervisory board or the general meeting; full powers of commercial representation and commercial powers of attorney notwithstanding, only directors are authorized to represent the credit cooperative; the appointment of directors is to be entered in the Commercial Register; • In the case of branches of foreign credit institutions or financial institutions, natural persons authorized to manage the business of and represent the branch. <p>These directors comprise the management board. They are assessed on the criteria, as laid down in Article 5 para. 1 nos. 6 to 13 of the Banking Act, which, though by law not specifically mentioned, in practice also includes an assessment of their available time for this position. Hitherto a fit and proper test on any <u>other</u> senior employee of the CI or members of the supervisory board, including its chairman, except for CIs with total assets exceeding EUR 750 million, was not foreseen by the Banking Act. In that case the supervisory board's chairman must fulfill fit & proper requirements accordingly (Article 28a para. 3 Banking Act). Additionally, the supervisor does not have the power or legal basis to require changes in the composition of the Supervisory Board if members of the supervisory board are not fulfilling their duties relating to these requirements.</p> <p>We recommend to swiftly implement fit & proper requirements for all members of the supervisory board and to provide the FMA with the legal basis and powers to require</p>

²⁰ Please refer to Principle 14, Essential Criterion 8.

	<p>changes in the composition of the supervisory board and to swiftly undertake such an assessment with respect to supervisory board members that not have been tested.</p> <p>In case for instance the chairman of the supervisory board would no longer qualify, the FMA could address measures towards the CI, not directly towards the persons concerned. The FMA would then order the CI to have the chair of the supervisory board removed. In second instance the FMA could prevent senior management from taken decisions that need approval of the supervisory board and/or the FMA could make its order towards the CI about the chairman of its supervisory board public. We understand that the respective articles in the Banking Act are expected to be changed as of 1st Jan 2014. It is expected that from then onwards, for all members of the supervisory board, a fit & proper testing will be undertaken. Practically, as of 22nd May 2013, the FMA will start performing fit & proper testing on all new supervisory board members, as well as on existing members in a risk based manner. This is due to the fact that as of May 2013, the EBA Guidelines on fit & proper testing will go into force, which the FMA will consider as much as possible in the execution of its tasks.</p> <p>In assessing these prerequisites, the FMA evaluates the documents submitted by the applicants.</p> <p>It will undertake an assessment of any potential for a conflict of interest in the context of the assessment of their personal reliability as required for conducting transactions for which the application has been done. This might occur, when a proposed person for the board is not independent because of political ties or if a proposed chair of the supervisory board would work at a competitor as well.</p> <p>It will also assess the existence of a record of criminal activities or adverse regulatory judgements. In this respect, possible extracts received from the register of convictions ("<i>Strafregisterauszug</i>") of the proposed directors are assessed. The guidance used in this respect are—most notably—high court rulings about previous cases. The assessors understood that the sole existence of a record of criminal activities or an adverse regulatory judgment in the past would not in itself disqualify the proposed director to uphold the director's position at the bank. In case the criminal record would however be related to an economic offence like financial fraud, money laundering or tax-evasion, the person would disqualify.</p> <p>Pursuant to Article 5 para. 1 no. 8 Banking Act, the professional qualification of directors require adequate theoretical and practical knowledge in the businesses applied for as well as management experience. The assessment of such adequate knowledge is part of the fit and proper test for the management. Generally, additional personal hearings are held with questions & answers to legal provisions of the Banking Act and related legal sources. Directors of small CIs may be waived from the personal hearing if the CI they manage is part of a decentralized sector and if the director has successfully passed the sector's</p>
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	<p>management academy. However, relevant documents and CVs will be assessed in any case.</p> <p>In the context of the assessment of the director’s professionalism, the FMA will also assess whether the management board has collective, sound knowledge of the banking activities for which the application has been done and sufficient practical experience in the banking business. The base is given in the corresponding EBA guidelines that will come into force in May 2013 and are already being used in practice. An example would be that not all board members would need to have a thorough understanding of accounting, but this might be concentrated with just one or two members.</p> <p>If a director joins the CI after the license had been granted and fails the prerequisites of the fit and proper test, the FMA has to order the CI to reestablish lawful conditions according to Article 70 para. 4 Banking Act by establishing an appropriate management.</p>
EC8	<p>The licensing authority reviews the proposed strategic and operating plans of the bank. This includes determining that an appropriate system of corporate governance, risk management and internal controls, including those related to the detection and prevention of criminal activities, as well as the oversight of proposed outsourced functions, will be in place. The operational structure is required to reflect the scope and degree of sophistication of the proposed activities of the bank.²¹</p>
Description and findings re EC8	<p>CIs may only be established in the form of a joint stock company, a limited liability company, a cooperative society or a savings bank (Article 5 para. 1 no. 1 Banking Act). Thus the respective provisions of the Stock Corporation Act (<i>Aktiengesetz—AktG</i>), the Limited Liability Companies Act (<i>Gesetz über Gesellschaften mit beschränkter Haftung—GmbHG</i>), the Societas Europaea Act (<i>Societas Europaea—Gesetz—SEG</i>), the Cooperatives Act (<i>Genossenschaftsgesetz—GenG</i>) or the Savings Bank Act (<i>Sparkassengesetz—SpG</i>) apply.</p> <p>They stipulate an appropriate division of tasks between the management and the supervisory board. Corporate governance principles are taken into due consideration through the application of these provisions and are assessed by the FMA.</p> <p>As regards internal control procedures more specifically, Articles 39 to 39c Banking Act further specify due diligence, organizational, risk management and internal control requirements and their regular (as regards Article 39 para. 2 and Article 39a Banking Act yearly) review by the internal audit unit. Furthermore, CIs have to establish adequate control procedures for large exposures (Article 27 para. 9 Banking Act) and for groups of CIs (Article 30 para. 7 Banking Act).</p> <p>In practice the applicant provides explanations on the motivation for establishing a new CI and on the expectations/plans as regards chances/business opportunities of the future CI on</p>

²¹ Please refer to Principle 29.

	<p>the banking market. The FMA assesses this information as well as the received information on the control procedures and whether these control procedures sufficiently reflect the size and complexity of the planned banking activities.</p> <p>The FMA would assess the internal control system, but not specifically the evaluation system for the detection and prevention of criminal activities at the time of the application as part thereof, except when certain indicators would have flagged the need to do so. The FMA would also assess the outsourced activities and whether and if so how supervision on these activities could take place. In this context it should be noted that outsourcing of any of the CI's core business would not be accepted.</p>
EC9	The licensing authority reviews pro forma financial statements and projections of the proposed bank. This includes an assessment of the adequacy of the financial strength to support the proposed strategic plan as well as financial information on the principal shareholders of the bank.
Description and findings re EC9	<p>The applicant has to provide a business plan containing a budget calculation for the first three years, according to Article 4 para. 3 no. 3 of the Banking Act.</p> <p>Evaluating the business plan for the following three years is a prerequisite in the licensing procedure. The business plan has to be in compliance with the applied banking activities and must be plausible.</p> <p>According to Article 79 para. 4 the OeNB will be mandated by the FMA to assess the business plan in its function as expert. Applicants are regularly required to present also a worst case scenario of the business plan.</p> <p>The financial strength of shareholders (owners) is also assessed.</p>
EC10	In the case of foreign banks establishing a branch or subsidiary, before issuing a license, the host supervisor establishes that no objection (or a statement of no objection) from the home supervisor has been received. For cross-border banking operations in its country, the host supervisor determines whether the home supervisor practices global consolidated supervision.
Description and findings re EC10	<p>For a subsidiary of a foreign CI, a no objection from the Home Authority is not specifically required, but the FMA would notify the Authority who could react.</p> <p>The FMA establishes a no objection from the foreign home authority in cases of the establishment of a branch of a non-EEA country in Austria. For an EU branch, the passport notification suffice and for the establishment of a subsidiary, a no objection is not required according to the Austrian Banking Law. More specifically:</p> <ul style="list-style-type: none"> Foreign CIs (meaning non EEA-CIs; see Article 2 no. 13 Banking Act) have to provide a written declaration of no objection by the supervisory authority at the undertaking's

	<p>head office, stating that there are no objections to the establishment of a branch of this undertaking in Austria (Article 4 para. 4 no. 5 Banking Act).</p> <ul style="list-style-type: none"> • If a CI based within the EEA wishes to establish a branch in Austria, according to the EU passport-regime this has to be permitted once the competent authority of the home Member State has transmitted to the FMA notification information (Article 9 para. 2 in conjunction with Article 10 para. 2 nos. 2 to 4 and para. 4 Banking Act) as follows: <ul style="list-style-type: none"> ○ the Member State within the territory of which the branch is to be established; ○ a program of operations setting out the types of business envisaged and the structural organization of the branch; ○ the address in the host Member State from which documents of the CI can be obtained; ○ the names of the directors of the branch. • If a CI based in an EEA wishes to establish a subsidiary in Austria, no statement of no objections by the home supervisor is required. However, according to Article 4 para. 5 Banking Act the FMA has to inform the competent authority in the undertaking's home Member State about the intended establishment. The FMA may also be required to obtain comments from these authorities in reviewing the suitability of the persons who possess qualifying holdings pursuant to Article 5 para. 1 no. 3 Banking Act as well as the reputation and experience of the directors pursuant to Article 5 para. 1 nos. 6 to 9 Banking Act involved in the management of another undertaking in the same group. <p>As regards consolidated supervision, all banking groups headquartered within the EU are subject to such supervision. However, there is no legal requirement that a foreign authority executes consolidated supervision. With a view to subsidiaries/branches from third countries, based on European Community legislation, Article 30 para. 9a Banking Act was introduced, according to which the FMA has to assess whether they are subject to equivalent consolidated supervision; if not, the FMA must apply the provisions of Article 24 Banking Act. Where the application of this supervisory technique is adequate and the competent authorities in the third country grant their consent, the FMA may also require the establishment of a financial holding company incorporated in the European Community in order to attain the objectives of supervision on a consolidated basis, and apply the provisions regarding supervision on a consolidated basis to the consolidated financial statements of that holding company (Article 30 para. 9a no. 3 Banking Act).</p>
EC11	The licensing authority or supervisor has policies and processes to monitor the progress of new entrants in meeting their business and strategic goals, and to determine that supervisory requirements outlined in the license approval are being met.
Description	New entrants are subject to all relevant regulations as of the time of their licensing. No

and findings re EC11	<p>specific supervisory regime applies to new entrants. However, considerable differences between the budget calculation in the business plan as presented with the application and the effective results later-on, would be detected through the monthly/quarterly and annual reports that have to be submitted by the CI to the OeNB. Adequate measures could then be taken by the FMA, starting within the framework of routine management discussions.</p> <p>Furthermore, the FMA takes new entrants into due consideration, when establishing its yearly planning (together with the OeNB) for on-site inspections of CIs, so that such new entrants are audited in due time after the start of their business activities.</p> <p>Nevertheless, we recommend to implement a more hands-on regime for new entrants in their first years of establishment, which are used to monitor the progress of new entrants in meeting their business and strategic goals, and to determine that supervisory requirements are met. This could include full scope on-site examinations in the first year of establishment, more intense and focused reporting requirements, higher frequency of contacts with management etc. Especially because new CIs tend to be small and the generic supervisory intensity towards smaller institutions is very different compared to the major CIs, such a specific regime is considered relevant.</p>
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Assessment of Principle 5	Materially non-compliant
Comments	<p>EC 2: The FMA has no specific powers to set itself criteria for licensing banks, though the legal provisions laid down in Art 4 and 5 Banking Act are already quite detailed and have in practise not yet hindered a thorough examination of an application.</p> <p>EC 7: The FMA only performs a fit & proper test on all directors that comprise the management board irrespective of the balance sheet and on the chairman of the supervisory board for CI's with total assets exceeding EUR 750 million. The FMA does not have the legal powers to undertake a fit and proper test on any other senior employee of the CI, on members of the supervisory board, or on the chairman of the supervisory board in CIs with total assets below EUR 750 million.</p> <p>Additionally, the supervisor does not have the power or legal basis to require changes in the composition of the supervisory board if members of the supervisory board are not fulfilling their duties relating to these requirements. In case the chairman of the supervisory board would no longer qualify, the FMA could address measures towards the CI, not directly towards the persons concerned. The FMA would then order the CI to have the chair of the supervisory board removed. In second instance the FMA could prevent senior management from taken decisions that need approval of the supervisory board and/or the FMA could make its order towards the CI about the chairman of its supervisory board public. We understand that the respective articles in the Banking Act are expected</p>

	<p>to be changed as of 1st Jan 2014.</p> <p>EC 11: New entrants are subject to all relevant regulations as of the time of their licensing. No specific supervisory regime applies to new entrants.</p>
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Principle 6	Transfer of significant ownership. The supervisor ²² has the power to review, reject and impose prudential conditions on any proposals to transfer significant ownership or controlling interests held directly or indirectly in existing banks to other parties.
Essential criteria	
EC1	Laws or regulations contain clear definitions of “significant ownership” and “controlling interest”.
Description and findings re EC1	<p>The Banking Act has clear definitions of “significant ownership” and “controlling interest. Both terms are defined, although by using different wordings. The Austrian Banking Act uses “qualifying participation” instead of “significant ownership” and “significant influence” instead of “controlling interest”. Article 2 para. 1 no. 3 of the Banking Act, states the following: “Qualifying participation: a direct or indirect holding which represents 10 percent or more of the capital or voting rights in an undertaking or which makes it possible to exercise significant influence over the management of that undertaking;”, whereby for the calculation of voting rights Article 91 paras. 1a to 2a in conjunction with Articles 92 and 92a paras. 2 and 3 of the Stock Exchange Act (Börsegesetz—BörseG) apply.</p> <p>Based on Article 20b para. 3 Banking Act the FMA issued the Regulation on Owner Control. Article 14 of this Regulation uses the term “control” when describing the necessary documentation within the notification process: “If through the planned acquisition or the planned increase of the qualifying participation the party subject to notification requirements obtains control over the target company, the notification shall include a business plan detailing the strategic objectives and plans which the party intends to pursue by acquiring or increasing the qualifying participation in the target company.”</p> <p>To determine “control”, the criteria laid down in Article 30 of the Banking Act are taken into consideration. Generally “control” has been accomplished when a CI has the right to appoint or dismiss a majority of the members of the administrative, management or supervisory body, has the right to exercise a controlling influence, actually exercises a controlling influence or on the basis of a contract with one or more members, has the right to make decisions as to how members' voting rights are to be exercised in the</p>

²² While the term “supervisor” is used throughout Principle 6, the Committee recognizes that in a few countries these issues might be addressed by a separate licensing authority.

	<p>appointment or dismissal of the majority of members of the management or supervisory body where necessary in order to attain a majority of all votes.</p> <p>This understanding of “control” is in line with the EBA “Guidelines for the prudential assessment of acquisitions and increases in holdings in the financial sector required by Directive 2007/44/EC. According to Article 20 para. 1 Banking Act the notification requirements also apply to persons acting jointly, so persons who acquire or reach a qualifying participation together. This is in line with Directive 2007/44/EC which is incorporated into the Austrian law that persons are ‘acting in concert’ when each of them decides to exercise his rights linked to the shares he acquires in accordance with an explicit or implicit agreement made between them. Notification of the voting rights held collectively by these persons will have to be made to the competent authorities by each of the parties concerned or by one of these parties on behalf of the group of persons acting in concert.</p> <p>Furthermore Article 2 para. 28 Banking Act contains in a definition of “close links”: a situation in which two or more natural or legal persons are linked in any of the following ways: a) The direct ownership of a participation; b) The existence of a parent-subsidiary relationship; in this context, all subsidiaries of subsidiary undertakings are also considered subsidiaries of the undertaking that is their original parent; or c) A relationship between natural or legal persons.</p>
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EC2	<p>There are requirements to obtain supervisory approval or provide immediate notification of proposed changes that would result in a change in ownership, including beneficial ownership, or the exercise of voting rights over a particular threshold or change in controlling interest.</p>
Description and findings re EC2	<p>Article 20, 20a and 20b of the Banking Act and the Regulation of the FMA on Owner Control (“Eigentümerkontrollverordnung”—EKV) require the assessment and approval of a proposed acquisition or of an increase of a qualified participating interest. This is organized by means of a requirement to notify the envisaged acquisition, to the FMA and a right by the FMA to prohibit this acquisition if it does not meet the requirements as laid down.</p> <p>Article 20 of the Banking Act was changed in 2009 to transpose Directive 2007/44/EG and the accompanying 3L3 Guidelines (3L3 referring jointly to the EBA, ESMA and EIOPA or their respective predecessor organizations) regarding procedural rules and evaluation criteria for the prudential assessment of acquisitions and increases of holdings in the financial sector into national legislation; the Guidelines were transposed in the EKV.</p> <p>Article 20 para. 1 1st sentence Banking Act describes that “Any party who has taken a decision to hold a qualifying participation in a credit institution (10 percent) directly or</p>

indirectly, or to increase such a qualifying participation directly or indirectly (proposed acquirer), in such a way that the limits of 20 percent, 30 percent or 50 percent of the voting rights or capital are reached or exceeded, or in such a way that the credit institution becomes a subsidiary undertaking of that party, must first notify the FMA in writing accordingly with an indication of the amount of the participation and the information required under Article 20b para. 3 Banking Act [in conjunction with the EKV.]

After having received a complete set of information, the FMA has 60 working days to assess the acquisition and to determine whether or not there is a need to prohibit the envisaged acquisition. If the FMA needs to request further information, the assessment period is postponed until the information is submitted. The assessment period may, however, even in these cases not exceed a total of 80 or, under certain circumstances 90 working days (e.g. when the proposed acquirer is situated outside the EEA).

Although there is no explicit definition of “ultimate beneficiary owner” within the Austrian Banking laws, in its assessment, the FMA would in practice undertake a thorough assessment of beneficiary owners, other than the acquirer, as described hereafter. The assessors have been informed that the FMA in its assessment of the ultimate beneficial owner”, would go as far as necessary to identify indeed the ultimate beneficial owner, which in the cases described require an in-depth analysis of ownership structure of entities and persons concerned.

Basically, the approach towards identifying the natural or legal person or “such persons acting in concert together” (hereinafter referred to as the proposed acquirer) is conducted based on a thorough assessment laid down in Article 20b of the Banking Act: In assessing the notification provided for in Article 20 para. 1 Banking Act, the FMA shall, in order to ensure the sound and prudent management of the CI in which an acquisition is proposed, and having regard to the likely influence of the proposed acquirer on the CI, appraise the suitability of the proposed acquirer and the financial soundness of the proposed acquisition against all of the following criteria: (1) the reputation of the proposed acquirer; (2) the reputation and experience of any person who will direct the business of the CI as a result of the proposed acquisition; (3) the financial soundness of the proposed acquirer, in particular in relation to the type of business pursued and envisaged in the CI in which the acquisition is proposed; (4) whether the CI will be able to comply and continue to comply with the prudential requirements based on Directives 2000/46/EC, 2002/87/EC, 2006/48/EC and 2006/49/EC and, in particular, whether the group of which it will become a part has a structure that makes it possible to exercise effective supervision, effectively exchange information among the competent authorities and determine the allocation of responsibilities among the competent authorities (Article 5 para. 1 nos. 4 and 4a); and (5) whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing within the meaning of Article 1 of Directive 2005/60/EC is being or has been committed or attempted, or that the proposed

	<p>acquisition could increase the risk thereof.</p> <p>Additional criteria are laid down in Articles 8 and 9 of the Regulation on Owner Control: If the party subject to notification requirements is not a natural person the following documents have to be included in a notification: officially certified copies of the current articles of association, the current partnership agreement or comparable agreements. Additionally, a list of the management bodies and personally liable members of a partnership, specifying the kind and scope of powers and the distribution of responsibilities has to be provided.</p> <p>If the party subject to notification requirements is a special-purpose fund, an explanation shall be included which details whether or to what extent, in percentage terms, these persons participate in profit distribution. If the party subject to notification requirements is not a natural person, a list of the party's economic beneficiaries, specifying the reasons for and the scope of the economic benefit.</p> <p>The necessary information on the reliability of the proposed acquirer is laid down in Article 9 of the Regulation on Owner Control and contains the same obligations for any legal person as it requires for natural persons. Article 10 of the Regulation on Owner Control contains the requirements to describe in detail participation relationships and affiliation with a group of companies as well as other possible avenues of influence. Article 11 of the Regulation describes the requirements for detailed disclosure of relevant business relationships, family ties and other relevant relationships as well as acquisition interests. Article 12 of the Regulation contains the requirements for a detailed disclosure of the financial situation and credit standing of the party subject to notification requirements. Article 13 of the Regulation states the requirements for the disclosure of the acquisition funding, and the obligation of disclosure of any and all agreements. Article 14 of the Regulation contains the requirements for a detailed disclosure of the business plan and a description of strategic objectives and plans.</p> <p>The FMA also utilizes in its assessment of the ultimate beneficial owner. The EBA "Guidelines for the prudential assessment of acquisitions and increases in holdings in the financial sector required by Directive 2007/44/EC". According to this Guideline. "Beneficial owners' are the natural persons who ultimately own or control the acquirer, and/or the persons on whose behalf the acquisition is being conducted. It also includes persons who exercise ultimate effective control over an acquirer which is a legal person or a legal arrangement, such as a trust."</p>
EC3	<p>The supervisor has the power to reject any proposal for a change in significant ownership, including beneficial ownership, or controlling interest, or prevent the exercise of voting rights in respect of such investments to ensure that any change in significant ownership meets criteria comparable to those used for licensing banks. If the supervisor determines that the change in significant ownership was based on false information, the supervisor</p>

	has the power to reject, modify or reverse the change in significant ownership.
Description and findings re EC3	<p>The FMA has the power to prohibit a proposed acquisition, provided this would be reasonable. According to Article 20b para. 1 Banking Act in assessing the notification provided for in Article 20 para. 1 Banking Act, the FMA shall, in order to ensure the sound and prudent management of the CI in which an acquisition is proposed, and having regard to the likely influence of the proposed acquirer on the CI, appraise the suitability of the proposed acquirer and the financial soundness of the proposed acquisition against the following criteria:</p> <ul style="list-style-type: none"> • the reputation of the proposed acquirer; • the reputation and experience of any person who will direct the business of the credit institution as a result of the proposed acquisition; • the financial soundness of the proposed acquirer, in particular in relation to the type of business pursued and envisaged in the credit institution in which the acquisition is proposed; • whether the credit institution will be able to comply and continue to comply with the prudential requirements based on Directives 2000/46/EC, 2002/87/EC, 2006/48/EC and 2006/49/EC and, in particular, whether the group of which it will become a part has a structure that makes it possible to exercise effective supervision, effectively exchange information among the competent authorities and determine the allocation of responsibilities among the competent authorities (Article 5 para. 1 nos. 4 and 4a Banking Act); • whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing within the meaning of Article 1 of Directive 2005/60/EC is being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof. <p>According to Article 20a para. 2 Banking Act, the FMA has to prohibit the proposed acquisition following an assessment according to the assessment criteria set forth in Article 20b Banking Act in conjunction with the EKV if this is reasonable or if the information that has been provided is incomplete.</p>
EC4	The supervisor obtains from banks, through periodic reporting or on-site examinations, the names and holdings of all significant shareholders or those that exert controlling influence, including the identities of beneficial owners of shares being held by nominees, custodians and through vehicles that might be used to disguise ownership.
Description and findings re EC4	<p>The FMA receives from CIs annually the names and addresses of all holders of a qualifying participation, which includes a participation which makes it possible to exercise significant influence over the management of the undertaking (see Article 2 no. 1). More specifically, CIs must notify the FMA:</p> <ul style="list-style-type: none"> • of any acquisition or disposal of qualifying participations as well as any cases in which

	<p>the participation limits defined in Article 20 paras. 1 and 2 Banking Act are reached, exceeded or underrun in writing immediately as soon as the CIs become aware of such transactions and</p> <ul style="list-style-type: none"> • in writing at least once per year of the names and addresses of shareholders and other members holding qualifying participations as well as the sizes of such participations as shown in particular by the information received at the annual general meetings of shareholders or other members, or as a result of the information received on the basis of Articles 91 to 93 Stock Exchange Act 1989. <p>In practice, this notification requirement also holds for the ultimate beneficial owner, as identified in the initial assessment process.</p>
EC5	<p>The supervisor has the power to take appropriate action to modify, reverse or otherwise address a change of control that has taken place without the necessary notification to or approval from the supervisor.</p>
Description and findings re EC5	<p>According to Article 20 para. 4 2. Sentence Banking Act the voting rights of the shares concerned in case a change of control has taken place without the necessary notification and consent of the FMA are suspended <i>ex lege</i>. According to Article 20 para. 4 of the Banking Act, the FMA must take suitable measures, in particular pursuant to para. 5 nos. 1 and 2 against the parties indicated in paras. 1 and 2 if they fail to fulfill their obligations of prior notification or if they acquire a participation despite an objection pursuant to Article 20a para. 2 Banking Act or without approval pursuant to Article 21 para. 2 Banking Act.</p> <p>The voting rights associated with the shares held by the shareholders or other members will be suspended until the FMA determines that the acquisition of the participation pursuant to Article 20a para. 2 Banking Act would not have been prohibited or until the FMA determines that the reason for previously prohibiting the acquisition no longer exists.</p> <p>In addition, the FMA can take specific other measures in case persons are involved that do not meet the requirements for sound and proper management. These particular measures are required where according to Article 20 para. 5 of the Banking Act the danger exists that the influence exercised by the persons possessing qualifying participations will not meet the requirements for the sound and prudent management of the credit institution. In such a case the FMA must take the measures necessary to avert the danger or to put an end to such a situation. In particular, such measures may include:</p> <ul style="list-style-type: none"> • measures in accordance with Article 70 para. 2 Banking Act • sanctions against the directors in accordance with Article 70 para. 4 no. 2 Banking Act; • There is also the possibility for the submission of a motion to a first-instance commercial court at the credit institution's place of establishment for the suspension of voting rights associated with those shares held by the shareholders or members in question. If a court orders the suspension of voting rights then the court must simultaneously appoint and transfer the exercise of voting rights to a trustee who

fulfills the requirements of Article 5 para. 1 no. 3 Banking Act. In cases where measures are taken pursuant to Article 20 para. 4 Banking Act, the FMA must request the appointment of a trustee at the competent court pursuant to Article 20 para. 5 Banking Act immediately upon becoming aware that the voting rights are suspended.

Below one can see the number of requests for transfer of significant ownership that the FMA has assessed in the period 2008–2012.

Year	(a) approved	(b) denied	(c) approved under conditions
2008	25	1	0
2009	31	0	0
2010	13	0	0
2011	4	1	15
2012-10	5	1	1

The FMA did not reverse or modify a change of control retrospectively. The FMA, however, acted in several cases for a CI's failure to notify the FMA in writing of any acquisition and any disposal pursuant to Article 20 Banking Act in conjunction with Article 98 para. 2 no (3) Banking Act under Administrative Penal Procedure. The statistics are shown below.

Actions based on Article 98 para. 2 Banking Act						
Year	2009	2010	2011	2012*	2013	Cumulative
§ 98 Abs. 2 Z 3 Banking Act	3	2	14	4	13	36

EC6	Laws or regulations or the supervisor require banks to notify the supervisor as soon as they become aware of any material information which may negatively affect the suitability of a major shareholder or a party that has a controlling interest.
Description and findings re EC6	The suitability of shareholders is one of the conditions for granting a banking license and must be observed at all times. Facts which are of a quality to negatively affect the suitability of shareholders may have a material influence on the conditions for revoking the banking license, and the FMA has to take the appropriate measures according to Article 70 para. 2 Banking Act if a shareholder is no longer considered suitable.

	<p>Also, directors of CIs are bound by their duty of diligence according to the principles of Article 39 para. 1 of the Banking Act which relates to the Stock Corporation Act which may require them to take steps if the suitability of a shareholder is negatively affected. If such a deterioration in shareholder suitability would result in circumstances where the ability to fulfill obligations is endangered, the CI have to notify this immediately to the FMA in writing (Article 73 para. 1 no. 5 Banking Act).</p> <p>However, there is no explicit notification requirement in the Austrian legislative framework for CIs to notify to the supervisor as soon as they become aware of any material information which may negatively affect the suitability of a major shareholder or a party that has a controlling interest. We recommend to introduce such an explicit requirement.</p> <p>Additionally, bank auditors are obliged to report to the supervisor any observations which may be of supervisory relevance, including facts concerning qualifying shareholders.</p>
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Assessment of principle 6	Compliant
Comments	EC 6: There is no explicit notification requirement in the Austrian legislative framework for CIs to notify to the supervisor as soon as they become aware of any material information which may negatively affect the suitability of a major shareholder or a party that has a controlling interest.

Principle 7	Major acquisitions. The supervisor has the power to approve or reject (or recommend to the responsible authority the approval or rejection of), and impose prudential conditions on, major acquisitions or investments by a bank, against prescribed criteria, including the establishment of cross-border operations, and to determine that corporate affiliations or structures do not expose the bank to undue risks or hinder effective supervision.
Essential criteria	
EC1	<p>Laws or regulations clearly define:</p> <p>(a) what types and amounts (absolute and/or in relation to a bank's capital) of acquisitions and investments need prior supervisory approval; and</p> <p>(b) cases for which notification after the acquisition or investment is sufficient. Such cases are primarily activities closely related to banking and where the investment is small relative to the bank's capital.</p>
Description	Prior supervisory approval is required for CIs investing or acquiring shares of CIs in Austria,

<p>and findings re EC1</p>	<p>CIs within the EEA, CIs outside the EEA and non-bank financial institutions within the EEA.</p> <p>In case CIs acquire shares of another CI within the EEA, the assessment is primarily done by the respective other Member State. In this case the FMA would not undertake the pre-approval, but the decision making would take place by the authority in the other Member State, based upon a common EU framework for such assessments.</p> <p>CIs acquiring shares of another Austrian CI are treated as any other interested party due to Article 20 para. 1 of the Banking Act. For the approval by the FMA and procedures its follows, please see CP 6.</p> <p>CIs acquiring shares of another CI within the EEA have to comply with the same conditions and procedure as prescribed in CP 6 based on the provisions of Directive 2007/44/EC and the accompanying 3L3 Guidelines. The assessment is primarily done by the respective other Member State. In this case the FMA would not undertake the pre-approval, but the decision making would take place by the authority in the other Member State, based upon the above mentioned Directive. The FMA may provide the other supervisory authority with its view; amongst others, the OeNB would undertake an analysis of the prudential risks involved.</p> <p>CIs acquiring shares in a CI based in a country outside the EEA and whereby the limits of 10% (qualifying participation), 20 percent, 33 percent or 50 percent of the voting rights or capital of that CI are reached, exceeded or underrun or if another CI indirectly or directly holds, acquires or disposes of those voting rights, need an approval of the FMA due to Article 21 para. 1 no. 2 Banking Act. For this kind of approval the same conditions apply like the conditions as laid down in the licensing procedure due to Article 21 para. 2 1st sentence Banking Act.</p> <p>For the acquisition of shares of insurance companies, investment firms, payment institutions and electronic money institutions within the EEA by a CI the analogous approval procedure like for CIs within the EEA applies due to Directive 2007/44/EC and the accompanying 3L3 Guidelines. Also here the approval procedure is primarily undertaken by the authority in the EU Member State where the respective insurance company, investment firm, payment institution or electronic money institution is located.</p> <p>In Austria, also the business of financing through the acquisition and resale of equity shares (capital financing business) is considered a banking transaction (Article 1 no. 15 Banking Act) and as such subject to a banking license.</p> <p>There are no cases for a mere notification after the acquisition or investment is accomplished.</p> <p>There is no prior approval process for investments by CIs in non-bank financial institutions outside the EEA or for non-bank non-financial institutions inside or outside the EEA. We</p>
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were also informed that no prior approval is necessary for setting up a credit institution in a third country when this would be done by means of a greenfield operation.

We recommend to provide the FMA with the necessary powers that will enable it to pre-approve investments or acquisitions in non-bank financial institutions as well as in non-bank non-financial institutions, given the risks involved.

We also recommend to clarify or revise the current Banking Act in such a way that greenfield operations when undertaken via setting up a subsidiary in another country, would also need pre-approval by the FMA.

Although not a pre-approval or notification process, Article 29 of the Banking Act contains certain limits for investments in undertakings which are neither CIs, financial institutions, undertakings whose activities are a direct extension of banking or concern services ancillary to banking nor contractual insurance or reinsurance undertakings. According to Article 29 para. 1 of the Banking Act a CI or group of CIs must not hold a qualifying participation in other undertakings where the book value of the qualifying participation exceeds 15% of the CIs eligible capital. Furthermore, the total book value of all qualifying participations in other undertakings must not exceed 60% of the CI's eligible capital or the group of CI's proper consolidated own funds to be taken into account (Article 29 para. 2 Banking Act). Where these limits (15%, resp 60%) are exceeded, the CI needs to hold own funds covering the amounts by which the qualifying holdings exceed these limits. Where both of these limits are exceeded, the amount to be covered by own funds needs to be the greater of the two excess amounts (Article 29 para. 4. Banking Act). Specific stocks and shares are not taken into account for this calculation (see Article 29 para. 3 Banking Act). Examples are shares used only temporarily during a financial reconstruction or rescue operation; shares held during the normal course of underwriting; or shares not intended for permanent use in business operations. Any participation in excess of the thresholds mentioned in Article 29 Banking Act and their coverage by own funds will be notified by the (external) bank auditor within the framework of his annual audit (Article 63 para. 4 no. 2 Banking Act) and will lead to preliminary proceedings in the course of proceedings by the FMA to reestablish lawful conditions (according to Article 70 para. 4 no. 1 Banking Act).

In addition the FMA could undertake some ex post measures in case the investment or acquisition that has not been pre-approved would be a danger to the fulfillment of the CI's obligations to its creditors. In such a case, the FMA could take a temporary measure based upon article 70 para 2 Banking Act, whereby it could completely or partly prohibit the continuation of business operations.

With regard to the materiality of holdings in non-bank/non-financial participations, the assessors has been informed by the FMA and OeNB that in practice, over the last years a tendency evolved that CIs in Austria have reduced their participations in non-financial companies and reinvest the proceeds into their banking business. Also the banks we

	<p>visited, affirmed this tendency.</p> <p>Please note that the merger or affiliation of CIs with other CIs or with non-banks requires a special permit by the FMA (Article 21 para. 1 nos. 1 and 7 Banking Act). The procedure for obtaining this special permit is built analogous to the licensing procedure.</p>
EC2	Laws or regulations provide criteria by which to judge individual proposals
Description and findings re EC2	<p>For acquisition of shares in CIs, insurance companies, investment firms, payment institutions and electronic money institutions within the EEA based on the EU -legislation, the Articles 20 to 20b Banking Act in conjunction with the Ruling of the FMA on Owner Control (<i>Eigentümerkontrollverordnung—EKV</i>) or similar laws and regulations from the Member States where the institution concerned is located, apply in the same manner as prescribed in CP 6, EC 2.</p> <p>For the approval of the acquisition of shares of CIs based in a country outside the EEA the same conditions like in the licensing procedure apply due to Article 21 para. 2 1st sentence Banking Act. See CP 5.</p>
EC3	<p>Consistent with the licensing requirements, among the objective criteria that the supervisor uses is that any new acquisitions and investments do not expose the bank to undue risks or hinder effective supervision. The supervisor also determines, where appropriate, that these new acquisitions and investments will not hinder effective implementation of corrective measures in the future.²³ The supervisor can prohibit banks from making major acquisitions/investments (including the establishment of cross-border banking operations) in countries with laws or regulations prohibiting information flows deemed necessary for adequate consolidated supervision. The supervisor takes into consideration the effectiveness of supervision in the host country and its own ability to exercise supervision on a consolidated basis.</p>
Description and findings re EC3	<p>When assessing a new acquisition or investment, for CI's within Austria or within another EEA country, the FMA or the competent authority in that other country, would evaluate the risk profile of the institution concerned as well as the possibility to undertake effective supervision.</p> <p>Also for such an assessment of a CI outside the EEA, the Banking Act focuses on both the assessment of prudential risks and an assessment of the possibility to undertake effective supervision.</p> <p>An acquisition of a CI in another EEA Member State is subject to the provisions of Article</p>

²³ In the case of major acquisitions, this determination may take into account whether the acquisition or investment creates obstacles to the orderly resolution of the bank.

	<p>20 Banking Act. Amongst others the FMA has to judge according to Article 20b para. 1 no. 4 Banking Act in particular, whether the group of which the CI will become a part of a structure that makes it possible to exercise effective supervision, effectively exchange information among the competent authorities and determine the allocation of responsibilities among the competent authorities. The rules also refer to some applicable provisions for licensing requirements (Article 5 para. 1 nos. 4 and 4a). See for more details CP 5 and CP 4 EC 2.</p> <p>With a view to acquisitions in third countries it is necessary that the laws, regulations and administrative provisions of a third country governing a natural or legal person with which the CI has close links, or difficulties involved in enforcing the provisions of the Banking Act do not impede the FMA in the effective exercise of its supervisory function (Article 21 para. 2 in conjunction with Article 5 para. 1 no. 4a Banking Act).</p> <p>According to Article 30 para. 8 Banking Act, it is essential that the superordinate CI ensures that information is provided by the subordinated institutions and a superordinate financial holding company. If upon acquisition of a participation (which can be a CI, financial institution, an investment firm or an ancillary banking services company) that has to be consolidated, the transmission of the required information is not ensured, the superordinate institution will not be allowed to acquire this participation.</p> <p>Affiliated undertakings incorporated outside Austria and subject to supervision on a consolidated basis must provide the FMA with documents and information required for consolidated supervision, where this is necessary for the fulfillment of the FMA's duties under this federal act and permissible under the law of the other country according to Article 30 para. 8a Banking Act.</p> <p>The establishment of a subsidiary is subject to the host country law.</p> <p>In practice, when reviewing a proposed acquisition, the following process is followed. The FMA has established by its Regulation of the FMA on Owner Control a list of information to be submitted to the FMA for the prudential assessment of compliance with the criteria in Article 20b para. 1 nos. 1 to 5 Banking Act. The extent of requested general documents and declarations regards the likely influence of the proposed acquirer on the CI. Within the short period of two working days following the arrival of the notification, the FMA shall acknowledge receipt of all the required information in writing to the proposed acquirer and shall inform the proposed acquirer of the date of the expiry of the assessment period at the time of acknowledging receipt (Article 20a para. 1 Banking Act). The time limit of 60 working days according to Article 20a para. 2 Banking Act starts once all necessary documents are presented to the FMA. Until the 50th working day of the assessment the FMA may, if necessary, request any further information that is necessary to complete the assessment (Article 20a para. 3 Banking Act). In case of reasonable grounds the FMA has to prohibit the proposed acquisition within 60 working days as from the date of the written acknowledgement of receipt of the notification and all the documents (for instance</p>
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	<p>in case the transmission of the required information is not ensured). If the FMA does not oppose the proposed acquisition in writing within the assessment period, it shall be deemed approved (Article 20a para. 2 Banking Act). Also conditions and obligations may be attached to the notice, in order to warrant compliance with the criteria set forth in Article 20b Banking Act.</p> <p>Regarding the establishment of cross border banking operations via a branch, it is necessary to distinguish between branches in EEA-Member States and branches outside the EEA (third country branches). Within the EEA the system of a single license (“European Passport”) applies. However, if the FMA would have doubts about the adequacy of the administrative structures (e.g. an adequate flow of information within the CI is not guaranteed) of a CI wishing to establish a branch in another Member State, it still may and will prohibit such establishment by an administrative ruling (Article 10 para. 3 Banking Act). With regard to a country outside the EEA, a special permit by the FMA is needed for the establishment by the CI of such a branch. If adequate supervision of this branch outside the EEA by the FMA is not ensured, the FMA has to deny such a permit (Article 21 para. 1 no. 5 and para. 2 Banking Act in conjunction with Article 5 para. 1 nos. 4 and 4a Banking Act).</p>
EC4	The supervisor determines that the bank has, from the outset, adequate financial, managerial and organizational resources to handle the acquisition/investment.
Description and findings re EC4	<p>Acquisition / investment in CIs</p> <p>The notification of the decision to acquire/increase a qualifying participation in another CI, the CI needs to submit a full set of information (for details see EKV <u>http://www.fma.gv.at/en/legal-framework/legal-foundation/regulations/austrian-banking-act-bwg-bankwesengesetz/regulation-of-the-fma-on-owner-control.html</u>). Such information material includes details about the financial situation, credit standing of the party subject to notification requirements, acquisition funding and business plan (description of strategic objectives and plans) which is assessed by the supervisor.</p> <p>Acquisition / investment in Non-banks financial institutions</p> <p>As mentioned above under EC 1, the acquisition of participations and investments in financial service providers is subject to a procedure which is analogous to the acquisition of CIs (described above under CP 6 EC 2) and needs a special notification.</p> <p>The acquisition of qualifying participations in other non-banks does not need supervisory approval. An acquisition is only permitted up to a limited amount of own funds, any exceeding amount must be fully covered by own funds, and compliance with Article 29 Banking Act is audited regularly by the bank auditor. Furthermore, CIs must report on their compliance with the own funds requirements of Article 22 para. 1 in conjunction with Article 29 para. 4 Banking Act in their monthly reports (Article 74 para. 2 Banking Act and</p>

	<p>ONA-V) to the FMA and the OeNB. The OeNB notifies those CIs to the FMA which do not comply (i.a.) with the own funds requirement.</p> <p>Thus, the adequacy of financial resources is controlled indirectly in different ways.</p>
EC5	<p>The supervisor is aware of the risks that non-banking activities can pose to a banking group and has the means to take action to mitigate those risks. The supervisor considers the ability of the bank to manage these risks prior to permitting investment in non-banking activities.</p>
Description and findings re EC5	<p>The acquisition of a non-bank non-financial entity would not need a pre-approval of the supervisor. Consequently, the supervisor would need to rely on signals from especially its off-site supervision and for larger banks, also the state commissioner to become aware of emerging risks from non-banking activities.</p> <p>The acquisition of participations and investments in non-bank financial service providers within the EEA is subject to a procedure which is analogous to the acquisition of CIs and needs also a special notification prior to the acquisition.</p> <p>The acquisition of participations in non-banks non-financial business does not need supervisory approval. An individual acquisition is permitted up to 15 percent of own funds. The total percent of such non-bank non-financial activities must not exceed 60 percent. Any exceeding amount must be fully covered by own funds due to Article 29 Banking Act that is audited regularly by the internal auditor and the bank auditor.</p> <p>The information flow between the CI and the supervisor on acquisitions and activities in other non-banking businesses substantially relies on a constant dialogue. The OeNB and the FMA are regularly having meetings and discussions with the Executive Board of CIs. On this occasion also the situation of participations, especially cross-border, is discussed.</p> <p>Whenever the FMA fears that such acquisition may cause a problem for the CI, the FMA will start proceedings pursuant to Article 70 para. 1 no. 1 Banking Act and require further information. On this basis the FMA will then decide about potentially necessary measures.</p> <p>For CIs where a state commissioner is appointed (see Article 76 Banking Act), the situation is slightly different. In Austria, company statutes typically contain a provision requesting the approval of the supervisory board for investments above usually max. EUR 100,000. Since the state commissioner or her/his deputy attends all supervisory board meetings, she/he learns of plans for such investments and reports them to the FMA.</p> <p>In the case of an appointed state commissioner, she/he may raise an objection to a decision on the basis of substantiated concerns on the violation of acts within the supervisory competence of the FMA, e.g. Article 29 Banking Act. Such objections postpone the effectiveness of the CI's supervisory board's resolution for a short period until a</p>

	<p>decision is issued by the supervisory authority (Article 76 para. 5 Banking Act).</p> <p>No specific framework exists for the assessment of possible risks of non-bank non-financial activities. We were informed that the assessment of such non-banking entities is mostly focused on key financial parameters, less on the risks posed by the specific business models of these non-bank activities.</p>
AC1	<p>The supervisor reviews major acquisitions or investments by other entities in the banking group to determine that these do not expose the bank to any undue risks or hinder effective supervision. The supervisor also determines, where appropriate, that these new acquisitions and investments will not hinder effective implementation of corrective measures in the future.²⁴ Where necessary, the supervisor is able to effectively address the risks to the bank arising from such acquisitions or investments.</p>
Description and findings re AC1	<p>No specific framework exists in Austria for the review by the FMA of major acquisitions or investments by non-bank non-financial entities in the banking group.</p> <p>However, for acquisitions and investments done by other entities of the group within the EEA, the supervisor in the other EEA country would undertake an assessment which is equivalent to the one the FMA would undertake.</p> <p>In case acquisitions would have been assessed by other supervisory authorities within a college of supervisors in which the FMA also participates, it could also undertake such a review, preferably within the college.</p>

Assessment of Principle 7	Materially non-compliant
Comments	<p>EC 1: There is no prior approval process for investments by CIs in non-bank financial institutions outside the EEA or for non-bank non-financial institutions inside or outside the EEA. We were also informed that no prior approval is necessary for setting up a credit institution in a third country when this would be done by means of a greenfield operation.</p>

Principle 8	<p>Supervisory approach. An effective system of banking supervision requires the supervisor to develop and maintain a forward-looking assessment of the risk profile of individual banks and banking groups, proportionate to their systemic importance; identify, assess and address risks emanating from banks and the banking system as a whole; have a</p>
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²⁴ Please refer to Footnote 33 under Principle 7, Essential Criterion 3

	framework in place for early intervention; and have plans in place, in partnership with other relevant authorities, to take action to resolve banks in an orderly manner if they become non-viable.
Essential criteria	
EC1	<p>The supervisor uses a methodology for determining and assessing on an ongoing basis the nature, impact and scope of the risks:</p> <ul style="list-style-type: none"> (a) which banks or banking groups are exposed to, including risks posed by entities in the wider group; and (b) which banks or banking groups present to the safety and soundness of the banking system. <p>The methodology addresses, among other things, the business focus, group structure, risk profile, internal control environment and the resolvability of banks, and permits relevant comparisons between banks. The frequency and intensity of supervision of banks and banking groups reflect the outcome of this analysis.</p>
Description and findings re EC1	<p>Risks of banks are being assessed on an ongoing basis. Both off-site analysis and on-site examinations take place continuously.</p> <p>The frequency and intensity of supervision depends upon the systemic relevance of the CI's and the risks identified. More systemically relevant CI's receive more resources to undertake off-site analysis. Also the frequency of on-site examinations would be higher for these institutions. From time to time the systemic relevance is being evaluated, which could lead to a reclassification of a CI as more or less systemically relevant. A specific formalized process to determine the systemic relevance isn't in place and the granularity is between systemically relevant institutions (top 8), the next 9 to 40 and then the smaller institutions.</p> <p>The intensity of supervision also depends upon the nature, impact and scope of risks. Periodically, all CI's are scored on their riskiness via an early warning system, the ABBA-system (see CP 9, EC 1) which in the assessor's view is to be considered as a best practice system. CI's are scored on a scale from 1 to 6. The most risky CI's are thereby being identified and subsequently assessed on an individual basis.</p> <p>Also macro prudential developments are periodically being assessed. Analysis of such macroprudential risks takes place in a separate division, and are subsequently being discussed in expert teams, leading to a view on the identified risks. These more systemic risks on for instance interconnectedness, liquidity stress or country risks are then either addressed via policy recommendations or taken into account in the micro prudential risk assessments by the off-site departments. The risk assessment methodology makes use of</p>

	<p>uniform risk modules for on-site examinations and off-site analysis, which facilitates an adequate alignment between on- and off-site activities and supervisory responses, provides a basis for peer comparisons and which makes an efficient use of resources possible. From time to time these modules are being updated, for instance due to new regulations. These modules are on areas like: ICAAP, Risk coverage potential, liquidity risk, credit risk, market risk, operational risk, model issues, other risks and special topics. For every area of risk the inherent severity of a risk is taken into account, the quality of the control environment to mitigate this risk and the impact of the remaining risks on the CI as a whole.</p> <p>The analysis of risks takes into account the proportionality principle. ICAAPs are being prepared by the institutions, whereby the top 8 CI's will provide a more granular ICAAP than e.g. the small Raiffeisenbanken, who would normally be assisted by their regional structures to set up their simpler ICAAP. The subsequent supervisory assessment leads to a risk scoring between 1–4, as basis for a possible change in the SREP score for capital adequacy.</p> <p>Besides this more institution specific approach, also a more thematic cross institution approach is being used. Amongst others, possible risks which might be of a more sectoral nature are being identified via continuous dialogues, via forums on the top 8 CI's that take place every quarter and in the risk workshop where possible systemic risks are being discussed. Also, centers of competence exist for all risk areas, that identify new emerging risk for their areas of expertise.</p> <p>An analysis of the group structure and of the business model used takes place on a continuous basis as well. The resolvability of banks is being assessed via recovery and resolution plans. The supervisor has quite recently started such assessments, at the moment related to 3 large CI's.</p> <p>There is no specific unit or functionary responsible for the further development of the supervisory approach and methods, nor is there a quality control unit or quality manager responsible for the accompanying monitoring of the supervisory processes.</p> <p>We recommend to introduce such a function.</p>
EC2	<p>The supervisor has processes to understand the risk profile of banks and banking groups and employs a well defined methodology to establish a forward-looking view of the profile. The nature of the supervisory work on each bank is based on the results of this analysis.</p>
Description and findings re EC2	<p>The legal basis for the wide range of on-site and off-site instruments is set in Article 70 para. 1 Banking Act. These supervisory instruments are used to get a thorough understanding of the risk profile of individual CIs and banking groups.</p>

	<p>The decision which CI should be audited is primarily determined by their riskiness and systemic relevance. In regular meetings of the KOFO (Coordination Forum of OeNB and FMA Senior Management) next year's on-site inspection plan is decided. During the FMA/OeNB-audits the focus is on the CI's overall steering and risk management, its internal control, as well as on the measures taken to prevent money laundering and terrorist financing.</p> <p>The FMA and OeNB significantly increased the total number and frequency of on-site inspections in the last years in order to cope with the ongoing changes and challenges in the banking system, given the CIs' riskiness and systemic relevance. The FMA and the OeNB have also intensified the ongoing dialogue with the CIs via an increased number of management meetings with senior management.</p> <p>The off-site analysis in the area of banking supervision uses a variety of data sources for identifying and assessing the risks of a CI and/or groups of CIs. This information is analyzed, screened and forwarded in reports to the FMA which then takes further action (e.g., remedial actions, imposition of administrative penalties).</p> <p>Additionally, the off-site analysis focuses its capacity to conduct special analyses to establish a forward-looking view on the risk profile of CIs including the development of the CIs' business models. In the past, several thematic analyses were held, for instance on repayment vehicles or special kinds of industry's inherent risk factors.</p> <p>Within the off-site analysis the Internal Capital Adequacy Assessment Process (ICAAP) and SREP (Supervisory Review and Evaluation Process) and the macroeconomic view provide the framework to correctly evaluate the CI's risk profile. In this respect the methodology is used, as outlined in the EBA guidelines on the Application of the Supervisory Review Process under Pillar 2.</p> <p>In the following the most important information sources used by off-site analysis are briefly described: Regular reporting by CI: The FMA and OeNB have the legal authority to require CIs to submit information on their financial situation, performance and other relevant issues at regular intervals e.g. budget forecasts, stress test results, etc.</p> <p>Involvement of the bank auditor: The rights and obligations of bank auditors are laid down in Articles 60 and following Banking Act. The bank auditors form an integral part of banking supervision in Austria. Therefore, the FMA strives to have an as close as possible contact to the bank auditors. This communication process does not only comprise inquiries for a specific reason (circumstances revealed in the submitted reports) but also meetings on a regular basis concerning current topics and the economic development of the audited CI.</p> <p>Duties of the state commissioner: The state commissioner and the deputy state commissioner (both acting as FMA-organs) participate in the general assembly and</p>
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	<p>supervisory board meetings of the CI and must report quarterly and annually on relevant activities of the CI such as profit situation, significant changes in the risk situation and senior-level staff changes (e.g. directors, chairpersons of the supervisory board). Moreover, they must report immediately if they become aware of facts on the basis of which the CI's fulfillment of its obligations to creditors and especially the security of the assets entrusted to the CI are no longer ensured (Article 76 para. 8 Banking Act).</p> <p>Dialogue with CI: Besides meetings with representatives of CIs for a certain reason, meetings take place with the management board of Austrian CIs on a regular basis either in the FMA or on-site in order to fulfill the requirements of an ongoing supervisory process in terms of SREP. CIs are selected depending on their riskiness and systemic relevance similar to the selection approach of on-site inspections. The aim of these meetings with the management board is to get a better understanding of the personality of the directors, their business strategies, management practices, and opinions on current economic developments. Additionally, two new kinds of meetings with the management board were established: the so-called <i>risk management meetings</i> and the <i>CEE-meetings</i>. The risk management meetings address the legal provisions laid down in Article 69 para. 2 Banking Act and support the supervisory assessment with regard to the adequacy of capital available for the coverage of all material risks from banking transactions and banking operations. With each of the top 6 CIs which are substantially exposed to CEE region, meetings are organized (one meeting for each CI per year). At these CEE-meetings, the CIs have to provide information on their CEE-strategy, the risk management of the group and on the development of important foreign subsidiaries.</p> <p>Dialogue with foreign supervisory authorities: In line with the importance of the Austrian CIs abroad and in order to fulfill the role of the FMA as <i>home supervisor</i>, contacts with foreign supervisory authorities, especially in CEE countries, are held via supervisory colleges once a year and quarterly via supervisory newsletters in order to share relevant information.</p>
EC3	The supervisor assesses banks' and banking groups' compliance with prudential regulations and other legal requirements.
Description and findings re EC3	<p>As can be seen from the on-site supervision manual, on-site inspections are strongly risk-focused. Compliance with prudential regulations and other legal requirements is therein an integrated part of the examination process.</p> <p>The prudential report as provided by the bank auditor focuses on the compliance with prudential regulations and other legal requirements (please see the Regulation on the Annex to the Audit Report on the Annual Financial Statements (AP-VO)). Special attention is given to the compliance of the CI with the regulatory provisions (solvency, own funds, consolidated own funds, liquidity, open positions, large exposures, transactions with affiliated parties, participations) and to the directors' duty of diligence.</p>

	<p>The above mentioned areas (solvency, own funds, consolidated own funds, liquidity, open positions, large exposures) are also checked off-site on a monthly basis (consolidated and unconsolidated) by validation routines and plausibility checks in the data management system.</p> <p>Also OeNB's off-site supervision departments who analyse the reports received on compliance should be mentioned, as well as the departments at the FMA that focus on certain areas, like financial conglomerates or customer due diligence.</p>
EC4	<p>The supervisor takes the macroeconomic environment into account in its risk assessment of banks and banking groups. The supervisor also takes into account cross-sectoral developments, for example in non-bank financial institutions, through frequent contact with their regulators.</p>
Description and findings re EC4	<p>The reform of the supervisory framework in Austria in 2008 explicitly regulated the financial stability mandate of the OeNB stipulated in Article 44b NBG. In particular, the OeNB shall monitor in the public interest "all circumstances that may have an impact on safeguarding financial stability in Austria." In this regard, the Financial Markets Analysis and Surveillance Division of the OeNB is responsible for identifying, monitoring and assessing the build-up of systemic risks as well as drafting policy measures addressing systemic risks. For these analyses, the OeNB has access to the data of non-bank financial intermediaries. This data is used for comprehensive financial stability analyses, which include all relevant components and segments of the Austrian financial system. The Off-Site Banking Analysis and Strategy Division and Off-Site Banking Analysis Division of the OeNB are responsible for incorporating macroprudential analyses into the assessment of CIs and banking groups. Risk exposures and developments in the banking system as a whole are monitored and assessed on the basis of extensive analysis of the supervisory reporting data.</p> <p>The FMA periodically provides the OeNB with data on the business situation, financial results and financial assets of insurance companies and pension funds. For a vivid exchange of information semi-annual meetings between supervised institutions and the FMA take place to discuss relevant topics on insurance companies, pension funds and mutual funds. For the investment firm segment, these meetings are held annually.</p> <p>Since 2004, FMA's "Integrated Financial Markets" Division addresses issues of cross-sectoral nature. This department is not only responsible for the supplementary supervision of financial conglomerates, but also deals with the overall advancement of accounting relevant to supervision, and records the economic significance and the consequences of risk transfer between financial intermediaries and also other cross-sectoral and market wide developments, which are or may become relevant for micro stability and lead to contagious effects.</p> <p>The FMA's internal cooperation and information sharing is safeguarded by the</p>

	<p>establishment of internal colleges for each conglomerate, comprising the responsible persons for the conglomerate, the group and for solo supervision. Financial conglomerate issues are also part of the supervisory dialogue with the management of the regulated entities.</p> <p>These macro-economic and cross-sectoral risk assessments are subsequently discussed and assessed on their relevance for micro-prudential supervision and if need be, integrated in the CI's individual risk assessments. Please see EC 5 on this link between macro- and cross-sectoral risks and micro prudential risks.</p>
EC5	<p>The supervisor, in conjunction with other relevant authorities, identifies, monitors and assesses the build-up of risks, trends and concentrations within and across the banking system as a whole. This includes, among other things, banks' problem assets and sources of liquidity (such as domestic and foreign currency funding conditions, and costs). The supervisor incorporates this analysis into its assessment of banks and banking groups and addresses proactively any serious threat to the stability of the banking system. The supervisor communicates any significant trends or emerging risks identified to banks and to other relevant authorities with responsibilities for financial system stability.</p>
Description and findings re EC5	<p>Macro- and micro-prudential supervision are closely interconnected within the Austrian supervisory framework. The identification of macroprudential risks and their relevance for micro-prudential supervision is done via expert teams. This activity stems from the mandate the OeNB has with respect to macroprudential supervision which at the moment is limited to systemic risk monitoring. (Please refer to CP 1 for a more detailed discussion of OeNB's mandate in conjunction with banking supervision).</p> <p>Using available off-site analysis tools and supervisory reporting data, comparatively weak CIs are identified. Furthermore, information reports on developments and trends in profitability, solvency and risk bearing capacity of the banking sector are made. These reports are used for international task forces within the EU and for discussions on their relevance for the Austrian banking sector.</p> <p>Examples include risk assessment tools applied in the OeNB are stress tests and early warning indicators, standardized factsheets on various aspects of financial stability (e.g. on CESEE & CIS exposures, on market developments, and on non-bank financial intermediaries), surveys among CIs on specific systemic risk issues (e.g. on repayment vehicle loans and on foreign-currency lending in CESEE & CIS), a biannual survey among OeNB experts (i.e., on the Risk Assessment Process) and an analysis of regulatory reporting (e.g., the weekly template on liquidity conditions of major Austrian CIs).</p> <p>Examples of measures that address risks concerning financial stability are those on foreign-currency loans (domestically as well as in CESEE) and the Austrian 'Sustainability Package'. At the moment these topics can only be addressed by using moral suasion in management talks and by publishing information of risk assessments of the banking</p>

sector., since. As no fully fledged macroprudential framework for addressing macroprudential risks exist at present in Austria.

A number of forums have been established at different levels and between the different authorities to discuss financial stability risks and identify possible links with micro-prudential supervision. They meet on a regular basis and have to-do-lists that assure that adequate follow-up action is taken. More specifically:

- the Risk Workshop brings together micro- and macroprudential supervisors as well as macro-economic analysts from both the FMA and OeNB to discuss the relevance of certain macro-economic risks for individual CI and to identify possible new emerging systemic risks coming from the risk assessments of individual CI (see below)
- the Forum of Heads of Division (Abteilungsleiterforum—ALF) and the Coordination Forum of Senior Management (Koordinationsforum—KOFO), that bring together management staff from FMA and OeNB from different hierarchical levels to assess the need to change the on- and off-site planning of supervisory activities, given new risks that have been identified and
- the Financial Market Committee (Finanzmarktkomitee—FMK), which brings together senior management and board members from FMA, BMF and OeNB to discuss in this context the need for any policy or regulatory action.

In the first two forums, all heads of divisions of the OeNB's Financial Stability and Bank Inspections Department (i.e., covering both micro- and macroprudential issues) and the FMA's Banking Supervision Department are invited.

In the Risk Workshop the link between micro- and macroprudential issues is one of the key features of the format. Since 2012, the results of the semi-annual "Risk Assessment Process", a survey among OeNB experts on the likelihood and impact of key risk factors for the Austrian banking sector as a whole, are discussed at this forum as well, in addition to the external views on the Austrian banking system, based on recent reports by or contacts with international financial institutions, rating agencies or global investment banks.

These three forums ensure that the FMA is informed regularly and timely about risks to the overall banking sector as identified and assessed by the OeNB, so that these issues may for instance be incorporated in the setting up of the on-site inspections plan as well.

The regular flow of information between micro- and macroprudential supervision within OeNB further benefits from the organizational structure which combines both functions within a single department (Financial Stability and Banking Inspections Department). Within the department, there are weekly senior staff meetings that allow to provide timely information to the off-site and on-site divisions about systemic risk developments. The level of collaboration between the Financial Markets Analysis and Surveillance Division (i.e., the division covering macroprudential issues) and the Off-site Banking Analysis Division for

	Large Banks (i.e., the “information hub” for micro-prudential issues for systemically important banks) is particularly high, including the sharing of analyses and collaboration in the preparation of policy responses (e.g. Sustainability Package).
EC6	Drawing on information provided by the bank and other national supervisors, the supervisor, in conjunction with the resolution authority, assesses the bank’s resolvability where appropriate, having regard to the bank’s risk profile and systemic importance. When bank-specific barriers to orderly resolution are identified, the supervisor requires, where necessary, banks to adopt appropriate measures, such as changes to business strategies, managerial, operational and ownership structures, and internal procedures. Any such measures take into account their effect on the soundness and stability of ongoing business.
Description and findings re EC6	<p>In accordance with the Proposal for a Directive of the European Parliament and of the Council establishing a framework for the recovery and resolution of credit institutions and investment firms (directive proposal),²⁵ the FMA and OeNB have conceived a template to draw up recovery and resolution plans. This template incorporates existing good practices as well as first indications of the European Commission’s planned framework on crisis management.</p> <p>The obligation to draw up these plans currently exists at the moment for 3 large internationally active Austrian banking groups (i.e., Erste Bank Group, Raiffeisen Zentralbank, UniCredit Bank Austria) as part of the Austrian Sustainability Package. The process between these three Austrian CIs and FMA/OeNB started in December 2011. End 2012 the CI’s have provided the FMA/OeNB with their draft plans which are now being assessed.</p> <p>In autumn 2012 the Austrian Council of Ministers passed a resolution that outlined a bank intervention and recovery act. A public consultation of the draft act took place in early 2013. This Bank Reorganisation Act has been passed by Parliament before the parliamentary summer recess 2013. It will enter into force on 1st January 2014. It will oblige all institutions to draft recovery and resolution plans that will be assessed by the FMA. Restructuring plans will have to be submitted by 1st July 2015, with the exception of the following credit institutions that will have to submit these plans by 1st July 2014: credit institutions with a balance sheet total exceeding 30 billion euros and credit institutions that receive funds directly from the ESFS or the ESM. Resolution plans will have to be submitted by 31st December 2015, with the exception of the credit institutions mentioned above that will have to submit these plans by 31st December 2014. This obligation will be subject to the proportionality principle. Furthermore the FMA will be given a set of early</p>

²⁵ COM (2012) 280 final, 6/6/2012.

	<p>intervention tools.</p> <p>In the assessors' view it is important that the FMA is given these powers to require CI's to set up recovery and resolution plans and to assess thereon the bank's resolvability, and to require banks to adopt appropriate measures in case barriers for an orderly resolution would be identified and that it will be provided with a clear framework or process for handling CI's in times of stress, such that any decisions to require or undertake recovery or resolution actions are made in a timely manner, in line with international best practices.</p> <p>The assessors have noted in this regard the legislative changes that will make it compulsory for CI's to make recovery and resolution plans and that will provide the FMA with additional powers to assure that such plans exist and can be enforced.</p>
EC7	The supervisor has a clear framework or process for handling banks in times of stress, such that any decisions to require or undertake recovery or resolution actions are made in a timely manner.
Description and findings re EC7	Until recently, rules for prevention, early intervention and resolution were not part of the legal framework. Mid this year however, the Bank Reorganisation Act has been passed by Parliament. It will enter into force on 1 st January 2014. For further details see EC6. Besides these upcoming extra powers to act within the context of an early intervention regime, we should note that the FMA has been given extra corrective powers. These apply for cases of danger to the fulfillment of the CI's obligations vis-à-vis its creditors. More specifically, according to Article 70 para. 2 Banking Act, the FMA could issue an administrative ruling for a limited period of time (18 month or less) ordering measures like prohibiting withdrawals of capital, prohibiting directors from managing the CI's or completely or partly prohibiting the continuation of business operations. (Please see CP 11 for more details).
EC8	Where the supervisor becomes aware of bank-like activities being performed fully or partially outside the regulatory perimeter, the supervisor takes appropriate steps to draw the matter to the attention of the responsible authority. Where the supervisor becomes aware of banks restructuring their activities to avoid the regulatory perimeter, the supervisor takes appropriate steps to address this.
Description and findings re EC8	Restructurings of existing CI's are intensively assessed by the FMA, amongst others whether effective supervision can take place after the restructuring is finalized. The structure should in any case assure, that the different entities within a group will provide all the information necessary to the parent company, so that effective consolidated supervision can take place. If that condition would be jeopardized, the FMA would take appropriate steps. In practice, the business models of Austrian CI's comprise of straight forward banking activities that would fully fall within the regulatory perimeter. Also, in Austria the activities that fall within the regulatory perimeter of banking supervision, are very wide, so that in practice banking activities would as a rule of thumb fall within the

	<p>regulatory perimeter.</p> <p>Also, the Division for Combat against Unauthorized Business at the FMA identifies and deals with undertakings which offer banking, insurance or other financial services without having the required license.</p> <p>The powers of the FMA include the obtaining and processing of data and on-site examination of any company under the suspicion of conducting unauthorized business (Articles 22b, 22c and 22d FMABG). If the carrying out of unauthorized business is detected, the FMA issues a procedural order requesting the person or company concerned to restore the lawful situation within an appropriate period of time, and, subsequently, if the unlawful situation continues, an administrative decision ordering measures restoring the lawful situation. As a last resort, the FMA is entitled to order the closing down of either several parts of the business or even of the entire company if necessary. Additionally administrative penal proceedings can be initiated by the FMA. In case of suspicion of a criminal offence the FMA files a report to the public prosecution.</p> <p>Furthermore, the FMA could inform and warn the public of unlicensed companies providing services requiring a license by the FMA. This has proven to be an effective tool to prevent the establishment or conduct of further unauthorized businesses, especially by undertakings which are not situated in Austria. Measures or sanctions taken against persons or companies as a result of unauthorized business carried out by them can be made public as well.</p> <p>Business models or products potentially bypassing legal provisions that the FMA becomes aware of (e.g. through consumer complaint, newspaper article) are reviewed thoroughly. Legal breaches are thus detected and addressed.</p>
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Assessment of Principle 8	Compliant
Comments	<p>EC 1: There is no specific unit or functionary responsible for the further development of the supervisory approach and methods, nor is there a quality control unit or quality manager responsible for the accompanying monitoring of the supervisory processes.</p> <p>EC 6: The obligation to draw up recovery and resolution plans currently exists for the 3 largest internationally active Austrian banking groups (i.e., Erste Bank Group, Raiffeisen Zentralbank, UniCredit Bank Austria), which cover almost half of the total bank assets, as part of the Austrian Sustainability Package. The process between these three Austrian CIs and FMA/OeNB started in December 2011. End 2012 the CI's have provided the FMA/OeNB with their draft plans which are now being assessed. In addition, the Bank Reorganisation Act has been passed by Parliament mid this year and will enter into force</p>

	<p>on 1st January 2014. It will oblige all institutions to draft recovery and resolution plans that will be assessed by the FMA. Restructuring plans will have to be submitted by 1st July 2015, with the exception of the following credit institutions that will have to submit these plans by 1st July 2014: credit institutions with a balance sheet total exceeding 30 billion euros and credit institutions that receive funds directly from the ESFS or the ESM. Resolution plans will have to be submitted by 31st December 2015, with the exception of the credit institutions mentioned above that will have to submit these plans by 31st December 2014. Furthermore the FMA will be given a set of early intervention tools.</p>
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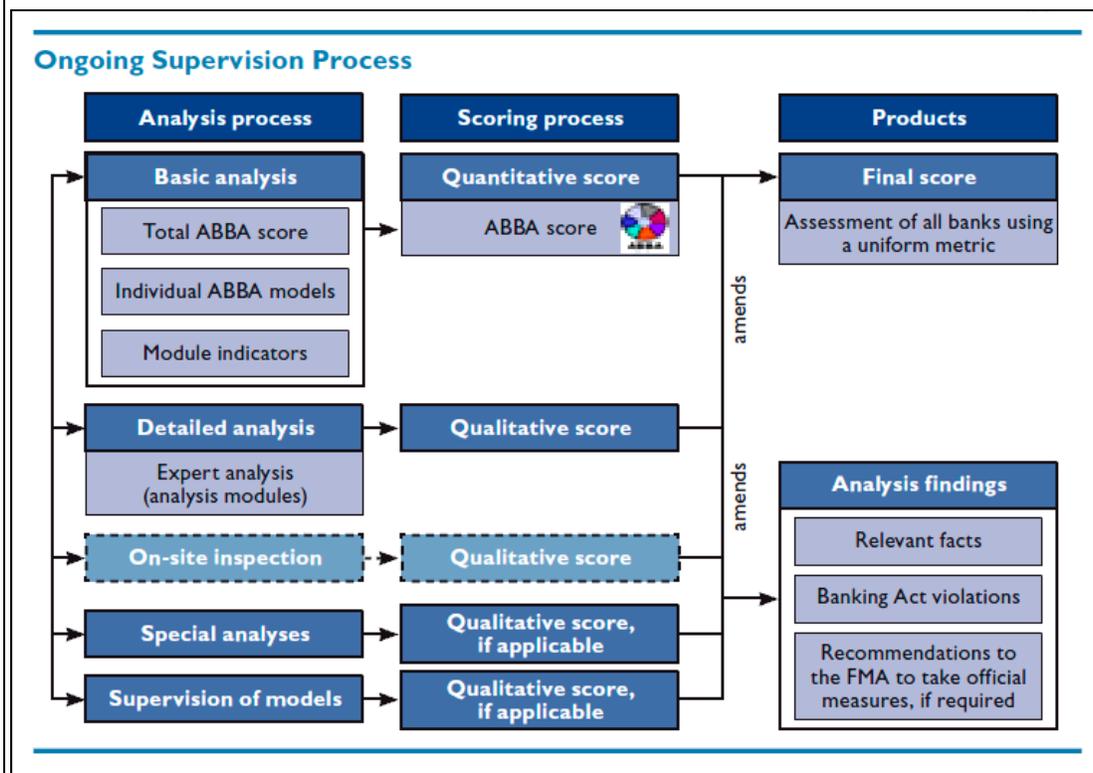
Principle 9	Supervisory techniques and tools. The supervisor uses an appropriate range of techniques and tools to implement the supervisory approach and deploys supervisory resources on a proportionate basis, taking into account the risk profile and systemic importance of banks.
Essential criteria	
EC1	The supervisor employs an appropriate mix of on-site ²⁶ and off-site ²⁷ supervision to evaluate the condition of banks and banking groups, their risk profile, internal control environment and the corrective measures necessary to address supervisory concerns. The specific mix between on-site and off-site supervision may be determined by the particular conditions and circumstances of the country and the bank. The supervisor regularly assesses the quality, effectiveness and integration of its on-site and off-site functions, and amends its approach, as needed.
Description and findings re EC1	<p>Since the reform of the supervisory framework in 2008, the OeNB acts as the fact-finding body, which includes the overall economic risk assessment (on-site inspection, off-site analysis and reporting) while the FMA is the decision-making body (in charge of official decisions and administrative procedures).</p> <p>Within the OeNB, micro-prudential supervision is handled primarily by the Off-Site Banking Analysis Division and by the On-Site Banking Inspections Division. The units in each division are organized by banking sectors, with distinctions drawn between major CIs,</p>

²⁶ On-site work is used as a tool to provide independent verification that adequate policies, procedures and controls exist at banks, determine that information reported by banks is reliable, obtain additional information on the bank and its related companies needed for the assessment of the condition of the bank, monitor the bank's follow-up on supervisory concerns, etc.

²⁷ Off-site work is used as a tool to regularly review and analyze the financial condition of banks, follow up on matters requiring further attention, identify and evaluate developing risks and help identify the priorities, scope of further off-site and on-site work, etc.

other major and regional CIs, joint stock CIs, and cooperative and savings CIs. The OeNB's analysis concept is based on three pillars: economic analysis, continuous model supervision and on-site findings.

Off-site supervision primarily entails an economic analyses function. The purpose of the economic analysis is to capture a CI's economic risk. Economic analysis is subdivided into automated basic analysis of all banking data (risk-based ABBA-report—Austrian Banking Business Analysis) and detailed economic analysis. For cost efficiency reasons, detailed economic analysis is not performed for each of Austria's over 800 CIs. Hence, a two-stage risk-based analysis process is employed. In the first step of this process, all CIs are subjected to largely automated screening under the basic analysis framework. Then, in the second step, all CIs identified as high-risk institutions during the basic analysis and generally all major and joint stock CIs undergo detailed economic analysis. The starting point for the detailed economic analysis of major CIs is the group analysis (consolidated top-down approach).



Description and findings re EC1 continued

Whereas off-site analysis models rely exclusively on reported quantitative data, the **detailed economic analysis** uses additional qualitative information. Reports by bank auditors, data from supervisory reports, information from talks under the structured dialogue framework (direct contacts with CIs), market information, findings from the Annex to the Audit Report (prudential report) and the reports of the state commissioners serve as the primary information sources for the detailed economic analysis. Unlike the basic analysis, where a model calculates bank assessments and scores automatically, the

detailed economic analysis framework calls for expert judgment of a CI's coverage and risk potential (credit, market, operational and other risks).

Moreover, the analysis results also determine the focus of the inspection at a given CI. To facilitate the integration of off-site findings into the overall risk assessment of the respective CI, a scoring metric has been developed to examine specific areas, such as credit risk, market risk, operational risk, liquidity risk, money laundering. Finally, each risk category is scored either by off-site or on-site experts by using a uniform metric which gives the overall risk assessment of the respective CI represented by an aggregated and final risk score.

On-site examinations are conducted according to the annual audit plan, which is jointly determined by FMA and OeNB. OeNB's internal examination standards, which serve as a basis for the conduction of on-site inspections, are implemented as modules in the IT system BOSS (Banking On-Site Supervision System). The specific modules are updated on a regular basis to include the most recent legal and international developments (e.g., EBA guidelines). The last major update of all BOSS modules was performed in 2012.

On-site inspection reports and expert opinions on models are an important source of information for off-site analysis. Consequently, the OeNB must relate them to the other analysis results available and the comments made by the CI, and then must evaluate them to determine any violations of laws and the resulting need for official measures (taken by the FMA as the decision-making body in charge of official decisions and administrative procedures).

Ongoing model supervision—the regular analysis of models subject to approval and of their use—includes all measures pertaining to the use of models subject to pillar I requirements including the approval and ongoing model supervision for internal risk management models - especially the Internal Rating Based (IRB) Approach for credit risk, the Value at Risk (VaR) model for the market risk and the Advanced Measurement Approach (AMA) for operational risk. The approval and ongoing model supervision for internal risk management models, which is incorporated in the On-Site Banking Inspections Division, involves assessing the functionality and adequacy of models on the basis of the relevant data reports and notifications as well as information from third parties, such as validation reports of CIs and evaluation data, and analyzing compliance with the approval procedures.

As regards the Supervisory Review and Evaluation Process (SREP), OeNB evaluates the risks the CI is exposed to and its risk bearing capacity on an annual basis, closely in line with EBA Guideline 39. In assessing the CI's risk profile, financial situation, overall risk profile, the respective risks, the methodologies used in course of the ICAAP and the risk bearing capacity, all information gathered off-site or in course of on-site inspections is utilized. In this assessment a scoring approach is followed, using scores from 1 to 4. As detailed off-site analysis and on-site inspections lead to assessments in terms of these

	<p>scores, they fit together in order to cover all aspects of capital adequacy mentioned above.</p> <p>Also, risks are being evaluated within groups of CI's or on certain topics. For instance, the CI's active in the different cooperative sectors like the Sparkassen sector, to a large extent have a similar business model. Consequently, a risk arising at one specific CI might also be relevant to other CI's. Special attention is given to such risks. In case this risk has a more systemic impact for the sector at hand, a detailed thematic analysis is being performed and a specific inspection plan is put in place, in as far felt necessary.</p> <p>The OeNB is required to make all analysis and on-site inspection results as well as all results of the ongoing model supervision available to the FMA. The findings contain a statement about whether there is a substantial change in the risk situation or any reason to suspect violation of regulatory provisions.</p> <p>For reasons of information exchange and to promote an effective and direct coordination at technical level, OeNB and FMA implemented a single point of contact (SPOC) system for every CI and every banking sector. These SPOCs exchange information frequently and serve as an information bridge for prudential issues between the two authorities and with the respective CI.</p> <p>The quality, effectiveness and integration of its on-site and off-site functions, is assessed as part of the normal supervisory process, given the interlinkages between both functions. There is no specific quality control function for OeNB and FMA on its supervisory processes. (See also AC 1).</p>
EC2	<p>The supervisor has a coherent process for planning and executing on-site and off-site activities. There are policies and processes to ensure that such activities are conducted on a thorough and consistent basis with clear responsibilities, objectives and outputs, and that there is effective coordination and information sharing between the on-site and off-site functions.</p>
Description and findings re EC2	<p>The OeNB and the FMA jointly define an audit plan for each upcoming calendar year (article 70 para. 1b Banking Act). This plan takes into account the following criteria: audits of systemically relevant CIs, an appropriate frequency of audits of CIs which are not systemically relevant, resources for ad hoc audits, thematic focuses of audits and review of measures taken to remedy the defects identified (follow-up audits). An overall multi-year planning process has not been established, although specific multi-year planning cycles exist for CI's that would not be examined each year. For those smaller banks a 5 year cycle exist for joint-stock CI's and a longer cycle for the even smaller CI's (in total 3 will be examined each year).</p> <p>We would recommend to develop such multi-year planning process and plan.</p>

Given the high number of smaller banks supervised, the inspection cycle for these institutions could be very long. For instance, the assessors have been informed that some of the smaller institutions have not been inspected for the last five years. However, these smaller institutions would to a large extent have similar business models that would lead to similar risks. For these reasons, in selecting a small institution for an inspection, one would assess in as far it is a good representation for the group of similar small institutions. Also, the bank auditor plays an important role in signaling possible risks at these institutions, as well as the government commissioner, in as far present.

The audit plan determines the focus of inspections for each CI and the time at which they are to be conducted. This plan is adopted jointly by both institutions. The audit plan also lists all inspections needed for model approval procedures or other official purposes. On the basis of the analysis results, those institutions and audit areas are chosen that appear relevant for an inspection either because of their size or because of their risk level.

Additionally, whenever necessary, the OeNB is entitled and obligated to request that the FMA extends ongoing inspections or initiates inspections not envisaged in the audit plan. The FMA must decide on such requests from the OeNB without delay, at the latest, however, within one week. Moreover, the OeNB may carry out on-site inspections on its own initiative, i.e., without an inspection mandate from the FMA, if "macroeconomic reasons" demand such inspections (e.g. the inspection of systemically relevant CIs).

For on-site inspections under the audit plan, the FMA issues an inspection mandate specifying the area to be inspected by the OeNB. Where advance notice is not expected to frustrate the objective of the inspection, the FMA notifies the CI of the planned inspection and the OeNB's examiner in charge contacts the CI to arrange organizational details. The inspection itself is conducted in close cooperation with the FMA and OeNB SPOCs. Once the inspection has been completed, the CI is usually informed of the preliminary inspection results in a concluding meeting.

The OeNB simultaneously provides both the CI and the FMA with the audit report, and the CI has the right to comment. The CI's comments are also made available to the FMA. The FMA is immediately informed in an ad hoc report according to Article 79 Banking Act of facts that become known to the OeNB in the course of its inspections and that trigger immediate official measures (taken by the FMA as the decision-making body).

Audits related to the compilation of an expert opinion for model approval are performed upon the application by a CI for model introduction or change within six month. The compilation of expert opinions for model approvals pursuant to Articles 21a and following Banking Act is drawn up according to a procedure similar to that for an audit report. In line with the legal framework, however, these opinions are sent to the FMA first, and then the FMA grants the CI the right to comment. Furthermore, the performance of the approved models is assessed on a regular basis (at least annually). As regards this ongoing supervision of approved models validation analysis is compiled comprising accuracy of

	<p>rating models, calibration of risk parameters, etc.</p> <p>The off-site monitoring intensity of CIs follows a risk-based approach. For this reason, the frequency of detailed analyses and management talks depends on the systemic relevance and the inherent risk profile of the respective CI. In 2011, a total of 663 detailed analyses by experts were produced (thereof 85 sector reports and 506 CI reports) and the number of standardized talks with the CI's management, its CI auditors and the auditing associations of the decentralized sectors amounted to 131 in 2011. Talks with the systemically most relevant and/or high-risk CIs take place permanently throughout the reporting year.</p> <p>Before, during and after inspections, on- and off-site experts meet periodically to share updates on all relevant prudential issues and deficiencies at the technical level.</p> <p>Furthermore, the FMA has to be informed by the OeNB and vice versa of findings of fundamental nature or of particular importance (Article 79 para. 1 and Article 80 para. 1 Banking Act).</p> <p>Inspection results and all other regulatory issues concerning a single CI, are discussed and exchanged within a bank forum at the senior management level of OeNB and FMA (<i>Einzelbankforum</i> - EBF). The forum is in charge of handling issues of an individual CI which includes ensuring that all relevant facts will be considered in the decision-making process and that supervisory concerns with respect to a single CI are identified and prioritized, which enables the FMA to take the appropriate decision on possible prudential measures.</p>
EC3	<p>The supervisor uses a variety of information to regularly review and assess the safety and soundness of banks, the evaluation of material risks, and the identification of necessary corrective actions and supervisory actions. This includes information, such as prudential reports, statistical returns, information on a bank's related entities, and publicly available information. The supervisor determines that information provided by banks is reliable²⁸ and obtains, as necessary, additional information on the banks and their related entities.</p>
Description and findings re EC3	<p>In general, the OeNB's analysis activities in the course of ongoing supervision is based on the following:</p> <ul style="list-style-type: none"> • Supervisory statistics • Supervisory reporting requirements, facts in notifications and information requested in particular cases (ad-hoc surveys) • Structured dialogue framework with CIs and auditors • CI's disclosure requirements and publicly available data (financial statements, investor relation presentation, press releases, reports from rating agencies, external analyst

²⁸ Please refer to Principle 10.

	<p>reports, etc.)</p> <p>Concerning supervisory statistics, FMA and OeNB make use of the common European reporting framework (COREP, FINREP, loss data collection) as well as national reporting schemes (structure of assets, liabilities, capital, P&L, credit risk, interest rate risk, equity risk, maturity and currency structure of balance sheet items) on the consolidated and unconsolidated level. The reporting requirement for material foreign subsidiaries on their stand-alone basis was added in recent years (dimensions as stated above).</p> <p>Due to the relatively high number of CIs, the FMA and the OeNB have chosen for a comprehensive reporting system backed up by a complex technical infrastructure. Naturally, it takes a sophisticated analytical framework to cull the essential information from an expansive base of collected data. Ideally, such analysis tools should flag those CIs with a high risk profile. According to Articles 44 and 74 Banking Act, CIs have to transmit extensive monthly, quarterly and annual reports to the FMA and OeNB. On the basis of the monthly and quarterly reports, the OeNB has to render expert opinions to the FMA regarding compliance with the provisions of Articles 22 to 27 and 29 and the regulations issued thereunder (Article 74 para. 3 Banking Act).</p> <p>In the OeNB the data is checked for consistency, standardized and stored in a database. Data management systems are used for recording, storing, validating and filtering data (including time series) reported by CIs (see EC 12). Such systems produce the key input for analysis. Validation routines and plausibility checks are in place.</p> <p>Regarding reporting requirements, Article 44 para. 1 Banking Act requires CIs and the branches of foreign CIs to submit audited annual financial statements, annual reports, consolidated financial statements and consolidated annual reports, including the Annex to the Audit Report on the annual financial statements (prudential report) indicated in Article 63 para. 5 Banking Act, to the FMA and the OeNB at the latest within six months after the close of the business year. The OeNB accounts for the relevant aspects of these reports in its overall analysis of financial statements within its risk-oriented approach.</p> <p>Reports of bank auditors under Article 63 para. 3 Banking Act (ad-hoc reporting obligation of bank auditors) represent an important source of supervisory information. In view of the inherent danger of a violation of the law in such cases, immediate action is generally required. Consequently, the primary responsibility for these reports lies with the FMA. Such reports are submitted to the FMA and the OeNB; the FMA handles the related procedure, in the course of which it also assesses whether the OeNB is to be charged with a special analysis. For further information see CP 26: Financial reporting and external audit.</p> <p>The Central Credit Register (CCR), to which exposures are reported under Article 75 Banking Act, is also a tool for analytical activities. The OeNB uses this information in its overall analysis.</p>
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	<p>Annual and case-related reports by the state commissioners and deputy state commissioners about their activities (Article 76 para. 8 Banking Act) and reports of the auditing associations and deposit guarantee schemes serve as additional sources of information for the OeNB and the FMA. The reports of the state commissioners are forwarded to the FMA, which evaluates whether the reports may prove useful for official or analysis purposes.</p> <p>For the purpose of monitoring CIs and groups of CIs on an ongoing basis, the FMA has the statutory power to demand that the management of CIs provide ad-hoc information about all business matters and to inspect bookkeeping records, documents and data media (Article 70 para. 1 no. 1 Banking Act and Article 73 Banking Act).</p> <p>Also, standardized meetings under the structured dialogue framework are held with the management of numerous CIs; these are known as management meetings, CEE- meetings (see CP 8 EC 2) and risk management meetings (see CP 8 EC 2). Moreover, the OeNB and the FMA maintain contact with all bank auditors of Austrian CIs. The regular meetings held with the auditing associations of the decentralized sectors and with the bank auditors are especially noteworthy in this context.</p> <p>Reliability of the data and information received, is assured by automated checks, by plausibility controls done by the statistics department and by the off-site department itself, that will assess credibility of the data, eg by comparison of the data concerned with previous reporting periods or with peers. Ad hoc questionnaires and data requests are being checked by the supervisory departments themselves. In addition, the Internal audit unit of the CI is required to review the accuracy and completeness of the content of notifications and reports to the FMA and OeNB, which would be audited as part of an on-site examination. Also a similar requirement exist for a bank auditor that operates within one of the decentralized banking groups (the groups of Raiffeisenbanks or Sparkassen). Failures that are detected during on-site examinations, are forwarded to the statistics department and vice versa.</p> <p>Also in the supplementent to the audit report on the annual financial statement, the auditor confirms the adequacy of the prudential returns.</p>
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EC4	<p>The supervisor uses a variety of tools to regularly review and assess the safety and soundness of banks and the banking system, such as:</p> <ul style="list-style-type: none"> (a) analysis of financial statements and accounts; (b) business model analysis; (c) horizontal peer reviews;
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	<p>(d) review of the outcome of stress tests undertaken by the bank; and</p> <p>(e) analysis of corporate governance, including risk management and internal control systems.</p> <p>The supervisor communicates its findings to the bank as appropriate and requires the bank to take action to mitigate any particular vulnerabilities that have the potential to affect its safety and soundness. The supervisor uses its analysis to determine follow-up work required, if any.</p>
Description and findings re EC4	<p>To evaluate the soundness of the financial sector, banking supervisory authorities have to use a variety of tools to regularly review and assess the safety and soundness of CIs and the banking system. Faced with a trade-off between efficiency and effectiveness, supervisory authorities endeavor to strike a balance in their evaluation and data gathering approach.</p> <p>Analysis of a large number of CIs in a systematic and reliable fashion (keeping resources at a reasonable level) can only be done with IT-assisted systems. IT systems try to filter out CIs with an increased risk level. More resources are then dedicated to the riskier CIs, which are subject to an in-depth monitoring. After a consolidation of machine-based methods (ABBA, see CP 9 EC 1 for further details) performed by the Statistics Department of OeNB in the last few months, important instruments of the automated analysis are:</p> <ul style="list-style-type: none"> • A logit model whose results can be directly interpreted as probabilities of defined problem events, which include insolvency, government bail-out, support by owner, establishing a bad bank, and others. The model was recently re-developed to include indicators from several risk categories (business development, credit risk, capital structure, profitability, market risk, liquidity risk, operational risk) and produces probabilities of defined problem events. • In addition to the statistical model, a structural model intends to show the causal relationships between CIs' risks and problem probabilities. For this purpose, a system of value at risk (VaR) models was constructed for the most important risk factors to which CIs are exposed (credit risk, market risk, and operational risk) and then placed in relation to CIs' predefined capacities to cover losses. The approach chosen for calculating credit risk is based on the CreditRisk+ portfolio model developed by Credit Suisse Financial Products in 1997. The market VaR module determines the total interest rate risk, foreign exchange risk and equity position risk for each CI based on the RiskMetrics approach, and the operational VaR model consists of a workaround using the Basic Indicator Approach (Basel II) in order to enable a rough approximation of this risk factor as Austrian CIs did not have to report data on operational losses to the regulators in the past. After aggregating the individual VaRs by assuming a correlation of one, the CIs' total VaR is related to their capacity to cover losses and a default probability is derived. • CIs are flagged due to different developments in various ratios reflecting balance sheet

structures and earnings developments in comparison to their peer groups. The results are then used to devote resources of off-site-analysis units to identified CIs.

In addition to the statistical assessment of all Austrian CIs, which is performed quarterly, a major part of all CIs is also subject to an annual detailed economic expert analysis. This expert assessment follows a standardized structure and covers the following areas:

- Analysis of coverage potentials under Pillar I and Pillar II
- Business model and strategy
- Balance sheet developments
- Profitability
- Budget planning
- Corporate and internal governance (derived from the latest on-site inspections and additional information sources)
- Credit risk (asset quality, concentration risk, structured credit and CDS-exposures)
- Market risk in the trading and banking book
- Operational risk
- Liquidity risk
- Other risk such as money laundering

The final output of the standardized expert judgments are a summarizing assessment, an assigned scoring, and regulatory actions.

Traditionally a large part of Austrian CIs are organized as savings banks and credit cooperatives. Given the close interdependence between individual institutions, sector and horizontal peer reviews are of high relevance.

OeNB regularly reviews supervisory statistics and other information for the purpose of such peer and sector analyses, and provides the FMA with the results of these comprehensive analyses. Based on the bank reporting data, the whole banking system is analyzed with respect to profitability, solvency, risk bearing capacity and other factors. These reports are used for international task forces within the EU and for discussions and possible actions in the home country.

In addition, the gathered information is used for peer reviews and cross-section analyses in order to evaluate the CI or CI group towards their international peer group. Furthermore, peer analyses in the field of market risk, liquidity risk and CESEE activities are performed. Additionally, benchmark scoring via scoring workshops is applied to evaluate the economic situation of CIs.

In addition, the outcomes of stress tests undertaken by the bank are being reviewed and fed into the risk assessment and evaluation process.

The assessors have been informed that the outcomes of the supervisory activities as

	mentioned above are part of the economic analysis of the CI in question done by the off-site analysis function. The outcome could lead to supervisory concerns which require supervisory actions, either for more detailed analysis or in the context of taking prudential measures.
EC5	The supervisor, in conjunction with other relevant authorities, seeks to identify, assess and mitigate any emerging risks across banks and to the banking system as a whole, potentially including conducting supervisory stress tests (on individual banks or system-wide). The supervisor communicates its findings as appropriate to either banks or the industry and requires banks to take action to mitigate any particular vulnerabilities that have the potential to affect the stability of the banking system, where appropriate. The supervisor uses its analysis to determine follow-up work required, if any.
Description and findings re EC5	<p>Broadly speaking, the OeNB employs three different stress testing tools:</p> <ul style="list-style-type: none"> • the Systemic Risk Monitor (SRM) • a macro stress testing tool • a cash-flow based liquidity risk framework <p>The Systemic Risk Monitor is a model-based, quantitative, software-application for the quarterly analysis of systemic stability in the Austrian banking industry. It is also used for stress testing of market, credit and contagion risk. The SRM combines supervisory reporting data from CIs, market and macroeconomic data in a Monte Carlo simulation environment. Results are calculated on a quarterly basis for a quarterly time horizon. Results for all (unconsolidated) Austrian banks are available to supervisors via OeNB's intranet on a bank-by-bank basis, including their "contagiousness" (which CIs default due to non-payment of CI x's interbank obligations) as well as their "vulnerability" (which CIs cause the default of CI x due to non-payment of their interbank obligations).</p> <p>The macro stress testing tool is a Matlab-based solvency stress testing framework. It covers multi-period point forecasts that quantify the impact of (multiple) macroeconomic scenarios on CIs' capitalization (ratios). The scope of the "core" tool is credit risk (incl. RWA impact), profitability and a balance sheets / P&L simulation. In addition the framework allows for a number of sensitivity analyses around the core-runs. In the past those included: indirect credit risk from FX lending, credit risk from sovereign exposures, risk from securitization portfolios, market risk (for a wide variety of market risk factors), cost of funding shocks (i.e., the link to the liquidity risk framework), etc. Results for a baseline and an adverse scenario for all (consolidated) Austrian CIs are available to supervisors biannually on a bank-by-bank basis via a dedicated stress testing process. The process includes at least three coordination meetings for each stress test—so called stress testing cockpits—for (senior) managers from the OeNB as well as the FMA.</p> <p>As a rule, one of two stress tests that are carried out per year is conducted as a "Joint Bottom-up Exercise", meaning that top CIs have to perform their own calculations based</p>

	<p>on the scenario designed by the OeNB and a set of common assumptions. The other stress test is a “Constrained Bottom-up Exercise”: CIs receive their top-down results along with scenarios and assumptions and are invited to check the plausibility of results. CIs may run their own stress test calculation but are not obliged to do so.</p> <p>The liquidity risk framework is a cash-flow based liquidity risk assessment based on the weekly liquidity reporting tool. Tests are conducted on an ad-hoc basis and in a coordinated manner for each of the macro stress tests (to calculate, amongst other indicators, the impact on funding costs). Results are available on a bank-by-bank basis for the large (consolidated) Austrian banking groups and communicated immediately at completion via the weekly liquidity risk debriefing emails (to management and supervisors).</p> <p>Finally, stress test results are taken into consideration in the detailed economic CI assessment performed by the off-site experts.</p>
EC6	<p>The supervisor evaluates the work of the bank’s internal audit function, and determines whether, and to what extent, it may rely on the internal auditors’ work to identify areas of potential risk.</p>
Description and findings re EC6	<p>As part of the audit work of the external bank auditors, the quality of the internal audit function of a CI must be assessed on an annual basis. The assessment of the work performed by the internal audit unit is therefore an integrated part of the Annex to the Audit Report on the annual financial statements (prudential report). This Annex is subsequently being assessed by the supervisor.</p> <p>The FMA and the OeNB are fully aware of the importance of the internal audit. Hence, Minimum Standards for Internal Auditing of CIs have been published²⁹. It is therefore emphasized that the evaluation of the work performed by internal audit units plays a very important role during on-site inspections and compilation of expert opinions conducted by the OeNB (see also EC 1).</p> <p>During on-site examinations, the work undertaken by internal audit is used as one of the inputs. At a minimum, internal audit will be involved in the supervisor’s work when an intake of an on-site examination takes place and when the concluding meeting is being held. At intake, the OeNB would assess the adequacy of the work done by internal audit and in as far it could be used in the examination at hand. To assess the work undertaken by internal audit in a certain risk area, no specific mandate would be needed by the OeNB from the FMA. For follow-up work after an examination has taken place, the FMA/OeNB could rely upon the activities of internal audit, in as far as it felt appropriate.</p>

²⁹ The FMA Internal Auditing Minimum Standards are available on the FMA website at <http://www.fma.gv.at/en/legal-framework/minimum-standards/banks.html>

	An instance where internal audit is more often involved, relates to the follow-up activities needed when certain deficiencies have been identified, whereby internal audit would be tasked to assess whether supervisory findings in one area might also be valid for other specified areas within the same CI's or CI's group.
EC7	The supervisor maintains sufficiently frequent contacts as appropriate with the bank's Board, non-Executive Board members and senior and middle management (including heads of individual business units and control functions) to develop an understanding of and assess matters such as strategy, group structure, corporate governance, performance, capital adequacy, liquidity, asset quality, risk management systems and internal controls. Where necessary, the supervisor challenges the bank's Board and senior management on the assumptions made in setting strategies and business models.
Description and findings re EC7	<p>The FMA and the OeNB maintain continuous contacts with the CIs' management based on the powers granted to it in the interest of a continuous supervision of CIs and groups of CIs according to Article 70 para. 1 no. 1 Banking Act. In general, the intensity and level of management meetings are based on the size of a CI's balance sheet and their systemic risk potential for the Austrian financial market. Meetings with the management board of all major and medium-sized CIs take place at least on an annual basis.</p> <p>The exception are smaller CIs (mainly local <i>Raiffeisenkassen</i> in the decentralized Raiffeisen sector, and small <i>Sparkassen</i> which are consolidated into Erste Group Bank) for which meetings are scheduled on a needs-basis, mainly in cases of problematic developments exposed by offsite analyses (e.g. ABBA flags) or bank auditors or reported by the CIs themselves.</p> <p>For these institutions, the regular talks would rather be focused on the bank auditors of these CI's. Each year, 3 so-called sectoral auditor talks are being held. The agenda would at a minimum include a discussion of the risk profile of the CI's with high risk scores as identified in the early warning system ABBA, and a discussion of the risks of CI's on which the bank auditor would have concerns. The assessors have been informed that indeed in a number of instances, these meetings with the bank auditors have signaled actual deficiencies or problems, especially when fraud or related issues arose.</p> <p>For the largest CIs (top 8), regular meetings take place on 3 levels (besides informal contacts):</p> <ul style="list-style-type: none"> • Annual meeting with the (full) management board, • Periodic meetings with the CRO: e.g. ,discussion of JRAD results, updates/follow-ups on CIs' remedial actions regarding on-site findings, • Regular meetings with senior and middle management on various issues (e.g., ICAAP/Pillar II, ALM, CESEE, liquidity, stress testing, etc.) <p>In addition, meetings with all management layers take place during on-site inspections and</p>

	<p>in their follow-up processes. Apart from these regular meetings the FMA may at any time request meetings with directors of CIs and in practice requests such meetings for good cause (Article 70 para. 1 Banking Act). Regular consultations with CIs and the Austrian Federal Economic Chamber in a number of issues (e.g. Basel III, QIS, etc.) also take place.</p>
EC8	<p>The supervisor communicates to the bank the findings of its on- and off-site supervisory analyses in a timely manner by means of written reports or through discussions or meetings with the bank's management. The supervisor meets with the bank's senior management and the Board to discuss the results of supervisory examinations and the external audits, as appropriate. The supervisor also meets separately with the bank's independent Board members, as necessary.</p>
Description and findings re EC8	<p>In case of an on-site examination/inspection, at the very end of the inspection period, the CI's management is provided with the findings of the inspection in a meeting to allow for last comments and factual corrections. The final written audit report is then sent to the CI, which is entitled to officially respond.</p> <p>This response together with a reply from the on-site inspectors is sent to the FMA.</p> <p>There could be four types of findings:</p> <ul style="list-style-type: none"> • An Article of the Banking Act or another relevant Act has been breached • A severe substantive finding • A minor finding • A recommendation. <p>To determine the type of finding, coordination takes place in the so-called round-of-three (Dreier Runde) between the OeNB off-site, the OeNB on-site and the FMA. The FMA would ultimately decide on the findings and send the decision to the management board of the CI. In case there would be severe findings, also the supervisory board is informed. In case an administrative action is launched, a comment by the CI is needed to proceed.</p> <p>Off-site analysts regularly hold management meetings with the CI's senior management. According to this programme, the intensity and level of management meetings are mainly based on the size of a CI's balance sheet and their systemic risk potential for the Austrian financial market. Apart from these regular meetings the FMA may at any time request meetings with directors of CIs and in practice requests such meetings for good cause (Article 70 para. 1 Banking Act). Regular consultations with CIs and the Austrian Federal Economic Chamber on a number of issues take place as well.</p>
EC9	<p>The supervisor undertakes appropriate and timely follow-up to check that banks have addressed supervisory concerns or implemented requirements communicated to them. This includes early escalation to the appropriate level of the supervisory authority and to</p>

	the bank's Board if action points are not addressed in an adequate or timely manner.
Description and findings re EC9	<p>According to Article 70 para 1., the FMA may impose follow-up reporting requirements to be able to review the measures identified to remedy the defects identified in on-site inspections and off-site analyses and to assess their degree of implementation. Moreover, the CIs' internal audit reports on the remedial actions may serve as an additional information source.</p> <p>In practise, the FMA makes use of these powers. The measures taken by the CI and their implementation, following findings that have for instance been identified as an outcome of an on/site examination, are reviewed and discussed among on- and off-site supervisors and FMA staff. The outcomes thereof are being registered in the supervisor's IT system, that allow for a systemic monitoring. In addition, follow-up meetings with the CI's senior and middle management teams are arranged to discuss the appropriateness of the actions taken and progress made. Finally, in case of severe deficiencies, FMA may impose a follow-up on-site-examination.</p>
EC10	The supervisor requires banks to notify it in advance of any substantive changes in their activities, structure and overall condition, or as soon as they become aware of any material adverse developments, including breach of legal or prudential requirements.
Description and findings re EC10	<p>Article 73 Banking Act stipulates notification requirements in addition to the regular reporting according to Articles 74 and 75 Banking Act. These notifications need to be done immediately and include the following: circumstances which endanger the CI's ability to fulfill its obligations; any failure to comply with regulatory standards, regulations or administrative rulings; the occurrence of insolvency or overindebtedness; the opening, relocation, closure or temporary discontinuation of the business operations; and any changes in the articles of association or resolutions to dissolve the undertaking.</p> <p>Further notification requirements exist in the context of Article 20 Banking Act (intention to own a qualifying holding).</p> <p>Moreover, CIs must notify the FMA in writing at least once per year of the names and addresses of shareholders and other members possessing qualifying holdings pursuant to Article 20 para. 5 Banking Act (see CP 6).</p> <p>According to Article 63 para. 3 Banking Act, the bank auditor must report material findings identified in the course of his/her auditing activities to the FMA and the OeNB immediately in writing along with explanations of these findings. This includes facts which endanger the going concern status of the CI; which indicate that the CI might not be able to fulfill its obligations; or which indicate a substantial deterioration of its risk situation.</p> <p>In addition, according to Article 76 Banking Act, the state commissioner and deputy state commissioner must report immediately to the FMA facts which become known to them on</p>

	<p>the basis of which it is no longer ensured that the CI is able to fulfil its obligations to creditors.</p> <p>In addition to these requirements, there is an ongoing dialogue between the FMA, OeNB and the licensed CIs.</p> <p>Notwithstanding the legal notification requirements, CIs would normally inform FMA/OeNB before substantial changes have taken place or material developments have occurred. In addition, the FMA/OeNB will contact the CIs beforehand if they gain knowledge of any significant facts and require confirmation or additional information.</p> <p>In case of major strategic or organizational changes which also have regulatory implications, bilateral meetings between the CI and the respective experts and senior management at the OeNB and FMA take place at an early stage.</p> <p>Moreover, the OeNB assesses the viability of CIs' business models via an extensive analysis before CIs are granted an approval to merge or to split its business (Article 21 Banking Act).</p> <p>In practice, when a certain adverse event would occur (like fraud or a system's failure), the SPOCs at the FMA and OeNB would be informed by the CI immediately.</p>
EC11	<p>The supervisor may make use of independent third parties, such as auditors, provided there is a clear and detailed mandate for the work. However, the supervisor cannot outsource its prudential responsibilities to third parties. When using third parties, the supervisor assesses whether the output can be relied upon to the degree intended and takes into consideration the biases that may influence third parties.</p>
Description and findings re EC11	<p>According to Article 70 para. 1 no. 2a Banking Act, the FMA may, in its area of responsibility as the banking supervisory authority (Article 69 para. 1 nos. 1 and 2) and notwithstanding the powers conferred on the basis of other provisions of the Banking Act, have the bank auditors of CIs, other bank auditors and external auditing companies, the competent auditing associations and other experts conduct all necessary audits any time for the purpose of supervising CIs and groups of CIs; the FMA is permitted to provide information to the auditors it engages where this serves the purpose of fulfilling the audit engagement.</p> <p>In practice this happens very rarely.</p> <p>The duties and competencies of FMA are stipulated in detail in the FMABG.</p>
EC12	<p>The supervisor has an adequate information system which facilitates the processing, monitoring and analysis of prudential information. The system aids the identification of areas requiring follow-up action.</p>

Description and findings re EC12	<p>The micro-prudential supervisory process is supported by a joint information system (data system). Various reporting data, relevant information available from the FMA's supervisory activities as well as data and results of OeNB analyses are filed in this database and signed digitally from the competent experts and the management bodies in charge. All official follow-up actions are also documented via this database.</p> <p>More specifically, the system used in this regard is BASS, an integrated IT work bench. It enables qualitative analyses and risk assessments and has integrated workflow facilities, contains a history of all supervisory facts about an institution, enables individual analyses and is based upon different business models. It has a scoring model for the different risk categories, provides an overview of all previous risk scores, a more granular scoring for systemically important versus other CI's, facilities for global, sector specific and special analyses, a database with all relevant electronic documents about the institution and electronic handbooks that provide internal guidance. A separate IT system is in use for on-site examinations, with comparable facilities but then geared towards the on-site work.</p>
Additional criteria	
AC1	The supervisor has a framework for periodic independent review, for example by an internal audit function or third party assessor, of the adequacy and effectiveness of the range of its available supervisory tools and their use, and makes changes as appropriate.
Description and findings re AC1	<p>The structure and separation of responsibilities within the supervising authorities and their tools are being reviewed and revised to changed circumstances, as part of the normal supervisory work processes. In addition, the Austrian Court of Audit from time to time examines the efficiency and effectiveness of the supervising authorities.</p> <p>However, no specific framework exists for a periodic independent review on the supervisory processes undertaken by FMA and OeNB. The authorities might consider implement such a function.</p>
Assessment of Principle 9	Compliant
Comments	<p>EC 2: An overall multi-year planning process has not been established, although specific multi-year planning cycles exist for CI's that would not be examined each year.</p> <p>AC 1: No specific framework exists for a periodic independent review on the supervisory processes undertaken by FMA and OeNB.</p>

Principle 10	Supervisory reporting. The supervisor collects, reviews and analyses prudential reports and statistical returns ³⁰ from banks on both a solo and a consolidated basis, and independently verifies these reports through either on-site examinations or use of external experts.
Essential criteria	
EC1	The supervisor has the power ³¹ to require banks to submit information, on both a solo and a consolidated basis, on their financial condition, performance, and risks, on demand and at regular intervals. These reports provide information such as on- and off-balance sheet assets and liabilities, profit and loss, capital adequacy, liquidity, large exposures, risk concentrations (including by economic sector, geography and currency), asset quality, loan loss provisioning, related party transactions, interest rate risk, and market risk.
Description and findings re EC1	<p>The FMA has the legal authority to require CIs to submit information, on both solo and consolidated basis, on their financial condition and performance, at regular intervals. Such regulations of the FMA require the approval of the BMF (Article 74 para. 7 Banking Act).</p> <p>According to Articles 70, 73, 74, 75, 79 as well as Article 44 Banking Act, CIs and their auditors have to deliver the relevant information (balance sheet, income and risk statement, monthly and quarterly reports, large exposures, etc.) to the FMA and the OeNB in regular intervals. Changes in the content of the different reports can be implemented quickly with specific regulations, which usually do not require changes of the Banking Act.</p> <p>All the above mentioned data are reviewed and audited by the bank auditors on an annual basis.</p> <p>The OeNB also collects unconsolidated data on loan classification and risk provisioning, on an individual borrower-basis for loans above a threshold of EUR 350,000 (Central Credit Register) and on an aggregated basis from CIs. The monthly notification also includes the value of collateral, the extent of the itemized valuation allowance and the rating class of the respective loans.</p> <p>Via COREP templates CIs submit detailed information regarding aspects of the minimum capital requirements calculation procedure for credit risk, market risk and operational risk. According to Article 29a Banking Act, Austrian superordinate CIs have the discretion to apply the regulatory standards with such book values being determined according to the international accounting standards adopted pursuant to Article 3 of regulation</p>

³⁰ In the context of this Principle, “prudential reports and statistical returns” are distinct from and in addition to required accounting reports. The former are addressed by this Principle, and the latter are addressed in Principle 27.

³¹ Please refer to Principle 2.

	<p>2002/1606/EC on the implementation of international accounting standards.</p> <p>The IFRS Templates (FINREP) gather consolidated information on balance sheet as well as profit and loss items; additional detailed tables on loans, hedge accounting, other operational income/expenses, impairment, repos and related parties are used. Derivatives and financial ratios are reported as additional information, analogous to CIs' reporting according to Local GAAP (Company Code).</p> <p>Foreign subsidiaries report according to the same reporting scheme via the Austrian parent bank but submit only detailed information on impairment.</p>
EC2	<p>The supervisor provides reporting instructions that clearly describe the accounting standards to be used in preparing supervisory reports. Such standards are based on accounting principles and rules that are widely accepted internationally.</p>
Description and findings re EC2	<p>In Austria, reporting instructions which clearly describe the accounting standards to be used in preparing supervisory reports are provided on the OeNB website for all reports (Statistical Reporting Service). The accounting principles and rules are based on the Unternehmensgesetzbuch (UGB), the Austrian Commercial Code, or IFRS. Moreover, reporting instructions have been developed in cooperation with the Austrian CIs.</p> <p>For differences between the UGB and IFRS, please see BCP 27.</p> <p>The general principles and norms for the consolidation of accounts as well as the accounting techniques are laid down in the UGB. Special accounting rules and practices for CIs are laid down in Article 43 to 59a Banking Act. CIs have the possibility to draw up their consolidated statements under International Accounting Standards (IAS/IFRS). CIs, which are listed on the stock exchange, are obligated to draw up their consolidated financial statements under IAS/IFRS since 2005.</p> <p>In practice, most CI's report based upon national GAAP. Just a few CI's provide their prudential reports, based upon IAS/IFRS accounting. However, most large CI's do use IFRS for their published financial statements, either because they are listed on the stock-exchange or issue debt securities. These CI's will need to change their accounting principles used for their prudential reporting in the near future, as soon as the Basel III requirements come into force in the EEA, which is expected as of 2014. The draft Directive implementing Basel III namely requires CI's to use IFRS for prudential purposes, in as far it is already used for their financial purposes. In this regard, please see Article 4 No.53 of the proposed CRR that refers to an 'applicable accounting framework', which means the accounting standards to which the institution is subject under Regulation (EC) No 1606/2002.</p> <p>We recommend implement the current draft Article 4 No.53 of the CRR as soon as possible, without a long grandfathering period for the change-over period from national</p>

	GAAP to IFRS for these CI's.
EC3	<p>The supervisor requires banks to have sound governance structures and control processes for methodologies that produce valuations. The measurement of fair values maximizes the use of relevant and reliable inputs and is consistently applied for risk management and reporting purposes. The valuation framework and control procedures are subject to adequate independent validation and verification, either internally or by</p> <p>an external expert. The supervisor assesses whether the valuation used for regulatory purposes is reliable and prudent. Where the supervisor determines that valuations are not sufficiently prudent, the supervisor requires the bank to make adjustments to its reporting for capital adequacy or regulatory reporting purposes.</p>
Description and findings re EC3	<p>Consistent, realistic and prudent valuation rules for superordinate CIs which report pursuant to Article 59 Banking Act (Local GAAP) are stipulated in Articles 55 to 58 Banking Act.</p> <p>According to Articles 60 to 63b Banking Act annual financial statements of each CI and the consolidated financial statements of each group of CIs pursuant to Article 59 para. 1 and Article 59a para. 1, must be audited by bank auditors (bank auditors), including bookkeeping, the annual report and the consolidated annual report pursuant to Article 59 and Article 59a para. 1.</p> <p>Valuation rules for superordinate CIs which report consolidated financial statements in accordance with IFRS are stipulated in the VERA-V (Annex C1, FINREP-Templates). IFRS references are indicated for balance sheet and income statement items and comprise consistent, relevant and prudent current values where relevant.</p> <p>Local GAAP is mostly used for the Standardized Method. According to Local GAAP, the following asset classes are valued at the lower of amortized cost and market method:</p> <ul style="list-style-type: none"> • Loans • Securities with an investment horizon of less than 12 months which are not listed on a public exchange • Securities with an investment horizon of more than 12 months • Participations; <p>whereas the following asset classes are valued, based upon the full fair value method or the lower of amortized costs or market value:</p> <ul style="list-style-type: none"> • Financial instruments held in the trading book • Securities listed on a public exchange with an investment horizon of less than 12 months. <p>Most large CI's make use of internal internal credit risk and/or VAR models in determining</p>

	their capital adequacy requirements. In these models, market values are used in the model calculations. The calculation methods are being assessed during on-site examinations. Also internal audit might undertake independent verifications of the valuations used.																																																			
EC4	The supervisor collects and analyses information from banks at a frequency commensurate with the nature of the information requested, and the risk profile and systemic importance of the bank.																																																			
Description and findings re EC4	<p>The numerous CI reports submitted to FMA and OeNB include standardized prudential and statistical reports, detailed balance sheets, income and risk statements, as well as detailed information concerning on and off balance sheet activities, reserves and capital.</p> <p>Since the introduction of the risk-based reporting system in January 2007 the risk disclosure gathers detailed information on the volume of all off balance sheet business, especially for credit risk, interest rate risk, stock risk, maturity risk, foreign-exchange risk and country risk. The following table summarizes the frequency of the various reports:</p> <table border="1"> <thead> <tr> <th>Item</th> <th>Consolidated</th> <th>Unconsolidated</th> </tr> </thead> <tbody> <tr> <td>On-balance Sheet</td> <td>Quarterly</td> <td>Quarterly</td> </tr> <tr> <td>Off-balance Sheet</td> <td>Quarterly</td> <td>Quarterly</td> </tr> <tr> <td>Profit and Loss</td> <td>Quarterly</td> <td>Quarterly</td> </tr> <tr> <td>Capital Adequacy (summary info)</td> <td>Monthly</td> <td>Monthly</td> </tr> <tr> <td>Capital Adequacy (details)</td> <td>Quarterly</td> <td>Quarterly</td> </tr> <tr> <td>Liquidity</td> <td>29 CIs: weekly/ monthly</td> <td>Monthly</td> </tr> <tr> <td>Large Exposure</td> <td>Monthly</td> <td>Monthly</td> </tr> <tr> <td>Assets Concentrations</td> <td>quarterly¹</td> <td>quarterly²</td> </tr> <tr> <td>Asset Quality</td> <td>Quarterly</td> <td>Monthly</td> </tr> <tr> <td>Loan Loss Provisioning</td> <td>Quarterly</td> <td>Quarterly</td> </tr> <tr> <td>Related Party Transaction</td> <td>Quarterly</td> <td>monthly³</td> </tr> <tr> <td>Interest Rate Risk</td> <td>Quarterly</td> <td>Quarterly</td> </tr> <tr> <td>Market Risks</td> <td>Quarterly</td> <td>Quarterly</td> </tr> <tr> <td>Operational Risk</td> <td>Annually</td> <td></td> </tr> <tr> <td>Payment Institutions</td> <td></td> <td>monthly/quarterly/ annually</td> </tr> <tr> <td>Remuneration Policy</td> <td>Annually</td> <td></td> </tr> </tbody> </table>	Item	Consolidated	Unconsolidated	On-balance Sheet	Quarterly	Quarterly	Off-balance Sheet	Quarterly	Quarterly	Profit and Loss	Quarterly	Quarterly	Capital Adequacy (summary info)	Monthly	Monthly	Capital Adequacy (details)	Quarterly	Quarterly	Liquidity	29 CIs: weekly/ monthly	Monthly	Large Exposure	Monthly	Monthly	Assets Concentrations	quarterly ¹	quarterly ²	Asset Quality	Quarterly	Monthly	Loan Loss Provisioning	Quarterly	Quarterly	Related Party Transaction	Quarterly	monthly ³	Interest Rate Risk	Quarterly	Quarterly	Market Risks	Quarterly	Quarterly	Operational Risk	Annually		Payment Institutions		monthly/quarterly/ annually	Remuneration Policy	Annually	
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	<p>This Austrian regular reporting scheme is based upon the COREP reporting framework, which is the standardized reporting framework used for prudential reporting within the EEA. Only very small CIs with total assets below EUR 250 million submit less detailed risk information.</p>
EC5	<p>In order to make meaningful comparisons between banks and banking groups, the supervisor collects data from all banks and all relevant entities covered by consolidated supervision on a comparable basis and related to the same dates (stock data) and periods (flow data).</p>
Description and findings re EC5	<p>In Austria, the OeNB collects all relevant information (stock data in monthly or quarterly reports, flow data in quarterly reports, both on a solo and consolidated basis) on CIs, checks the plausibility of the data and analyses the reports with different systems. The FMA has online access to the data. The reported information is easily comparable because the reports are standardized. Since the reporting framework used is based on the COREP framework which is also being used by other EEA supervisory authorities, comparison of this type of prudential information within a college of supervisors in which an Austrian CI participates, is also improved. This COREP Framework, which will be further harmonized within the EEA in 2013, entails standardized definitions and detailed information about the risk structure of a CI.</p> <p>The comparison of IFRS and UGB (Local GAAP) balance sheets at year-end is done by supervisory calculations.</p>
EC6	<p>The supervisor has the power to request and receive any relevant information from banks, as well as any entities in the wider group, irrespective of their activities, where the supervisor believes that it is material to the condition of the bank or banking group, or to the assessment of the risks of the bank or banking group or is needed to support resolution planning. This includes internal management information.</p>
Description and findings re EC6	<p>The supervisor has the power to request and receive any relevant information from CIs as well as from any of their related companies from any CI at any time (e.g. also during an on-site inspection), according to Article 70 para. 1 Banking Act. The assessors have been informed that this also includes access to internal management information.</p> <p>If the supervisor considers that the CIs should include additional information in their regular data questionnaire, the applicable Regulation needs to be changed.</p> <p>Independently, CIs could be subject to ad-hoc requests. The assessors have been given examples of such ad hoc information requests. For instance, the top 3 CIs have delivered additional information in the context of recovery and resolutions plans and on CI have provided the OeNB and FMA on an ad hoc basis with information on consumer loans in foreign exchanges rates.</p>

	<p>The Austrian supervisor has an analytical framework that uses the statistical and prudential information for the ongoing monitoring of the condition and performance of individual CIs. The supervisory requirements are checked monthly and quarterly on the basis of the CI reports (consolidated and unconsolidated). The OeNB has demonstrated the IT system used in this respect. The system includes very detailed rules on these supervisory requirements that are being checked against the reports received, leading to quite detailed alerts. CIs not fulfilling the supervisory requirements will be inspected in greater detail. All off-site results (including reporting errors) are used as an input for on-site supervision planning.</p>
EC7	<p>The supervisor has the power to access³² all bank records for the furtherance of supervisory work. The supervisor also has similar access to the bank's Board, management and staff, when required.</p>
Description and findings re EC7	<p>The supervisor has the power to inspect bookkeeping records, documents and data media as specified in Article 70 para. 1.</p> <p>The supervisor organizes meetings with the management of the CI on a case-by-case basis. Additionally, regular meetings are held. In addition, the assessors have been informed that the FMA and OeNB have the right to meet with and question senior executives and board members of an institution. Also from the meetings the assessors had with the CI's we visited, it was understood that there is a direct communication line between the supervisor and senior management of the CI.</p> <p>In CIs with total assets greater than EUR 1 billion the supervisor is directly represented in the supervisory board via state commissioners according to Article 76 Banking Act.</p>
EC8	<p>The supervisor has a means of enforcing compliance with the requirement that the information be submitted on a timely and accurate basis. The supervisor determines the appropriate level of the bank's senior management is responsible for the accuracy of supervisory returns, imposes sanctions for misreporting and persistent errors, and requires that inaccurate information be amended.</p>
Description and findings re EC8	<p>If a CI does not comply with information requirements, the FMA can impose fines up to EUR 60,000 According to Article 98 para. 2 Banking Act. In addition the bank auditor (Article 63 para. 5 Banking Act) is required to review the reporting system of a CI and reports the results to the FMA. See also Article 39 Banking Act.</p> <p>The CRO of the CI will formally sign off the prudential returns. With respect to the data used during on-site examinations, two board members are required to sign off that the</p>

³² Please refer to Principle 1, Essential Criterion 5.

	documents and data provided is complete and correct.
EC9	The supervisor utilizes policies and procedures to determine the validity and integrity of supervisory information. This includes a programme for the periodic verification of supervisory returns by means either of the supervisor's own staff or of external experts. ³³
Description and findings re EC9	<p>The Austrian supervisor works together with the bank auditor, and uses on-site inspections and a system for checking data quality to confirm the validity and integrity of supervisory information.</p> <p>The annual accounts of each CI and the consolidated accounts of each CI group, including the accounting and the management report as well as the consolidated report, if necessary, are to be examined by the bank auditors as to their compliance with the law. In addition, it is the bank auditors' responsibility to examine, among other things, the substantive correctness of the measurement, including whether the required write-offs, value adjustments and provisions have been made, as well as compliance with the regulatory provisions of the Banking Act (especially with regard to own funds, large exposures and liquidity). The results of this audit are to be included in an Annex to the Audit Report on the annual financial statements (prudential report). This report has to be submitted to the management and the supervisor together with the audit report on the annual accounts. The CI is obliged by law to submit the above-mentioned reports to the FMA and the OeNB not later than six months after the financial year has ended (see Article 44 Banking Act). Therefore, the FMA receives audited annual accounts, management reports, banking supervisory audit reports and a disclosure regarding hidden reserves from all CIs in the reporting period.</p> <p>In accordance with Article 70 para. 1 no. 3 Banking Act, the FMA may instruct the OeNB with the onsite-inspection of CIs, their branches and representative offices outside Austria as well as companies belonging to the CI group.</p> <p>To provide high-quality data about CIs and other financial intermediaries the OeNB has switched in 2006 to more comprehensive system for checking data quality, especially the validity and integrity of data. The system implements various methods to check the plausibility (verification) of data reported to the OeNB. The main merit of the system is that it allows for a flexible adaptation of the scope of data checks and for an automatic adjustment of the plausibility parameters on the basis of historical data developments. Moreover, procedural models developed for individual specifications were made applicable to data quality checks by breaking down reporting entities into three priority groups corresponding to large, medium-sized and small entities. To improve the monitoring, the OeNB has developed a Java-based application that provides for the visual presentation of</p>

³³ May be bank auditors or other qualified external parties, commissioned with an appropriate mandate, and subject to appropriate confidentiality restrictions.

	<p>unusual developments in individual CIs' data. The periodic verification of supervisory returns is carried out by experienced members of the staff to ensure that this issue is treated in an appropriate manner.</p> <p>In a current project OeNB develops an integrated data model in close cooperation with reporting CIs that aims to guarantee a unified data base for any supervisory reports starting at the reporters' data base. Additionally this database allows reporters and supervisors to adopt very quickly to any future data needs (e.g., EBA; Banking Union).</p>
EC10	<p>The supervisor clearly defines and documents the roles and responsibilities of external experts,³⁴ including the scope of the work, when they are appointed to conduct supervisory tasks. The supervisor assesses the suitability of experts for the designated task(s) and the quality of the work and takes into consideration conflicts of interest that could influence the output/recommendations by external experts. External experts may be utilized for routine validation or to examine specific aspects of banks' operations.</p>
Description and findings re EC10	<p>FMA and OeNB hold regular meetings with the board of the auditing associations of the decentralized sectors as well as with all bank auditors of Austrian CIs. This exchange of information, which has proven beneficial over the years, was in the last years further intensified and is an important part of supervisory activities, as are the talks with the management of deposit guarantee institutions, which also exercise an early-warning function for their sector pursuant to the Banking Act.</p> <p>Other external experts are rarely used. There are two possibilities of external experts functioning as banking supervisors, as foreseen by law:</p> <ul style="list-style-type: none"> • The appointment of an expert supervisor (government commissioner) who is an attorney at law or external auditor in the case of danger to the fulfillment of the CI's obligations to its creditors according to Article 70 para. 2 no. 2 Banking Act • The nomination of a bank auditor or another expert to conduct an on-site examination in a CI according to Article 70 para. 1 no. 2a Banking Act. <p>Since the FMA has to bear the costs of such an external expert acting on behalf of the supervisor, there is a limited use of the above mentioned powers. The adequacy of such an external expert is assessed on a case by case basis, based upon the individual conditions of the relevant case and on former experience with the expert as well as considering possible conflicts of interest when choosing an individual to provide the requested expertise.</p> <p>In practice, only a few examples are known when external experts were employed, especially on topics with regard to money laundering and IT. In these cases very specific</p>

³⁴ May be bank auditors or other qualified external parties, commissioned with an appropriate mandate, and subject to appropriate confidentiality restrictions. External experts may conduct reviews used by the supervisor, yet it is ultimately the supervisor that must be satisfied with the results of the reviews conducted by such external experts.

	inspections were undertaken by these external experts on a specialized topic. Specific mandates have been drafted in these cases, whereby the roles and responsibilities of these external experts have been clarified as well as their expected field of operations.
EC11	The supervisor requires that external experts bring to its attention promptly any material shortcomings identified during the course of any work undertaken by them for supervisory purposes.
Description and findings re EC11	<p>According to Article 63 para. 3 Banking Act the supervisor requires the bank auditor to be informed without delay on any material shortcomings identified during the course of any work undertaken by them for the supervisor.</p> <p>The content of the audit report on the annual financial statements (prudential report) is determined in the Regulation on the Annex to the Audit Report on the Annual Financial Statements (See also Article 44 paras. 1, 5 and 7 Banking Act).</p>
EC12	The supervisor has a process in place to periodically review the information collected to determine that it satisfies a supervisory need.
Description and findings re EC12	<p>To a large extent, the prudential returns are based on the harmonized reporting framework that is used within the EEA. Working groups within the EU are involved in the continuous further development of this framework, following user needs and changes in regulation.</p> <p>The OeNB is responsible for all off-site analyses of CIs. In this context, the OeNB is obliged to perform regular comprehensive analyses of data reports and of other relevant information for banking supervision purposes whether it still fulfills the needs of the users.</p> <p>During the financial crisis it turned out that some parts of the regular supervisory reporting did not meet the required data granularity. This was especially the case with large cross-border CIs and their foreign subsidiaries. Therefore, the OeNB requests additional data from these CIs on a regular basis (e.g. on non-performing loans, liquidity and foreign currency loans) and conducts ad-hoc surveys to cover special topics and ensure a comprehensive (consolidated) supervision.</p> <p>A specific questionnaire was introduced in July 2009 concerning all CIs which are required to conduct an ICAAP (internal capital adequacy assessment process).</p> <p>This questionnaire is sent to the CIs on an annual basis and the analyses of the answers are an important input for the annual assessment of capital adequacy, specifically in the context of cross-border banking groups where a joint risk assessment and decision process (JRAD) is carried out in the college of supervisors http://www.fma.gv.at/en/international/international-cooperation/colleges-of-supervisors.html.</p>

Assessment of Principle 10	Compliant
Comments	EC 2: In practice, most CI's report based upon national GAAP. Just a few CI's provide their prudential reports, based upon IAS/IFRS accounting. However, most large CI's do use IFRS for their published financial statements, either because they are listed on the stock-exchange or issue debt securities. These CI's will need to change their accounting principles used for their prudential reporting in the near future, as soon as the Basel III requirements come into force in the EEA, which is expected as of 2014. The draft Directive implementing Basel III namely requires CI's to use IFRS for prudential purposes, in as far it is already used for their financial purposes. In this regard, please see Article 4 No.53 of the proposed CRR that refers to an 'applicable accounting framework', which means the accounting standards to which the institution is subject under Regulation (EC) No 1606/20021.
Principle 11	Corrective and sanctioning powers of supervisors. The supervisor acts at an early stage to address unsafe and unsound practices or activities that could pose risks to banks or to the banking system. The supervisor has at its disposal an adequate range of supervisory tools to bring about timely corrective actions. This includes the ability to revoke the banking license or to recommend its revocation.
Essential criteria	
EC1	The supervisor raises supervisory concerns with the bank's management or, where appropriate, the bank's Board, at an early stage, and requires that these concerns be addressed in a timely manner. Where the supervisor requires the bank to take significant corrective actions, these are addressed in a written document to the bank's Board. The supervisor requires the bank to submit regular written progress reports and checks that corrective actions are completed satisfactorily. The supervisor follows through conclusively and in a timely manner on matters that are identified.
Description and findings re EC1	Based upon the interviews held with the FMA and OeNB and with a number of CI supervised, the assessors' view is that the Austrian supervisor raises supervisory concerns at a sufficiently early stage with bank's management. Such concerns will for instance be raised in the course of the ongoing regular or periodic communication with bank's management. For the major CI's, there is an ongoing dialogue with bank's management and concerns are raised within the scope of this dialogue. For the smaller institutions, on a periodic basis meetings are being held in which concerns are being discussed. If concerns are more material, ad hoc communication will be established. Also concerns will be raised as a result of on-site inspections that have been carried out. For such concerns, based upon how important they are, the FMA will require the CI to identify its follow-up actions which will subsequently be assessed by the FMA and OeNB,

	<p>based upon which the FMA might identify further follow-up actions if needed.</p> <p>In general, the CI's we visited describe a supervisory reaction that is quite intrusive, and that is traditionally quite focused on breaches of law.</p> <p>Based upon Article 70 para 4. No 1. Banking Act, the FMA has to order a CI to reestablish lawful conditions within a period appropriate in view of the circumstances of the case.</p> <p>Administrative rulings by the FMA are addressed to the CI as such. Basically (if the provisions of the banking laws that the FMA has to apply do not provide for something else) rulings of the FMA containing remedial actions can be issued in writing or orally pursuant of Article 62 para. 1 AVG.</p> <p>CIs have to bring all administrative rulings issued by the FMA on the basis of provisions stated in the banking laws as defined in Article 70 para. 8 Banking Act to the attention of the Chairman of their supervisory body without delay. This means that every administrative ruling by the FMA has to be brought to the attention of the chairman of the supervisory board or other supervisory body.</p> <p>After the issuance of an administrative ruling pursuant to Article 70 para. 4 Banking Act (in many cases discussions with the management suffice to ensure compliance with legal and prudential provisions), the CI usually reestablishes the required lawful conditions.</p> <p>All remedial actions which are taken by the FMA are issued in writing.</p> <p>If deemed necessary, a regular progress reporting can be imposed on the CI according to Article 70 para. 1 no. 1 Banking Act. The reports are analyzed by the FMA and OeNB. If the remedial actions taken are completed satisfactorily, the duty of additional reporting shall be terminated.</p>
EC2	<p>The supervisor has available³⁵ an appropriate range of supervisory tools for use when, in the supervisor's judgment, a bank is not complying with laws, regulations or supervisory actions, is engaged in unsafe or unsound practices or in activities that could pose risks to the bank or the banking system, or when the interests of depositors are otherwise threatened.</p>
Description and findings re EC2	<p>According to article 70 para 4 of the Banking Act, the FMA may take a range of supervisory actions, in cases where the CI's licensing requirements or any provision of an applicable act are violated. More specifically, in such cases the FMA must:</p> <ul style="list-style-type: none"> • Instruct the CI to restore legal compliance which is appropriate in light of the

³⁵ Please refer to Principle 1.

	<p>circumstances, under threat of an initial penalty.</p> <ul style="list-style-type: none"> • In cases of repeated or continued violations, completely or partly prohibit the directors from managing the CI and in such cases enforcing the penalty that has been initially imposed and setting a higher penalty in case the instruction would not be met. • Where other measures pursuant to the Banking Act cannot ensure the adequate functioning of the CI, as <i>ultima ratio</i> revoke the banking license <p>More concretely, based on para 4. nos. 1 and 2 of Article 70 of the Banking Act, the FMA can enforce any provision of the Banking Act, including <i>i.a.</i></p> <ul style="list-style-type: none"> • solvency (Article 22 Banking Act), • (consolidated) own funds (Article 23 and 24 Banking Act), • liquidity (Article 25 Banking Act), • disclosure obligations (Article 26 and 26a Banking Act), • large exposures (Article 27 Banking Act), • transactions with affiliated parties and participations (Article 28 and 29 Banking Act), • the duty of diligence (Article 39 Banking Act), • internal audit provisions (Article 42 Banking Act), • accounting and bank auditing (Articles 43 to 65 Banking Act), • reporting and notification requirements (Articles 20, 73 to 75 Banking Act). • as well as the duties of CIs according to Articles 70 to 71 Banking Act according to the FMA's administrative rulings. <p>For instance, if reporting requirements or time limits for reporting or filing documents are not met by the CI, the FMA may prescribe a fine. The extent of the delay as well as the obstructed supervision of the business practices and the extra costs incurred due to the delayed submission shall be taken into account when determining the amount of the fine. The default charges can be prescribed several times until payment has been made (Article 22a FMABG).</p> <p>The statutory ranges of penalties are regulated per single violation. As of May 1st 2012, these amounts have been doubled.</p> <p>The current fine range is as follows:</p> <ul style="list-style-type: none"> • From six weeks of imprisonment to EUR 150,000 for severe breaches of duties relating to combat against money leandering and terrorist financing • To EUR 100,000 for unlicensed activities • To EUR 60,000 for other violations (eg on reporting) of the Banking Act. <p>In practice, the number of administrative penal proceeding in banking supervision was the following:</p>
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2008	2009	2010	2011	2012
132	248	386	396	397

In addition, the number of administrative penalties imposed by the FMA in banking supervision was the following:

	2010	2011	2012
#	542	492	375
of which banking supervision	327	307	210
Amount in mln (FMA total, not only related to banking supervision)	EUR 1.4	EUR 1.2	EUR 1.3

Practically, if a concern does not necessitate immediate corrective measures, the FMA will usually grant the CI the possibility to comment on violations or breaches of prudential requirements as a first step of initiating supervisory proceedings. Such a hearing is also legally required by the AVG, which applies to all supervisory measures of the FMA.

In case the CI demonstrates to the satisfaction of the FMA that it is about to reestablish lawful conditions, the initiated investigations will end. Checks whether the CI has established such lawful conditions are specifically performed by the bank auditor in his reports.

In cases in which such a settlement of the problem is not feasible, the FMA will by issuing an administrative ruling order the CI under threat of penalty to reestablish lawful conditions (Article 70 para. 4 no. 1 Banking Act). Hereby the FMA has sufficient flexibility to adequately respond by varying the appropriate period in view of the circumstances of the case. Occasionally, the FMA has to repeat this proceeding (that is to order by administrative ruling the reestablishment of lawful conditions under threat of a higher fine) and execute the imposed fine (see Article 70 para. 4 no. 2 Banking Act). If the CI does not reestablish the lawful conditions, the FMA has to forbid completely or partly the Executive Board to conduct business (Article 70 para. 4 no. 2 Banking Act).

As the last consequence the FMA has to revoke the CI's license due to Article 70 para. 4 no. 3 Banking Act.

EC3

The supervisor has the power to act where a bank falls below established regulatory threshold requirements, including prescribed regulatory ratios or measurements. The supervisor also has the power to intervene at an early stage to require a bank to take

	action to prevent it from reaching its regulatory threshold requirements. The supervisor has a range of options to address such scenarios.										
Description and findings re EC3	<p>Based upon Article 70 para 4. (see EC 2 above) the FMA has the legal right to act where a CI has fallen below its established regulatory threshold requirements. In this respect, the FMA can enforce any provision of the Banking Act that includes established regulatory threshold requirements.</p> <p>In addition, the FMA has powers to undertake corrective actions in case of danger to the fulfillment of the obligations of a CI to its creditors, in particular with respect to the safety of the assets entrusted to it (see Article 70, para 2. Banking Act). In these cases the FMA may issue administrative rulings (Bescheide) which:</p> <ul style="list-style-type: none"> • Completely or partly prohibit withdrawals of capital and earnings as well as distributions of capital and earnings • Appoint an expert supervisor (normally an attorney at law or external auditor) who must prohibit the CI from undertaking any transaction which might exacerbate the danger as meant above and/or who only allows individual transactions to mitigate such danger in cases where the CI is completely or partly prohibited from continuing its business or transactions. • Completely or partly prohibit directors of the CI from managing the CI, whereby the responsible body must re-appoint the corresponding number of directors within a month and the FMA must give its consent to these appointments in the context of the circumstances at hand. • Completely or partly prohibit the continuation of business operations. <p>These administrative rulings under Article 70, para 2 would be effective for a limited period of time in order to avert the danger. This period might not exceed 18 months after going into effect.</p> <p>Measures according to Article 70 para. 2 Banking Act are not used that often. The following table presents the measure used with respect to the expert supervisor:</p> <table border="1" data-bbox="553 1457 1302 1604"> <thead> <tr> <th>2008</th> <th>2009</th> <th>2010</th> <th>2011</th> <th>2012</th> </tr> </thead> <tbody> <tr> <td>0</td> <td>3</td> <td>0</td> <td>1</td> <td>0</td> </tr> </tbody> </table> <p>Furthermore, where the solvency of the CI is endangered, the FMA has the power to stop the repayment of hybrid capital, to limit the variable remuneration granted to employees and/or to impose using its net profits for building up its capital basis (Article 70 para. 4c Banking Act).</p> <p>Another corrective action the FMA can employ, is charging the CIs interest in cases where</p>	2008	2009	2010	2011	2012	0	3	0	1	0
2008	2009	2010	2011	2012							
0	3	0	1	0							

	<p>certain regulatory requirements are not met. This is laid down in Article 97 para. 1 of the Banking Act. The interest charged needs to be seen as a penalty for breaching certain regulatory limits. Examples are interest amounts to be paid in case the CI's level of own funds falls below its minimum level or in case the CI exceeds its large exposure limits. Interest to be paid according to Article 97 para. 1 Banking Act must be remitted to the Republic of Austria (Article 97 para. 2 Banking Act).</p> <p>Very specific to securitizations, according to Article 70 para. 4b additional risk weights may be imposed in case of violations of securitization provisions (Articles 22d and 22f Banking Act). And within the framework of Regulation (EU) No 236/2012, the FMA has the right to impose restrictions and bans in relation to short selling in financial instruments.</p> <p>The main power the FMA has to intervene at an early stage in requiring a CI to take action to prevent it from reaching its regulatory threshold requirements, is its ability to prescribe extra capital requirements to mitigate deficiencies in risk management or an increased risk profile or risk exposures of the CI, based upon Article 70 para. 4a. Banking Act. More specifically, based on this article, the FMA can impose a minimum capital requirement that is higher than the normal minimum capital requirement. This extra capital add-on can be up to 150% of the minimum capital requirement. The measure is to be taken where a violation of the Banking Act leads to an inadequate limitation of the risks arising from banking transactions and operations of the CI and a proper capture and limitation of risks cannot be expected in the short term. The measure can be taken in conjunction with other measures, like penalties. This measure is extensively used in the context of determining the PII capital requirements, using the JRAD model.</p> <p>However, the FMA does not have the powers to directly intervene at an early stage by issuing an order to remedy a deficiency in for instance the CI's risk management systems or by issuing an order that would prohibit, limit or set other conditions on the business activities or exposures of the CI in question, when risks are building up or are not properly captured by the CI.</p> <p>We recommend that the FMA be provided with such powers.</p>
EC4	<p>The supervisor has available a broad range of possible measures to address, at an early stage, such scenarios as described in essential criterion 2 above. These measures include the ability to require a bank to take timely corrective action or to impose sanctions expeditiously. In practice, the range of measures is applied in accordance with the gravity of a situation. The supervisor provides clear prudential objectives or sets out the actions to be taken, which may include restricting the current activities of the bank, imposing more stringent prudential limits and requirements, withholding approval of new activities or acquisitions, restricting or suspending payments to shareholders or share repurchases, restricting asset transfers, barring individuals from the banking sector, replacing or restricting the powers of managers, Board members or controlling owners, facilitating a takeover by or merger with a healthier institution, providing for the interim management</p>

	of the bank, and revoking or recommending the revocation of the banking license.
Description and findings re EC4	<p>As also described in EC 3, the central provision for dealing with a situation involving danger to the fulfillment of obligations of a CI to its creditors, in particular the assets entrusted to it, is Article 70 para. 2 Banking Act. This article enables the FMA to order temporary measures (expiring no later than 18 months after taking effect) by way of administrative ruling. Please refer to EC 3 for further details.</p> <p>In case of an evidenced over indebtedness of a CI, the Banking Act contains insolvency provisions, adapting the generally applicable provisions of the Austrian Bankruptcy Code (Articles 81 to 91 Banking Act). An over indebted or insolvent CI can, if this situation is likely to be cured, apply for receivership with the competent court. Such application can also be made by the FMA (Article 83 para. 1 Banking Act). The FMA has standing as a party in such receivership proceeding (Article 82 para. 2 Banking Act). The court has to inform the FMA and the OeNB without delay of the imposition of such a proceeding (Article 82 para. 6). The CI, as well as the FMA, has the right to appeal decisions by which the application for receivership is denied or the receivership is terminated (Article 90 para. 5 Banking Act). The court shall hear the FMA prior to appointing a receiver or administrator of a bankrupt estate; (Article 82 para. 5 Banking Act).</p> <p>The difference between a situation leading to temporary measures ordered by the FMA pursuant to Article 70 para. 2 Banking Act and a situation leading to the application for receivership by the FMA is that in the first case there is an imminent danger to the fulfillment of obligations (which leads to temporary supervisory measures), whereas in the second case there is an evidenced over indebtedness, but which is likely to be cured (e.g. the CI's capital is increased). Temporary measures ordered by the FMA are suspended for the duration of a receivership (Article 70 para. 5 Banking Act).</p> <p>In case that an over indebtedness or an insolvency of a CI is not likely to be cured, the FMA can file for bankruptcy. In the case of an active receivership, only the receiver can file for bankruptcy (Article 82 para. 3 Banking Act). No proceeding of composition with creditors can be instituted over the assets of a CI. In bankruptcy proceedings of a CI no forced composition with creditors can take place (Article 82 para. 1 Banking Act). Articles 83 to 91 Banking Act contains the following further provisions concerning receivership and insolvency proceedings.</p> <p>Further to the above mentioned revocation of a banking license as ultima ratio pursuant to Article 70 para. 4 no. 3 Banking Act (see EC 2) the FMA shall revoke the license if it was granted on the basis of incorrect statements or deceptive conduct or was otherwise fraudulently obtained; the CI does not fulfill its obligations to its creditors (Article 6 para. 2 nos. 1 and 2 Banking Act).</p> <p>The FMA must revoke the license in cases where bankruptcy proceeding are initiated for the assets of the CI and the CI has adopted a corporate resolution to dissolve the</p>

undertaking and all banking transactions have been settled (Article 6 para 2 nos 4 and 5 Banking Act).

Furthermore, the license can be revoked by the FMA if the business operation for which it has been granted is not commenced within twelve months from the granting of the license, or the business operation for which it has been granted, has not been conducted for a period of more than six months (Article 6 para. 1 Banking Act).

The intention to directly or indirectly acquire or dispose of a qualifying participation (as defined in Article 2 no. 3 Banking Act) in a CI has to be notified in writing to the FMA in advance. If the current owners of qualifying participations in a CI might exercise an influence endangering the fulfillment of the requirements imposed in the interest of sound and prudent management of the CI, the FMA shall take appropriate measures to avoid this danger or to put an end to that situation (Article 20 para. 5 Banking Act). The voting rights attached to the stocks or other shares held by the respective stockholders or other shareholders are suspended *ex lege* for given periods due to Article 20 para. 4 2. of the Banking Act.

If a CI directly or indirectly acquires or relinquishes a participation in a CI domiciled in a third country and thereby reaches, exceeds or undercuts the relevant thresholds (10 percent, 20 percent, 33 percent or 50 percent), a special permit by the FMA is required (Article 21 para. 1 no. 2 Banking Act).

If directors of a CI do not fulfill the conditions of Article 5 para. 1 nos. 6 to 13 Banking Act anymore, which provide, i.a. for adequate professional qualification and experience, no other full time occupation, personal reliability, freedom of certain criminal charges, then one of the conditions for the granting of a license is no longer met. In such a case, the FMA shall take the measures described below pursuant to Article 70 para. 4 Banking Act. The FMA itself can not directly relieve a director or replace a director with someone chosen by the FMA. Please refer to EC 5.

If a licensed CI plans to extend its business to banking activities, which are not yet comprised in its license, it has to apply for an expansion of its license.

This expansion of an existing license is subject to the same conditions as the granting of a new license. Accordingly, the FMA has the same means to ensure compliance with the provisions of the Banking Act and can thus assure safety and soundness of the concerned CI.

Participations of CIs in non-banks are only restricted by the Banking Act in such way that if their book value surpasses certain thresholds, they must be covered by own funds. If CIs acquire participation in non-banks and this acquisition is in conflict with the diligence of a prudent and conscientious director (Article 39 para. 1 Banking Act), the FMA shall take the

	<p>measures provided for in Article 70 para. 4 Banking Act.</p> <p>The FMA is not entitled to arrange or order a merger of CIs. Nevertheless, the FMA will apply Article 21 Banking Act in any case of merger between CIs and will prohibit such a merger if the conditions of the Banking Act (Articles 4 to 6 and 8 Banking Act) are not met.</p> <p>The FMA can publish remedial measures for public information purposes according to Article 70 para. 7 Banking Act.</p> <p>Furthermore, administrative rulings that prohibit entirely or in part the directors of the CI from conducting business (Article 20 para. 2 no. 3 and para. 4 no. 2 Banking Act) and any lifting of such prohibitions have to be communicated by the FMA to the competent court for the purpose of registration in the commercial register (Article 70 para. 9 Banking Act).</p> <p>Finally, the FMA is authorized to inform the public in individual cases that a specifically named undertaking is not authorized to conduct certain banking transactions by means of an announcement in the Official Gazette of the <i>Wiener Zeitung</i> or in another publication medium which is distributed nationwide. Upon individual request, the FMA must provide information within a reasonable period of time on the scope of licenses issued to CIs. The FMA must compile a database containing information on the current scope of existing licenses issued to CIs and to enable queries of these data via the web site (Article 4 para. 7 Banking Act).</p>
EC5	The supervisor applies sanctions not only to the bank but, when and if necessary, also to management and/or the Board, or individuals therein.
Description and findings re EC5	<p>Not the CI, but only natural persons can be penalized for administrative and criminal offences respectively. Thus, natural persons, who legally represent legal persons, e.g. in the case of CIs the directors pursuant to Article 2 no. 1 Banking Act, are criminally liable due to Article 9 para. 1 Administrative Penal Act (<i>Verwaltungsstrafgesetz—VStG</i>).</p> <p>Accordingly, the directors of a CI which does not comply with the provisions of the Banking Act or other banking laws, the violation of which constitutes an administrative offence,³⁶ are punishable by the FMA.</p> <p>Pursuant to Article 9 para. 2 VStG the directors of a CI can nominate a responsible person for certain areas of the CI, for which he is criminally liable.</p> <p>Certain administrative penalties do not directly address directors or the designated responsible person, but do address any person who violates certain provisions of the Banking Act or other banking laws, e.g. the bank auditor or the responsible person of a</p>

³⁶ Please refer to Article 98 Banking Act.

	<p>guarantee facility. These provisions are contained in Article 98 para. 1 and Article 99 Banking Act.</p> <p>We recommend to introduce the possibility for the FMA to apply penalties to the CI as well. This might also impact the maximum level of the penalties. In this regard the assessors have been informed that the CRD IV will introduce powers for the FMA to impose pecuniary administrative sanctions both against natural and legal persons for infringements of prudential regulation as specified in the CRD IV. According to this EU legislation, the FMA will be provided with the power to impose sanctions against legal persons in relation to the list of offences specified in the CRD IV, though this power would not be extended to other areas of financial markets supervision. We have also been informed that with regard to criminal offenses that are within the jurisdiction of the ordinary courts in criminal matters, corporate persons can already be penalized, based upon the "<i>Verbandsverantwortlichkeitsgesetz</i>" of 2006.</p> <p>Please note that as also stated in CP 7 EC 5, in case a director of a CI or a chairman of the supervisory board do not fulfill the conditions of Article 5 para. 1 nos. 6 to 13 Banking Act concerning fit & properness, the FMA itself cannot directly take a supervisory measure against such a person and relieve that person out of his or her position, but would need to address the CIs.</p> <p>We recommend to introduce such a power for the FMA.</p>
EC6	<p>The supervisor has the power to take corrective actions, including ring-fencing of the bank from the actions of parent companies, subsidiaries, parallel-owned banking structures and other related entities in matters that could impair the safety and soundness of the bank or the banking system.</p>
Description and findings re EC6	<ul style="list-style-type: none"> • Actions from parent companies, subsidiaries, parallel-owned banking structures and other related companies might impair the safety and soundness of the CI. If such actions put danger to the fulfillment of the CI's obligations to its creditors, the FMA may issue an administrative ruling as remedial action according to Article 70 para. 2 Banking Act. In particular this administrative ruling may • (partly) prohibit the withdrawal of capital and earnings as well as distributions of capital and earnings; • Authorize exceeding the eligibility limits of Article 23 para. 14 nos. 1 to 3; • appoint an expert supervisor (i.e., government commissioner) who prohibits transactions or - in case that the CI must not continue business - allows individual transactions; • (partly) prohibit directors from managing the CI; • (partly) prohibit the continuation of business operations. <p>Thus, also ring-fencing measures are part of the FMA's powers to avoid danger to the</p>

	<p>safety and soundness of the CI.</p> <p>In practice, ring-fencing would be done according to either point 1 or 2 above. In practice, these measures have been utilised.</p>
EC7	The supervisor cooperates and collaborates with relevant authorities in deciding when and how to effect the orderly resolution of a problem bank situation (which could include closure, or assisting in restructuring, or merger with a stronger institution).
Description and findings re EC7	<p>Knowledge of a problem bank situation</p> <p>By means of the monthly and quarterly reports which have to be submitted to the FMA and the OeNB (Articles 74 and 79 Banking Act), all information which might indicate a weakness or other irregularities of a CI is assessed. Furthermore, CIs have to report without delay in writing to the FMA and the OeNB all circumstances which make it clear to a prudent director that the ability for the CI to fulfill its obligations is endangered or insolvency or over indebtedness has occurred (Article 73 para. 1 nos. 5 and 6 Banking Act). According to Article 63 para. 3 Banking Act, also the bank auditor has to report such facts immediately in writing to the FMA and the OeNB. The same applies to the state commissioner (if appointed; Article 76 para. 8 Banking Act).</p> <p>Measures ordered by FMA</p> <p>The FMA may, in case of danger to the fulfillment of the CI's obligations to its creditors, in particular with respect to the security of assets entrusted to this CI, issue an administrative ruling ordering measures for a limited period of time in order to avert that danger. These measures must be abrogated at the latest 18 months after going into effect (Article 70 para. 2 Banking Act). The prudential measures which may be taken have to be proportional to the danger (to the fulfillment of the obligations of a CI to its creditors). In ordering such prudential measures, the FMA has to consider whether the supervisory tools are adequate and appropriate.</p> <p>Measures ordered by courts</p> <p>An indebted or insolvent CI can, if this situation is likely to be cured, apply for receivership with the competent court. Such application can also be made by the FMA (Article 83 para. 1 Banking Act). See EC 4.</p> <p>Measures on mergers and acquisitions</p> <p>A merger or takeover requires a special permit by the FMA (Article 21 para. 1 Banking Act). The FMA is not entitled to impose such a merger. In case of a (direct or indirect) acquisition of a qualifying participation (Article 2 no. 3 Banking Act) in a CI, the acquirer has to inform the FMA about the size of this participation. The FMA may prohibit such</p>

proposed participation, see in detail CP 6.

Guarantee facilities

The private Austrian deposit guarantee schemes serve, in a first stage, also gather information and impose corrective measures on CIs participating in each scheme. CIs, the bank auditor and the guarantee facilities themselves are obliged by law to exchange information in an early warnings system (Article 93a paras. 4 and 7 Banking Act; Article 61 para. 1 Banking Act). In their articles of association, most guarantee facilities have made use of their rights based upon statute (Article 93a para. 6 Banking Act) to provide for their participation in rescue activities. The CIs are obliged by Article 93 para. 1 of the Banking Act and by their statutes to take part in a deposit guarantee scheme.

There are currently 5 guarantee schemes:

- *Einlagensicherung der Banken & Bankiers GesmbH* (for CIs organized in the form of a stock corporation);
- *Sparkassen-Haftungs Aktiengesellschaft* (for the savings banks sector);
- *Österreichische Raiffeisen-Einlagensicherung reg. GenmbH* (for the Raiffeisensector);
- *Schulze-Delitzsch-Haftungsgenossenschaft reg. GenmbH* (for the Commercial Credit Co-operative Banks (i.e., *Volksbanken*) sector);
- *Hypo-Haftungs Gesellschaft m.b.H.* (for the State mortgage bank sector).

The core objective of a guarantee facility is of course to function as an instrument designed to guarantee and ease the recovery of deposits of CI clients up to a certain amount in case of the bankruptcy of a CI (Article 93 para. 3 Banking Act). If the concerned deposit guarantee facility is unable to pay back the secured deposits, then the other facilities have to share the burden. In the extreme case of a systemic crisis, as a last resort, the Federal State will bail out the depositors.

CIs taking deposits are required to participate in the deposit guarantee scheme within the framework of their trade association. If a CI is obliged to adhere to a certain guarantee facility because of the nature of its banking business, non-membership in such deposit guarantee facility leads *ex lege* to the expiration of the CI's banking license with regard to such businesses (Article 93 para. 1 Banking Act).

Within two decentralized sectors (*Raiffeisenkundengarantie* and *Sparkassen-Haftungsverbund*) sector specific interbank commitments have been concluded. Such agreements are designed to provide for mutual financial aid in situations of crisis and insolvency. It has been good practice among such institutions to prevent cases of insolvency within such trade association by way of mutual assistance.

Since the establishment of the FMA in 2002 neither receivership had to be ordered by a court (nor was applied for by the FMA or a CI) nor bankruptcy proceedings over a CI had to

	<p>be filed. Note that in the past there were cases of insolvency of CIs which were mainly due to fraud.</p> <p>Cooperation with other authorities</p> <p>Based on the current legal provisions, the FMA is the sole authority to decide on prudential measures when a CI's license has to be revoked and is about to be resolved (cf Art 6-7a Banking Act). Changes in this regard are however likely to happen under the upcoming Bank Restructuring Act and under the framework of the SSM which momentarily is under construction. Notwithstanding this legal foundation, there is in practice a close cooperation between FMA and other institutions in case that a CI has to be resolved. For instance, the FMA would rely on the expertise of the OeNB as concerns the evaluation of the status and the changes in the economic situation of such a CI and the FMA would ask the external bank auditor for additional relevant economic information. Moreover, the FMA would contact the DGS if prudential measures that trigger payouts by the DGS will be taken.</p> <p>And in case the CI has branches or subsidiaries abroad, the FMA has to inform the host country authorities about planned or already taken measures and take into account the input of these authorities when deciding about further measures (see for instance Article 7a para. 2 Banking Act regarding the voluntary winding-up of the CI and Article 83 paras. 4 and 5 Banking Act regarding reorganization matters).</p> <p>In practice, the decision making process would in such cases closely be coordinated within the college of supervisors that has been set up for the banking group. This college of supervisors could also be used as the platform to collaborate closely on the measures to be taken.</p>
Additional criteria	
AC1	Laws or regulations guard against the supervisor unduly delaying appropriate corrective actions.
Description and findings re AC1	<p>Pursuant to Article 130 para. 1 of the Austrian Federal Constitution (B-VG) the Administrative Court pronounces judgment upon the alleged breach of administrative authorities' task to take a decision.</p> <p>Such a complaint is only possible, if there is no superior authority to which a party might either appeal or which can influence the authority unduly delaying the decision, i.e., if a request for devolution in the (normal) course of an administrative proceeding (pursuant to Article 73 of the AVG) is impossible.</p> <p>Since the FMA is operationally independent (Article 1 para. 1 FMABG) and the BMF is no superior authority in the meaning of Article 73 AVG, a complaint to the Administrative Court is permitted, if the FMA breaches its obligation to decide.</p>

	<p>Such a complaint is permitted, if the FMA has not taken a decision within a period of 6 months (Article 27 Administrative Court Act) and can only be brought in by someone who is a party to the respective administrative proceeding (Article 132 B-VG), e.g. by the applicant for a banking license pursuant to Article 4 Banking Act or the applicant for a special permit pursuant to Article 21 para. 1 Banking Act.</p> <p>Persons that are not parties to supervisory proceedings but whose interests are affected by actions (not) taken or decisions (not) made by the FMA can bring an action against the FMA only pursuant to the Official Liability Act.</p> <p>Since the establishment of the FMA, the assessors were informed that no request for devolution has been filed.</p>
AC2	When taking formal corrective action in relation to a bank, the supervisor informs the supervisor of non-bank related financial entities of its actions and, where appropriate, coordinates its actions with them.
Description and findings re AC2	<p>As the supervisory competence over non-bank related financial entities rests with the FMA, the communication within the different departments is facilitated. When formal remedial action in relation to a CI is taken, the appropriate departments are informed and, where needed, meetings between the relevant departments are held, also with a view to coordinate the actions.</p> <p>Also please note, that the definition of CI is quite broad, so that quite some institutions would fall under the scope of banking supervision in Austria.</p>

Assessment of principle 11	Largely Compliant
Comments	<p>EC 3: The FMA does not have the powers to directly intervene at an early stage by issuing an order to remedy a deficiency in for instance the CI's risk management systems or by issuing an order that would prohibit, limit or set other conditions on the business activities or exposures of the CI in question, when risks are building up or are not properly captured by the CI. In such cases it would rather rely on capital add-ons.</p> <p>EC 5: Not the CI, but only natural persons can be penalized for administrative and criminal offences respectively. In this regard the assessors have been informed that the CRD IV will introduce powers for the FMA to impose pecuniary administrative sanctions both against natural and legal persons for infringements of prudential regulation as specified in the CRD IV. According to this EU legislation, the FMA will be provided with the power to impose sanctions against legal persons in relation to the list of offences specified in the</p>

	<p>CRD IV, though this power would not be extended to other areas of financial markets supervision. We have also been informed that with regard to criminal offenses that are within the jurisdiction of the ordinary courts in criminal matters, corporate persons can already be penalized, based upon the “<i>Verbandsverantwortlichkeitsgesetz</i>” of 2006.</p> <p>EC 5: In case a director of a CI or a chairman of the supervisory board does not fulfill the conditions of Article 5 para. 1 nos. 6 to 13 Banking Act concerning fit & properness, the FMA itself cannot directly take a supervisory measure against such a person and relieve that person out of his or her position but would need to address the CI. However, the FMA may due to Art. 70 para. 4 no. 1 Banking Act order to restore legal compliance which may include the dismissal of a director of a CI or a chairman of the supervisory board who does not fulfill the conditions of Article 5 para. 1 nos. 6 to 13 Banking Act concerning fit & properness.</p>
Principle 12	Consolidated supervision. An essential element of banking supervision is that the supervisor supervises the banking group on a consolidated basis, adequately monitoring and, as appropriate, applying prudential standards to all aspects of the business conducted by the banking group worldwide. ³⁷
Essential criteria	
EC1	The supervisor understands the overall structure of the banking group and is familiar with all the material activities (including non-banking activities) conducted by entities in the wider group, both domestic and cross-border. The supervisor understands and assesses how group-wide risks are managed and takes action when risks arising from the banking group and other entities in the wider group, in particular contagion and reputation risks, may jeopardize the safety and soundness of the bank and the banking system.
Description and findings re EC1	<p>With the implementation of the supervisory reform in 2008 the consolidated supervision of Austrian CIs has been further strengthened.</p> <p>The Austrian Banking Act covers a large number of reporting and submission requirements that allow the FMA and the OeNB to judge the structure of an organization as a whole at the group level. The Banking Act contains a large number of reporting and notification requirements designed to make it possible for the FMA to evaluate the structure of banking organizations and adequately supervise them at group level. Documentation at the application stages for a banking license contains very granular information about participating parties and close associations. The FMA can refuse the license if the structure is opaque or it impairs effective supervision.</p> <p>Further, according to Article 21 para. 1 Banking Act CIs need to request a special approval</p>

³⁷ Please refer to footnote 19 under Principle 1.

from the FMA in certain cases. In the case of qualifying holdings in CIs by non-banks (as defined in Article 2 no. 22 Banking Act) or by foreign CIs (Article 2 no. 23 lit. a Banking Act), Article 20 paras. 1, 2 and 5 Banking Act applies.

According to the requirements laid out in Articles 21a and following Banking Act the CIs have to submit notification documentation for different kinds of approvals by the FMA. The approval procedure is based on an ongoing exchange of the FMA with the respective host supervisors in order to gain sustainable information. In this context Article 77 c Banking Act refers to the procedure of cross-border decisions under the lead of FMA. Finally, the FMA shares information with respective host authorities according to Article 77 Banking Act.

Additionally, ongoing reporting requirements help FMA and OeNB to maintain current information on the structure of the group. For example, there are several reporting requirements in Article 73 para. 3 Banking Act and a quarterly reporting requirement of the balance sheet, the profit and loss statement and a risk statement of all foreign CIs which are fully consolidated by the parent institute (Article 74 para. 1 Banking Act).

With the regulation on the quarterly excerpts of the asset and liability statement and the income statement for fully consolidated CIs abroad, which entered into force in 2002, the FMA can obtain a comparable insight into the results of these institutions during the year. On an annual basis CIs have to communicate to the FMA and the OeNB the audited (conducted by an external bank auditor) annual consolidated financial statements and the audit reports on these consolidated annual reports.

The evaluation of the organizational structure of a banking group and especially the evaluation of activities of each member of the group as well as the activities within the group (e.g. connected lending) are essential parts of the on-site inspections conducted by the OeNB and/or by the FMA.

Since it is essential for the supervision in Austria to supervise banking groups on a consolidated basis, it has been made sure that a constant and adequate monitoring of all aspects of business conducted by the banking group internationally is in place.

Concerning the framework for assessing emerging group wide risks, special attention should also be given to the so-called Austrian sustainability package. Please also see EC 2 hereafter.

With the implementation of the supervisory reform in 2008 the consolidated supervision of Austrian CIs has been further strengthened. Within the OeNB, special on-site and off-site analysis divisions have been established to focus exclusively on the off-site analysis and on-site inspection of the biggest Austrian banking groups. Currently the top 6 banking groups account for approx. 58 percent of total consolidated assets. Similarly, dedicated divisions have been set up in OeNB for the on-site and off-site supervision of

the remaining banking groups and regional CIs.

Regarding the analytical framework the main analysis and research products focus predominantly on consolidated data and review the risks at a group level. Special supervisory focus has also been given to financial developments of the CESEE subsidiaries of Austrian banking groups. Also, the FMA/OeNB published the Austrian sustainability package, which will strengthen the sustainability of the business models of large internationally active Austrian CIs. The OeNB research products for banking groups include: in-depth analytical reviews of full year and half year results, scoring analysis reports, risk and capital adequacy assessment reports under Pillar II including the annual JRAD analysis, bi-annual flash reports of the biggest banking groups, risk model validation reports, on-going model analyses, special ad-hoc analyses and quarterly summaries of ongoing supervisory developments for the high-level supervisory meetings at the senior management level of OeNB and FMA (*Einzelbankforum—EBF*).

The contacts with the management of the biggest banking groups and with their bank auditors have been intensified and are summarized under the heading “structured dialogue”. Talks with auditors center on the financial statements of the group (and the most important individual CIs), annual talks with the top management concentrate on strategic issues and significant risk potentials of the banking group. CESEE talks are held with CIs that conduct substantial business in that region. Risk management talks are conducted with risk managers in charge of functional risk management at group level to enrich the supervisor’s insight how risks are managed and to discuss potential risk sources.

Regarding on-site inspections, the top 8 banking groups are an integral part of the annual audit plan, which is defined jointly by FMA and OeNB (see also Article 70 para. 1b Banking Act). The main off-site findings determine the focus of the on-site inspection of a specific banking group and include among other topics group-wide risk management as well as special cross-border issues. On-site actions in host countries may take place in the form of dedicated inspections of host subsidiaries or in the form of brief on-site visits during examinations on group level which are both usually conducted in cooperation with the relevant host supervisor. Furthermore, OeNB regularly participates in host supervisors’ on-site inspections.

In addition, supervisory colleges hosted by the FMA as consolidating supervisor play a central role in the consolidated supervision of cross-border financial groups. The objective of these colleges is to coordinate the process of supervising banking groups and to promote an open exchange of information between home and host authorities. The colleges also work to define a common understanding of Pillar II issues at the group level or at the individual bank level. The main outcome of the colleges is the joint risk assessment of the banking group. Furthermore, starting with 2012, technical colleges have been held, in order to provide a forum for exchanging information on utilized risk models, roll-out plans and bottom-up assessments of model quality between home and host

	supervisors.
EC2	The supervisor imposes prudential standards and collects and analyses financial and other information on a consolidated basis for the banking group, covering areas such as capital adequacy, liquidity, large exposures, exposures to related parties, lending limits and group structure.
Description and findings re EC2	<p>The Austrian Banking Act imposes various prudential standards for consolidated banking groups:</p> <ul style="list-style-type: none"> • Capital. In accordance with Article 24 Banking Act groups of CIs and financial holding groups must have adequate own funds. Thus, the provisions of Article 23 Banking Act on the own funds of solo institutions – including the capital ratio of at least 8% – apply as appropriate. Additionally, the bank auditor of the superordinate CI shall include the statement on consolidation of own funds in the Annex to the Audit Report on the annual financial statements (prudential report) (Article 24 para. 5 Banking Act). The Banking Act considers under subsection “consolidation” also the consolidation of the trading book (Article 24a) and the consolidation of open foreign exchange and gold positions (Article 24b). • Large exposures, lending limits. According to Article 27, para. 1 Austrian Banking Act CIs have to comply with the large exposure standards both on a solo and on a consolidated level. • Related parties. Related party matters are extensively regulated under Article 28 Banking Act. This provision deals with definitions of related parties. • Adequate risk management and control systems. Consolidated banking groups are closer defined in Article 30 para. 1 Banking Act. Groups of CIs have to limit at all times appropriately the particular banking risk inherent in their operations (Article 30 para. 7 Banking Act). Accordingly, the institutions in the group of CIs must set up adequate internal control mechanisms and provide the superordinate CI with all documents and information required for consolidation. The CIs must also provide each other with all information which appears necessary in order to ensure the adequate management and monitoring of all risks as specified in Articles 39 and 39a Banking Act. • The Austrian ‘Sustainability package’. On 14 March 2012 FMA/OeNB issued the supervisory guideline “Strengthening the sustainability of the business models of large internationally active banks”, also known as the Austrian ‘Sustainability Package’. The guideline aims at: <ul style="list-style-type: none"> • Strengthening the core capital base of Austrian CIs at group level by demanding banking groups to fully comply with Basel III rules already at the beginning of 2013 (4.5 percent minimum CT1 plus 2.5 percent CT1 capital conservation puffer). Furthermore, the banking groups will be subject to an additional capital surcharge of up to 3 percentage points of CET1 (depending on the riskiness of CIs’ business models) from January 1, 2016. • Improving the local refinancing situation of the subsidiaries of Austrian banking

groups. To this end the supervisory authority will together with the OeNB monitor and analyze—based on quarterly data (starting from end-2011)—the ratio of net new lending to local stable funding. The analysis of past experience has shown that exceeding a reference ratio of 110 percent can be considered an alarm signal. The results of this monitoring exercise will be discussed and assessed with the competent host and home supervisors in the supervisory colleges to agree on any necessary supervisory measures.

The Austrian Banking Act provides various references to the collections of information on a consolidated basis. The collection of information on consolidated bases is i.a. regulated in Articles 44, 59, 70 and 74 Banking Act. Under Article 44 para. 1 Banking Act CIs and the branches of foreign CIs must submit audited annual financial statements, annual reports, consolidated financial statements and consolidated annual reports, including the Annex to the Audit Report on the annual financial statements (prudential report) indicated in Article 63 para. 5 Banking Act, to the FMA and the OeNB at the latest within six months after the close of the business year. According to Article 59 Banking Act the superordinate CI must prepare consolidated financial statements and a consolidated annual report for its group of CIs. Article 30 as well as paras. 2 to 5 determine the scope of consolidation.

Article 70 Banking Act empowers the FMA to request all information on all business matters; inspect bookkeeping records, documents and data media from CIs and superordinate CIs on behalf of undertakings in the group of CIs as well as their governing bodies.

Article 74 Banking Act refers mainly to regular reporting requirements for CIs, superordinate CIs, fully consolidated foreign CIs and consolidated banking groups - they must submit an Asset, Income and Risk Statement according to the layout set forth in the regulation issued pursuant to Article 74 para. 7 Banking Act to the FMA immediately after the end of each calendar quarter.

OeNB performs an ongoing analysis for banking groups on a consolidated basis. This is mainly based on the following information sources:

- consolidated regulatory reporting on a quarterly basis
- reports to the Central Credit Register
- semi-annual questionnaires on FX-exposures and credit quality (ADR)
- annual JRAD questionnaire
- model validation reports
- information requested in particular cases
- information obtained during the structured dialogue framework
- information obtained during on-site inspections
- CIs' disclosure requirements
- weekly liquidity monitoring on group level (see also CP 24)

	<ul style="list-style-type: none"> minutes from CI's board meetings submitted by the State Commissioner. <p>The information obtained from CIs is processed in the internal OeNB /FMA IT-systems and is made available to the supervisor and OeNB for further analysis.</p>
EC3	<p>The supervisor reviews whether the oversight of a bank's foreign operations by management (of the parent bank or head office and, where relevant, the holding company) is adequate having regard to their risk profile and systemic importance and there is no hindrance in host countries for the parent bank to have access to all the material information from their foreign branches and subsidiaries. The supervisor also determines that banks' policies and processes require the local management of any cross-border operations to have the necessary expertise to manage those operations in a safe and sound manner, and in compliance with supervisory and regulatory requirements. The home supervisor takes into account the effectiveness of supervision conducted in the host countries in which its banks have material operations.</p>
Description and findings re EC3	<p>The group-wide steering processes of internationally active Austrian CIs are a central issue, regularly addressed in off-site and on-site supervisory measures and during periodical high-level meetings by FMA/OeNB senior officials with the CIs' board and senior management.</p> <p>The FMA is actively involved in the mutual information sharing process set out by the supervisory colleges and is therefore able to act based upon information received, but also can oversee that adequate action might be taken by host supervisors. Further information exchange is conducted based upon the numerous MoUs signed between FMA and supervisory authorities of the respective countries.</p> <p>During the regular off-site analysis process, internal risk-reports on group level and large CESEE subsidiaries are regularly assessed. Risk management talks as well as dedicated CESEE talks also focus on the oversight and risk management of foreign subsidiaries. In addition, colleges play a central role in the risk-assessment of cross-border financial groups, as well as the annual JRAD questionnaire and the analysis based thereon.</p> <p>During on-site inspections, group-wide risk management processes, information flows and the dissemination of relevant data throughout the group are scrutinized in detail. Recently, OeNB has performed various examinations dedicated to the group-wide steering of CIs' credit portfolios (three examinations in 2010, 2011 and 2012) and a coordinated examination across all group entities with respect to the ICAAP implementation (one examination in 2009 in close coordination with all host supervisors).</p> <p>The supervisory approaches as well as the areas of special concern to host supervisors are well known to FMA/OeNB since they are exchanged regularly within the structured dialogue of supervisory colleges and also on a bilateral basis.</p>

EC4	The home supervisor visits the foreign offices periodically, the location and frequency being determined by the risk profile and systemic importance of the foreign operation. The supervisor meets the host supervisors during these visits. The supervisor has a policy for assessing whether it needs to conduct on-site examinations of a bank's foreign operations, or require additional reporting, and has the power and resources to take those steps as and when appropriate.						
Description and findings re EC4	<p>The countries, subsidiaries, branches and lines of business in host countries to be examined are selected based on the annual examination plan set up by FMA and OeNB. Furthermore, supervisory actions in host countries or off-site analyses dealing with host exposures may be performed any time if need be.</p> <p>On-site actions in host countries may take place in the form of dedicated inspections of host subsidiaries or in the form of brief on-site visits during examinations on group level which are both usually conducted in cooperation with the relevant host supervisor. Furthermore, OeNB regularly participates in host supervisors' on-site inspections. In addition to the above mentioned on-site actions, OeNB also conducts examinations of internal model rollouts in host countries or approvals of group-wide models.</p> <p>On-site actions have been taken in the following countries in the past years:</p> <table border="1" data-bbox="427 995 1425 1293"> <tr> <td data-bbox="427 995 558 1108">2010</td> <td data-bbox="558 995 1425 1108">Croatia, Germany, Hungary, Italy, Liechtenstein, Romania, Singapore, Slovakia, United Kingdom, United States of America</td> </tr> <tr> <td data-bbox="427 1108 558 1222">2011</td> <td data-bbox="558 1108 1425 1222">Croatia, the Czech Republic, Germany, Hungary, Italy, Romania, and the Russian Federation</td> </tr> <tr> <td data-bbox="427 1222 558 1293">2012</td> <td data-bbox="558 1222 1425 1293">Croatia, Hungary, Italy, Romania and the Russian Federation</td> </tr> </table>	2010	Croatia, Germany, Hungary, Italy, Liechtenstein, Romania, Singapore, Slovakia, United Kingdom, United States of America	2011	Croatia, the Czech Republic, Germany, Hungary, Italy, Romania, and the Russian Federation	2012	Croatia, Hungary, Italy, Romania and the Russian Federation
2010	Croatia, Germany, Hungary, Italy, Liechtenstein, Romania, Singapore, Slovakia, United Kingdom, United States of America						
2011	Croatia, the Czech Republic, Germany, Hungary, Italy, Romania, and the Russian Federation						
2012	Croatia, Hungary, Italy, Romania and the Russian Federation						
EC5	The supervisor reviews the main activities of parent companies, and of companies affiliated with the parent companies, that have a material impact on the safety and soundness of the bank and the banking group, and takes appropriate supervisory action.						
Description and findings re EC5	<p>The FMA and OeNB regularly assess the main activities of the parent companies and would also do so for affiliates of the parent. In practice, the larger banking groups do not have affiliate structures. Amongst others, information from the central credit registers is used to have a view on the credit quality of such affiliates.</p> <p>Article 2 nos. 11, 11a and 11b Banking Act includes a definition of "parent undertaking": A parent undertaking is an undertaking as defined in Article 244 paras. 1 and 2 Company Code, which is subject to the following provisions: a) the legal form of the undertaking and its place of establishment must not be taken into account; b) the provisions of Article 244</p>						

	<p>paras. 4 and 5 Company Code must be applied; c) the definition of participations under Article 2 no. 2 Banking Act must be applied.</p> <p>Based on the assumption that the term “parent company” implies it is an undertaking which does not qualify as a credit or financial institution itself it is nevertheless under the scope of the supervisory regime based on the requirements laid down in Articles 20 and following Banking Act which deal with “significant ownership of CIs”. The respective criteria applicable to this complex are to be found under CP 6.</p> <p>Of particular importance is Article 20b Banking Act, which states the assessment criteria regarding the reputation and soundness of the proposed acquirer.</p> <p>Under the supervision of the FMA the so-called fit and proper test is performed to assure that the chairman of the Supervisory Board of any undertaking which holds ownership of a CI meets the requirements stipulated in the interest of sound and prudent management of the CI, and no facts are known which would raise doubts as to the personal reliability of those persons.</p>
EC6	<p>The supervisor limits the range of activities the consolidated group may conduct and the locations in which activities can be conducted (including the closing of foreign offices) if it determines that:</p> <ul style="list-style-type: none"> (a) the safety and soundness of the bank and banking group is compromised because the activities expose the bank or banking group to excessive risk and/or are not properly managed; (b) the supervision by other supervisors is not adequate relative to the risks the activities present; and/or (c) the exercise of effective supervision on a consolidated basis is hindered
Description and findings re EC6	<p>To ensure compliance with the legal requirements of the Banking Act, the Austrian banking supervisor can rely on a broad range of supervisory tools also in the field of consolidated supervision. An important rule is the following: if the exchange of information with a subordinated entity is no longer possible and consolidation requirements thus cannot be adequately fulfilled, the procedure applicable to violations of the Banking Act takes effect (Article 30 para. 8 Banking Act).</p> <p>Moreover, if the participation of an Austrian parent CI in a foreign subsidiary does not meet the requirements to be fulfilled in the interest of a sound management of the CI pursuant to Article 30 para. 6 in conjunction with Article 70 para. 1 Banking Act, the FMA has the possibility of taking measures and sanctions that, in their final analysis, can lead to the disposal of the participation.</p> <p>In conducting their business, the directors of a CI have to apply the diligence of a prudent</p>

	<p>and conscientious director (Article 39 Banking Act). In particular, they shall inform themselves about and appropriately limit the risks of banking transactions of the banking group and of operating the CI and give consideration to parallel risks. They shall, furthermore, give consideration to the overall earnings situation of the CI. CIs shall establish such administrative, accounting and control procedures as are necessary for the purpose of recording and evaluating the risks of the CI's banking transactions and of operating the CI, and to record and evaluate as far as possible the potential risks resulting from new business and parallel risks. The adequacy of these procedures and their enforcement shall be reviewed by the internal audit unit at least once a year. These obligations are always a major focus during on-site inspections. If the management of the CI fails to act as a prudent and conscientious director as set out above, the FMA can resort to several prudential means as laid down in Article 70 para. 2 to 4a Banking Act.</p> <p>Restrictions on the range of activities a CI or a financial holding group may perform, are also indirectly achieved via group-level provisions on own funds and large exposures and in the restriction on holding participating interests in enterprises in non-financial sectors (Article 29 Banking Act). It should however be mentioned that the FMA does not have the specific power to directly limit the range or type of activities the CI may conduct if risks related to these activities are not adequately managed by the institution. Please refer to CP 11.</p> <p>The FMA, furthermore, controls the international activities by a CI according to Article 21 and Article 10 Banking Act.</p>
EC7	In addition to supervising on a consolidated basis, the responsible supervisor supervises individual banks in the group. The responsible supervisor supervises each bank on a stand-alone basis and understands its relationship with other members of the group. ³⁸
Description and findings re EC7	<p>Every CI within the group is subject to individual supervision due to the provisions of the Banking Act.</p> <p>The countries, subsidiaries, branches and lines of business in Austria and in host countries which ought to be examined are selected based on the annual examination plan set up by FMA and OeNB. Furthermore, supervisory actions for individual group entities both home and abroad or off-site analyses dealing with select exposures may be performed any time if need be.</p>
Additional criteria	

³⁸ Please refer to Principle 16, Additional Criterion 2.

AC1	For countries which allow corporate ownership of banks, the supervisor has the power to establish and enforce fit and proper standards for owners and senior management of parent companies.
Description and findings re AC1	<p>The FMA has to evaluate in the case of an application for a license if the persons who hold qualifying participations in the CI satisfy the requirements imposed in the interest of sound and prudent management of the CI and no facts exist which may raise doubts as to the personal reliability of these persons; if such facts exist, the license shall be granted only if the doubts prove to be unfounded.</p> <p>As it is stipulated in Article 20 para. 1 Banking Act, also an indirect qualified participation of a CI must be permitted by the FMA. So even persons which stand behind a financial holding company are audited if they meet the fit and proper criteria for such participation.</p> <p>In the case of an application of a desired qualified direct or indirect participation in a CI, the FMA can prohibit the proposed participation, if the conditions set forth in Article 5 para. 1 nos. 3 to 4 Banking Act are not fulfilled.</p> <p>If there is a danger that the influence exercised by owners of qualifying participations will not satisfy the requirements imposed in the interest of sound and prudent management of the CI, the FMA has to take appropriate measures to avert this danger or to put an end to that situation. Such measures comprise, in particular, measures within the meaning of Article 70 para. 2 Banking Act or sanctions against the directors within the meaning of Article 70 para. 4 no. 2 Banking Act.</p>

Assessment of Principle 12	Compliant
Comments	
Principle 13	Home-host relationships. Home and host supervisors of cross-border banking groups share information and cooperate for effective supervision of the group and group entities, and effective handling of crisis situations. Supervisors require the local operations of foreign banks to be conducted to the same standards as those required of domestic banks.
Essential criteria	
EC1	The home supervisor establishes bank-specific supervisory colleges for banking groups with material cross-border operations to enhance its effective oversight, taking into account the risk profile and systemic importance of the banking group and the corresponding needs of its supervisors. In its broadest sense, the host supervisor who has a

	<p>relevant subsidiary or a significant branch in its jurisdiction and who, therefore, has a shared interest in the effective supervisory oversight of the banking group, is included in the college. The structure of the college reflects the nature of the banking group and the needs of its supervisors.</p>
<p>Description and findings re EC1</p>	<p>The mandatory establishment of supervisory colleges has been anchored in Austrian legislation through an amendment of the Banking Act that entered into force as of December 31, 2010 (meanwhile amended with reference to the integration of the EBA). According to Article 77b para. 1 Banking Act the FMA as the consolidating supervisory authority (as defined in Article 2 no. 9c Banking Act), shall establish colleges of supervisors under its presidency for the purpose of fulfilling the duties set forth in Articles 129 and 130 para. 1 the CRD.</p> <p>The FMA shall decide which other competent authorities and institutions shall participate pursuant to para. 3 (see below) in a meeting or an activity of the college of supervisors (see Article 77b para 2). In this decision, the FMA must take into account the relevance of the supervisory activity to be planned or coordinated for the authorities concerned and in particular the possible effects on the financial stability of the Member States concerned pursuant to Article 69 para. 4 of the Banking Act and the duties pursuant to Article 42a para. 2 of the CRD.</p> <p>Article 77b para. 3 Banking Act refers to the parties which may participate in a college of supervisors:</p> <ul style="list-style-type: none"> • competent authorities of the Member States that are responsible for the supervision of an EEA parent CI or CI subordinate to an EEA parent financial holding company; • competent authorities of a hosting Member State, in which significant subsidiaries have been established; • the OeNB and other central banks of the Member States pursuant to nos. 1 and 2; • competent authorities of third countries provided they are subject to requirements of professional secrecy equivalent to those defined in Article 44 para. 1 of EU-Directive 2006/48/EC and that such cooperation serves the fulfillment of their supervisory duties; • and EBA. <p>All supervisory authorities within the EEA in which the Austrian institution has a presence could participate in a college. Whether a non-EEA foreign supervisory authority could participate, depends upon the equivalence of the confidentiality conditions. In this respect the FMA makes use of the decisions by the EBA as to the equivalence of third countries' confidentiality provisions, to be determined on the basis of the methodology published on June 15, 2010.</p> <p>Participation of competent authorities from non-EEA Member States is not possible as long as the equivalence of confidentiality provisions of a non-EEA country has not been</p>

	<p>confirmed by an assessment. Such a equivalence has been positively assessed for eg Serbia and Croatia. It could also be that a separate MoU has been concluded between the Austrian authorities and the country concerned that include provisions on access to the entity's documents and on confidential information exchange. At the moment this is the case with one country. Also the supervisors of such a country could join the college in question.</p> <p>However, with a limited number of foreign supervisory authorities that supervise subsidiaries of a parent Austrian CI, arrangements on confidential supervisory information exchange are not in place, which means that they cannot participate in the college. Please also see EC2, including on the recommendation.</p> <p>The assessors have noticed that clearly colleges are an important instrument in the FMA's and OeNB's supervision. Adequate cooperation and coordination between authorities within a college is seen as an important feature of cross-border supervision and consequently the FMA is actively involved in establishing supervisory colleges. The practice of supervisory colleges goes back to the first technical coordination meetings in 2006. In 2011 four fully fledged colleges for major internationally active institutions according to the CRD requirements were established. As of 2012 there were 7 further colleges (thus, 11 colleges all together) hold.</p>
EC2	<p>Home and host supervisors share appropriate information on a timely basis in line with their respective roles and responsibilities, both bilaterally and through colleges. This includes information both on the material risks and risk management practices of the banking group³⁹ and on the supervisors' assessments of the safety and soundness of the relevant entity under their jurisdiction. Informal or formal arrangements (such as memoranda of understanding) are in place to enable the exchange of confidential information.</p>
Description and findings re EC2	<p>As already mentioned under EC1, with a limited number of foreign supervisory authorities that supervise subsidiaries of a parent Austrian CI, arrangements on confidential supervisory information exchange are not in place, which not only means as mentioned under EC1 that they cannot participate but also as meant under this EC2 that confidential supervisory information cannot be exchanged bilaterally between the home and host supervisory authority.</p> <p>We recommend to move forward speedily with these foreign supervisory authorities to establish the required cooperation arrangements and to evaluate the measures that have been taken to effectively exercise supervision in the absence of such arrangements,</p>

³⁹ See Illustrative example of information exchange in colleges of the October 2010 BCBS Good practice principles on supervisory colleges for further information on the extent of information sharing expected.

amongst others in the context of the effective handling of a crisis situation.

The modalities for the establishment and the operating principles of the Colleges of Supervisors shall be established by the FMA after consultation with the competent authorities concerned pursuant to Article 77a para. 1 Banking Act. The operating principles include the exchange of information. According to Article 77b para. 2 Banking Act the FMA shall provide all the members of the college of supervisors with timely, constant and full information on the organization of the meetings of the College of supervisors; main issues to be discussed and the intended activities; and the procedure determined in these meetings and the measures implemented.

In addition to the overall scope of the colleges, there is a detailed elaboration of the cooperation with other competent authorities in Section 77b para. 4 Banking Act. In particular, the FMA shall cooperate with the competent authorities present in the colleges of Supervisors and determine within the Colleges of Supervisors and in cooperation with the other competent authorities the *modus operandi* concerning the following tasks:

- exchanging information;
- agreeing on the voluntary entrustment of tasks and voluntary delegation of responsibilities, where appropriate;
- determining supervisory examination programs based on the risk assessment of the group of CIs in accordance with Article 124 of EU-Directive 2006/48/EC;
- avoiding unnecessary duplication of supervisory requirements, in particular in relation to the information requests referred to in Article 130 para. 2 and Article 132 para. 2 of EU-Directive 2006/48/EC in order to increase the efficiency of supervision;
- consistently applying the prudential requirements under EU-Directive 2006/48/EC across all companies in a group of CIs without prejudice to the options and discretions available in this Directive and EU-Directive 2006/49/EC;
- applying Article 129 para. 1 lit. c of EU-Directive 2006/48/EC taking into account international standards in the area of cooperation with the competent authorities and the preparation for situations of crisis.

Further, due to Article 77b para. 5 in conjunction with Article 77 para. 5 no.1 Banking Act the FMA shall keep EBA informed on the activities of the Colleges of Supervisors, over which it presides, both in normal situations and in situations of crisis and communicate all information to the Authority that is of particular relevance for the convergence of supervisory activities, subject to Article 77 para. 4 of the Banking Act—this article contains an extensive list of information to be potentially shared with other members of the college.

The scope of information that will be shared is specified. See the list in Article 77 para. 4 Banking Act.

Information exchange is allowed within colleges as well as on a bilateral basis. The exchange of information with the competent authorities must serve the purpose of

fulfilling the duties of the competent authorities. Article 77 para. 5 Banking Act stipulates that the provision of information and documents, including the communication of specific data, is permissible in the context of administrative assistance to the participants in the ESFS, MoF of the Member States, members and bodies of the ESCB, competent authorities in third countries with which the Council of the European Union has concluded an agreement in application of Article 39 of EU-Directive 2006/48/EC; and competent authorities in other third countries where cooperation is also necessary in the interest of Austrian banking supervision and is in line with international standards.

Another important tool of sharing information are the so called “CESEE talks”: Austrian CIs are prominent in CESEE, and thus great significance is associated with this region for the business development of Austria’s major CIs. In keeping with this significance, “CESEE talks” are held for the major banking groups with a significant CESEE commitment. The purpose of the talks is to develop a clear view of the structure and business activities of CESEE subsidiaries as well as of the risks to which they are exposed. Detailed information is also provided by the CIs concerning their strategy for CESEE, the group risk management system and the development of their most significant subsidiaries abroad. The meetings, which take place once a year, are held on invitation of the FMA with the management board members responsible for CESEE activities and with the managing directors of the most important CESEE subsidiaries of the five largest international active CIs. Please refer also to CP 3 EC 2.

Especially via the conclusion of a Multilateral Cooperation and Coordination Agreement according to Article 131 of EU-Directive 2006/48/EC signed between the competent authorities within the EEA jurisdiction responsible for supervision on a consolidated basis, the effective supervision of CIs, especially including the identification of vulnerabilities and action taking, is facilitated. The agreement in line with the upcoming “EBA Guidelines for the Operational Functioning of Supervisory Colleges” covers amongst other issues the coordination of exchange of information and the planning and coordination of supervisory activities through a yearly Supervisory Action Plan, in going-concern as well as in emergency situations. Besides supervisory authorities from EEA countries equivalent non-EEA supervisors are potential parties of the agreement.

Besides the college arrangements, the FMA together with OeNB and the MoF has signed bilateral MoUs to facilitate cooperation (including information sharing) with 23 countries, including some of the EEA authorities. MoU were agreed with the ECB on Crisis Management as well. Relevant MoUs are published on the FMA’s website (<http://www.fma.gv.at/en/international/international-cooperation/mou.html>). MoUs concluded with EEA members primarily substantiate EU-Directive 2006/48/EC to achieve a common application of its rules. MoUs contain further details on the cooperation of the authorities as regards branches and the free movement of services as well as the exchange of information concerning the supervised institutions.

	<p>According to the MoUs, the host supervisor has to alert the home supervisor of any event concerning the branch which might jeopardize the stability of the financial institution as a whole. The authorities also have to inform each other if they learn of an incipient crisis affecting financial institution with branches in the other country or affecting cross-border services. The same applies if the crisis is limited to the branch but could result in the whole institution becoming insolvent.</p> <p>The general principles of the MoUs also apply to subsidiaries, particularly in relation to the exchange of information and on-site inspections. Though subsidiaries are supervised on a solo basis by the supervisor in the country of incorporation, the FMA is entitled within the framework of consolidated supervision and within the MoU to perform on-site inspections of subsidiaries abroad and vice-versa, i.e., home supervisors of other banking groups are allowed to conduct on-site inspections of their supervised groups' Austrian subsidiaries.</p> <p>MoUs concluded with third countries promote cooperation between the authorities. They provide for the exchange of information, joint on-site inspection of direct or indirect subsidiaries and branches abroad and assistance with on-site inspections.</p> <p>According to the MoUs, the authorities have to inform each other on problem situations concerning cross-border establishments as well as on financial market problems if financial institutions of the other country can be adversely affected.</p> <p>In practice, for a banking group subject to the FMA being the consolidating supervisor, the joint risk assessment process runs within the Colleges every year – the preparations (sending out templates to host authorities) starting in spring, the Colleges taking place in October and November of each year. In addition to College meetings, bilateral meetings with host authorities are organized on an irregular basis in order to make use of the Operational Networking on expert level. After several years of operating within Colleges, the exchange of information works without disruptions. On a quarterly basis the FMA as a consolidating supervisor provides the host authorities with a Supervisory Newsletter, which brings with it a feedback loop with host supervisors. Austria is compliant with all guidelines relevant to Supervisory Colleges, referring to EBA-(former CEBS) Guidelines on the operational functioning of colleges.</p> <p>Additionally information exchange as well as mutual on-site inspections are conducted on a bilateral level due to the various MoU in place.</p>
EC3	Home and host supervisors coordinate and plan supervisory activities or undertake collaborative work if common areas of interest are identified in order to improve the effectiveness and efficiency of supervision of cross-border banking groups.
Description and findings	The FMA is obliged to coordinate the supervisory examination programs, based on an

re EC3	<p>assessment of the banking group's risks (Article 77b, para. 4 no. 2 Banking Act).</p> <p>The FMA as consolidating supervisor and the OeNB are performing the yearly group-wide risk assessment in cooperation with the relevant competent host authorities responsible for the supervision of the respective subsidiaries in order to effectively assume and fulfill their role as consolidating supervisor in accordance with the provisions of the CRD. After completion of the overall risk assessment by the home supervisor, the group-wide evaluations on an aggregated basis are provided to the host authorities. The results will serve as the basis for reaching a joint decision on the adequacy of capital as well as the planning of supervisory actions on a consolidated level. For this purpose a Supervisory Report Template (SRT) and an accompanying master report are provided by the FMA and OeNB which should be completed for each CI on a solo or sub-consolidated basis, if applicable. There are standardized data requirements according to the Guidelines on Common Solvency Reporting (COREP) and Financial Reporting (FINREP) established by EBA/CEBS. Beyond that, the accompanying master report focuses on qualitative information with open questions in order to allow for including critical points of the host authorities' assessment.</p> <p>In order to implement the "EBA Guidelines for the Joint Assessment of the Elements covered by the Supervisory Review and Evaluation Process (SREP) and the Joint Decision regarding the Capital Adequacy of Cross-Border Groups" (JRAD – Joint Risk Assessment Decision) and in line with Article 129 para. 3 of EU-Directive 2009/111/EC, the FMA and OeNB have established the necessary tools and processes for reaching a joint decision to determine the adequacy of the level of own funds held by the group with respect to its financial situation and risk profile and the required level of own funds of each entity within the banking group.</p>
EC4	<p>The home supervisor develops an agreed communication strategy with the relevant host supervisors. The scope and nature of the strategy reflects the risk profile and systemic importance of the cross-border operations of the bank or banking group. Home and host supervisors also agree on the communication of views and outcomes of joint activities and college meetings to banks, where appropriate, to ensure consistency of messages on group-wide issues.</p>
Description and findings re EC4	<p>The FMA has established communication strategies for the respective CIs within the multilateral agreements according to Article 131 CRD. Besides the communication within the banking group as well as with the host supervisors, there is also a clear set up of communication in case of an emergency situation laid down in the respective agreements</p> <p>The communication between home and host supervisor in colleges is developed according to a written agreement (Article 131 CRD) which entails provisions about the communication strategy between host and home supervisor.</p> <p>As part of this communication plan, periodically newsletters are being distributed about</p>

	<p>the bank concerned within the college. This newsletter especially addresses recent developments in the risks within the group. Also a common secure IT platform is used for efficient information exchange within the college.</p>
EC5	<p>Where appropriate, due to the bank's risk profile and systemic importance, the home supervisor, working with its national resolution authorities, develops a framework for cross-border crisis cooperation and coordination among the relevant home and host authorities. The relevant authorities share information on crisis preparations from an early stage in a way that does not materially compromise the prospect of a successful resolution and subject to the application of rules on confidentiality.</p>
Description and findings re EC5	<p>Currently there is neither a national resolution framework nor a resolution authority in Austria. At EU level, the EC proposal (June 2012) of the EU Directive establishing a framework for the recovery and resolution of CIs and investment firms COM (2012) 280 final, 6/6/2012 incorporates that on national level there has to be a resolution authority which also can be the supervisory authority. This proposal contains that within resolution colleges the home and host authorities come to an agreement as regards the resolution of a cross border group. If no consensus can be reached, the proposal mentions the involvement of EBA as a mediator. According to the proposal, Member States shall adopt and publish by 31st of December 2014 at the latest the laws, regulations and administrative provisions necessary to comply with the Directive and apply those provisions from 1st of January 2015.</p> <p>However, the competent authorities participating in the college cooperate closely in a crisis situation in order to facilitate the actions and the timely decision making process of the authorities responsible for the management and resolution of the crisis. They will cooperate closely with other relevant authorities in their countries (i.e., central banks and/or finance ministries) involved in the crisis management process.</p> <p>Furthermore, based on the MoU of 2008 as well as on the ECOFIN council conclusions of June and December 2010 the FMA in co-operation with the OeNB and the MoF established a regional Cross Border Stability Group for four Austrian cross-border CIs operating in the CESEE region (Erste Group Bank AG, Raiffeisen Bank International AG, Österreichische Volksbanken AG and Hypo-Alpe Adria-Bank International AG).</p> <p>Austria together with Bulgaria, Czech Republic, Hungary, Slovenia and Slovakia signed the Cross Border Agreement in January 2012. The Austrian Cross Border Stability Group serves as a joint discussion platform of the national domestic standing groups (DSGs). Its key objectives are the coordination of crisis management activities, encouraging the exchange of information and seeking to achieve consistency in the decision-making process, e.g. by using the "Heat Map" for determining the systemic relevance of a CI or a group of CIs. One of the main tasks of the Austrian Cross Border Stability Group was the conduct of crisis simulation exercises in July 2012.</p>

EC6	Where appropriate, due to the bank's risk profile and systemic importance, the home supervisor, working with its national resolution authorities and relevant host authorities, develops a group resolution plan. The relevant authorities share any information necessary for the development and maintenance of a credible resolution plan. Supervisors also alert and consult relevant authorities and supervisors (both home and host) promptly when taking any recovery and resolution measures.
Description and findings re EC6	<p>At the end of 2011 the FMA and OeNB have developed, ahead of European and national legislation, a sustainability package. This package asks for recovery and resolution plans being set up for the three main Austrian banking groups corresponding to requirements of other European national authorities supervising entities of these three banking groups. This package contains a set of templates concerning recovery and resolution plans. The EBA guidelines have been used as a yardstick for the requirements laid down. The request was presented to the relevant banking groups in December 2011 along with a time frame. The FMA has recently received the draft recovery plans from the respective CIs. These will be discussed with the FMA in the near future. For UniCredit Bank Austria, Banca d'Italia will ask for such plans.</p> <p>The development of a group resolution plan requires on the one hand, national legal provisions as regards the effective resolution in the home and host member states and on the other hand, provisions in place as regards the reaching of an agreement (joint decision) with home and host authorities.</p> <p>The FMA expects to have effective group resolution plans in place when the Directive establishing a framework for the recovery and resolution of CIs and investment firms will be implemented. In addition, as of 1st January 2014 the Bank Reorganisation Act will be applied. Amongst others, this act will prescribe credit institutions to develop resolution plans.</p> <p>We recommend to move forward swiftly in establishing these group resolution plans that are being and will be developed by the Austrian CI's and which will be assessed by the supervisory authority as a result of the changes to the law in Austria, also in conjunction with the host authorities concerned and integrate the development and maintenance of such plans in the context of the supervisory college for said CI, in as far possible.</p>
EC7	The host supervisor's national laws or regulations require that the cross-border operations of foreign banks are subject to prudential, inspection and regulatory reporting requirements similar to those for domestic banks.
Description and findings re EC7	Foreign owned CIs which want to conduct banking businesses in Austria need an Austrian banking license before taking up such business. Therefore, these subsidiaries are subject to the same rules as domestic CIs (Principle of supervision by the competent authority of the country of incorporation). Subsidiaries of EEA CIs are subject to the same prudential,

	<p>inspection, and regulatory reporting requirements as domestic owned CIs.</p> <p>Branches and Austrian subsidiaries (conducting banking businesses in Austria) of CIs based in third countries (i.e., countries outside the EEA) are subject to the same prudential, inspection, and regulatory reporting requirements as domestic CIs. In some aspects, the Banking Act contains special provisions for these branches (e.g. in Article 44 para. 2 Banking Act and Article 65 para. 3 Banking Act for financial statements and their publication), but in fact, these branches and subsidiaries of CIs outside the EEA have to comply with the same rules like Austrian based CIs.</p> <p>Article 9 Banking Act provides for the establishment of branches of CIs established in another EEA Member State. These CIs make use of the benefits of the freedom of establishment, and it is the CI's home country supervisor which is primarily responsible for the notification and the supervision of its branches ("European Passport", principle of home country supervision). The legal procedures according to Article 9 Banking Act comply with Articles 25 and 26 CRD.</p> <p>Nevertheless, these branches have to comply with a number of provisions of the Austrian Banking Act stipulated in Article 9 para. 7 Banking Act: Article 25 Banking Act (liquidity); Article 31 and 32 Banking Act (savings deposits); Article 33 to 37 Banking Act (consumer protection); Article 38 Banking Act (banking secrecy); Article 39 Banking Act (duty of diligence); Article 40 to 41 Banking Act (money laundering); Article 44 paras. 3 to 6, Article 60 to 63 and Article 65 para. 3a Banking Act (accounting and audit, bank auditor, publication of annual financial statements); Article 66 to 68 Banking Act (deposits held in trust for a ward); Article 74 Banking Act (reporting); Article 75 Banking Act (reporting of major loans); Article 93 paras. 8 and 8a Banking Act (deposit guarantee); Article 94 Banking Act (protection of designations); Article 95 paras. 3 and 4 Banking Act (prohibition of employee savings banks); and depending on their business purpose, Article 10 to Article 18 Securities Supervision Act (WAG 2007) and the other federal statutes referred to in Article 69 Banking Act and the regulations and administrative rulings issued on the basis of the aforementioned provisions.</p> <p>According to Article 44 paras. 4 and 5 Banking Act branches must have information on income and expenses of the branch, the average number of employees of the branch and the total assets and liabilities attributable to the external audited by bank auditors and submit the report on this audit to the FMA and the OeNB at the latest within six months after the close of the business year.</p> <p>Thus, in spite of the principle of home country supervision, branches of EEA CIs are subject to additional supervision in Austria.</p> <p>For activities on the basis of the freedom to provide services, the initial commencement of activities in Austria by way of the provision of services requires a notification from the competent authority in the home Member State to the FMA indicating which of the</p>
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	<p>activities listed in Annex I to the CRD are to be carried out (Article 9 para. 6 Banking Act). According to Article 9 para. 8 Banking Act, CIs which carry out activities in Austria by way of the provision of services must comply with: Article 31 and 32 Banking Act (savings deposits); Article 33 to 37 Banking Act (consumer protection); Article 38 Banking Act (banking secrecy); Article 39 Banking Act (duty of diligence); Article 40 to 41 Banking Act (money laundering); Article 66 to 68 Banking Act (deposits held in trust for a ward); Article 93 paras. 8 and 8a Banking Act (deposit guarantee); Article 94 Banking Act (protection of designations); Article 95 paras. 3 and 4 Banking Act (prohibition of employee savings banks); and, depending on their business purpose, Article 10 to Article 18 WAG 2007 and the other federal statutes referred to in Article 69 Banking Act and the regulations and administrative rulings issued on the basis of the laws and provisions listed above.</p>
EC8	<p>The home supervisor is given on-site access to local offices and subsidiaries of a banking group in order to facilitate their assessment of the group's safety and soundness and compliance with customer due diligence requirements. The home supervisor informs host supervisors of intended visits to local offices and subsidiaries of banking groups.</p>
Description and findings re EC8	<p>The home supervisory authority of a foreign CI group is regularly informed on the envisaged on-site inspections. It is invited to participate in the on-site inspection and will be granted the right to on-site access of branches and subsidiaries of their CI group in Austria on the basis of existing MoUs, to the extent that the granting of reciprocal audit rights is ensured and that the matter is discussed with the FMA in advance.</p> <p>Article 15 para. 5 and Article 16 para. 4 Banking Act expressly grant foreign supervisory authorities of EEA Member States an opportunity for on-site inspection after prior notification of the FMA.</p> <p>In practice, also on-site CDD examinations have taken place at CI's of non-EEA countries.</p>
EC9	<p>The host supervisor supervises booking offices in a manner consistent with internationally agreed standards. The supervisor does not permit shell banks or the continued operation of shell banks.</p>
Description and findings re EC9	<p>The FMA does not permit the establishment of shell banks (as defined in Article 2 no. 74 Banking Act) within Austria, in compliance with Article 11 no. 2 CRD. Even though there is no statutory prohibition on such entities, the possibility of creating a shell operation is precluded through the licensing and supervisory processes, which require that licensed institutions have, among other things, an appropriate organizational and management structure.</p> <p>CIs must not enter into or continue a correspondent banking relationship with a shell bank and must take appropriate measures to ensure that they do not engage in or continue correspondent banking relationships with a CI which is known to permit its accounts to be used by a shell bank. It is considered to be an inadmissible business relationship according</p>

	<p>to Article 40d para. 1 Banking Act.</p> <p>The FMA allows representative offices to operate in Austria, provided that they do not undertake in banking business. Requirements for such representative offices are laid down in Article 73 of the Banking Act.</p>
EC10	A supervisor that takes consequential action on the basis of information received from another supervisor consults with that supervisor, to the extent possible, before taking such action.
Description and findings re EC10	<p>According to all MoUs home and host supervisor have to inform each other of all relevant measures or sanctions against cross-border establishments licensed in the other country as well as against its branches or subsidiaries.</p> <p>Duties to consult each other exist in the fields of the licensing of subsidiaries and the acquisition of CIs licensed in the other country.</p> <p>In the context of the single license principle (“European Passport”) the home supervisor is basically responsible to take supervisory actions against branches in other EEA Member States and services provided in an EEA Member States on the basis of the freedom to provide cross-border service.</p> <p>Article 15 to 17 Banking Act provide for the framework within which the host and the home supervisor have to contact each other and the home supervisor has to inform the host supervisor in the case that a license is withdrawn.</p> <p>If a CI or an investment firm licensed in another Member State or their parent-company intends to acquire an Austrian CI and this intended acquisition is prohibited by the FMA, the acquirer’s home country supervisor has to be informed (Article 20a para. 6 Banking Act).</p>

Assessment of Principle 13	Largely Compliant
Comments	<p>EC 1 / 2: In practice, with a limited number of foreign supervisory authorities that supervise subsidiaries of a parent Austrian CI, arrangements on confidential supervisory information exchange are not in place, which means that confidential supervisory information between the home and host authorities cannot be exchanged and the foreign supervisor cannot take part in the college.</p> <p>The assessors understand that the FMA is fully committed to information exchange and cross border cooperation and that Austria is in line with the requirements set by EBA and</p>

	<p>the European framework on the establishment of supervisory colleges. In this context the equivalence of a respective third country has to be assessed and determined on a European level and be in line with the confidentiality regime of the participating countries. With regards to the third-country competent authorities mentioned above, the requirement has not been met that they are subject to confidentiality requirements that are equivalent, in the opinion of all the competent authorities and that therefore the Austrian supervisor could not conclude arrangements on confidential supervisory information exchange with these third-country competent authorities.</p> <p>EC 6: At the moment, except for the 3 largest CI's (Erste, Raiffeisen and UniCredit Bank Austria) which account for almost half of total bank assets in Austria, resolution plans are not prescribed for CI's. For the three institutions mentioned, the plans are still under development. As of 1st January 2014 the Bank Reorganisation Act will be applied. Amongst others, this act will prescribe credit institutions to develop resolution plans.</p>
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B. Prudential Regulations and Requirements	
Principle 14	Corporate governance. The supervisor determines that banks and banking groups have robust corporate governance policies and processes covering, for example, strategic direction, group and organizational structure, control environment, responsibilities of the banks' Boards and senior management, ⁴⁰ and compensation. These policies and processes are commensurate with the risk profile and systemic importance of the bank.
Essential criteria	
EC1	Laws, regulations or the supervisor establish the responsibilities of a bank's Board and senior management with respect to corporate governance to ensure there is effective control over the bank's entire business. The supervisor provides guidance to banks and banking groups on expectations for sound corporate governance.
Description and findings re EC1	<p>Banking Act</p> <p>Article 39 para. 1 of the Banking Act sets forth a "duty of diligence" for the directors of a CI and sets out their responsibility to monitor and limit risks arising from banking transactions and banking operations and to monitor, capture and manage such risks through adequate mechanisms. Accordingly, pursuant to Article 39 para. 2 and 2b of the Banking Act, CIs are obliged to have in place administrative, accounting and control mechanisms for capturing, assessment, management and monitoring risks arising from banking transactions, banking operations and compensation policies and practices. This obligation encompasses, in particular, the submission of regular risk and control reports to the management and the supervisory board. The adequacy of these procedures and their enforcement must be reviewed by the internal audit unit at least once a year. The bank auditor's prudential report also contains an evaluation of these procedures. Furthermore, OeNB and FMA experts review the effectiveness of these procedures during on-site inspections of CIs.</p> <p>According to Article 39a of the Banking Act, CIs are obliged to assess the institution's capitalization by way of internal plans and mechanisms (Internal Capital Adequacy Assessment Process—ICAAP). The bank auditor is obliged to audit the compliance of the CI regarding the ICAAP annually (Article 63 para. 4 no. 2b Banking Act).</p>

⁴⁰ Please refer to footnote 27 under Principle 5.

Company Law

Austrian company law generally provides for a bicameral structure which comprises of a board of management (executive organ) running the company and responsible for its daily business and a supervisory body responsible for supervising the executive organ and for a limited number of specific decisions (such as the consensus for granting major loans (i.e., loans in excess of 10 percent of a bank's capital—the legal definition of a large exposure) or for transactions with affiliated parties).

In addition thereto, there is a representative decision-making body (the shareholders' meeting or for cooperatives the General Meeting or Member's Representative Meeting). (Savings banks do not have the latter as they do not have shareholders or members).

Also, pursuant to Article 82 of the Stock Corporation Act and Article 22 of the Austrian Limited Liabilities Company Act, corporations in Austria are required to have internal control systems (ICS) in place that are adequate for the nature and scale of their business. These ICS serve to safeguard assets and investments, to guarantee the accuracy and reliability of data, to comply with the relevant laws and regulations and to enhance the efficiency of operational processes as well as to support compliance with corporate policy. The bank auditor (who has a warning obligation, i.e., it must report to the regulator) and the supervisory board examine the effectiveness and the application of this early warning system. The management board must ensure that an ICS is in place and that its operation is monitored and documented.

Corporate Governance Code

Besides the Banking Act and general company law, the Austrian Code of Corporate Governance, first published in 2002 (as last amended in July 2012), provides for detailed rules on corporate governance. It is a voluntary self-regulatory initiative of listed stock companies. There are only two banks with a stock exchange listing and one of these is a partial listing. In general, however, many of the larger banks implement the Code on a voluntary basis.

Specific rules in the Banking Act

CIIs have to establish an internal audit unit immediately subordinated to the managing directors and reporting directly to them. Material audit results based on audits performed quarterly must be reported to the chairman of the supervisory body (Article 42 Banking Act). In February 2005, the FMA published Minimum Standards for Internal Auditing which are to be seen as recommendations (FMA-

	<p>MS-IR) and are a more detailed interpretation of Article 42 Banking Act.</p> <p>The bank auditor checks the annual balance sheet's accuracy and its compliance with the relevant legal provisions and records the results in an audit report for the management (Article 63 Banking Act). The bank auditor may also contact the Chairman of the supervisory body outside the scope of audit mandates if a report to the board would, in view of the type and circumstances of the violations detected, not achieve the purpose of curing the defaults or if they are of a serious nature (Article 63a para. 3 of the Banking Act).</p>
EC2	The supervisor regularly assesses a bank's corporate governance policies and practices, and their implementation, and determines that the bank has robust corporate governance policies and processes commensurate with its risk profile and systemic importance. The supervisor requires banks and banking groups to correct deficiencies in a timely manner.
Description and findings re EC2	OeNB and FMA experts assess CIs' corporate governance policies and practices through both on-site and off-site supervision. The on-site inspection regime entails a review of the bank's corporate governance policies and practices by examiners while on inspection and how such policies and practices are implemented in practice, e.g. an analysis of directors' attendance at board meetings and the quality of their contributions. Off-site monitoring includes an analysis of banks' reports to the FMA/OeNB relating to corporate governance issues as well as a qualitative analysis of annual reports (e.g. on remuneration policy) and annexes to the external auditor's report in which the auditor is statutorily required to comment on the bank's compliance (or otherwise) with corporate governance provisions.
EC3	The supervisor determines that governance structures and processes for nominating and appointing Board members are appropriate for the bank and across the banking group. Board membership includes experienced non-executive members, where appropriate. Commensurate with the risk profile and systemic importance, Board structures include audit, risk oversight and remuneration committees with experienced non-executive members.
Description and findings re EC3	As mentioned under EC 1, Austrian law provides for a bicameral structure which comprises of a board of management (executive organ) running the company and responsible for its daily business and a supervisory body with non-executive members responsible for supervising the executive organ. Processes for nominating board members are determined by company law. In connection with bank licensing, the Banking Act provides for certain requirements that must be met by persons envisaged to be appointed as management board members such as the relevant member's solid financial situation, no criminal proceedings, no bankruptcy proceedings, personal reliability, expertise and appropriate

	<p>professional experience (Article 5 of the Banking Act). In major CIs (institutions with assets exceed Euro 750m), the supervisory board's chairman must meet these requirements. (Article 28a para. 3 Banking Act). There are currently neither legal requirements (qualification, soundness etc.) for chairmen of supervisory boards in smaller institutions, nor for ordinary supervisory board members in general.</p> <p>Pursuant to Article 39c of the Banking Act, supervisory boards in major CIs must establish a remuneration committee. At least one of its members must be a remuneration expert.</p> <p>Pursuant to Article 63a (4) of the Banking Act supervisory boards in major CIs must as well establish an audit committee, including at least one expert in banking finance and accounting.</p> <p>The EBA Guidelines on internal governance published in September 2011 are based on Article 22 CRD and set out additional criteria on duties and requirements to be fulfilled by CIs' management and supervisory board members, their appointment, nomination procedures, timely resources and certain committees. The guidelines must be applied by Austrian CIs from 31 March 2012 onwards. Amongst others, they provide for a "know-your-structure"-principle, risk controlling mechanisms, a "Chief Risk Officer" as head of effective risk controlling, the requirement of sufficient timely resources for board members to fulfill their duties, and "fit-and-proper"-tests which shall ensure a regularly assessment of the suitability of management and supervisory board members by both the CIs themselves as well as the supervisory authority.</p> <p>Within the envisaged implementation of the European Basel III regulatory framework, rules on minimum requirements for all supervisory board members (Article 87 Draft CRD IV), as well as the establishment of risk committees and nomination committees shall be included in the Banking Act.</p>
EC4	Board members are suitably qualified, effective and exercise their "duty of care" and "duty of loyalty". ⁴¹
Description and	As mentioned under EC3, the Banking Act as well as the FMA set high standards

⁴¹ The OECD (OECD glossary of corporate governance-related terms in "Experiences from the Regional Corporate Governance Roundtables", 2003, www.oecd.org/dataoecd/19/26/23742340.pdf.) defines "duty of care" as "The duty of a board member to act on an informed and prudent basis in decisions with respect to the company. Often interpreted as requiring the board member to approach the affairs of the company in the same way that a 'prudent man' would approach their own affairs. Liability under the duty of care is frequently mitigated by the business judgment rule." The OECD defines "duty of loyalty" as "The duty of the board member to act in the interest of the company and shareholders. The duty of loyalty should prevent individual board members from acting in their own interest, or the interest of another individual or group, at the expense of the company and all shareholders."

findings re EC 4	<p>regarding the qualification of the managing directors of a CI. As mentioned in EC 3 above, the FMA evaluates the expertise and integrity (and other criteria) of the proposed directors according to the criteria stipulated in the Banking Act (Article 5 para. 1 nos. 6 to 13 of the Banking Act) in a fit and proper test. The directors have to comply with these criteria as long as they are directors of a CI. In case a director is not qualified anymore the FMA will require the CI to revoke him as director and to replace him (in case there would be less than two directors left) within adequate time period (Article 70 para. 4 of the Banking Act). Please see CP 5 EC 7.</p> <p>There are equivalent requirements for the chairmen of supervisory boards in major CIs but not for other members of the supervisory board nor for chairmen of smaller supervisory boards. (see above EC 3).</p> <p>Article 39 of the Banking Act sets forth the management board members' "duty of diligence" with reference to Article 84 of the Stock Corporation Act (AktG), pursuant to which members of a corporations management board (as well as supervisory board—Article 99 AktG) and their deputies must always act as a "prudent and diligent director". They are responsible vis-à-vis the company (and, in certain cases, even vis-à-vis the companies' creditors) for all damage caused through not acting diligently.</p> <p>Certain decisions such as major loans or transactions with related parties are subject to authorization by the supervisory board in order to prevent directors from acting in their own interest (see Article 28 of the Banking Act).</p>
EC5	<p>The supervisor determines that the bank's Board approves and oversees implementation of the bank's strategic direction, risk appetite⁴² and strategy, and related policies, establishes and communicates corporate culture and values (e.g. through a code of conduct), and establishes conflicts of interest policies and a strong control environment.</p>
Description and findings re EC5	<p>Article 39 para. 1 of the Banking Act stipulates the directors' obligation to keep themselves adequately informed and to control and limit risks. The FMA is informed by the bank auditor (Article 63 para. 4 no. 3 of the Banking Act) and within the framework of on-site inspections whether the corresponding control and administrative procedures, which are also controlled annually by the internal audit (Article 39 para. 2 of the Banking Act), are in place.</p>

⁴² "Risk appetite" reflects the level of aggregate risk that the bank's Board is willing to assume and manage in the pursuit of the bank's business objectives. Risk appetite may include both quantitative and qualitative elements, as appropriate, and encompass a range of measures. For the purposes of this document, the terms "risk appetite" and "risk tolerance" are treated synonymously.

	<p>Furthermore, the FMA may at any time demand from the CI information on all business matters, e.g. provisions, risk management, internal organization etc. (Article 70 para. 1 no. 1 of the Banking Act).</p> <p>Every CI is required to set up an ICAAP covering all aspects of risk management, but considering proportionality with regard to risk and complexity of the banking business conducted. The ICAAP is considered as an integrated part of the strategic management. The ultimate responsibility for the risk management processes and the internal capital adequacy assessment process lies with the management. The management (i.e., the directors) is also responsible for installing the required monitoring and internal reporting regarding the ICAAP.</p>
EC6	The supervisor determines that the bank's Board, except where required otherwise by laws or regulations, has established fit and proper standards in selecting senior management, maintains plans for succession, and actively and critically oversees senior management's execution of Board strategies, including monitoring senior management's performance against standards established for them.
Description and findings re EC6	Article 5, para. 1 of the Banking Act contains rules and requirements for a CI's directors in connection with licensing proceedings. During routine supervision (e.g. on-site inspections and in the above mentioned management meetings) the supervisor considers the quality of management. Additionally, the bank auditor must also report whether the requirements of Article 39 of the Banking Act (duty of diligence) are met or not in the Annex to the Audit Report on the annual financial statements (prudential report, see Article 63 para. 4 no. 3 of the Banking Act).
EC7	The supervisor determines that the bank's Board actively oversees the design and operation of the bank's and banking group's compensation system, and that it has appropriate incentives, which are aligned with prudent risk taking. The compensation system, and related performance standards, are consistent with long-term objectives and financial soundness of the bank and is rectified if there are deficiencies.
Description and findings re EC7	Article 39b of the Banking Act and the Annex to Article 39b of the Banking Act set out detailed rules for CIs' remuneration systems. Remuneration policies and practices must be consistent with the relevant CI's long-term-objectives and may not encourage staff to take inappropriate risks. Variable remuneration is only permissible based on the CI's sound financial situation and adequate capitalization. When determining variable remuneration, a performance assessment must be conducted over a period of several years with regard to the whole institutions', the relevant department's and the individual person's performance. With regard to certain categories of staff specified in the Banking Act, part of variable remuneration must be paid in shares or other instruments

	<p>showing the institution's long-term performance. A certain part of variable remuneration must be deferred over a period of at least five years. Variable remuneration must be reduced or even totally cancelled in case of an institution's negative or subdued financial situation. A claw-back system must be established in case deferred variable remuneration granted in earlier years must be reduced in light of the institution's long-term performance. The supervisory board oversees and authorizes the CI's remuneration policies and practices. Major CIs must establish a remuneration committee with three members, one of which must be a remuneration expert.</p> <p>Compliance with remuneration provisions is supervised by FMA and OeNB through the CIs' auditors' annual reports, analyzing the CIs' annual reporting of aggregated remuneration data (from 2013 onwards) and on-site inspections. Also, the FMA has issued circulars explaining and specifying the correct application of remuneration provisions.</p>
EC8	The supervisor determines that the bank's Board and senior management know and understand the bank's and banking group's operational structure and its risks, including those arising from the use of structures that impede transparency (e.g. special-purpose or related structures). The supervisor determines that risks are effectively managed and mitigated, where appropriate.
Description and findings re EC8	See EC1 above.
EC9	The supervisor has the power to require changes in the composition of the bank's Board if it believes that any individuals are not fulfilling their duties related to the satisfaction of these criteria.
Description and findings re EC9	<p>According to Article 70 para. 4 of the Banking Act, the FMA may prohibit the directors from managing the CI under clearly described conditions. While the management of a CI can be prohibited, the FMA has no clear legal basis for an influence on the composition of the supervisory board, especially since there are only qualitative requirements for the chairman of major CIs but not the ordinary member of the supervisory board.</p> <p>In accordance with the EBA Guidelines on Internal Governance published in September 2011 and the EBA Guidelines on the assessment of Suitability of Members of the Management Body and Key Function Holders, fit and proper tests must in the future be conducted regarding supervisory board members. Furthermore, the transposition of Basel III (Article 87 Draft CRD IV) into national law will bring improvements.</p>

Additional criteria	
AC1	Laws, regulations or the supervisor require banks to notify the supervisor as soon as they become aware of any material and bona fide information that may negatively affect the fitness and propriety of a bank's Board member or a member of the senior management.
Description and findings re AC1	A CI must meet all licensing requirements at all times. This includes the fitness and propriety of any member of the managing board (i.e., directors). Article 73 para.1 numbers 2 and 3 of the Banking Act provide for the obligation of CIs to notify the FMA of material changes regarding the qualifications of a director as determined in Article 5 para. nos. 6 to 11 and 13 of the Banking Act.
Assessment of Principle 14	Largely Compliant
Comments	<p>All the directors of credit institutions must meet the fit and proper criteria as set down by the FMA. However, other than the Chairmen of major credit institutions (i.e., with assets of over EUR 750 million) there are no legal requirements for the Chairmen of supervisory boards of smaller institutions or for ordinary supervisory board members in general to meet such requirements. Additionally, the supervisor does not have the power or legal basis to require changes in the composition of the CI's supervisory board if members of the supervisory board are not fulfilling their duties relating to these requirements.</p> <p>(This issue is dealt with in Principle 5—Licensing Criteria— which gives it a MNC rating).</p> <p>The reason for the Largely Compliant rating under this Principle relates to the reporting lines of the internal auditor. The Internal Audit Unit is subordinated to the managing directors and reports directly to them. Material audit results based on audits performed must be reported quarterly to the chairman of the supervisory committee. In keeping with best international practice, it would be more appropriate for the internal auditor to report directly to the chairman of the supervisory committee and have full access to the chairman on an on-going basis. This is on the basis that the internal auditor's finding may relate to deficiencies on the part of the managing directors.</p>

Principle 15	Risk management process. The supervisor determines that banks ⁴³ have a comprehensive risk management process (including effective Board and senior management oversight) to identify, measure, evaluate, monitor, report and control or mitigate ⁴⁴ all material risks on a timely basis and to assess the adequacy of their capital and liquidity in relation to their risk profile and market and macroeconomic conditions. This extends to development and review of contingency arrangements (including robust and credible recovery plans where warranted) that take into account the specific circumstances of the bank. The risk management process is commensurate with the risk profile and systemic importance of the bank. ⁴⁵
Essential criteria	
EC1	<p>The supervisor determines that banks have appropriate risk management strategies that have been approved by the banks' Boards and that the Boards set a suitable risk appetite to define the level of risk the banks are willing to assume or tolerate. The supervisor also determines that the Board ensures that:</p> <ul style="list-style-type: none"> (a) a sound risk management culture is established throughout the bank; (b) policies and processes are developed for risk-taking, that are consistent with the risk management strategy and the established risk appetite; (c) uncertainties attached to risk measurement are recognized; (d) appropriate limits are established that are consistent with the bank's risk appetite, risk profile and capital strength, and that are understood by, and regularly communicated to, relevant staff; and (e) senior management takes the steps necessary to monitor and control all material risks consistent with the approved strategies and risk appetite.

⁴³ For the purposes of assessing risk management by banks in the context of Principles 15 to 25, a bank's risk management framework should take an integrated "bank-wide" perspective of the bank's risk exposure, encompassing the bank's individual business lines and business units. Where a bank is a member of a group of companies, the risk management framework should in addition cover the risk exposure across and within the "banking group" (see footnote 19 under Principle 1) and should also take account of risks posed to the bank or members of the banking group through other entities in the wider group.

⁴⁴ To some extent the precise requirements may vary from risk type to risk type (Principles 15 to 25) as reflected by the underlying reference documents.

⁴⁵ It should be noted that while, in this and other Principles, the supervisor is required to determine that banks' risk management policies and processes are being adhered to, the responsibility for ensuring adherence remains with a bank's Board and senior management.

Description and findings re EC1	<p>While EC1 focuses more on what the supervisor requires in the area of risk management and EC2 on the basis (including the legal basis for such requirements, the legal background has been set out in EC 1 to provide the backdrop for the practical implementation of risk management processes. Accordingly, the general aspects of risk management strategy, infrastructure and processes in CIs are governed by the legal provisions set out below.</p> <p><u>1. Legal Framework</u></p> <p>The requirements for CIs' risk management strategy, board involvement, risk management processes and the respective supervisory tasks are particularly laid down in the following provisions:</p> <p>Requirements for CIs</p> <p>According to Article 39 para. 1 of the Banking Act, <i>the directors of a CI must exercise the diligence of a prudent and conscientious director as defined in Article 84 para. 1 of the Stock Corporation Act. In particular, they must obtain information on and control, monitor and limit the risks of banking transactions and banking operations using appropriate strategies and mechanisms, and have in place plans and procedures pursuant to Article 39a (ICAAP). Moreover, they must consider the overall earnings situation of the CI.</i></p> <p>Para. 2 further specifies that <i>CIs must have in place administrative, accounting and control mechanisms for the capture, assessment, management and monitoring of risks arising from banking transactions and banking operations. These mechanisms must be appropriate to the type, scope and complexity of the banking transactions conducted. Wherever possible, the administrative, accounting and control procedures must also capture risks arising from banking transactions and banking operations as well as risks stemming from remuneration policies and practices which might possibly arise. The organizational structure must prevent conflicts of interest and of competences by establishing delineations in structural and process organization which are appropriate to the CI's business operations. The adequacy of these procedures and their enforcement must be reviewed by the internal audit unit at least once per year. Para. 2b specifies the risks that must be included in the procedures pursuant to para. 2.</i></p> <p>Para. 2a elaborates that <i>CIs may make use of joint risk classification organizations as service providers for the development and ongoing maintenance of rating methods if the CIs report this to the FMA in advance. The participating CIs may convey all information necessary for the capture and assessment of risks to the joint risk classification organization for the exclusive purpose of developing and maintaining risk assessment and mitigation methods and making these methods available to the participating CIs by processing the data; the risk classification</i></p>
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organization shall only be permitted to transfer personal data to the CI which originally provided the underlying borrower data. The joint risk classification organization, its governing bodies, employees and other persons working for the organization shall be subject to the banking secrecy requirements pursuant to Article 38. With regard to the risk classification organization, the FMA shall have all information, presentation and auditing powers set forth in Article 70 para. 1; Article 71 is applicable in this context.

According to para. 2b, the procedures pursuant to para. 2 must include in particular the following:

1. credit risk (Article 2 no. 57),
 2. concentration risk (Article 2 no. 57b),
 3. risk types in the trading book (Article 22o para. 2),
 4. commodities risk and foreign exchange risk, including the risk arising from gold positions,
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1. where these are not covered by no. 3,
 2. operational risk (Article 2 no. 57d),
 3. securitization risk (Article 2 no. 57c),
 4. liquidity risk (Article 25),
 5. interest rate risk arising from any transactions not already covered by no. 3,
 6. the residual risk from credit risk mitigation techniques (Article 2 no. 57a),
 7. risks arising from the macroeconomic environment and
 8. the risk arising from money laundering and terrorist financing.

In addition, para. 2c mandates that in the case of new transactions with which the CI has no experience regarding the risks involved, due consideration must be given to the security of third-party funds entrusted to the CI and to the preservation of the CI's own funds. The procedures pursuant to para. 2 must ensure that the risks arising from new transactions as well as concentration risks are captured and assessed to the fullest possible extent.

According to Article 39a CIs must have in place effective plans and procedures in order to determine on a regular basis the amount, the composition and the distribution of capital available for the quantitative and qualitative coverage of all material risks from banking transactions and banking operations and to hold capital in the amount necessary. These plans and procedures must be based on the nature, scope and complexity of the banking transactions conducted. Moreover CIs must review the suitability and enforcement of the strategies at regular intervals at least

on an annual basis. Superordinate CIs have to fulfill the obligation exclusively on a consolidated basis.

Pursuant to Article 42 para. 4 nos. 1 to 6, the internal audit has to review risk management procedures (e.g. no. 5: "the suitability and enforcement of the procedures pursuant to Article 39 para. 2 and Article 39a) and to report to the directors and—under certain conditions—to the chairperson of the CI's supervisory board.

With respect to the area of liquidity risk, legal requirements are set forth in Article 25 Banking Act and in the Liquidity Risk Management Regulation (*Liquiditätsrisikomanagementverordnung - LRMV*) which contains the national implementation of the CRD II. Article 25 mandates that:

(1) CIs must ensure that they can honor their payment obligations at all times. They must:

- 1. establish company-specific financial and liquidity planning based on banking experience;*
- 2. sufficiently ensure their ability to compensate for any future imbalances of incoming and outgoing payments by constantly maintaining sufficient liquid funds;*
- 3. have in place systems for monitoring and controlling the interest rate risk of all transactions;*
- 4. structure their interest rate reset and call privileges in particular according to the maturity structure of their assets and liabilities in such a way that potential changes in market conditions are taken into account; and*
- 5. have in place documentation on the basis of which the credit institution's financial situation can be calculated with reasonable accuracy at all times; these documents are to be presented to the FMA with appropriate comments on request.*

(2) The FMA shall issue a regulation specifying the minimum requirements for the requirements referred to in para. 1. These minimum requirements shall be consistent with Annex V, Numbers 14 to 22 of Directive 2006/48/EC.

Furthermore, the bank auditor has to confirm that the institution under consideration complies with the rules set out in the above mentioned regulations on a yearly basis (Article 63 para. 4 Banking Act in conjunction with the Regulation on the Annex to the Audit Report on the Annual Financial Statements).

In addition to the legal provisions quoted above, FMA has issued binding

- minimum standards for credit business and other lines of business with

counterparty credit risk (*FMA-Mindeststandards für das Kreditgeschäft und andere Geschäfte mit Adressenausfallsrisiken* (FMA-MS-K), April 2005)

- minimum standards for FX lending (*FMA-Mindeststandards für die Vergabe und Gestionierung von Fremdwährungskrediten* (FMA-FX-MS), October 2003)
- minimum standards for lending with repayment vehicles (*FMA— Mindeststandards für die Vergabe und Gestionierung von Krediten mit Tilgungsträgern* (FMA-TT-MS), October 2003).
- The minimum standards FMA-FX-MS and FMA-TT-MS have been amended in March 2010 by the document “*Ergänzung zu den FMA Mindeststandards zur Vergabe und Gestionierung von Fremdwährungskrediten und Krediten mit Tilgungsträgern vom 16. Oktober 2003*” (new encompassing minimum standards on foreign currency loans (FCL) and loans with repayment vehicles (LRV)⁴⁶). This document is currently being updated (see CP17 EC4).

Supervisory responsibilities

Supervisory responsibilities are specified in Article 69 and Article 70 para. 4 nos. 1, 2 and 4a Banking Act.

Moreover, according to Article 63 paras. 3 and 4 Banking Act the bank auditor must review compliance with Articles 39 and 39a Banking Act on an annual basis.

2. Practical Application

The provisions of the legal framework of the Banking Act are reviewed during on-site inspections and off-site analysis of relevant data provided by the CIs in the form of periodic reports.

During the Supervisory Review and Evaluation Process (SREP), OeNB/FMA evaluates the risks the CI is exposed to and its risk bearing capacity on a yearly basis. Closely in line with CEBS Guidelines GL 39⁴⁷ the CI’s risk profile, financial situation, overall risk profile, the respective risks, the methodologies used in course of the ICAAP and the risk bearing capacity are assessed. In order to do so a scoring approach is followed. The scores are chosen in the range from 1 to 4 and take account of the reliability of the methods used and the figures calculated by the CI in terms of Pillar I or Pillar II risks. The scores are applied by means of particular surcharges which lead, on a risk by risk basis, to the supervisor’s

⁴⁶ <http://www.fma.gv.at/en/legal-framework/minimum-standards/banks.html>; for the updated versions please refer to <http://www.fma.gv.at/de/rechtliche-grundlagen/mindeststandards/banken.html>.

⁴⁷ CEBS (EBA) Guidelines for the Joint Assessment of the Elements Covered by the Supervisory Review and Evaluation Process (SREP) and the Joint Decision Regarding the Capital Adequacy of Cross-border Groups (GL39), published in December 2010.

	<p>estimation of the respective risks (SREP capital estimate). In order to achieve consistent results within the peer group the fulfillment of some supervisory expectations (holding period etc) is checked before setting the SREP capital. In case these expectations are not met the CI's own figures are scaled or a proxy capital is calculated (e.g. if the CI failed to estimate a risk on its own). The sum of these SREP capital estimates, the risk in total, is then compared to the risk bearing capacity, which comprises own funds and maybe some other capital instruments in exceptional cases. On basis of this reconciliation the capital situation is deemed adequate or a capital add on is applied by FMA (Joint Risk Assessment Decision—JRAD).</p> <p>Special emphasis on a comprehensive risk management process is put in the relevant chapters of the Guidelines on Credit Risk, Market Risk, Interest Rate Risk in the Banking Book, Operational Risk and Bank-Wide Risk Management (http://www.fma.gv.at/en/about-the-fma/publications/fmaoenb-guidelines.html). These guidelines, which have been issued by FMA and OeNB over the last years, contain recommendations regarding appropriate management duties, procedures and responsibilities, reporting mechanisms, limit controls, risk analysis upon introduction of new products, risk management handbooks and internal auditing procedures. The general principles and standards expected from CIs with respect to risk strategies, risk management culture and sound internal policies and checks and balances are further substantiated in the risk specific examination standards which serve as basis for the conduction of on-site inspections. OeNB's internal examination standards are implemented as modules in the IT system BOSS (Banking On-Site Supervision System). The last major update of all BOSS modules was performed in 2012. Currently, an English translation is being compiled which will be provided upon completion.</p> <p>These examination standards and the focal points established therein are further mirrored by the topics addressed in off-site analysis. These internal standards incorporate international guidelines and technical papers issued by the Basel Committee on Banking Supervision (BCBS) and the European Banking Authority (EBA, formerly CEBS). Thereby it is ensured that the essential criteria EC1.a – EC1.e are being adequately covered in ongoing supervision, both off-site and on-site and that adherence to international standards and supervisory best practices is granted.</p>
EC2	<p>The supervisor requires banks to have comprehensive risk management policies and processes to identify, measure, evaluate, monitor, report and control or mitigate all material risks. The supervisor determines that these processes are adequate:</p> <p>(a) to provide a comprehensive "bank-wide" view of risk across all material risk</p>

	<p>types;</p> <p>(b) for the risk profile and systemic importance of the bank; and</p> <p>(c) to assess risks arising from the macroeconomic environment affecting the markets in which the bank operates and to incorporate such assessments into the bank's risk management process.</p>
Description and findings re EC2	<p><u>1. Legal Framework</u></p> <p>For the general legal framework we refer to EC1.</p> <p><u>2. Practical Application</u></p> <p>As already outlined in the answer to EC1, bank-wide risk management policies and processes are a central point of attention in all off-site analyses and on-site inspections which are being conducted by OeNB and assessed by FMA, predominantly in the area of ICAAP inspections but also in the assessment of individual risk categories. Furthermore, the annual JRAD contains as a central feature the assessment of bank-wide risk measurement methods. In order to address the comprehensive "bank-wide" view on risks as set forth in EC2(a), close attention is paid to the bank-wide dissemination of risk policies and group standards, as well as to the availability of relevant information on all levels of the banking group.</p> <p>All supervisory actions in Austria follow a "double risk-oriented" approach, meaning that more resources are being concentrated on riskier and/or systemically important CIs and that for every institution special attention is paid to the dominant risk categories within that CI. Thus, adequate supervisory expectations with respect to the risk profile and systemic importance of the CI are ensured, as requested by EC2 (b).</p> <p>According to Article 39 para. 2b no. 10 of the Banking Act (cf. EC1), CIs are requested to consider risks arising from the macroeconomic environment in their risk management process. This field is also considered in the annual SREP/JRAD (see CP15EC1). Furthermore the adequate coverage of macroeconomic risks in the CI's risk quantification and steering procedures as demanded by EC2(c) is addressed by OeNB/FMA via in depth analyses of CIs and their core markets and through the selection of relevant group subsidiaries in potentially riskier CESEE countries for on-site visits.</p> <p>On-site actions have been taken in the following countries in the past years:</p>

	<table border="1"> <tr> <td data-bbox="418 281 511 394">2010</td> <td data-bbox="511 281 1404 394">Croatia, Germany, Hungary, Italy, Liechtenstein, Romania, Singapore, Slovakia, United Kingdom, United States of America</td> </tr> <tr> <td data-bbox="418 394 511 508">2011</td> <td data-bbox="511 394 1404 508">Croatia, the Czech Republic, Germany, Hungary, Italy, Romania, and the Russian Federation</td> </tr> <tr> <td data-bbox="418 508 511 579">2012</td> <td data-bbox="511 508 1404 579">Croatia, Hungary, Italy, Romania and the Russian Federation</td> </tr> </table>	2010	Croatia, Germany, Hungary, Italy, Liechtenstein, Romania, Singapore, Slovakia, United Kingdom, United States of America	2011	Croatia, the Czech Republic, Germany, Hungary, Italy, Romania, and the Russian Federation	2012	Croatia, Hungary, Italy, Romania and the Russian Federation
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2011	Croatia, the Czech Republic, Germany, Hungary, Italy, Romania, and the Russian Federation						
2012	Croatia, Hungary, Italy, Romania and the Russian Federation						
EC3	<p>The supervisor determines that risk management strategies, policies, processes and limits are:</p> <ul style="list-style-type: none"> (a) properly documented; (b) regularly reviewed and appropriately adjusted to reflect changing risk appetites, risk profiles and market and macroeconomic conditions; and (c) communicated within the bank <p>The supervisor determines that exceptions to established policies, processes and limits receive the prompt attention of, and authorization by, the appropriate level of management and the bank's Board where necessary.</p>						
Description and findings re EC3	<p><u>1. Legal Framework</u></p> <p>For the general legal framework we refer to EC1.</p> <p><u>2. Practical Application</u></p> <p>The compliance with criteria EC3 is predominantly assessed during on-site inspections and by means of document requests for off-site analyses. Awareness of senior directors and board members of the need of proper documentation of standards, their dissemination throughout the CI and their regular revisiting is assessed during high-level meetings in on-site inspections and high-level meetings organized on a regular basis by the responsible off-site analysts.</p>						
EC4	<p>The supervisor determines that the bank's Board and senior management obtain sufficient information on, and understand, the nature and level of risk being taken by the bank and how this risk relates to adequate levels of capital and liquidity. The supervisor also determines that the Board and senior management regularly review and understand the implications and limitations (including the risk</p>						

	measurement uncertainties) of the risk management information that they receive.
Description and findings re EC4	<p><u>1. Legal Framework</u></p> <p>The legal provisions are contained in Article 39 paras. 1 and 2 and Article 39a paras. 1 and 2 of the Banking Act</p> <p>Please note that according to Article 5 para. 1 no. 8 of the Banking Act it is also a licensing requirement that directors possess the professional qualification and experience necessary for operating the CI (see CP 14: Corporate Governance and CP 5 EC 7).</p> <p>Supervisory responsibilities: see EC 1.</p> <p><u>2. Practical Application</u></p> <p>The requirements of EC 4 are reviewed by the supervisor during on-site inspections and during meetings with the board and the directors responsible for the risk management of the CI. Furthermore, the assumptions made and deficiencies identified in utilized risk models and the awareness of board members and senior management thereof are explicitly addressed in model approval processes, ongoing off-site model supervision and the examination of material model changes.</p>
EC5	The supervisor determines that banks have an appropriate internal process for assessing their overall capital and liquidity adequacy in relation to their risk appetite and risk profile. The supervisor reviews and evaluates banks' internal capital and liquidity adequacy assessments and strategies.
Description and findings re EC5	<p><u>1. Legal Framework</u></p> <p>See also above EC 1.</p> <p>CIs must have in place effective plans and procedures in order to determine on a regular basis the amount, the composition and the distribution of capital available for the quantitative and qualitative coverage of all material risks from banking transactions and banking operations and to hold capital in the amount necessary (Article 39a para. 1 of the Banking Act). Furthermore, in conducting their business, the directors of a CI must exercise the diligence of a prudent and conscientious director (Article 39 para. 1 of the Banking Act). In particular, they must obtain information on and control, monitor and limit the risks of banking transactions and banking operations using appropriate strategies and mechanisms.</p> <p>Moreover, they must consider the overall earnings situation of the CI. CIs must have in place administrative, accounting and control mechanisms for the capture,</p>

assessment, management and monitoring of risks arising from banking transactions and banking operations. These mechanisms must be appropriate to the type, scope and complexity of the banking transactions conducted. Wherever possible, the administrative, accounting and control procedures must also capture risks from banking transactions and banking operations which might possibly arise.

Guidelines published by FMA and OeNB:

In the course of implementing the Basel II framework FMA and OeNB issued a series of guidelines. These guidelines were intended to assist CIs in Austria redesigning their methods and processes where this was seen essential and to develop a mutual understanding between CIs and supervisors. In parallel CEBS and now EBA have been addressing these issues with the primary aim to achieve convergence in supervisory standards and practices across the EEA. Now, in the course of implementing Basel III, the EC demanded EBA to develop a single supervisory handbook to complement the single rulebook, see EC communication of 12 September 2012. Therefore, appropriate guidance for CIs and supervisors alike is to be expected in the (near) future accomplished by EBA. FMA and OeNB will decide on a case by case basis whether the present Austrian guidelines are to be replaced by respective new EBA guidelines or whether the Austrian supervisors themselves will update the respective guideline. As regards Pillar II and CIs' ICAAPs for instance FMA and OeNB chose not to wait for the further development by EBA but to make necessary adjustments in the meanwhile. The latest communication of supervisory expectations concerning these issues will be published shortly on the OeNB website.

ICAAP

- Guidelines on Bank-wide Risk Management—Internal Capital Adequacy Assessment Process (February 2006).

On the question of liquidity risk management, under Article 39 (1) of the Banking Act, Credit institutions must ensure that they can honor their payment obligations at all times. They must

Establish company-specific financial and liquidity planning based on banking experience and ensure their ability to compensate for any future imbalances of incoming and outgoing payments by constantly maintaining sufficient liquid funds.

The FMA oversees the liquidity management by banks in a number of ways - through on-site/off-site surveillance and compliance with its two liquidity stock ratios. Its main tool is the weekly reporting template covering all currencies and 14

	<p>time periods.</p> <p><u>2. Practical Application</u></p> <p>During the Supervisory Review and Evaluation Process (SREP), OeNB/FMA reviews the overall risk of the CI by using a set of questions to be answered by the CI in a self-assessment-process (see CP15 EC1). The questions are being chosen depending on the size, complexity and business strategy of the CI (principle of proportionality).</p> <p>The assessment of capital and liquidity adequacy is a prime concern of FMA and OeNB. At large, CIs' internal processes for ensuring capital and liquidity adequacy are also key elements in conducting on-site inspections and are thereby subject to regular supervisory scrutiny.</p>
EC6	<p>Where banks use models to measure components of risk, the supervisor determines that:</p> <p>(a) banks comply with supervisory standards on their use;</p> <p>(b) the banks' Boards and senior management understand the limitations and uncertainties relating to the output of the models and the risk inherent in their use; and</p> <p>(c) banks perform regular and independent validation and testing of the models</p> <p>The supervisor assesses whether the model outputs appear reasonable as a reflection of the risks assumed.</p>
Description and findings re EC6	<p><u>1. Legal Framework</u></p> <p>Besides the overall diligence provisions, the Banking Act contains detailed requirements for periodic validation/testing of models and systems:</p> <ul style="list-style-type: none"> • Internal Ratings Based Approach: Article 21a para. 1 no. 7 of the Banking Act in conjunction with Article 59 and Article 64 of the Solvency Regulation with Article 42 para. 4 no. 6 of the Banking Act. • Own Volatility Estimates (Comprehensive Method) for Credit Risk Mitigation Techniques: Article 21c para. 1 of the Banking Act in conjunction with Article 22g para. 9 no. 2a bb of the Banking Act; Article 128 para. 4 nos. 8 and 9 of the Solvency Regulation. • Advanced Measurement Approach for Operational Risk: Article 21d para. 2 no. 5 of the Banking Act. • Internal Market Risk Models for the Trading Book: Article 21e para. 1 of the Banking Act in conjunction with 22p para. 5 of the Banking Act and Articles

225 and 227 of the Solvency Regulation. Moreover, in Article 22p para. 5 no. 1 lit. b of the Banking Act it is stated that VaR CIs have to perform stress testing and that the results of these tests have to be sent to the OeNB and the FMA quarterly. Based on Article 228 para. 1 to 2 of the Solvency Regulation CIs must on a daily basis back test their model results and report any exemptions to the FMA and the OeNB.

- Internal Models for Calculating Exposure Values for Derivative Contracts, Repurchase Agreements, Securities or Commodities Lending or Borrowing Transactions, Margin Lending Transactions and Long Settlement Transactions: Article 21f para. 1 of the Banking Act in particular in conjunction with Article 21f para. 4 no. 1d and no. 2d of the Banking Act.

During the approval process of the validation concept, back testing procedures and implemented stress tests have to be examined by OeNB.

Moreover, according to Article 42 para. 4 no. 6 of the Banking Act, the internal audit unit must review at least once per year, the CI's rating systems and their functioning, including the operations of the credit function and the estimation of probabilities of default, loss given default, expected loss and conversion factors.

2. Practical Application

Before using an internal model for own funds calculation in any of the above stated areas, an approval of the supervisor is required according to Articles 21a to 21f of the Banking Act. The approval process for the initial admission as well as for every material change always comprises an on-site inspection of compliance with legal requirements. The on-going model supervision is conducted off-site via validation analyses and reports on back testing and stress testing. Additionally, pursuant to Article 70 para. 1 of the Banking Act, the already approved models are periodically reviewed during on-site inspections by OeNB commissioned by FMA.

The rules concerning periodic and independent validation and testing of the models and systems are reviewed through ongoing off-site model-supervision, model approvals and on-site inspections.

The requirements of EC 6 are reviewed by the supervisor during on-site inspections (including the review of board minutes) and during meetings with the board and the directors responsible for the risk management of the CI. Furthermore, the assumptions made and deficiencies identified in utilized risk models and the awareness of board members and senior management thereof are explicitly addressed in model approval processes, ongoing off-site model supervision and the examination of material model changes.

EC7	The supervisor determines that banks have information systems that are adequate (both under normal circumstances and in periods of stress) for measuring, assessing and reporting on the size, composition and quality of exposures on a bank-wide basis across all risk types, products and counterparties. The supervisor also determines that these reports reflect the bank's risk profile and capital and liquidity needs, and are provided on a timely basis to the bank's Board and senior management in a form suitable for their use.
Description and findings re EC7	<p>1. <u>Legal Framework</u></p> <p>See above EC 1.</p> <p>2. <u>Practical Application</u></p> <p>The evaluation of the reporting lines and reports themselves is also part of ongoing off-site analyses. Furthermore, available risk reporting and the information used for internal steering of the CI are assessed in detail during on-site inspections. The availability of comprehensive business data and the quality of internal information systems including the adequacy of IT infrastructure are a major point of concern in on-site inspections in any risk category and are subject to close scrutiny. Additionally, in case of detected deficiencies in CIs' information and reporting systems, further supervisory measures like, for example, on-site inspections in the field of IT infrastructure and data quality may be triggered.</p>
EC8	The supervisor determines that banks have adequate policies and processes to ensure that the banks' Boards and senior management understand the risks inherent in new products, ⁴⁸ material modifications to existing products, and major management initiatives (such as changes in systems, processes, business model and major acquisitions). The supervisor determines that the Boards and senior management are able to monitor and manage these risks on an ongoing basis. The supervisor also determines that the bank's policies and processes require the undertaking of any major activities of this nature to be approved by their Board or a specific committee of the Board.
Description and findings re EC8	<p>1. <u>Legal Framework</u></p> <p>See above EC 1. Article 39 para. 2c of the Banking Act requires that <i>in the case of new transactions with which the CI has no experience regarding the risks involved, due consideration must be given to the security of third-party funds entrusted to the CI and to the preservation of the CI's own funds. The procedures pursuant to para. 2</i></p>

⁴⁸ New products include those developed by the bank or by a third party and purchased or distributed by the bank.

	<p><i>must ensure that the risks arising from new transactions as well as concentration risks are captured and assessed to the fullest possible extent.</i></p> <p>In case a CI utilizes an internal model for minimum capital requirement calculation for market risk in the Trading Book, Article 225 para. 8 no. 1 of the Solvency Regulation requires the conduction of detailed risk analyses in case of the introduction of a new product. However, it ought to be underlined that Article 39 of the Banking Act as a global due diligence requirement for all lines of business a CI pursues, provides a binding legal framework for a product approval process in all areas.</p> <p>2. Practical Application</p> <p>Compliance is assessed in the course of on-site inspections. The evaluation of a CI's product approval process has evolved over the years into a central topic in the examination of all risk categories. Similarly, the introduction of new lines of business is subject to an introductory process as mandated by Article 39 of the Banking Act. The steps taken by CIs before starting a new line of business are also subject to detailed scrutiny in the framework of on-site inspections.</p>
EC9	<p>The supervisor determines that banks have risk management functions covering all material risks with sufficient resources, independence, authority and access to the banks' Boards to perform their duties effectively. The supervisor determines that their duties are clearly segregated from risk-taking functions in the bank and that they report on risk exposures directly to the Board and senior management. The supervisor also determines that the risk management function is subject to regular review by the internal audit function.</p>
Description and findings re EC9	<p>1. Legal Framework</p> <p>See above EC 1 and Article 39 para. 2 of the Banking Act.</p> <p>Furthermore, the FMA has issued the FMA Minimum Standards for the Credit Business and other Transactions entailing Credit Risks on 13 April 2005 (FMA-MS-K). Among others these contain the following relevant objectives (see for more details the explanations provided for each Minimum Standard):</p> <p><i>The key principle for defining the processes in the credit business shall be a clear functional separation of the following units:</i></p> <ul style="list-style-type: none"> • Front office ("Markt"): units that initiate transactions and have a vote in lending decisions. • Back office ("Marktfolge"): units that do not belong to the front office and also have a vote in lending decisions that is independent of that of the front

	<p>office unit.</p> <p><i>The front office shall be separated from the back office in terms of organizational structure. The separation of the two units shall be taken into account in the case of representation as well.</i></p> <p><i>In the case of computer-aided loan processing, functional separation shall be guaranteed through appropriate procedures and precautionary measures.</i></p> <p><i>The following tasks shall be performed outside the front office:</i></p> <ul style="list-style-type: none"> <i>a. responsibility for the development and quality of the processes and sub-processes of lending and loan processing (clause 39);</i> <i>b. definition and the regular review of the criteria which govern the reclassification of exposures as requiring intensified handling or problem loan processing (clause 41);</i> <i>c. definition of guidelines for risk analysis and monitoring adherence to them (clause 51);</i> <i>d. assessment of certain collateral (clause 52);</i> <i>e. responsibility for the development, quality and monitoring of the use of risk classification procedures (clause 56);</i> <i>f. responsibility for the restructuring or recovery procedure or the monitoring of these procedures (clause 68);</i> <i>g. preparing the decision on the amount of risk provisioning or write-downs for certain exposures (clause 72);</i> <i>h. risk controlling tasks (clause 75), in particular drawing up the risk report (clause 87).</i> <p><i>In the case of trading transactions, the vote of the front office may be exercised by the traders in the course of setting counterparty limits; in this case, the proper review of the counterparty risks shall be ensured as well. The same shall apply to the setting of issuer limits for trading transactions.</i></p> <p><u>2. Practical Application</u></p> <p>The CIs' compliance with the FMA Minimum Standards is evaluated by the CIs' bank auditor and this evaluation has to be reported to the OeNB/FMA on an annual basis. Additionally, compliance with the FMA Minimum Standards is reviewed during on-site inspections. The supervisory expectations concerning the segregation of duties between risk-taking and risk-management units in all other lines of business are following the standards as set out for the area of credit risk and quoted above. Apart from formal aspects like the assignment of tasks to respective units, the available resources, responsibilities and decision powers of risk management units are monitored in depth in on-site inspections.</p>
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	<p>CIs' internal audit has to perform regular reviews of risk management functions, processes and models as mandated by Article 42 of the Banking Act. The activities set by internal audit, the quality of its audit reports and the tracking of remedial actions taken are subject to evaluation in on-site inspections of the respective risk category.</p>
EC10	<p>The supervisor requires larger and more complex banks to have a dedicated risk management unit overseen by a Chief Risk Officer (CRO) or equivalent function. If the CRO of a bank is removed from his/her position for any reason, this should be done with the prior approval of the Board and generally should be disclosed publicly. The bank should also discuss the reasons for such removal with its supervisor.</p>
Description and findings re EC10	<p>1. Legal Framework</p> <p>See above EC 1.</p> <p>2. Practical Application</p> <p>There is no explicit requirement for larger and more complex banks to have a dedicated risk management unit overseen by a Chief Risk Officer or equivalent function. In such circumstances, the FMA and OeNB would expect a dedicated risk manager on board level (CRO) and a clearly cut structure of risk management units at the CRO's disposal. From discussions with a number of larger and more complex banks, the assessors did form the opinion that they had a dedicated risk management unit overseen by a Chief Risk Officer.</p> <p>Compliance with this standard is assessed during on-site inspections and in high-level meetings with off-site analysts.</p> <p>The comprehensive requirements regarding the directors of a CI are laid down in Articles 5 and 39 of the Banking Act. Their fulfillment is a basic requirement to obtain a license. In case there are any deficiencies discovered by the FMA, the license may be revoked. Therefore, a potential removal of a person, not meeting the respective requirements, would be part of substantial talk between CI and supervisor.</p>
EC11	<p>The supervisor issues standards related to, in particular, credit risk, market risk, liquidity risk, interest rate risk in the banking book and operational risk.</p>
Description and findings re EC11	<p>Legal Framework and Practical Application</p> <p>FMA and OeNB have issued guidelines concerning credit risk, market risk, interest rate risk in the banking book, operational risk and on bank-wide risk management.</p>

	<p>Minimum Standards published by the FMA⁴⁹</p> <ul style="list-style-type: none"> • FMA Minimum Standards for Granting and Managing Foreign Currency Loans (October 2003) • FMA Minimum Standards for Granting and Managing Loans with Repayment Vehicles (October 2003) • FMA Minimum Standards for Internal Auditing (February 2005) • FMA Minimum Standards for the Credit Business and other Transactions entailing Counterparty Risks (April 2005) <p>Guidelines published by FMA and OeNB⁵⁰</p> <p>In the course of implementing the Basel II framework FMA and OeNB issued a series of guidelines. These guidelines were intended to assist CIs in Austria redesigning their methods and processes where this was seen essential and to develop a mutual understanding between CIs and supervisors. In parallel CEBS and now EBA have been addressing these issues with the primary aim to achieve convergence in supervisory standards and practices across the EEA.</p> <p>Now, in the course of implementing Basel III, the EC demanded from EBA to develop a single supervisory handbook to complement the single rulebook, see EC communication of 12 September 2012. Therefore appropriate guidance for CIs and supervisors alike is to be expected in the (near) future accomplished by EBA. FMA and OeNB will decide on a case by case basis whether the present Austrian guidelines are to be replaced by respective new EBA guidelines or whether the Austrian supervisors themselves will update the respective guideline. As regards Pillar II and CIs' ICAAPs for instance FMA and OeNB chose not to wait for the further development by EBA but to make necessary adjustments in the meanwhile. The latest communication of supervisory expectations concerning these issues will be published shortly on the OeNB website.</p> <p>Credit Risk</p> <ul style="list-style-type: none"> • Best Practices in Risk Management for Securitized Products (December 2004) • Rating Models and Validation (November 2004) • Credit Approval Process and Credit Risk Management (December 2004) • Credit Risk Mitigation Techniques (December 2004)
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⁴⁹ <http://www.fma.gv.at/en/legal-framework/minimum-standards/banks.html>; for the updated versions please refer to <http://www.fma.gv.at/de/rechtliche-grundlagen/mindeststandards/banken.html>.

⁵⁰ <http://www.fma.gv.at/en/about-the-fma/publications/fmaoenb-guidelines.html>.

	<ul style="list-style-type: none"> ○ Credit Risk Mitigation Techniques in Croatia (December 2004) ○ Credit Risk Mitigation Techniques in Poland (December 2004) ○ Credit Risk Mitigation Techniques in Slovakia (December 2004) ○ Credit Risk Mitigation Techniques in Slovenia (December 2004) ○ Credit Risk Mitigation Techniques in the Czech Republic (December 2004) ○ Credit Risk Mitigation Techniques in Hungary (December 2004) <p>Operational Risks</p> <ul style="list-style-type: none"> ● Guidelines on Operational Risk Management (August 2006) <p>Interest Rate Risk:</p> <ul style="list-style-type: none"> ● Guidelines on the Management of Interest Rate Risk in the Banking Book ("<i>Leitfaden zum Management des Zinsrisikos im Bankbuch</i>"), published in 2008. <p>ICAAP</p> <ul style="list-style-type: none"> ● Guidelines on Bank-wide Risk Management—Internal Capital Adequacy Assessment Process (February 2006) <p>The treatment of liquidity risk is regulated in Article 25 of the Banking Act and the Liquidity Risk Management Regulation (<i>Liquiditätsrisikomanagementverordnung - LRMV</i>); moreover, Articles 39 and 39a of the Banking Act apply. The reporting standards for CIs' weekly liquidity monitoring are documented in the Guideline "<i>Erläuterung zur Liquiditätsmeldung</i>", published in 2008 and updated in 2009.</p>
EC12	<p>The supervisor requires banks to have appropriate contingency arrangements, as an integral part of their risk management process, to address risks that may materialize and actions to be taken in stress conditions (including those that will pose a serious risk to their viability). If warranted by its risk profile and systemic importance, the contingency arrangements include robust and credible recovery plans that take into account the specific circumstances of the bank. The supervisor, working with resolution authorities as appropriate, assesses the adequacy of banks' contingency arrangements in the light of their risk profile and systemic importance (including reviewing any recovery plans) and their likely feasibility during periods of stress. The supervisor seeks improvements if deficiencies are identified.</p>
Description and	For information on resolution plans please refer to CP 8 EC 6.

findings re EC12	<p>Following consultations with the three largest internationally active Austrian CIs OeNB and FMA have devised principle-based measures to make those CIs' business models more sustainable. These measures include the preparation of recovery plans by end 2012. Notwithstanding the guidance, there is no legal basis for recovery planning in Austria yet (and probably not until the implementation of the European directive). This issue is discussed at some length under Principle 11— Corrective and Sanctioning Powers of Supervisors.</p> <p>At this point in time we have received first drafts of recovery plans by all of the three CIs. We consider the drafting as well as the evaluation of Recovery Plans a pilot project for 2012 the aim of which is to gain first experiences and a common understanding of the matters to be addressed and assessed to subsequently improve the quality of the plans.</p> <p>Furthermore, bank-specific contingency plans are assessed both for capital (ICAAP) and liquidity within the scope of respective on-site inspections. For details we refer to the internal examination standards.</p>
EC13	<p>The supervisor requires banks to have forward-looking stress testing programs, commensurate with their risk profile and systemic importance, as an integral part of their risk management process. The supervisor regularly assesses a bank's stress testing program and determines that it captures material sources of risk and adopts plausible adverse scenarios. The supervisor also determines that the bank integrates the results into its decision-making, risk management processes (including contingency arrangements) and the assessment of its capital and liquidity levels. Where appropriate, the scope of the supervisor's assessment includes the extent to which the stress testing program:</p> <ul style="list-style-type: none"> (a) promotes risk identification and control, on a bank-wide basis (b) adopts suitably severe assumptions and seeks to address feedback effects and system-wide interaction between risks; (c) benefits from the active involvement of the Board and senior management; and (d) is appropriately documented and regularly maintained and updated. <p>The supervisor requires corrective action if material deficiencies are identified in a bank's stress testing programme or if the results of stress tests are not adequately taken into consideration in the bank's decision-making process</p>
Description and findings re EC13	<u>1. Legal Framework</u>

	<p>See above EC 1.</p> <p><u>2. Practical Application</u></p> <p>CIs' stress testing infrastructure is predominantly assessed during on-site inspections and within the scope of the SREP/JRAD (see CP15 EC 1). The principles as set forward in EC13 (a-d) are central aspects of on-site inspections in any risk category. We refer to the internal examination standards as laid down in the modules of OeNB's BOSS-system for further details (see also CP15 EC1).</p> <p>Furthermore, the results of market risk stress tests conducted by CIs utilizing an internal model for calculating minimum capital requirements for market risk in the Trading Book are analyzed on a quarterly basis.</p>
EC14	The supervisor assesses whether banks appropriately account for risks (including liquidity impacts) in their internal pricing, performance measurement and new product approval process for all significant business activities.
Description and findings re EC14	<p><u>1. Legal Framework</u></p> <p>See above EC 1.</p> <p><u>2. Practical Application</u></p> <p>General aspects of risk adjusted pricing and performance measurement are usually discussed in on-site inspections on any risk category. The commensurability of internal pricing in CIs is furthermore assessed during on-site inspections in the field of liquidity risk, where the standards issued by CEBS (EBA) on liquidity cost benefit allocation⁵¹ are incorporated in the internal examination standards.</p> <p>For the assessment of the product approval process, see EC 8.</p>
Additional criteria	
AC1	The supervisor requires banks to have appropriate policies and processes for assessing other material risks not directly addressed in the subsequent Principles, such as reputational and strategic risks.
Description and findings re AC1	The provisions of Article 39 para. 2 and Article 39a para. 1 of the Banking Act comprise all material risks. Qualitative risk assessments for the various subtypes of other risks have to be performed by the CI autonomously and shall be

⁵¹ Cf. CEBS Guidelines on Liquidity Cost Benefit Allocation, 27 October 2010.

	documented appropriately. Furthermore, this issue is addressed in the annual ICAAP questionnaire and the ensuing SREP / JRAD (see CP15 EC1).
Assessment of Principle 15	Largely compliant.
Comments	<p>In general, Austrian law provides for a comprehensive risk management process in credit institutions and from the assessors interaction with the credit institutions these laws appear to be implemented. The supervisory regime also shows competence in its oversight of implementation.</p> <p>There was just one shortcoming in the process—there is no explicit requirement for larger and more complex banks to have a dedicated risk management unit overseen by a Chief Risk Officer or equivalent function. The FMA and OeNB expect such to exist and as far as can be ascertained this is indeed the case. To eliminate uncertainty, however, it is proposed that the FMA introduce such a requirement.</p> <p>It is planned to introduce an explicit requirement for CIs to have a dedicated risk management function in the course of the year 2013. The main task of the risk management function, which will be independent from operational functions, will be to ensure that all material risks are identified, measured and properly reported. Moreover, there will be the obligation for CIs to establish a “risk committee” as a subcommittee of the supervisory board. The risk committee shall advise the executive board on the CI’s overall risk strategy and will assist the supervisory board in overseeing the implementation of the risk strategy.</p>
Principle 16	Capital adequacy. ⁵² The supervisor sets prudent and appropriate capital adequacy requirements for banks that reflect the risks undertaken by, and presented by, a bank in the context of the markets and macroeconomic conditions in which it operates. The supervisor defines the components of capital, bearing in mind their ability to absorb losses. At least for internationally active banks, capital requirements are not less than the applicable Basel standards.
Essential criteria	
EC 1	Laws, regulations or the supervisor require banks to calculate and consistently observe prescribed capital requirements, including thresholds by reference to which a bank might be subject to supervisory action. Laws, regulations or the

⁵² The Core Principles do not require a jurisdiction to comply with the capital adequacy regimes of Basel I, Basel II and/or Basel III. The Committee does not consider implementation of the Basel-based framework a prerequisite for compliance with the Core Principles, and compliance with one of the regimes is only required of those jurisdictions that have declared that they have voluntarily implemented it.

	<p>supervisor define the qualifying components of capital, ensuring that emphasis is given to those elements of capital permanently available to absorb losses on a going concern basis.</p>
Description and findings re EC1	<p>The minimum capital adequacy provisions for Austrian CIs are laid down (particularly) in Articles 22 to 24 of the Banking Act. These Articles are the transposition of the CRD into Austrian law. (This directive is currently under revision to transpose Basel III into EU legislation).</p> <p>The calculation of the minimum capital adequacy ratio is laid down in Article 22 Banking Act and corresponds to Article 75 of the CRD. Each individual CI as well as each group of CIs are required to calculate and maintain at all times minimum own funds, which cover</p> <ol style="list-style-type: none"> 1. credit risk, 2. trading book risk and 3. operational risk, 4. commodities and foreign-exchange risk, including the risk arising from gold positions, each for positions outside the trading book; 5. (additional capital requirements as necessary in accordance with Article 29 para. 4 (qualifying participations) and 6. Article 70 para. 4a (capital add-on) or 7. requirements due to exceed of large exposure limits (in accordance with Article 27 para. 16a Banking Act). <p>According to Article 70 para. 4 of the Banking Act, the FMA has the authority to take measures if a CI falls below the minimum capital ratio. The FMA requires a CI violating provisions of the Banking Act (e.g. falling below the minimum capital ratio of 8%) under threat of penalty to re-establish lawful conditions within a period appropriate in view of the circumstances of the case. In case of repetition or continuation the FMA shall prohibit in part or entirely the directors of the CI from conducting business, unless this would be inadequate in view of the type and gravity of the breach, and restitution of the lawful conditions can be expected by repeating the proceeding as mentioned before. Finally, the FMA has authority to revoke the license if other measures pursuant to the Banking Act cannot secure the functionality of the CI. For each negative difference between own funds and own funds requirement, FMA, in absence of any more severe measures, has to charge the CI with penalty interest.</p> <p>Deteriorating capital levels coming close to the minimum capital level of 8% result in supervisors entering into discussions with the board of directors and examine the relevant CI in more detail.</p>

	Article 70 para. 2 of the Banking Act, furthermore, states, that in case of danger to the fulfillment of the obligations of a CI to its creditors, in particular to the safety of assets entrusted to it (e.g. caused by a failure to observe the minimal capital ratio), the FMA may, in order to avert such danger, order by way of ruling temporary measures (prohibition of the withdrawal of capital or profits as well as distributions of capital or profits, appointment of a competent supervisor (government commissioner), prohibition of directors of CIs from managing the business, prohibition of the continuation of the business operation) which shall expire no later than 18 months after taking effect.
EC2	At least for internationally active banks, ⁵³ the definition of capital, the risk coverage, the method of calculation and thresholds for the prescribed requirements are not lower than those established in the applicable Basel standards.
Description and findings re EC2	In line with the CRD, which requires all CI within the EU to apply Basel II and Basel 2.5, all Austrian CIs are subject to the same definition of own funds, the same method of calculation and the same required ratio. Moreover, the implementation of Basel III in the EU via a regulation and directive (CRR and CRD IV) is still under discussion and once implemented will also be applicable to all CIs in Austria. (Note: holdings in insurance companies, re-insurance companies and insurance holding companies are deducted half from Tier 1 and half from Tier 11, in keeping with the requirements of Basel 11.
EC3	The supervisor has the power to impose a specific capital charge and/or limits on all material risk exposures, if warranted, including in respect of risks that the supervisor considers not to have been adequately transferred or mitigated through transactions (e.g. securitization transactions) ⁵⁴ entered into by the bank. Both on-balance sheet and off-balance sheet risks are included in the calculation of prescribed capital requirements.
Description and findings re EC3	The FMA has to assess the appropriateness of the capital requirement of a group of CIs annually in cooperation with the other competent authorities responsible for supervising subordinate credit institutions incorporated in other Member States. The FMA has to decide in cooperation with these authorities, on the application of

⁵³ The Basel Capital Accord was designed to apply to internationally active banks, which must calculate and apply capital adequacy ratios on a consolidated basis, including subsidiaries undertaking banking and financial business. Jurisdictions adopting the Basel II and Basel III capital adequacy frameworks would apply such ratios on a fully consolidated basis to all internationally active banks and their holding companies; in addition, supervisors must test that banks are adequately capitalized on a stand-alone basis.

⁵⁴ Reference documents: Enhancements to the Basel II framework, July 2009 and: International convergence of capital measurement and capital standards: a revised framework, comprehensive version, June 2006.

	<p>measures based on the assessment pursuant to Article 69 paras. 2 and 3 at the consolidated level and pursuant to Article 70 para. 4a of the Banking Act.</p> <p>Risks not adequately transferred or mitigated through transactions (although excluded from the own requirements) are captured by Article 39 para. 2b no. 6 of the Banking Act. A capital charge for this risk type to be imposed by the supervisor can be derived via Article 70 para. 4a of the Banking Act.</p> <p>According to Article 22 para. 2 of the Banking Act on-balance sheet as well as off-balance sheet exposures have to be taken into account when calculating the capital requirements.</p>
EC4	<p>The prescribed capital requirements reflect the risk profile and systemic importance of banks⁵⁵ in the context of the markets and macroeconomic conditions in which they operate and constrain the build-up of leverage in banks and the banking sector. Laws and regulations in a particular jurisdiction may set higher overall capital adequacy standards than the applicable Basel requirements.</p>
Description and findings re EC4	<p>According to Article 39a para. 1 of the Banking Act CIs must have in place effective plans and procedures in order to determine on a regular basis the amount, the composition and the distribution of capital necessary for the quantitative and qualitative coverage of all material risks from banking transactions and banking operations and to hold capital in the amount necessary. These plans and procedures must be based on the nature, scope and complexity of the banking transactions conducted.</p> <p>The FMA and OeNB released in March 2012 supervisory guidance to strengthen the sustainability of the business models of large internationally active Austrian CIs. The sustainability package will increase the capitalisation of banking groups over the medium and long term, rebalance the refinancing structure of exposed banking subsidiaries and make sure that banking groups possess adequate recovery and resolution plans. Three banking groups (Erste Group Bank, Raiffeisen Zentralbank, Unicredit Bank Austria) are currently subject to this guidance.</p> <p>The three pillars of the sustainability package are:</p> <ol style="list-style-type: none"> 1. Increase capitalisation

⁵⁵ In assessing the adequacy of a bank's capital levels in light of its risk profile, the supervisor critically focuses, among other things, on (a) the potential loss absorbency of the instruments included in the bank's capital base, (b) the appropriateness of risk weights as a proxy for the risk profile of its exposures, (c) the adequacy of provisions and reserves to cover loss expected on its exposures and (d) the quality of its risk management and controls. Consequently, capital requirements may vary from bank to bank to ensure that each bank is operating with the appropriate level of capital to support the risks it is running and the risks it poses.

	<p>The Basel III rules in respect of Common Equity Tier 1 (CET1) shall be fully implemented from the 1st of January 2013 without making use of any related transitional provisions – with the exception that private and state participation capital subscribed under the CI support package will be included in the capital base. Furthermore, the Austrian supervisors will apply an additional capital surcharge of up to 3 percentage points of CET1 from the 1st of January 2016, taking into account specificities of the CIs' risk profile.</p> <ol style="list-style-type: none"> 2. Rebalance refinancing structures The FMA and OeNB will monitor the ratio of net new lending to the local stable funding ratio (110%). 3. Recovery and resolution plans <p>Parent institutions must establish recovery and resolution plans by end 2012.</p>
EC5	<p>The use of banks' internal assessments of risk as inputs to the calculation of regulatory capital is approved by the supervisor. If the supervisor approves such use:</p> <ol style="list-style-type: none"> (a) such assessments adhere to rigorous qualifying standards; (b) any cessation of such use, or any material modification of the bank's processes and models for producing such internal assessments, are subject to the approval of the supervisor; (c) the supervisor has the capacity to evaluate a bank's internal assessment process in order to determine that the relevant qualifying standards are met and that the bank's internal assessments can be relied upon as a reasonable reflection of the risks undertaken; (d) the supervisor has the power to impose conditions on its approvals if the supervisor considers it prudent to do so; and (e) if a bank does not continue to meet the qualifying standards or the conditions imposed by the supervisor on an ongoing basis, the supervisor has the power to revoke its approval.
Description and findings re EC5	<p>The use of internal assessments of risks as inputs to the calculation of regulatory capital requirement is subject to approval by the FMA. Conditions of this approval are laid down in Articles 21a (credit risk), 21c (volatility of financial collateral), 21d (operational risk), 21e (trading book risk), 21f (counterparty risk). As an example, criteria for the approval of IRB systems are listed below:</p> <p><u>Ad (a)</u></p> <p>According to Article 21a para. 1 of the Banking Act the approval is to be granted if:</p> <ol style="list-style-type: none"> 1. the systems used to control and assess credit risks as well as the resulting

parameter estimates are sound, integrated properly and play an essential role in risk management, decision-making processes, the credit approval process and internal capital adequacy assessment processes as well as internal control systems and reporting.

2. the rating systems used deliver meaningful results for the assessment of obligor and transaction characteristics and enable a meaningful differentiation of risk as well as accurate and consistent quantitative estimates of risk;
3. the rating systems used have been in use for at least three years, and these systems sufficiently fulfill the requirements for internal risk measurement and internal risk management at the time the application is submitted;
4. where own estimates of loss given default and conversion factors are used, the estimates have been in use for at least three years and sufficiently fulfill the requirements for the use of own estimates;
5. the CI has an appropriately independent organizational unit which is responsible for the internal rating systems used;
6. the data required for proper credit risk measurement and proper credit risk management are collected;
7. the rating systems, their design and validation are documented properly;
8. the requirements of Article 22b para. 11 Banking Act are fulfilled; and
9. the fulfillment of disclosure requirements is ensured and these requirements are fulfilled on an ongoing basis.

In the procedure the FMA must obtain an expert opinion from the OeNB on the fulfillment of the requirements pursuant to nos. 1 to 8.

Ad (b)

According to Article 21 para. 3 of the Banking Act CIs and superordinate CIs acting on behalf of a group of CIs must notify the FMA and OeNB in writing immediately if:

1. the CI no longer fulfills one or more of the requirements indicated in nos. 1 to 9 above,
2. it does not comply with requirements and conditions imposed by administrative ruling, and present a plan for a return to compliance within a reasonable period of time or demonstrate that the effect of non-compliance is immaterial;
3. the CI intends to change the Internal Ratings Based Approach approved by the FMA or its application and demonstrate that the changes are immaterial; and submit to the FMA and OeNB on a yearly basis a description of the validation of the models used, including the results and measures taken, as well as the results of stress tests performed.

	<p>CIIs and superordinate CIIs may only make material changes to an approved Internal Ratings Based Approach or its application with the approval of the FMA. <u>Ad (c) and (e)</u></p> <p>The FMA must monitor the application of the Internal Ratings Based Approach on an ongoing basis. The FMA must revoke its approval in cases where risk no longer appears to be captured properly (Article 21a para. 5 of the Banking Act).</p> <p><u>Ad (d)</u></p> <p>According to the General Administrative Procedure Act all administrative rulings can include conditions.</p>
EC6	<p>The supervisor has the power to require banks to adopt a forward-looking approach to capital management (including the conduct of appropriate stress testing).⁵⁶ The supervisor has the power to require banks:</p> <ul style="list-style-type: none"> (a) to set capital levels and manage available capital in anticipation of possible events or changes in market conditions that could have an adverse effect; and (b) to have in place feasible contingency arrangements to maintain or strengthen capital positions in times of stress, as appropriate in the light of the risk profile and systemic importance of the bank.
Description and findings re EC6	<p>When assessing the adequacy of their capital position, CIIs have to take into account possible downturn scenarios (see Article 45 of the Solvency Regulation).</p> <p>Under the internal capital adequacy assessment process (Pillar II of the Basel II framework; Articles 39 and 39a of the Banking Act), CIIs also have to apply a forward-looking approach. They have to review the suitability of their strategies and procedures at regular intervals (at least annually) and to adapt their strategies and procedures as necessary. They must also take into account risks arising from the macroeconomic environment (Article 39 para. 2b no. 10 of the Banking Act) and risks that may arise from new transactions with which the CI has no experience (Article 39 para. 2c of the Banking Act).</p> <p>The OeNB regularly conducts macro-economic stress tests in which CIIs are invited to participate. As a rule, one of the two stress tests that are carried out per year is conducted as a "Joint Bottom-up Exercise", meaning that top CIIs have to perform their own calculations based on the scenario designed by the OeNB and a set of</p>

⁵⁶ "Stress testing" comprises a range of activities from simple sensitivity analysis to more complex scenario analyses and reverses stress testing.

	<p>common assumptions. The other stress test is a “Constrained Bottom-up Exercise”: CIs receive their top-down results along with scenarios and assumptions and are invited to check the plausibility of results. CIs may run their own stress test calculation but are not obliged to do so.</p> <p><u>Ad (b)</u></p> <p>Please also refer to CP 16 EC 4.</p>
AC1	For non-internationally active banks, capital requirements, including the definition of capital, the risk coverage, the method of calculation, the scope of application and the capital required, are broadly consistent with the principles of the applicable Basel standards relevant to internationally active banks.
Description and findings re AC1	See EC2
AC2	The supervisor requires adequate distribution of capital within different entities of a banking group according to the allocation of risks. ⁵⁷
Description and findings re AC2	Article 22 of the Banking Act requires all CIs to comply with the regulatory minimum capital requirements on an individual basis, irrespective of whether they belong to a group of CIs or not. Thus, each CI is required to hold own funds according to its risk profile. With respect to internationally active banking groups, minimum requirements for each subsidiary are decided upon by a college of supervisors (consisting of the supervising authorities of all those EEA member states that the banking group is active in).
Assessment of Principle 16	Compliant
Comments	<p>Austria has applied Basel II through the adoption of the EU CRD. It will implement Basel III through the adoption of CRD IV/CRR1 later this year.</p> <p>Capital levels in Austrian Banks have improved over the years (Tier 1 capital at end June 2012 was about 10.5 percent) but are still somewhat below the European average.</p> <p>The FMA can and does to require banks to maintain ratios higher than the minimum 8 percent ratio. A minimum capital ratio of more than 8 percent applied to 6 out of the 677 Austrian banks on a consolidated basis at end 2012, covering</p>

⁵⁷ Please refer to Principle 12, Essential Criterion 7.

	<p>56 percent of consolidated total assets of the Austrian banking system. In addition, capital adequacy add-ons are currently in the process of being implemented for a number of additional banks.</p> <p>At end June 2012 the estimated additional capital required by the Austrian Bank Sector to meet Basel III requirements was EUR 8 billion to EUR 13 billion. (The difference relates to the uncertainty surrounding Tier II capital.) The EUR 13 billion comprises: EUR 4 billion CET1; EUR 4 billion additional Tier 1 capital and a maximum of EUR 5 billion Tier 2. Already, the three largest banking groups (Erste Group Bank, Raiffeisen Zentralbank and Unicredit Bank Austria) meet the 7 percent threshold for Common Equity Tier 1.</p> <p>As part of a restructuring scheme introduced in 2008, the Austrian Government, and to a much lesser extent the private sector, invested together a total of EUR 5.2 billion by way of participation shares in a number of Austrian banks. This is due for repayment at end 2017. Under a special transitional provision in CRD IV, this amount will rank as Tier I capital until maturity in 2017.</p> <p>The terms of Basel III can create difficulties for banks formed as cooperatives in raising additional capital. A big majority (in number) of Austrian banks are cooperatives. Austria is seeking to address this issue. It has recently introduced Article 30 (a) of the Banking Act whereby credit institutions which are permanently affiliated to a central organization which is also a credit institution (the cooperative structure as exists in Austria) can, under certain circumstances, calculate capital adequacy on a consolidated basis thereby removing the need for individual bank cooperatives to hold capital.</p>
<p>Principle 17</p>	<p>Credit risk.⁵⁸ The supervisor determines that banks have an adequate credit risk management process that takes into account their risk appetite, risk profile and market and macroeconomic conditions. This includes prudent policies and processes to identify, measure, evaluate, monitor, report and control or mitigate credit risk⁵⁹ (including counterparty credit risk)⁶⁰ on a timely basis. The full credit lifecycle is covered including credit underwriting, credit evaluation, and the ongoing management of the bank's loan and investment portfolios.</p>

⁵⁸ Principle 17 covers the evaluation of assets in greater detail; Principle 18 covers the management of problem assets.

⁵⁹ Credit risk may result from the following: on-balance sheet and off-balance sheet exposures, including loans and advances, investments, inter-bank lending, derivative transactions, securities financing transactions and trading activities.

⁶⁰ Counterparty credit risk includes credit risk exposures arising from OTC derivative and other financial instruments.

Essential criteria	
EC1	Laws, regulations or the supervisor require banks to have appropriate credit risk management processes that provide a comprehensive bank-wide view of credit risk exposures. The supervisor determines that the processes are consistent with the risk appetite, risk profile, systemic importance and capital strength of the bank, take into account market and macroeconomic conditions and result in prudent standards of credit underwriting, evaluation, administration and monitoring.
Description and findings re EC1	<p>Credit risk management requirements for CIs are set out in the relevant articles of the Banking Act and the Solvency Regulation as well as in Minimum Standards and Guidelines issued by FMA and OeNB. The provisions of the Austrian Banking Act and the Solvency Regulation are fully in line with the respective requirements stipulated in EU legislation (and therefore with the relevant Basel requirements). The most important requirements are described below. (See also CP 15 EC1).</p> <p>According to Article 39 paras. 1 and 2 of the Banking Act (general due diligence obligations), CI management is obliged to conduct business in a prudent way and has to establish administrative, accounting and control procedures which are necessary for the purpose of recording and evaluating the risks of the CIs banking transactions. Article 39 para. 2b of the Banking Act explicitly stipulates that these procedures have to take into account—among others—credit risks. (A more detailed description of Article 39 of the Banking Act can be found in CP15 EC1).</p> <p>According to Article 22 of the Banking Act CIs have to calculate minimum capital requirements for credit risk either on the basis of the standardized approach to credit risk or the internal ratings-based approach. In particular, the IRB-regulations set forth minimum requirements for credit risk management standards and processes.</p> <p>According to Article 39a Banking Act (ICAAP), CIs must have in place effective plans and procedures in order to determine on a regular basis the amount, the composition and the distribution of capital available for the quantitative and qualitative coverage of all material risks from banking transactions and banking operations and to hold capital in the amount necessary. These plans and procedures must be based on the nature, scope and complexity of the banking transactions conducted.</p> <p>Complementary to Article 39 paras. 1 and 2 of the Banking Act, in April 2005 the FMA published “Minimum Standards for the Credit Business and other Transactions entailing Counterparty Risks”, addressing CIs with a minimum capital requirement of EUR 30 million. These standards include principles on risk management and procedures with focus on the independence of risk</p>

management, loan granting process, credit risk analysis, early warning systems, problem loan management and credit risk reporting.

In the course of implementing the Basel II framework FMA and OeNB issued a series of guidelines. These guidelines are intended to assist CIs in Austria redesigning their methods and processes where deemed to be necessary and to develop a mutual understanding between CIs and supervisors. In parallel CEBS and now EBA have been addressing these issues with the primary aim to achieve convergence in supervisory standards and practices across the EEA. Now, in course of implementing Basel III and the creation of a Banking Union, the EC demanded the EBA to develop a single supervisory handbook to complement the single rulebook,(See EC communication of 12 September 2012). Therefore, appropriate guidance for CIs and supervisors alike is to be expected in the (near) future accomplished by EBA.

Pursuant to Article 42 para. 4 nos. 1 to 6 Banking Act, the internal audit has to review risk management procedures and to report to the directors and—under certain conditions—to the chairperson of the CI's supervisory board.

Compliance with the above mentioned requirements is monitored and/or ensured by on-site and off-site supervisory activities (by FMA and OeNB) as well as the implemented regulatory reporting. These activities also reflect and take into account current supervisory and macroeconomic developments (see also CP 15 EC 1).

In addition during the supervisory colleges all credit risk relevant data are exchanged and discussed in detail with host authorities.

Findings from all these sources (on-site, off-site, college) form an integral part in the supervisory credit risk assessment and are an important input for the set-up of the supervisory audit plan and potential capital measures under Pillar II.

If a CI does not comply with the provisions of Articles 39 and 39a of the Banking Act, which has to be assessed by the FMA according to Article 69 para. 2 of the Banking Act, the FMA may take the measures described in Article 70 of the Banking Act.

The bank auditor assesses compliance with Articles 39 and 39a of the Banking Act in the Annex to the Audit Report on the annual financial statements (prudential report, Article 63 para. 4 of the Banking Act). In addition, the internal audit unit has to review the adequacy of these procedures at least once a year (Article 42 para. 4 of the Banking Act).

EC2	The supervisor determines that a bank's Board approves, and regularly reviews, the credit risk management strategy and significant policies and processes for assuming, ⁶¹ identifying, measuring, evaluating, monitoring, reporting and controlling or mitigating credit risk (including counterparty credit risk and associated potential future exposure) and that these are consistent with the risk appetite set by the Board. The supervisor also determines that senior management implements the credit risk strategy approved by the Board and develops the aforementioned policies and processes.
Description and findings re EC2	<p>According to Article 39 para. 1 of the Banking Act, <i>the directors of a CI must exercise the diligence of a prudent and conscientious director as defined in Article 84 para. 1 Stock Corporation Act. In particular, they must obtain information on and control, monitor and limit the risks of banking transactions and banking operations using appropriate strategies and mechanisms, and have in place plans and procedures pursuant to Article 39a (ICAAP). Moreover, they must consider the overall earnings situation of the CI.</i></p> <p>Para. 2 further specifies that <i>CIs must have in place administrative, accounting and control mechanisms for the capture, assessment, management and monitoring of risks arising from banking transactions and banking operations. These mechanisms must be appropriate to the type, scope and complexity of the banking transactions conducted. Wherever possible, the administrative, accounting and control procedures must also capture risks arising from banking transactions and banking operations as well as risks stemming from remuneration policies and practices which might possibly arise.</i></p> <p>CIs are judged on these requirements via the on-site and off-site supervisory process. Credit risk considerations are a major part of off-site analyses (periodic reporting updates, annual scoring report, etc.) as well as a major agenda point in periodic with the management of CIs. In the case of Large CIs particularly, internal risk reports are also reviewed to gain recent and in-depth information on latest credit risk developments. Furthermore, constant information exchanges and consultations take place with the largest CIs regarding current supervisory developments (e.g. in the context of Basel III).</p>
EC3	<p>The supervisor requires, and regularly determines, that such policies and processes establish an appropriate and properly controlled credit risk environment, including:</p> <p>(a) a well documented and effectively implemented strategy and sound policies</p>

⁶¹ "Assuming" includes the assumption of all types of risk that give rise to credit risk, including credit risk or counterparty risk associated with various financial instruments.

	<p>and processes for assuming credit risk, without undue reliance on external credit assessments;</p> <p>(b) well defined criteria and policies and processes for approving new exposures (including prudent underwriting standards) as well as for renewing and refinancing existing exposures, and identifying the appropriate approval authority for the size and complexity of the exposures;</p> <p>(c) effective credit administration policies and processes, including continued analysis of a borrower’s ability and willingness to repay under the terms of the debt (including review of the performance of underlying assets in the case of securitization exposures); monitoring of documentation, legal covenants, contractual requirements, collateral and other forms of credit risk mitigation; and an appropriate asset grading or classification system;</p> <p>(d) effective information systems for accurate and timely identification, aggregation and reporting of credit risk exposures to the bank’s Board and senior management on an ongoing basis;</p> <p>(e) prudent and appropriate credit limits, consistent with the bank’s risk appetite, risk profile and capital strength, which are understood by, and regularly communicated to, relevant staff;</p> <p>(f) exception tracking and reporting processes that ensure prompt action at the appropriate level of the bank’s senior management or Board where necessary; and</p> <p>(g) effective controls (including in respect of the quality, reliability and relevancy of data and in respect of validation procedures) around the use of models to identify and measure credit risk and set limits.</p>
Description and findings re EC3	<p>The Banking Act places the responsibility on the CI’s management to introduce the respective policies and guidelines as well as the corresponding control environment. Furthermore, concrete provisions for credit risk management are specified in the Solvency Regulation Guidelines and Minimum Standards. Specifically the “Minimum Standards for the Credit Business and other Transactions entailing Counterparty Risks” covers aspects such as the independence of risk management, loan granting process, credit risk analysis, early warning systems, problem loan management and credit risk reporting.</p> <p>Issues such as CIs’ risk appetite, credit limits etc. are covered by the specific Pillar II provisions (Article 39a Banking Act) and the respective Guidelines (Guidelines on Bank-Wide Risk Management—Internal Capital Adequacy Assessment Process,</p>

Guidelines on credit granting process and credit risk management).

With respect to risk model related issues, Article 39 of the Banking Act states that CIs must have mechanisms to assess and monitor risks and this also extends to risk models. Model related aspects are also covered by Guidelines (CEBS/EBA/OeNB and FMA Guidelines on rating models and validation, Guidelines on Bank-Wide Risk Management—Internal Capital Adequacy Assessment Process). On top of that, for Basel II IRB CIs the detailed Solvency Regulation (based on the Basel II Accord) applies.

The points mentioned in EC 3 are monitored and/or ensured by on-site and off-site supervisory activities such as:

- The appropriate and properly controlled credit risk environment as well as the related policies and processes are regularly examined in on-site credit risk inspections.
- The use of the Basel II IRB approach requires the approval by FMA which is based on an expert opinion (covering the respective rating models and parameter estimation via an on-site examination) carried out by the OeNB. In addition, a yearly off-site evaluation of the IRB rating models is carried out by the OeNB on the basis of the validation reports which are delivered by the CIs to the OeNB).
- During the Supervisory Review and Evaluation Process (SREP), OeNB evaluates the risks the CI is exposed to and its risk bearing capacity on a yearly basis.
- Monthly report to the OeNB's central credit registry: loans above EUR 350,000, with information about risk classification, provision, collateral of each borrower, etc.
- Annex to the Audit Report of the external bank auditors on the Annual Financial Statements (prudential report): comments on weaknesses of processes and the organizational structure and internal control environment (Article 63 paras. 4 and 5 of the Banking Act).

In general, the approach of on-site credit risk examinations is a first step to gain an overview about the credit portfolio quality based on various risk indicators such as NPL ratios, loan loss provisions, days past due, segments, rating grades, currency, products, loan management status (normal, restructuring, workout), etc. In a second step, the credit risk management framework consisting of strategies, processes and guidelines are evaluated in the context of the insights gained from the initial portfolio analyses. Finally, a risk based selection of individual loan cases is reviewed in order to evaluate the actual implementation of strategies, guidelines and processes as well as the appropriate risk assessment in terms of loan loss provisions and NPL status. Recent macroeconomic and regulatory developments are always considered in on-site inspections.

	<p>OeNB's internal examination standards are implemented as modules in the IT system BOSS (Banking On-Site Supervision System). The last major update of all BOSS modules was performed in 2012.</p> <p>Furthermore, OeNB/FMA may at any time require CIs to provide additional information (i.e., information which is not covered in implemented regulatory reporting) deemed necessary for an effective on-going supervision (Article 70 para. 1 no. 1 of the Banking Act).</p>
EC4	<p>The supervisor determines that banks have policies and processes to monitor the total indebtedness of entities to which they extend credit and any risk factors that may result in default including significant unhedged foreign exchange risk.</p>
Description and findings re EC4	<p>Article 39 Banking Act explicitly states that procedures have to take into account – among others – credit risks and CIs must have mechanisms to assess and monitor these risks. In addition to that, the “Minimum Standards for the Credit Business and other Transactions entailing Counterparty Risks” specifies the requirements for an adequate assessment of the borrower’s creditworthiness and repayment ability.</p> <p>According to Article 27 of the Banking Act CIs have to monitor the lending limits of the single CI and the whole banking group to a single client or a group of connected clients. In case of large exposures, CIs have to report large exposures in the monthly report, also for the whole banking group. According to Article 27 para. 14 of the Banking Act, every large exposure determined pursuant to para. 2 requires the explicit prior consent of the supervisory board, and para. 17 defines additional due diligence obligations regarding large exposures. CIs and other institutions (e.g. leasing and insurance companies) have to report exposures to clients or groups of connected clients exceeding EUR 350,000 to OeNB’s central credit registry on a monthly basis (Article 75 of the Banking Act). The OeNB has to make this data accessible at all times to the FMA. In addition, this report has to contain the members of the groups of connected clients. CIs can obtain information on a client’s indebtedness with other institutions through inquiry at the OeNB.</p> <p>The most recent version of minimum standards concerning FX lending published by the FMA 2012 is a comprehensive update of previously published standards (2003, 2010). In this latest version the FMA addresses the scope of application, risk management practices, information requirements vis-à-vis clients and consumers, strict limitation of new contracts, concrete strategies to decrease the total amount of exposure and involvement of the internal audit.</p> <p>These topics are monitored and ensured by on-site and off-site supervisory activities.</p>

EC5	The supervisor requires that banks make credit decisions free of conflicts of interest and on an arm's length basis.
Description and findings re EC5	<p>There are no specific provisions requiring banks to make credit decisions free of conflicts and on an arm's length basis, not even in the case of related party lending (See Principle 20 EC2). The FMA tends to rely on indirect requirements to deal with such issues, e.g., the requirement for the application of the four eyes principle to all significant decisions taken by banks, the obligation for directors to always act in the best interests of the bank, directors not being able to vote on loan applications in which they have an interest, etc. These mitigating factors are set out as follows:</p> <p>Pursuant to Article 5 para. 1 no. 12 Banking Act each CI must have at least two directors and its articles of association must prohibit individual power of representation or individual "<i>Prokura</i>" (full power of commercial representation within the meaning of Article 48 UGB). This "four-eye-principle" is not only obligatory for the management but also for the entire banking procedures and transactions.</p> <p>According the "Minimum Standards for the Credit Business and other Transactions entailing Counterparty Risks" prudent lending practices imply a segregation of duties and the involvement of more than one person when granting a loan. Depending on the amount of the loan, different hierarchies are involved. This system of involvement of different groups in the lending process (loan officer, risk manager, credit committee, supervisory board, etc.) provides a high level of safety against a possible conflict of interests or pressure from outside parties.</p> <p>In the case of transactions with affiliated parties (regulated in Article 28 Banking Act), the beneficiary has no right to vote on the resolution.</p>
EC6	The supervisor requires that the credit policy prescribes that major credit risk exposures exceeding a certain amount or percentage of the bank's capital are to be decided by the bank's Board or senior management. The same applies to credit risk exposures that are especially risky or otherwise not in line with the mainstream of the bank's activities.
Description and findings re EC6	<p>Article 27 para. 14 of the Banking Act states that every large exposure (10% or more of the CI's eligible capital) requires the explicit prior consent of the supervisory board and that the supervisory board must receive a report on every large exposure at least once per year.</p> <p>Article 27 para. 17 Banking Act states further that where the exposure exceeds 10% of the CI's eligible capital or amounts to at least EUR 750,000, the directors of the CI must have the economic circumstances of the obligors and guarantors</p>

	<p>disclosed before incurring such an exposure and, for the duration of the exposure, remain sufficiently informed about the economic development of the obligors and guarantors as well as the value and enforceability of the collateral, and require the regular presentation of annual financial statements.</p> <p>Article 28 Banking Act requires that loans to persons or enterprises close to the institution (transactions with affiliated parties) require a unanimous decision by all directors of the institution and the explicit consent of the supervisory board.</p> <p>As already mentioned above Article 39 Banking Act explicitly stipulates that procedures have to take into account – among others – credit risks and CIs must have mechanisms to assess and monitor these risks. In addition to that, the “Minimum Standards for the Credit Business and other Transactions entailing Counterparty Risks” demands that the framework conditions for the credit business must contain a clear credit decision making hierarchy and criteria for allocating decisions to a certain level in this hierarchy. For these purposes the criteria include, inter alia, the risk classification of the borrower and the amount and terms of the exposure.</p> <p>Article 39 para. 2c of the Banking Act provides that the board must exercise due diligence in the case of new transactions with respect to which no experience exists as to the risk involved. The board has an obligation to obtain information on and control, monitor and limit the risk the risk of banking transactions (including new types of transactions and banking operations using appropriate strategies and mechanisms.</p> <p>Compliance with the above mentioned requirements is monitored and ensured by on-site and off-site supervisory activities (by FMA and OeNB) as well as the implemented regulatory reporting.</p>
EC7	<p>The supervisor has full access to information in the credit and investment portfolios and to the bank officers involved in assuming, managing, controlling and reporting on credit risk.</p>
Description and findings re EC7	<p>As mentioned under EC4, CIs and other institutions (e.g. leasing and insurance companies) have to report exposures to clients or groups of connected clients exceeding EUR350,000 to the OeNB’s central credit registry on a monthly basis (Article 75 of the Banking Act).</p> <p>In addition, the largest CIs are required to provide data in OeNB’s semi-annual additional data request (ADR) which also includes information on credit and investment portfolios.</p> <p>Furthermore, OeNB/FMA may at any time demand from CIs to provide additional</p>

	<p>information (i.e., information which is not covered in implemented regulatory reporting) deemed necessary for an effective on-going supervision (Article 70 para. 1 no. 1 of the Banking Act). FMA may also mandate the OeNB to perform on-site inspections at any time.</p> <p>In case of such on-site inspections, Article 71 of the Banking Act states that CIs have to put at the disposal of the examiners the records necessary for the inspection and grant them access to the books, documents and data storage devices and also provide information via interviews. The examiners are entitled to request all information and business documents necessary for the inspection from the directors and any person employed in the business. Information can also be gathered from bank auditors.</p>
EC8	The supervisor requires banks to include their credit risk exposures into their stress testing programs for risk management purposes.
Description and findings re EC8	<p>According to Article 45 para. 1 of the Solvency Regulation, CIs are required to have stress testing programs in place in order to assess the adequacy of own funds. Article 45 para. 2 of the Solvency Regulation requires CIs to regularly perform stress tests in order to assess the impact of adverse conditions on the own funds requirement for credit risk thereby, for instance, taking into consideration the impact of (at least) mild recessions, rating migrations of assets and the deterioration of creditworthiness of collateral providers.</p> <p>In addition, the Guidelines on Bank-Wide Risk Management – Internal Capital Adequacy Assessment Process (August 2006) recommend that the ICAAP reporting of CIs prepared for management include the results of stress testing and scenario analyses.</p> <p>The use of the Basel II IRB approach requires the approval by FMA which is based on an expert opinion (covering the respective rating models and parameter estimation via an on-site examination) carried out by the OeNB.</p> <p>OeNB assesses the appropriateness and results of internal stress testing performed by CIs in on-site inspections (either regular credit risk inspections or expert opinions in the course of the IRB approval process).</p>
Assessment of Principle 17	Largely Compliant
Comment	The supervisor has set down comprehensive rules and regulations regarding credit risk in credit institutions which appear to be adequately observed by the banks. However, there is one weakness in the process, relating to EC 5 which requires banks to make credit decisions free of conflicts of interest and on an arm's length

	basis. There is no such specific requirement although the FMA seeks to mitigate the weakness by a number of indirect means
Principle 18	Problem assets, provisions and reserves. ⁶² The supervisor determines that banks have adequate policies and processes for the early identification and management of problem assets, and the maintenance of adequate provisions and reserves. ⁶³
Essential criteria	
EC1	Laws, regulations or the supervisor require banks to formulate policies and processes for identifying and managing problem assets. In addition, laws, regulations or the supervisor require regular review by banks of their problem assets (at an individual level or at a portfolio level for assets with homogenous characteristics) and asset classification, provisioning and write-offs.
Description and findings re EC1	<p>CIIs are required to establish such administrative, accounting and control procedures for the purpose of recording and evaluating the risks of the CI (Article 39 Banking Act). Furthermore, the internal audit unit has to assess the adequacy of such procedures and the legality, propriety and expedience of the entire enterprise (Article 42 para. 1 of the Banking Act).</p> <p>In addition, CIIs are expected to follow the “Minimum Standards for the Credit Business and other Transactions entailing Counterparty Risks”, where the rules for credit policies, procedures, problem loan treatment and provisioning are explained in detail.</p> <p>CIIs have to report to the OeNB their large exposures (including the problematic ones) on a monthly basis (Article 27 of the Banking Act). In addition the OeNB also maintains a credit register, into which all major loans (loans exceeding EUR 350,000, including the problematic ones) are reported on a monthly basis (see also Article 75 of the Banking Act). The report includes information about group of connected clients. The loan file information submitted to the OeNB also includes the CI’s internal rating of the loan and the provisions made so far (all reports submitted to the authorities have to be checked by the internal audit unit of the CI). This process ensures that CIIs are required to evaluate their loans on an ongoing basis. In case of major deficiencies, the auditor is also required to report these deficiencies in the Annex to the Audit Report on the annual financial</p>

⁶² Principle 17 covers the evaluation of assets in greater detail; Principle 18 covers the management of problem assets.

⁶³ Reserves for the purposes of this Principle are “below the line” non-distributable appropriations of profit required by a supervisor in addition to provisions (“above the line” charges to profit).

	<p>statements (prudential report) pursuant to Article 44 para. 4 of the Banking Act.</p> <p>Within the additional data request (ADR), OeNB collects and reviews on a semi-annual basis consolidated data regarding problem loans (NPLs, renegotiated and restructured loans), collateral and provisioning levels. The data is split according to the country of loan origination and also includes the foreign subsidiaries. Other important data sources regarding NPLs, impaired assets and provisioning levels include specialized templates within the regulatory reporting framework (FINREP and COREP) as well as the internal credit risk reports of CIs, which are sent to FMA/OeNB on a regular basis. In addition during the supervisory colleges NPL levels, coverage ratios and other credit risk data are exchanged and discussed in detail with host authorities.</p> <p>Findings from all these sources form an integral part in the supervisory credit risk assessment and are an important input for the set-up of the supervisory audit plan of the FMA and potential capital measures under Pillar II.</p> <p>Pursuant to Article 63 para 3 of the Banking Act the bank auditor has to inform the supervisory authorities, inter alia, of instances of substantial deteriorations of the risk situation of the CI.</p> <p>In addition, in the general supervisory framework a state commissioner attends all supervisory board meetings of each CI exceeding EUR 1bn in assets (Article 76 of the Banking Act). The state commissioner has to forward all relevant documentation from these meetings to the FMA.</p>
EC2	<p>The supervisor determines the adequacy of a bank's policies and processes for grading and classifying its assets and establishing appropriate and robust provisioning levels. The reviews supporting the supervisor's opinion may be conducted by external experts, with the supervisor reviewing the work of the external experts to determine the adequacy of the bank's policies and processes</p>
Description and findings re EC2	<p>The CI's policies and processes for grading and classifying its assets and establishing appropriate and robust provisioning levels are monitored and/or ensured by on-site and off-site supervisory activities such as:</p> <ul style="list-style-type: none"> • The regular off-site review of data from regulatory reporting and ADR as described in EC 1. • The OeNB credit registry is also used to check the credit rating the different CIs apply to overlapping customers (in the cases customers maintain various credit lines with different CIs). In addition during on-site inspections of a CI frequently inspectors go through samples of individual loan files and check if the provision levels are adequate. • On-site credit risk examinations place special emphasis on troubled loan

	<p>classification and management and review a selected sample of individual loan cases, especially in terms of the adequacy of loan loss provisioning (for this purpose a dedicated module in the BOSS IT-application is available; see CP 17 EC1 and EC3). Recent macroeconomic and regulatory developments are always considered in on-site inspections.</p> <p>Bank auditors have to confirm the adequacy of the value of all balance sheet items in their annual review of the CIs financial statements and have to report on the asset quality and the provisions levels in the Annex to the Audit Report on the annual financial statements (prudential report). Article 70 para 1 no. 2a of the Banking Act also empowers the FMA to initiate special audits.</p>
EC3	The supervisor determines that the bank's system for classification and provisioning takes into account off-balance sheet exposures. ⁶⁴
Description and findings re EC3	The supervisory assessment is always based on total exposure (on- and off-balance sheet exposure) without the application of conversion factors and therefore an integral part of on- and off-site supervisory activity.
EC4	The supervisor determines that banks have appropriate policies and processes to ensure that provisions and write-offs are timely and reflect realistic repayment and recovery expectations, taking into account market and macroeconomic conditions.
Description and findings re EC4	See EC 1 and EC 3.
EC5	The supervisor determines that banks have appropriate policies and processes, and organizational resources for the early identification of deteriorating assets, for ongoing oversight of problem assets, and for collecting on past due obligations. For portfolios of credit exposures with homogeneous characteristics, the exposures are classified when payments are contractually in arrears for a minimum number of days (e.g. 30, 60, 90 days). The supervisor tests banks' treatment of assets with a view to identifying any material circumvention of the classification and provisioning standards (e.g. rescheduling, refinancing or reclassification of loans).
Description and findings re EC5	As already mentioned in EC 2, on-site credit risk examinations place special emphasis on troubled loan classification and management and review a selected sample of individual loan cases, especially in terms of the adequacy of loan loss provisioning. In the light of the recent macroeconomic and regulatory

⁶⁴ It is recognized that there are two different types of off-balance sheet exposures: those that can be unilaterally cancelled by the bank (based on contractual arrangements and therefore may not be subject to provisioning), and those that cannot be unilaterally cancelled.

	<p>developments, on-site inspection activities and procedures have been refined in order to address the issues mentioned in EC 5, especially with respect to the correct detection of NPLs and appropriate provisioning.</p> <p>Within the additional data request (ADR), OeNB collects and reviews on a semi-annual basis consolidated data regarding problem loans (NPLs, renegotiated and restructured loans), collateral and provisioning levels. Information gained from the ADR is validated both on-and-off site.</p>
EC6	<p>The supervisor obtains information on a regular basis, and in relevant detail, or has full access to information concerning the classification of assets and provisioning. The supervisor requires banks to have adequate documentation to support their classification and provisioning levels.</p>
Description and findings re EC6	<p>See previous ECs.</p>
EC7	<p>The supervisor assesses whether the classification of the assets and the provisioning is adequate for prudential purposes. If asset classifications are inaccurate or provisions are deemed to be inadequate for prudential purposes (e.g. if the supervisor considers existing or anticipated deterioration in asset quality to be of concern or if the provisions do not fully reflect losses expected to be incurred), the supervisor has the power to require the bank to adjust its classifications of individual assets, increase its levels of provisioning, reserves or capital and, if necessary, impose other remedial measures.</p>
Description and findings re EC7	<p>On-site examinations may result in reclassifications of individual assets as well as additional loan loss provisioning requirements. See EC 2 and EC 5.</p> <p>Within the Pillar II SREP framework, based on the overall risk assessment of a CI, additional capital may be required. The overall level of provisioning given the portfolio and the risk management processes is also considered in the SREP (see CP 17 EC 1).</p>
EC8	<p>The supervisor requires banks to have appropriate mechanisms in place for regularly assessing the value of risk mitigants, including guarantees, credit derivatives and collateral. The valuation of collateral reflects the net realizable value, taking into account prevailing market conditions.</p>
Description and findings re EC8	<p>In recent years, the FMA and OeNB have published a number of Credit Risk Guidelines including Guidelines on Credit Risk Mitigation (in Austria and separately for relevant CEE countries).</p> <p>The assessment of credit risk mitigants plays an essential role in the evaluation of</p>

	<p>the whole credit risk management process and in the individual loan file review during on-site inspections.</p> <p>In addition, the capital requirements for credit risk as stipulated in Articles 22g and 22 h of the Banking Act and in Articles 83 to 155 of the Solvency Regulation provide a strict framework with respect to collateral eligibility and minimum standards in collateral management (valuation based on market values etc.).</p>
EC9	<p>Laws, regulations or the supervisor establish criteria for assets to be:</p> <p>(a) identified as a problem asset (e.g. a loan is identified as a problem asset when there is reason to believe that all amounts due, including principal and interest, will not be collected in accordance with the contractual terms of the loan agreement); and</p> <p>(b) reclassified as performing (e.g. a loan is reclassified as performing when all arrears have been cleared and the loan has been brought fully current, repayments have been made in a timely manner over a continuous repayment period and continued collection, in accordance with the contractual terms, is expected).</p>
Description and findings re EC9	<p>CIIs are required to establish such administrative, accounting and control procedures for the purpose of recording and evaluating the risks of the CI (Article 39 of the Banking Act).</p> <p>Within the additional data request (ADR), OeNB collects and reviews on a semi-annual basis consolidated data regarding problem loans (NPLs, renegotiated and restructured loans), collateral and provisioning levels. The NPL definition applied is broadly in line with Basel II default definition (90 days past due, unlikely to pay).</p> <p>In addition, as already mentioned in EC 2, on-site credit risk examinations place special emphasis on troubled loan classification and management. As in the case of ADR, the Basel II default definitions represent the minimum standard. The process of reclassification to performing is always evaluated in on-site inspections.</p>
EC10	<p>The supervisor determines that the bank's Board obtains timely and appropriate information on the condition of the bank's asset portfolio, including classification of assets, the level of provisions and reserves and major problem assets. The information includes, at a minimum, summary results of the latest asset review process, comparative trends in the overall quality of problem assets, and measurements of existing or anticipated deterioration in asset quality and losses expected to be incurred.</p>
Description and	Internal credit risk reporting to the board is always assessed in on-site inspections.

findings re EC10	<p>In addition to that, off-site supervision regularly receives a CI's internal credit risk reports and also assesses them.</p> <p>In addition, in the general supervisory framework a state commissioner attends all supervisory board meetings of each CI exceeding EUR 1bn in assets (Article 76 of the Banking Act). The state commissioner has to forward all relevant documentation from these meetings to the FMA.</p>
EC11	<p>The supervisor requires that valuation, classification and provisioning, at least for significant exposures, are conducted on an individual item basis. For this purpose, supervisors require banks to set an appropriate threshold for the purpose of identifying significant exposures and to regularly review the level of the threshold.</p>
Description and findings re EC11	<p>Thresholds regarding significant exposures for internal risk management purposes such as provisioning or risk classification vary among CIs. These thresholds—given a CI's portfolio structure and size—are evaluated in on-site inspections on a bank-by-bank basis.</p> <p>Notwithstanding CIs' internal risk management approaches regulatory thresholds are defined in Articles 27(Large Exposures) and 75 (see hereunder) of the Banking Act. These articles stipulate special regulatory reporting requirements and minimum internal control and approval mechanisms on an individual exposure level above the regulatory thresholds.</p> <p>Accordingly, under Article 75 of the Banking Act individual loans above EUR 350,000 have to be reported to the OeNB (credit registry) with information about risk classification, provision, collateral of each borrower, etc. Under Article 27 of the Banking Act, individual large exposures, i.e., exposures to a client or a group of connected clients equaling or exceeding 10 percent of a CI's own funds or a group of CIs own funds to be taken into account and of an amount of at least EUR 500,000 are subject to strictly defined approval procedures (supervisory board approval) and reporting processes as stipulated in Article 27.</p> <p>With respect to accounting aspects IFRS and Austrian GAAP accounting rules require the regular valuation and provisioning of significant exposures on an individual item basis. All positions relevant for supervision including own funds are valued using Austrian GAAP, except for one Austrian CI which currently uses IFRS. Article 22 para. 3 and Article 29a of the Banking Act allow CIs to choose the relevant accounting standards themselves.</p> <p>Bank auditors have to confirm the adequacy of the value of all balance sheet items and of provisioning levels in their annual review of the CIs financial statements and have to report on the asset quality and the provisions levels in the Annex to the</p>

	Audit Report on the annual financial statements (prudential report).
EC12	The supervisor regularly assesses any trends and concentrations in risk and risk build-up across the banking sector in relation to banks' problem assets and takes into account any observed concentration in the risk mitigation strategies adopted by banks and the potential effect on the efficacy of the mitigant in reducing loss. The supervisor considers the adequacy of provisions and reserves at the bank and banking system level in the light of this assessment.
Description and findings re EC12	<p>Trends and concentrations in risk and risk build-up across the banking sector are monitored in the course of the OeNB's macroprudential analyses and are (partially) published in OeNB's semi-annual financial market stability report.</p> <p>The potential build-up of risks and risk trends in the banking sector are regularly discussed in risk assessment workshops and meetings of the FMK. Risk assessment workshops are one-day workshops attended by OeNB staff from different areas (supervisors, economists) and FMA staff and held at the OeNB at least three times a year. The workshops are organized by OeNB's financial markets/financial stability division and cover current risks for the Austrian banking system. A summary of the workshop findings is delivered to OeNB's and FMA's senior management.</p> <p>The FMK is a high-level committee comprising one representative of the FMA, the OeNB and the BMF. External experts may be called in as consultants. They convene at least four times a year to promote cooperation and the exchange of views on the economic situation of and economic challenges posed to the Austrian financial sector</p> <p>In addition, ongoing discussions take place within the ESRB and the EBA in numerous working groups, forums and board meetings. In addition, information provided in the ECB's financial stability reports, EBA risk assessments and relevant IMF publications is taken into account and benchmarked against Austrian/CESEE data. Regular discussions with CIs are also used to discuss risk trends and challenge the CIs' assessments.</p> <p>The so called "bank forum" (<i>Einzelbankforum</i> - EBF), where main risks and ongoing prudential actions of individual CIs are discussed by OeNB- and FMA-management on a quarterly basis, is also used to discuss industry wide trends and risk developments (see also CP 9 EC 3).</p>
Assessment of Principle 18	Compliant
Comments	The FMA has a wide ranging regime for monitoring problem loans in credit institutions. In the first instance, credit institutions must have sound administrative and control systems in place and the internal auditor is required to confirm the

adequacy of such systems.

The OeNB receives a monthly schedule of large exposures (loans in excess of ten percent of capital) including problematic loans, details of all loans over EUR 350,000 (for credit register purposes) and semi-annual consolidated data on problem loans (NPLs, renegotiated and restructured loans), collateral and provisioning. In addition, the bank auditor must inform the supervisory authorities in cases where there is a substantial deterioration of the risk situation in a credit institution. All of these are monitored through the on-site and off-site regime.

The level of NPLs has remained more or less stable within Austria over the last number of years, at less than 5 percent. That of CESEE, however, has risen by 5 percentage points over the last 4 years. It now stands at about 16 percent, giving an overall consolidated figure of over 9 percent for Austrian banks. The level of NPLs in CESEE has stabilized in recent months but is still a major cause of concern for the authorities. In the recently introduced stability program, in order to avoid excessive credit growth in CESEE, a new loan to local stable funding ratio of 110 to 100 has been established. This ratio is not binding but is used for monitoring purposes. For legal questions outside its jurisdictions, the Austrian Supervisor is in full confidence that it will receive the information of local laws and regulation in the CESEE region to the extent necessary by the supervisory colleagues from the CESEE region. Nonetheless, it should ensure that it has appropriately trained staff who are familiar with local laws and regulations in the CESEE region, particularly in the area of collateral valuations (e.g. real estate).

With particular reference to CESEE lending, almost invariably, the CESEE operations of Austrian banks are carried out via branches so that the policies and procedures relating to problems loans, etc., apply equally to lending in Austria and in the other jurisdictions. In addition, the FMA has prepared Guidelines on Credit Risk Mitigants for each jurisdiction in which Austrian banks lend. These Guidelines entitled “Credit Risk Mitigation, Legal Framework in Central and Eastern Europe” have been drafted with the collaboration of experts from the respective countries and are designed as an introduction to security law in each country for banks operating in those countries—or planning to launch operations there—as well as for their customers. The Guidelines describe the requirements of the most frequent types of credit security and the problems that may arise in this context.

Of particular concern in Austria is so called foreign exchange (FX) loans, both domestically (largely Swiss Francs) and in the foreign subsidiaries (largely Euros). They were first advanced in 2008 and now stand at more than EUR 50 billion. No new FX loans are being advanced. These loans (many were mortgages) were structured as investment vehicles, the proceeds of which on maturity were intended to clear the loan in one bullet payment. However, the value of these

	investments is falling short of their anticipated value at inception and the proceeds may not be sufficient to clear the loan on maturity (as well as possibly incurring an FX loss). The level of NPL tends to be higher in this category than in the loan book as a whole. For instance, in the CESEE region total NPLs stood at 15.9 percent at end June 2012 whereas the figure for FX loans stood at 19.7 percent.
Principle 19	Concentration risk and large exposure limits. The supervisor determines that banks have adequate policies and processes to identify, measure, evaluate, monitor, report and control or mitigate concentrations of risk on a timely basis. Supervisors set prudential limits to restrict bank exposures to single counterparties or groups of connected counterparties. ⁶⁵
Essential criteria	
EC1	Laws, regulations or the supervisor require banks to have policies and processes that provide a comprehensive bank-wide view of significant sources of concentration risk. ⁶⁶ Exposures arising from off-balance sheet as well as on-balance sheet items and from contingent liabilities are captured.
Description and findings re EC1	<p>According to Article 39 para. 2 of the Banking Act every CI has to cover, evaluate, steer and monitor its own risks by using adequate methods to administrate, calculate and control considering the type, size and complexity of the respective scope of business.</p> <p>Furthermore according to Article 39 para. 2b of the Banking Act these methods have to consider in particular also the concentration risk (definition of concentration risk see hereunder Article 2 no. 57b of the Banking Act.). In addition, Article 39 para. 2c Banking Act mandates that with respect to new transactions concentration risks must also be captured and assessed.</p> <p>Definition of Concentration Risk (Article 2 no 57b of the Banking Act).</p> <p>"The potential adverse consequences which may arise from concentrations or</p>

⁶⁵ Connected counterparties may include natural persons as well as a group of companies related financially or by common ownership, management or any combination thereof.

⁶⁶ This includes credit concentrations through exposure to: single counterparties and groups of connected counterparties both direct and indirect (such as through exposure to collateral or to credit protection provided by a single counterparty), counterparties in the same industry, economic sector or geographic region and counterparties whose financial performance is dependent on the same activity or commodity as well as off-balance sheet exposures (including guarantees and other commitments) and also market and other risk concentrations where a bank is overly exposed to particular asset classes, products, collateral, or currencies.

	<p>interactions between similar and different risk factors or risk types, such as the risk arising loans to the same client, to a group of connected clients, to clients from the same geographic region or industry or to clients who offer the same goods and services, as well as the risk arising from the use of credit mitigation techniques and in particular from large indirect credit exposures.”</p> <p>As well as the provisions of the Banking Act, the “Minimum Standards for the Credit Business and other Transactions entailing Counterparty Risks” (published by the FMA in April 2005) include references regarding the management of concentration risk via implementing an adequate limit system (see Chapter V. No. 40 and Chapter VI. No. 80).</p> <p>Arising from the above, the adequacy of the concentration risk management of CIs is evaluated by covering topics such as: sufficient documentation (guidelines, policies), adequate measuring methods, reporting of identified concentrations (single name concentrations, industry sector concentrations, etc.), adequate limit system and tight monitoring in on-site inspections.</p> <p>The supervisory view is always based on total exposure (on & off balance sheet exposure) without the application of conversion factors and therefore an integral part of every on- and off-site activity.</p> <p>In addition to the on-site activities where, for example, single name concentrations are evaluated, the adequacy of the quantification methods for concentration risk in CIs is evaluated within the JRAD process (Pillar II).</p>
EC2	<p>The supervisor determines that a bank’s information systems identify and aggregate on a timely basis, and facilitate active management of, exposures creating risk concentrations and large exposure⁶⁷ to single counterparties or groups of connected counterparties.</p>
Description and findings re EC2	<p>The verification of the existence of management information systems concerning exposures creating risk concentrations and large exposure to single counterparties or groups of connected counterparties is part of the supervision process (e.g. during the on-site inspections).</p> <p>CIs have to establish adequate administrative, accounting and control procedures</p>

⁶⁷ The measure of credit exposure, in the context of large exposures to single counterparties and groups of connected counterparties, should reflect the maximum possible loss from their failure (i.e. it should encompass actual claims and potential claims as well as contingent liabilities). The risk weighting concept adopted in the Basel capital standards should not be used in measuring credit exposure for this purpose as the relevant risk weights were devised as a measure of credit risk on a basket basis and their use for measuring credit concentrations could significantly underestimate potential losses (see “*Measuring and controlling large credit exposures*, January 1991).

	<p>for the purpose of recording the large exposures and subsequent changes to them as well as for monitoring these exposures in the light of the CI's exposure policy. The adequacy of these procedures and their enforcement have to be reviewed by the internal audit unit at least once a year (see Articles 27 para. 18, 30 para. 7 and 39 of the Banking Act).</p> <p>Additionally, Article 27 para. 14 of the Banking Act requires for every large exposure the explicit prior consent of the supervisory board or the CI's other supervisory body competent under law or articles of association. Blanket authorizations given before they are actually required are not permissible in this context. The CI's supervisory board or other supervisory body competent according to applicable law or the articles of association must receive a report on every large exposure at least once per year.</p> <p>Furthermore, all limits are regularly evaluated during the on-site examinations regarding their consistency and their execution on a solo and consolidated basis.</p>
EC3	The supervisor determines that a bank's risk management policies and processes establish thresholds for acceptable concentrations of risk, reflecting the bank's risk appetite, risk profile and capital strength, which are understood by, and regularly communicated to, relevant staff. The supervisor also determines that the bank's policies and processes require all material concentrations to be regularly reviewed and reported to the bank's Board.
Description and findings re EC3	The risk management policies in relation to concentration risk are outlined in EC1. Internal risk reporting (including concentration risk) to the board is always assessed in on-site inspections. Also, off-site supervision regularly receives a CI's internal risk reports and assesses them.
EC4	The supervisor regularly obtains information that enables concentrations within a bank's portfolio, including sectoral, geographical and currency exposures, to be reviewed.
Description and findings re EC4	Large exposures have to be reported to the OeNB on a monthly basis according to Article 74 para. 3 no. 1 of the Banking Act. Compliance with this provision is monitored by on-site inspections. Additionally, the monthly reports on large exposures gather sectoral concentrations on a consolidated and unconsolidated basis. The monthly notification also includes the value of the collateral, the extent of the itemized valuation allowance and the rating class of the respective loans. Moreover, the data registered in the OeNB's central credit registry (see also Article 75 Banking Act) provides information on sectoral and/or geographical concentrations within a CI's credit portfolio (on an individual creditor-basis and on

	<p>an aggregated basis).</p> <p>Internal risk reporting (including concentration risk) is always assessed in on-site inspections. In addition, off-site supervision regularly receives a CI's internal risk reports and also assesses them.</p>
EC5	<p>In respect of credit exposure to single counterparties or groups of connected counterparties, laws or regulations explicitly define, or the supervisor has the power to define, a "group of connected counterparties" to reflect actual risk exposure. The supervisor may exercise discretion in applying this definition on a case by case basis.</p>
Description and findings re EC5	<p>A detailed definition of a "group of connected counterparties" is set in Article 27, paras 11 and 12 of the Banking Act. It is a broad definition, based on the following: "Natural or legal persons as well as other entities of which one may exercise control..."</p> <p>In addition to the above, the Guidelines to the Major Loans Register" of OeNB establish interpretation rules for group of connected clients.</p>
EC6	<p>Laws, regulations or the supervisor set prudent and appropriate⁶⁸ requirements to control and constrain large credit exposures to a single counterparty or a group of connected counterparties. "Exposures" for this purpose include all claims and transactions (including those giving rise to counterparty credit risk exposure), on-balance sheet as well as off-balance sheet. The supervisor determines that senior management monitors these limits and that they are not exceeded on a solo or consolidated basis.</p>
Description and findings re EC6	<p>In keeping with the definitions set out in the EU Capital Requirement Directive (CRD) a large exposure is defined as an exposure representing ten percent or more of a CI's capital; twenty five percent of a CI's capital is the limit for a large exposure to private counterparties (including credit institutions) or a group of connected counterparties.</p> <p>When calculating large exposures, off balance sheet transactions are taken into account. (Articles 27, paras 2 and 15 of the Banking Act).</p> <p>The OeNB receives detailed information on any large credit exposure via reporting requirements and in the course of on-site inspections.</p>

⁶⁸ Such requirements should, at least for internationally active banks, reflect the applicable Basel standards. As of September 2012, a new Basel standard on large exposures is still under consideration.

EC7	The supervisor requires banks to include the impact of significant risk concentrations into their stress testing programs for risk management purposes.
Description and findings re EC7	<p>Concentration risk related issues (including stress testing) are covered in the guidelines issued by FMA and OeNB on Bank-Wide Risk Management.</p> <p>The guidelines recommend that the ICAAP reporting of CIs prepared for management include the results of stress testing and scenario analyses.</p> <p>The OeNB assesses the appropriateness and results of internal stress testing performed by CIs in its annual ICAAP and SREP assessments and on-site inspections as the case may be. Off-site, these assessments are made on the basis of the ICAAP questionnaire, which is distributed to the respective CIs on a yearly basis. Where an on-site inspection takes place, this can be assessed in more detail, especially as regards utilization of qualitative information.</p>
Additional criteria	
AC1	<p>In respect of credit exposure to single counterparties or groups of connected counterparties, banks are required to adhere to the following:</p> <p>(a) ten percent or more of a bank's capital is defined as a large exposure; and</p> <p>(b) twenty-five percent of a bank's capital is the limit for an individual large exposure to a private sector non-bank counterparty or a group of connected counterparties.</p> <p>Minor deviations from these limits may be acceptable, especially if explicitly temporary or related to very small or specialized banks.</p>
Description and findings re AC1	According to Article 27 paras. 2 and 15 of the Banking Act CIs have to adhere to the two mentioned large exposure definitions (10 percent and 25 percent). See also EC 6.
Assessment of Principle 19	Compliant
Comments	The FMA implements the EU Directive for the purposes of calculating large counterparty exposures. The FMA does not set limits to exposures to, for example, sectoral, geographical, currency, etc. exposures. It does, however, monitor exposures to these sectors. If it believes that any such exposure is excessive it will increase the level of capital cover for such excesses. It does not have the legal powers to issue, for instance, a directive/condition on the bank requiring it to limit

	<p>(or indeed reduce) such exposures as can be the practice in other jurisdictions.</p> <p>This lack of power is not specific to large exposures—it has much wider application, e.g. sovereign debt. For this reason, it is not intended to downgrade this assessments or assessments for other exposures on an individual basis. It will be dealt with under Principle 11—Corrective and Sanctioning Powers of Supervisors.</p>
Principle 20	Transactions with related parties. In order to prevent abuses arising in transactions with related parties ⁶⁹ and to address the risk of conflict of interest, the supervisor requires banks to enter into any transactions with related parties ⁷⁰ on an arm’s length basis; to monitor these transactions; to take appropriate steps to control or mitigate the risks; and to write off exposures to related parties in accordance with standard policies and processes.
Essential criteria	
EC1	Laws or regulations provide, or the supervisor has the power to prescribe, a comprehensive definition of “related parties”. This considers the parties identified in the footnote to the Principle. The supervisor may exercise discretion in applying this definition on a case by case basis.
Description and findings re EC1	Article 28 of the Banking Act defines “related parties”. It includes directors, members of the supervisory board, the spouses and close family members of both, any person representing the directors or supervisory board members as well as third part entities in which these persons have an interest.
EC2	Laws, regulations or the supervisor require that transactions with related parties are not undertaken on more favorable terms (e.g. in credit assessment, tenor, interest rates, fees, amortization schedules, requirement for collateral) than corresponding transactions with non-related counterparties. ⁷¹

⁶⁹ Related parties can include, among other things, the bank’s subsidiaries, affiliates, and any party (including their subsidiaries, affiliates and special purpose entities) that the bank exerts control over or that exerts control over the bank, the bank’s major shareholders, Board members, senior management and key staff, their direct and related interests, and their close family members as well as corresponding persons in affiliated companies.

⁷⁰ Related party transactions include on-balance sheet and off-balance sheet credit exposures and claims, as well as, dealings such as service contracts, asset purchases and sales, construction contracts, lease agreements, derivative transactions, borrowings, and write-offs. The term transaction should be interpreted broadly to incorporate not only transactions that are entered into with related parties but also situations in which an unrelated party (with whom a bank has an existing exposure) subsequently becomes a related party.

⁷¹ An exception may be appropriate for beneficial terms that are part of overall remuneration packages (e.g. staff receiving credit at favorable rates).

Description and findings re EC2	<p>There is no explicit requirement to the effect that transactions with related parties must not be undertaken on more favourable terms than corresponding transactions with non-related counterparties.</p> <p>The relevant provision is Article 28 para 1 of the Banking Act. It states that a CI, either directly or indirectly, may enter into legal transactions with related parties as defined in Article 28 para. 1 Banking Act only upon a unanimous resolution taken by all directors and subject to the consent of the supervisory board or of other supervisory bodies competent according to the applicable law or the articles of association. The party involved is not entitled to vote on resolutions regarding transactions with management and related parties, although the legislation is silent on whether the board member is excluded from all discussions on the matter.) In the case of loans, the resolution must also govern the interest rate and repayment.</p> <p>According to Article 70 Stock Corporation Act the management board has to conduct its business for the benefit of the company. Article 84 of the Stock Corporation Act in conjunction with Article 39 of the Banking Act stipulates that management board members have to “exercise their duties with the due diligence of a prudent director.”</p> <p>Anybody who—given his influence on the company—determines board members to grant special benefits to the damage of the company or its shareholders is liable. Additionally, supervisory and management board members are liable jointly and severally, if they acted in a negligent way in granting such special benefits (Article 100 Stock Corporation Act in conjunction with Article 84 Stock Corporation Act).</p>
EC3	<p>The supervisor requires that transactions with related parties and the write-off of related-party exposures exceeding specified amounts or otherwise posing special risks are subject to prior approval by the bank’s Board. The supervisor requires that Board members with conflicts of interest are excluded from the approval process of granting and managing related party transactions.</p>
Description and findings re EC3	<p>Transactions listed in Article 28 para. 1 nos. 1 to 6 of the Banking Act (transactions with management and related persons) have to be approved on basis of a unanimous resolution taken by all directors and are subject to the consent of the supervisory board. The party involved is not entitled to vote on resolutions regarding transactions with management and related parties (see Article 28 para. 1 of the Banking Act).</p> <p>If a member of the management board/director of the CI or a related person is at the same time the economic owner or member of the management board of a company, transactions with this company require the consent of the supervisory</p>

	board (Article 28 para. 3 of the Banking Act).
EC4	The supervisor determines that banks have policies and processes to prevent persons benefiting from the transaction and/or persons related to such a person from being part of the process of granting and managing the transaction.
Description and findings re EC4	<p>Transactions involving directors and members of the management or supervisory board require a unanimous resolution by all directors and the consent of the supervisory board. Anybody who is involved into such transactions has no voting power. (Article 28 para. 1 of the Banking Act).</p> <p>Furthermore, these transactions have to be reported to the supervisory board on an annual basis (Article 28 para. 4 of the Banking Act).</p> <p>However, there is no explicit prohibition on persons benefiting from the transaction and/or persons related to such a person from being part of the managing the transaction.</p>
EC5	Laws or regulations set, or the supervisor has the power to set on a general or case by case basis, limits for exposures to related parties, to deduct such exposures from capital when assessing capital adequacy, or to require collateralization of such exposures. When limits are set on aggregate exposures to related parties, those are at least as strict as those for single counterparties or groups of connected counterparties.
Description and findings re EC5	<p>There are no specific limits for exposures to related parties. Instead, the general large exposures limits are applied. Thus, an individual large exposure to a single client or a group of connected clients (i.e., group of persons/entities related to one another) is limited to 25 percent of the CI's own funds.</p> <p>Any participation in a company, which is not a CI or financial institution or which does not conduct banking-related business must not exceed 15 percent of the CI's own funds. The total amount of such participations must not exceed 60 percent of the CI's own funds (see Article 29 paras. 1 and 2 of the Banking Act and CP 7).</p> <p>A participation in CIs or Financial Institutions, which are not part of the group of CIs, has to be deducted from own funds under defined circumstances (Article 23 para. 13 of the Banking Act).</p>
EC6	The supervisor determines that banks have policies and processes to identify individual exposures to and transactions with related parties as well as the total amount of exposures, and to monitor and report on them through an independent credit review or audit process. The supervisor determines that exceptions to policies, processes and limits are reported to the appropriate level of the bank's

	<p>senior management and, if necessary, to the Board, for timely action. The supervisor also determines that senior management monitors related party transactions on an ongoing basis, and that the Board also provides oversight of these transactions.</p>
Description and findings re EC6	<p>CI's must set up management, accounting and control procedures which are adequate with regard to the extent and the complexity of the business. The effectiveness of control procedures and the compliance with them have to be audited annually (Article 39 para. 2 of the Banking Act).</p> <p>The following rules apply to monitoring and reporting:</p> <ul style="list-style-type: none"> a) With regards to management and related party transactions, the CI's supervisory board must receive a report on each of these transactions and each of these loans and advances at least once per year (Article 28 para. 4 of the Banking Act). b) Large exposures have to be reported to the supervisory board at least on an annual basis (Article 27 para. 14 of the Banking Act) <p>Detailed regulations on how connected parties must be identified can be found in the OeNB Guidelines for the Major Loans Register.</p> <p>A review of policies for transactions with related parties and a review of specific individual exposures with related parties including the reporting and review process can be part of on-site inspections depending on the inherent risk and volume of those transactions. Large exposures have to be reviewed by internal audit on an annual basis and are a main focus of regulatory reviews and reporting.</p> <p>There are no explicit provisions whereby exceptions to policies, procedures, and limits are reported to the appropriate level of the bank's senior management and, if necessary, to the Board, for timely action.</p>
EC7	<p>The supervisor obtains and reviews information on aggregate exposures to related parties.</p>
Description and findings re EC7	<p>According to Article 74 paras. 2 and 3 and Article 75 para. 1 of the Banking Act, CI's have to report large exposures as well as any exposure above EUR 350,000 on a monthly basis. This information is reviewed on a monthly basis and also during on- and off-site inspections.</p> <p>Furthermore, the state commissioner has to report to the FMA quarterly. If in his judgment any resolution taken by the supervisory board violates the Banking Act, he has to inform the FMA immediately (see Article 76 para. 5 Banking Act).</p>

	<p>Generally, supervisory board and management board meeting minutes are requested and reviewed as part of each on-site inspection. Thus, information on exposures to related parties is obtained through approvals and reports, which are part of meeting minutes.</p> <p>The bank auditor, in his annual report to the FMA, specifies the aggregate exposures to related parties.</p>
Assessment of Principle 20	Materially non-compliant.
Comments	<p>A number of issues listed in the essential criteria are not specifically addressed although in certain instances there are other mitigating circumstances.</p> <p>EC2. There is no explicit requirement to the effect that transactions with related parties must not be undertaken on more favourable terms than corresponding transactions with non-related counterparties. Related party loans will only be granted upon a unanimous resolution taken by all directors and subject to the consent of the supervisory board. The resolution must also govern the interest rate and repayment terms but there is no requirement that these must be at arm's length. (FMA content that directors must at all times act in the best interest of the credit institution and to grant related party lending at favourable rates would be in breach of this requirement. This argument, however, may not always be valid—for example, the directors may believe that the granting of a related party loan on favourable terms to a key director may be in the best interest of the institution.)</p> <p>EC3. There is no requirement that the write-off of related exposures exceeding specific amounts or otherwise posing special risks are subject to prior approval by the bank's board.</p> <p>EC3(also). Any board member or member of the supervisory board cannot vote on a resolution dealing with a loan in which he/she would be a beneficiary, although there is no specific provision banning the member from being party to discussions on the loan. Also, there is no explicit prohibition on such a beneficiary managing the account.</p> <p>EC6. Banks have policies and processes to identify individual exposures to and transactions with related parties as well as the total amount of exposures and to monitor and report on them through an independent credit review or audit process. However, there is no explicit provision for exceptions to policies, processes and limits to be reported to the appropriate level of the bank's senior management and, if necessary, to the board, for timely action.</p> <p>EC7. The supervisor does not receive a specific listing of related party lending. The</p>

	<p>FMA can directly request such a list if this is deemed necessary. What it does receive are quarterly reports on large exposures as well as any exposure above Euro 350,000 on a monthly basis (Central Credit Register). This information is reviewed and the issue of related party lending is examined on on-site inspections. Also, the State Commissioner has to report to the FMA if in his/her judgement any resolution taken by the supervisory board of a credit institution violates the Banking Act. (The State Commissioner is appointed by the Federal Minister of Finance and attends all supervisory board meetings in the case of Credit Institutions whose total assets exceed Euro 1 billion. He/ she must raise objections to resolutions which violate legal or other provisions or administrative rulings of the FMA and must report immediately on such activities to the FMA). The bank auditor specifies an aggregate figure for all related party lending in his annual report to the FMA.</p> <p>The FMA believes that all of these requirements enable it to monitor adequately related party lending. It is suggested, however, that, for the sake of completeness, the FMA receive a specific listing of all related party lending on a regular basis.</p> <p>Maximum levels of related party lending is governed by the general limits that apply to large exposures (10 percent/25 percent—see Principle 19). The FMA should consider introducing specific, more restrictive, limits for related party lending.</p>
Principle 21	Country and transfer risks. The supervisor determines that banks have adequate policies and processes to identify, measure, evaluate, monitor, report and control or mitigate country risk ⁷² and transfer risk ⁷³ in their international lending and investment activities on a timely basis.
Essential criteria	
EC1	The supervisor determines that a bank's policies and processes give due regard to the identification, measurement, evaluation, monitoring, reporting and control or mitigation of country risk and transfer risk. The supervisor also determines that the processes are consistent with the risk profile, systemic importance and risk appetite of the bank, take into account market and macroeconomic conditions

⁷² Country risk is the risk of exposure to loss caused by events in a foreign country. The concept is broader than sovereign risk as all forms of lending or investment activity whether to/with individuals, corporates, banks or governments are covered.

⁷³ Transfer risk is the risk that a borrower will not be able to convert local currency into foreign exchange and so will be unable to make debt service payments in foreign currency. The risk normally arises from exchange restrictions imposed by the government in the borrower's country. (Reference document: *IMF paper on External Debt Statistics – Guide for compilers and users*, 2003.)

	and provide a comprehensive bank-wide view of country and transfer risk exposure. Exposures (including, where relevant, intra-group exposures) are identified, monitored and managed on a regional and an individual country basis (in addition to the end-borrower/end-counterparty basis). Banks are required to monitor and evaluate developments in country risk and in transfer risk and apply appropriate countermeasures.
Description and findings re EC1	<p>In case of off-site inspection the supervisor uses the Banking Information System (BIS) statistics to identify, monitor and control the country risk and transfer risks. Furthermore, the BIS statistics are enlarged to create a so called (OeNB) Risk Statistics (<i>Risikostatistik</i>) which shows also the ultimate country risks. In addition to the analysis of the original country and transfer risks the (open) foreign currency positions and their minimum capital requirements, regulated under Article 22 of the Banking Act and Article 223 Solvency Regulation, are also monitored.</p> <p>The BIS statistics was established in accordance with Article 39 and Article 39a of the Banking Act. In addition, the FMA and the OeNB have published guidelines on "Bank-Wide Risk Management and the Internal Capital Adequacy Assessment Process" to support Austrian CIs in implementing an adequate ICAAP.</p>
EC2	The supervisor determines that banks' strategies, policies and processes for the management of country and transfer risks have been approved by the banks' Boards and that the Boards oversee management in a way that ensures that these policies and processes are implemented effectively and fully integrated into the banks' overall risk management process.
Description and findings re EC2	CIs are expected to account for country and transfer risk as expressed in the guidelines on "Bank-Wide Risk Management and the Internal Capital Adequacy Process" as an integral part of their ICAAP. The ICAAP framework of a CI has to be approved by the CIs' boards on a regularly basis.
EC3	The supervisor determines that banks have information systems, risk management systems and internal control systems that accurately aggregate, monitor and report country exposures on a timely basis; and ensure adherence to established country exposure limits.
Description and findings re EC3	During the on-site inspections the OeNB verifies especially the credit risk management, the participation in other countries, the loans given to other countries and the groups of connected clients (Article 27 para. 4 of the Banking Act) with companies abroad as well as the internal audit unit of the CI (Article 42 of the Banking Act). In applying the Supervisory Review and Evaluation Process (Articles 69 and 70 of the Banking Act) the relevant risk management systems (including limitation issues), the risk measurements and Internal Control Systems

	of the CI are also evaluated during an on-site inspection.
EC4	<p>There is supervisory oversight of the setting of appropriate provisions against country risk and transfer risk. There are different international practices that are all acceptable as long as they lead to risk-based results. These include:</p> <p>(a) The supervisor (or some other official authority) decides on appropriate minimum provisioning by regularly setting fixed percentages for exposures to each country taking into account prevailing conditions. The supervisor reviews minimum provisioning levels where appropriate.</p> <p>(b) The supervisor (or some other official authority) regularly sets percentage ranges for each country, taking into account prevailing conditions and the banks may decide, within these ranges, which provisioning to apply for the individual exposures. The supervisor reviews percentage ranges for provisioning purposes where appropriate.</p> <p>(c) The bank itself (or some other body such as the national bankers association) sets percentages or guidelines or even decides for each individual loan on the appropriate provisioning. The adequacy of the provisioning will then be judged by the external auditor and/or by the supervisor.</p>
Description and findings re EC4	<p>Country risk provisions are made in Austria on an individual basis and are subject to the general rules for provisioning of the Banking Act. Details on provisioning can be found under comments on CP 20.</p> <p>Provisions are set for country risk or counterparty risk due to the financial weakness of the debtor. The CI has to demonstrate general country risk provisions (for each country), which are assessed by the bank auditor in the Annex to the Audit Report (in accordance with the Regulation on the Annex to the Audit Report on the Annual Financial Statements).</p> <ol style="list-style-type: none"> 1) There is no specific published legal regulation on the percentages or amounts for country risk provisions in Austria. 2) The supervisors (or some other official authority) do not set percentage intervals for each country. <p>Certified public accountants publish general quotations for countries(for consistency in the carrying out of audits); also bank sectors publish lists with provision-quotes for the CIs within the respective sector. It is up to the CI's directors to decide on the appropriate provisioning (Article 39 of the Banking Act) which will be assessed by the bank auditors (see Article 63 Banking Act) and by the FMA and the OeNB. However, in the case where a CI substantially deviates from the general quotation for country risk lending (secondary market prices) the</p>

	CI has to publish this fact. Otherwise the bank auditor must not endorse the annual financial statements or has to add a comment.
EC5	The supervisor requires banks to include appropriate scenarios into their stress testing programs to reflect country and transfer risk analysis for risk management purposes.
Description and findings re EC5	<p>The methodology for incorporating appropriate scenarios into stress testing programs for country and transfer risk is based upon EBA GL 32, which states in GL 10/93: "In conducting this assessment, supervisors should consider the transferability of capital and liquidity in financial groups during stressed conditions, taking account of potential funding difficulties that may be expected in stressed conditions." CIs basically tend to incorporate this issue in their stress testing methodology if there is at least a realistic possibility that potential funding difficulties may come up during stressed market conditions.</p> <p>From a supervisory point of view, liquidity-transfers are monitored and analyzed on a regular basis via the monitoring of the "Supervisory guidance on the strengthening of the sustainability of the business models of large internationally active Austrian banks" (published in March 2012).</p> <p>Furthermore, the EBA GL 32 (Annex, Liquidity Risk 8) states: "When conducting liquidity stress testing exercises on a consolidated basis possible strains on transfers of liquidity among the entities in the group should be considered and incorporated into the relevant scenarios." Cross-border liquidity-transfer problems are incorporated in stress tests operated by CIs basically on a qualitative level.</p>
EC6	The supervisor regularly obtains and reviews sufficient information on a timely basis on the country risk and transfer risk of banks. The supervisor also has the power to obtain additional information, as needed (e.g. in crisis situations).
Description and findings re EC6	The supervisor gets information on credit risk by using the BIS statistics, the so called Risk Statistics and the Major Loan Registers (credit engagements exceeding EUR 350,000). Additionally, in the Annex to the Audit Report of the bank auditor on the annual financial statements (prudential report) the exposures are shown in total and per country. Furthermore, the open exposures on foreign currencies and their minimum capital requirements have to be reported.
Assessment of Principle 21	Compliant
Comments	The "Comments" for Principle 19—Large Exposures are also relevant for this Principle.

Principle 22	Market risk. The supervisor determines that banks have an adequate market risk management process that takes into account their risk appetite, risk profile, and market and macroeconomic conditions and the risk of a significant deterioration in market liquidity. This includes prudent policies and processes to identify, measure, evaluate, monitor, report and control or mitigate market risks on a timely basis.
Essential criteria	
EC1	Laws, regulations or the supervisor require banks to have appropriate market risk management processes that provide a comprehensive bank-wide view of market risk exposure. The supervisor determines that these processes are consistent with the risk appetite, risk profile, systemic importance and capital strength of the bank; take into account market and macroeconomic conditions and the risk of a significant deterioration in market liquidity; and clearly articulate the roles and responsibilities for identification, measuring, monitoring and control of market risk.
Description and findings re EC1	<p><u>1. Legal Framework</u></p> <p>The risks inherent in CIs' Trading Books are explicitly quoted in the general due diligence requirements as set forth in Article 39 of the Banking Act, whereby a sound framework for quantifying and managing market risk in the Trading Book becomes a necessary feature for the fulfillment of the due diligence requirements.</p> <p>Articles 21e and 22p of the Banking Act and Articles 224 to 232 of the Solvency Regulation specify the criteria for appropriate identification, measuring, monitoring and control of market risk for CIs which calculate their minimum capital requirement for market risk based on an internal model (Value-at-Risk (VaR), stressed Value-at-Risk (sVaR) and if applicable All Price Risks measure (APR) for correlation trading products as well as Incremental Risk Charge (IRC)).</p> <p>For CIs that apply the standardized approach to determine their minimum capital requirements and CIs whose trading book does not exceed the limits specified in Article 22q para. 1 of the Banking Act ("small trading book"), the principles for measuring and controlling market risk are more generally specified in Articles 39 para. 2 and 39a of the Banking Act.</p> <p>Article 22n of the Banking Act specifies under which circumstances positions ought to be assigned to a CI's Trading Book, irrespective of the approach utilized for calculating the CI's minimum capital requirement for market risk. Article 22o of the Banking Act defines the Risk Types in the Trading Book for which minimum capital requirements have to be calculated, based either on the internal model based approach pursuant Article 22p of the Banking Act and Articles 224 to 232 of</p>

the Solvency Regulation or on the standardized approach according to the rules defined in Article 220 para. 2 of the Banking Act and Articles 203 to 223 of the Solvency Regulation.

Articles 195 to 197 of the Solvency Regulation specify further requirements concerning the assignment of positions to the Trading Book and their treatment. Articles 198 to 202 of the Solvency Regulation regulate the areas of position valuation, independent price verification, prudent valuation adjustments and necessary systems and controls in place.

2. Practical Application

The rules laid down in the Articles mentioned above are reviewed in the course of on-site inspections and off-site analyses of relevant data provided by the CIs in the form of periodic reports. The supervisory requirements concerning market risk in the Trading Book are duly covered in the internal examination standards for on-site inspections. Market risk in the Trading Book is also a relevant aspect in on-site inspections of CIs' ICAAP (pursuant Article 39a of the Banking Act) and in the annual SREP / JRAD (see CP 15 EC 1). Both off-site analyses and on-site inspections focus on the commensurability of CIs' internal risk management processes, quantification models and internal rules with the complexity and scope of business pursued in this field as well as with the systemic importance of the CI as a whole and its trading operations in particular. Details on the supervisory assessment of the different facets of market risk management are outlined in the ensuing ECs. OeNB's internal examination standards are implemented as modules in the IT system BOSS (Banking On-Site Supervision System). The last major update of all BOSS modules was performed in 2012. (Currently, an English translation is being compiled which will be provided upon completion).

Furthermore, the application of internal models for calculating minimum capital requirements for market risk in the Trading Book is examined on-site during the initial model approval process and when assessing material model changes. Once approved, these internal models are subject to on-going off-site analysis.

Furthermore, the bank auditor has to confirm that the institution under consideration complies with the rules set out in the above mentioned regulations on a yearly basis (Article 63 para. 4 of the Banking Act in conjunction with the Regulation on the Annex to the Audit Report on the Annual Financial Statements).

In the course of implementing the Basel II framework FMA and OeNB issued a series of guidelines. These guidelines were intended to assist CIs in Austria redesigning their methods and processes where this was seen essential and to develop a mutual understanding between CIs and supervisors. In parallel CEBS and now EBA have been addressing these issues with the primary aim to achieve

	<p>convergence in supervisory standards and practices across the EEA. Now, in course of implementing Basel III, the EC demanded the EBA to develop a single supervisory handbook to complement the single rulebook. Therefore, appropriate guidance for CIs and supervisors alike is to be expected in the (near) future accomplished by EBA. FMA and OeNB will decide on a case by case basis whether the present Austrian guidelines are to be replaced by respective new EBA guidelines or whether the Austrian supervisors themselves will update the respective guideline.</p> <p>The Guidelines on Market Risk which have been issued by the OeNB in 1999 still provide some guidance and general principles illustrating how to cope with the relevant rules for the identification, measuring, monitoring and control of market risk. These publications are designed to increase transparency and to enhance the objectivity of the audit procedures. The following six volumes are available in German:⁷⁴</p> <p>Volume 1: General Market Risk of Debt Instruments (2nd revised and extended edition)</p> <p>Volume 2: Standardized Approach Audits</p> <p>Volume 3: Evaluation of Value at Risk-Models</p> <p>Volume 4: Provisions for Options Risks</p> <p>Volume 5: Stress Testing</p> <p>Volume 6: Other Risks associated with the Trading Book</p>
EC2	<p>The supervisor determines that banks' strategies, policies and processes for the management of market risk have been approved by the banks' Boards and that the Boards oversee management in a way that ensures that these policies and processes are implemented effectively and fully integrated into the banks' overall risk management process.</p>
Description and findings re EC2	<p>1. Legal Framework</p> <p>See EC 1. Since market risk management is an explicit requirement in the due diligence provisions set forth in Article 39 of the Banking Act, the criteria outlined in EC 2 are explicitly addressed:</p>

⁷⁴ http://www.oenb.at/en/presse_pub/period_pub/finanzmarkt/barev/barev.jsp#tcm:16-154029

	<p><i>Article 39.</i></p> <p><i>(1) In their management activities, the directors of a CI must exercise the diligence of a prudent and conscientious director as defined in Article 84 para. 1 of the Stock Corporation Act. In particular, they must obtain information on and control, monitor and limit the risks of banking transactions and banking operations using appropriate strategies and mechanisms, and have in place plans and procedures pursuant to Article 39a. Moreover, they must consider the overall earnings situation of the CI.</i></p> <p><i>(2) CIs must have in place administrative, accounting and control mechanisms for the capture, assessment, management and monitoring of risks arising from banking transactions and banking operations. These mechanisms must be appropriate to the type, scope and complexity of the banking transactions conducted. Wherever possible, the administrative, accounting and control procedures must also capture risks arising from banking transactions and banking operations which might possibly arise. The organizational structure must prevent conflicts of interest and of competences by establishing delineations in structural and process organization which are appropriate to the CI's business operations. The adequacy of these procedures and their enforcement must be reviewed by the internal audit unit at least once per year.</i></p> <p>The existence of board-approved strategies and policies for the management of trading positions is also a requirement of Article 195 of the Solvency Regulation. Binding policies and documentation of risk management processes are also an explicit requirement of Article 225 of the Solvency Regulation which regulates the qualitative criteria for the admission of internal models for calculating the minimum capital requirement for market risk.</p> <p><u>2. Practical Application</u></p> <p>As outlined in the above answer to EC 1, CIs' market risk management and governance are assessed both via off-site analyses and via on-site inspections. The respective strategies and policy documents are utilized as basis for off-site analyses; furthermore, their adequacy and the soundness of their implementation are scrutinized in the framework of on-site inspections.</p>
EC3	<p>The supervisor determines that the bank's policies and processes establish an appropriate and properly controlled market risk environment including:</p> <p>(a) effective information systems for accurate and timely identification, aggregation, monitoring and reporting of market risk exposure to the bank's Board and senior management;</p> <p>(b) appropriate market risk limits consistent with the bank's risk appetite, risk</p>

	<p>profile and capital strength, and with the management's ability to manage market risk and which are understood by, and regularly communicated to, relevant staff;</p> <p>(c) exception tracking and reporting processes that ensure prompt action at the appropriate level of the bank's senior management or Board, where necessary;</p> <p>(d) effective controls around the use of models to identify and measure market risk, and set limits; and</p> <p>(e) sound policies and processes for allocation of exposures to the trading book.</p>
Description and findings re EC3	<p><u>1. Legal Framework</u></p> <p>See EC 1. The general provisions set forth in our answer to EC 1 also serve as answer to EC 3, details can be found below.</p> <p><u>Ad (a)</u></p> <p>The existence of adequate, accurate and effective information systems is an explicit requirement of Article 39 paras. 1 and 2 of the Banking Act and is thereby valid for any CI irrespective of the approach used for calculating the minimum capital requirement. Furthermore, Article 195 para. 2 lit. d of the Solvency Regulation mandates that Trading Book positions shall be part of the CI's risk reporting to the board and senior management (irrespective of approach for capital calculation). For CIs utilizing the internal model based approach for calculating the minimum capital requirement for market risk, the qualitative model standards specified in Article 225 of the Solvency Regulation stipulates that board members shall subject daily market risk reports to a strategic analysis with special focus on the CI's risk bearing capacity.</p> <p><u>Ad (b)</u></p> <p>It is necessary to distinguish between CIs that apply an internal model to determine their minimum capital requirement (VaR CIs) and CIs that apply the standardized approach or that run a so called "small" Trading Book.</p> <ul style="list-style-type: none"> • VaR CIs: According to Article 22p para. 5 no. 1 of the Banking Act, for the proper capture of market risk, limits must be set for the individuals and organizational units responsible for trading. The fulfillment of these rules is part of the model approval process. Pursuant to Article 21e para. 2 of the Banking Act, the FMA has to seek an expert opinion from the OeNB in the approval procedure on whether all relevant requirements are met, on the independence of the expert appointed by the CI and on the size of the factor

	<p>(multiplier) referred to in Article 22p para. 2 no. 2 of the Banking Act. This expert opinion is based on an on-site inspection conducted by the OeNB.</p> <ul style="list-style-type: none"> • Other CIs: For all other CIs, the rules are laid down in Articles 39 paras. 1 and 39a of the Banking Act, where it is stated that directors of CIs shall appropriately limit the risks of banking transactions and of operating the CI. Based on Article 70 para. 1 no. 3 of the Banking Act the FMA may instruct the OeNB to conduct on-site inspections for the purpose of reviewing the orderly limitation of market risk. <p><u>Ad (c)</u></p> <p>The existence of exception tracking and reporting processes as stipulated by EC 3 (c) ought to be assessed in connection with the CI's information systems and reporting processes. (See legal framework above.)</p> <p><u>Ad (d)</u></p> <p>For those CIs utilizing an internal model for calculating the minimum capital requirement for the Trading Book, detailed rules governing the internal control processes are specified in Article 225 of the Solvency Regulation. For all CIs including those which use market risk models solely for internal purposes (Pillar II), the general due diligence requirements as specified in Articles 39 and 39a of the Banking Act apply.</p> <p><u>Ad (e)</u></p> <p>Sound policies and processes for the assignment of positions to the Trading Book are requested by Article 22n of the Banking Act. The general requirements set forth in Article 22n of the Banking Act are amended by Article 196 of the Solvency Regulation which contains provisions for the assignment of positions to the Trading Book.</p>
EC4	<p>The supervisor determines that there are systems and controls to ensure that banks' marked-to-market positions are revalued frequently. The supervisor also determines that all transactions are captured on a timely basis and that the valuation process uses consistent and prudent practices, and reliable market data verified by a function independent of the relevant risk-taking business units (or, in the absence of market prices, internal or industry-accepted models). To the extent that the bank relies on modeling for the purposes of valuation, the bank is required to ensure that the model is validated by a function independent of the relevant risk-taking businesses units. The supervisor requires banks to establish and maintain policies and processes for considering valuation adjustments for positions that otherwise cannot be prudently valued, including concentrated, less</p>

	liquid, and stale positions.
Description and findings re EC4	<p><u>1. Legal Framework</u></p> <p>According to Article 70 para. 1 no. 3 of the Banking Act the OeNB may be instructed to perform on-site inspections in any risk category, line of business or organizational unit. Based on the scope of the inspection performed upon order of the FMA, the inspectors verify that CIs which run a large trading book (i.e., the limits given in Article 22q para. 1 of the Banking Act are exceeded) perform a daily valuation of trading book positions and run a daily process of limit control and reporting. As specified in Article 21e para. 2 of Banking Act the OeNB verifies during the approval period (amongst others) that all transactions are captured on a timely basis and that the daily evaluation of trading book positions using appropriate market data is conducted.</p> <p>Requirements dealing with valuation adjustments/reserves for positions that otherwise cannot be prudently valued (including concentrated, less liquid, and stale positions) are specified in Articles 198 to 202 of the Solvency Regulation.</p> <p>Independent model validation is a legal requirement as laid down in Article 225 para. 12 of the Solvency Regulation.</p> <p><u>2. Practical Application</u></p> <p>The rules laid down in the Articles mentioned above are reviewed in the course of on-site inspections and off-site analyses of relevant data provided by the CIs in the form of periodic reports. During on-site inspections, OeNB always puts a special emphasis on the revision of the data supply for the models and procedures in use. OeNB considers the input of accurate and relevant data to be one of the most important issues concerning the measurement and control of market risk.</p>
EC5	The supervisor determines that banks hold appropriate levels of capital against unexpected losses and make appropriate valuation adjustments for uncertainties in determining the fair value of assets and liabilities.
Description and findings re EC5	<p><u>1. Legal Framework</u></p> <p>According to Article 39a para. 1 of the Banking Act, all CIs must have in place effective plans and procedures in order to determine on a regular basis the amount, the composition and the distribution of capital available for the quantitative and qualitative coverage of all material risks from banking transactions and banking operations and to hold capital in the amount necessary. These plans and procedures must be based on the nature, scope and complexity of the banking transactions conducted.</p>

	<p>The aspect of EC 5 concerning valuation adjustments is covered by Article 201 of the Solvency Regulation.</p> <p><u>2. Practical Application</u></p> <p>The adequacy of models used for determining the amount of internal capital and the resulting internal capital allocation are both central aspects of the annually conducted SREP/JRAD (see CP15 EC1). Within the framework of the SREP/JRAD, information and data submitted by the CIs are analyzed off-site. In addition to the assessment of internal capital adequacy performed in the annual SREP/JRAD, this topic is extensively covered in on-site inspections in the area of ICAAP. In addition to ICAAP inspection, the quantification of market risk for Pillar II purposes is also assessed in the framework of market risk inspections.</p>
EC6	The supervisor requires banks to include market risk exposure into their stress testing program for risk management purposes.
Description and findings re EC6	<p><u>1. Legal Framework</u></p> <ul style="list-style-type: none"> • VaR CIs: According to Article 22p para. 5 no. 1 lit. b of the Banking Act in conjunction with Articles 224 to 232 of the Solvency Regulation, VaR CIs have to perform stress testing and reverse stress testing (Article 230 para. 5 of the Solvency Regulation). The results of these tests have to be sent to FMA and OeNB on a quarterly basis. During the approval process, the stress testing procedures are examined by OeNB. • All CIs: Based on Article 70 para. 1 of the Banking Act the OeNB performs on-site inspections in the course of which these issues are addressed. <p><u>2. Practical Application</u></p> <p>The criteria laid down in EC 6 are reviewed in the course of on-site inspections. The issues of scenario analysis, stress testing and contingency planning are addressed in detail in the OeNB Guidelines on Market Risk (Volume 3, "Evaluation of Value at Risk–Models", and Volume 5, "Stress Testing"). The area of stress testing including reverse stress testing is also covered in detail in OeNB's internal examination standards for on-site inspections.</p> <p>Stress testing results submitted by CIs which utilize an internal model based approach for calculating minimum capital requirements for market risk in the Trading Book are analyzed off-site on a quarterly basis.</p>
Assessment of Principle 22	Compliant

Comments	The trading operations of—even the largest—Austrian CIs are relatively limited. The focus lies on flow trading and to a limited extent on warehousing positions in order to meet future clients’ needs. Proprietary trading strategies hardly exist anymore, those proprietary strategies and desks which existed have almost all been scrapped over the last four years. The traded instruments are mostly plain vanilla derivatives and cash instruments in the areas of FX and interest rate (including credit) markets. Equity instruments and derivatives play a minor role in Austrian CIs’ trading activities. Exotic structures both in cash instruments and in derivatives are traded in limited amounts. The most noteworthy exposures to exotic markets arise from Austrian CIs’ operations in CESEE countries which usually lead to small trading positions in those countries’ FX, interest rate and equity markets.
Principle 23	Interest rate risk in the banking book. The supervisor determines that banks have adequate systems to identify, measure, evaluate, monitor, report and control or mitigate interest rate risk ⁷⁵ in the banking book on a timely basis. These systems take into account the bank’s risk appetite, risk profile and market and macroeconomic conditions.
Essential criteria	
EC1	Laws, regulations or the supervisor require banks to have an appropriate interest rate risk strategy and interest rate risk management framework that provides a comprehensive bank-wide view of interest rate risk. This includes policies and processes to identify, measure, evaluate, monitor, report and control or mitigate material sources of interest rate risk. The supervisor determines that the bank’s strategy, policies and processes are consistent with the risk appetite, risk profile and systemic importance of the bank, take into account market and macroeconomic conditions, and are regularly reviewed and appropriately adjusted, where necessary, with the bank’s changing risk profile and market developments.
Description and findings re EC1	Interest rate risk in the banking book forms part of the general due diligence obligations (directors’ responsibilities) according to Article 39 of the Banking Act. The general principles which are applied to all CIs with respect to interest rate risk in the banking book are given in Article 39 paras. 1, 2 and 2b of the Banking Act. In particular, CIs must develop and maintain an ICAAP that identifies risks CIs are or might be exposed to and allocate adequate internal capital against those risks (Article 39a para. 1 of the Banking Act). The overall responsibility for the ICAAP is

⁷⁵ Wherever “interest rate risk” is used in this Principle the term refers to interest rate risk in the banking book. Interest rate risk in the trading book is covered under Principle 22.

assigned to the institution's management board, which must ensure that the CI's risk-bearing capacity is secured and that all material risks (including the interest rate risk in the banking book) are measured and limited.

Furthermore, FMA and OeNB monitor a CI's interest rate risk based on Article 69 para. 2 of the Banking Act: In contrast to other Pillar II risks, Article 69 para. 3 of the Banking Act stipulates the obligation that *"the review and evaluation performed by the FMA (SREP) must include the exposure of CIs to the interest rate risk arising from non-trading activities. The FMA must take measures in the case of CIs whose economic value declines by more than 20% of their own funds as a result of a sudden and unexpected change in interest rates, the size of which is to be prescribed by the FMA and must not differ between CIs."*

The interest rate shock prescribed by FMA is currently 200 bps.

Guidance with respect to supervisory expectations towards interest rate risk management have been made public in the FMA/OeNB guidelines on Interest Rate Risks in the Banking Book (*"Leitfaden zum Management des Zinsrisikos im Bankbuch"*), published in 2008⁷⁶.

The implementation of the supervisory requirements set forth by EC1 is also covered by the answer to the ensuing ECs and ACs of CP 23. Summarizing, the commensurability of a CI's interest rate risk measurement, monitoring and steering with the institution's risk appetite, its size and complexity, its systemic importance and the riskiness of its lines of business are subject to ongoing supervisory attention both off-site and on-site. The data submitted by CIs via the compulsory interest rate statistics (*Zinsrisikostatistik*) as mandated by Article 69 of the Banking Act (see also EC 3) serves as basis for detailed off-site evaluations. In particular, data on interest rate risk bearing positions are combined with up-to-date market data in an in-house Value-at-Risk model. To assess a CI's interest rate risk the results are interpreted in relation to other sources of risk (Incremental-VaR) and to the risk bearing capacity of the CI.

Furthermore, a major off-site supervisory undertaking is the annual SREP/JRAD in which the adequacy of institutions' ICAAP is assessed (see CP 15 EC 1). In addition to these off-site analyses, CIs' ICAAP in general and specific Pillar II risk categories such as market risks in the Banking Book are regular subjects of on-site inspections during which the requirements and standards set forth in EC1 and in all other ECs and ACs of CP 23 are evaluated in detail. OeNB's internal examination standards are implemented as modules in the IT system BOSS (Banking On-Site Supervision System). The last major update of all BOSS modules was performed in

⁷⁶ <http://www.fma.gv.at/de/über-die-fma/publicationen/fmaoenb-leitfadenreihe.html>.

	2012. (Currently, an English translation is being compiled which will be provided upon completion.)
EC2	The supervisor determines that a bank's strategy, policies and processes for the management of interest rate risk have been approved, and are regularly reviewed, by the bank's Board. The supervisor also determines that senior management ensures that the strategy, policies and processes are developed and implemented effectively.
Description and findings re EC2	<p>(See EC1 for legal framework).</p> <p>The interest rate risk in the banking book is covered by the ICAAP/SREP framework (Pillar II risks) (see CP 15 EC 1). CIs must have in place administrative, accounting and control mechanisms for the capture, assessment, management and monitoring of risks arising from potential changes in interest rates as they affect the CI's banking book activities (Article 39 paras. 2 and 2b of the Banking Act). The adequacy of these procedures and their enforcement must be reviewed by the internal audit unit at least once per year (Article 42 para. 4 no. 5 of the Banking Act). Guidance with respect to identification, measurement and controlling interest rate risk is given in the FMA/OeNB Guideline on Interest Rate Risk in the Banking Book (2008). Moreover, the CIs must have in place sound, effective and complete strategies and processes to assess and maintain on an on-going basis the amounts, types and distribution of internal capital that they consider adequate to cover the nature and level of the risks (including interest rate risk in the banking book) to which they are exposed (Article 39a para. 1 of the Banking Act). The legal requirements set out in Article 39 of the Banking Act are reviewed periodically through on-site inspections and are analyzed off-site based on the risk management information that FMA/OeNB receive from CIs. Interest rate risk in the Banking Book together with its related strategies, policies and processes is not only assessed in the context of ICAAP and the SREP/JRAD process (see CP15/EC1) but also in the framework of on-site inspections dedicated to market risks in the Banking Book.</p>
EC3	<p>The supervisor determines that banks' policies and processes establish an appropriate and properly controlled interest rate risk environment including:</p> <ul style="list-style-type: none"> (a) comprehensive and appropriate interest rate risk measurement systems; (b) regular review, and independent (internal or external) validation, of any models used by the functions tasked with managing interest rate risk (including review of key model assumptions); (c) appropriate limits, approved by the banks' Boards and senior management, that reflect the banks' risk appetite, risk profile and capital strength, and are

	<p>understood by, and regularly communicated to, relevant staff;</p> <p>(d) effective exception tracking and reporting processes which ensure prompt action at the appropriate level of the banks' senior management or Boards where necessary; and</p> <p>(e) effective information systems for accurate and timely identification, aggregation, monitoring and reporting of interest rate risk exposure to the banks' Boards and senior management.</p>
Description and findings re EC3	<p>See EC's I and 2 re legal basis (Article 39a pars 1 and 2 of Banking Act).</p> <p>CI's must have in place interest rate risk systems for measuring, monitoring, controlling and reporting of interest rate exposures. It is essential that these systems capture all material sources of interest rate risk (Article 39 of the Banking Act). CI's must establish and enforce consistent limits and other practices to maintain exposures within levels consistent with their internal capital (Article 39 para. 1 of the Banking Act). The assumptions underlying the systems must be clearly understood and validated on a regular basis (Article 39a para. 2 of the Banking Act). In the case of interest rate risk in the banking book the FMA must take measures in the case of CI's whose economic value declines by more than 20 percent of their own funds as a result of a sudden and unexpected change in interest rates (currently 200 basis points). The range of possible supervisory measures is set in Article 70 paras. 4 and 4a of the Banking Act.</p> <p>The review and evaluation performed by FMA/OeNB is based on on-site inspections and off-site activities (primarily on reports received from CI's and quantitative analysis models developed by FMA/OeNB). The criteria EC3 (a)-(e) are duly covered in OeNB's internal standards for on-site inspections, more precisely in the examination standards for ICAAP and market risks in the Banking Book.</p>
EC4	<p>The supervisor requires banks to include appropriate scenarios into their stress testing programs to measure their vulnerability to loss under adverse interest rate movements.</p>
Description and findings re EC4	<p>See also EC1.</p> <p>In the context of internal capital assessment under Pillar II CI's should consider stress testing in order to improve the institution's understanding of its current risk profile (diagnostic tool) and potential future losses (forward looking tool). Stress testing should enable CI's to assess the adequacy of internal capital under stressful market conditions. FMA/OeNB expects that CI's develop their own systems and stress tests which are commensurate with their risk profile and risk management policies. The administrative, accounting and control mechanism for the capture,</p>

	<p>assessment, management and monitoring of risks arising from banking transactions and banking operations (Article 39 para. 2 of the Banking Act) must include risks arising (or possibly arising) from the macroeconomic environment (Article 39 para. 2b no. 10 of the Banking Act).</p> <p>To facilitate supervisors monitoring of interest rate risk exposures in the banking book across institutions, CIs must provide the results of their internal measurement systems (additionally to a standardized approach), expressed in terms of the change in economic value relative to own funds (sum of Tier I and Tier II capital) using a parallel 200 basis point shift, which reflects a fairly uncommon and stressful rate environment.</p> <p>In addition to parallel shifts in the yield curve, CIs are supposed to measure the vulnerability under scenarios that might include changes in the relationship among key market rates (basis risk), changes in the slope and shape of the yield curve (yield curve twists and butterflies), changes in the volatility of market rates or shifts in the customer behaviors etc. CIs should consider the results of stress tests when establishing and reviewing the policies and limits for interest rate risk. Generally stress tests should provide CIs answers to the following questions:</p> <ul style="list-style-type: none"> • What will the loss be in the event of the specified scenarios? • What are the institution’s worst case scenarios? • What can CIs do to limit the losses incurred in the worst case scenarios? <p>Guidance with respect to supervisory expectations towards interest rate stress test has been published in the FMA/OeNB guidelines on Interest Rate Risks in the Banking Book (2008), especially in Section 4.4.3. CIs’ interest rate stress testing program is comprehensively covered in OeNB’s internal examination standards, based on which regular on-site inspections are conducted.</p>
Additional criteria	
AC1	The supervisor obtains from banks the results of their internal interest rate risk measurement systems, expressed in terms of the threat to economic value, including using a standardized interest rate shock on the banking book.
Description and findings re AC1	Since the end of 2002, the OeNB has been using quarterly reports on interest rate statistics (“Zinsrisikostatistik”) to monitor the interest rate risk in the banking book of all CIs in Austria. Such a report consists of an interest rate gap analysis, and its principles follow the Basle Committee’s document “Principles for the management and Supervision of Interest Rate Risk—Annex 4”. The reporting requirements for interest rate risk exposures in the banking book are specified in Article 74 para. 1

	<p>of the Banking Act.</p> <p>A standardized reporting framework ("<i>Zinsrisikostatistik</i>", which is part of the Asset, Income and Risk Statement) provides FMA/OeNB with sufficient information to assess the individual CIs' interest rate risk exposures on a quarterly basis. The monitoring of interest rate risk in the Banking Book for supervisory purposes is based on risk as measured by economic value approach using a maturity/repricing schedule (gap analysis). All interest-sensitive assets, liabilities and OBS positions (off-balance sheet) have to be slotted into 13 predefined time bands according to their residual term to maturity (fixed rate instruments) or residual term to the next repricing date (floating-rate instruments). Those assets and liabilities lacking definitive repricing intervals or actual maturities that could vary from contractual maturities (NOMALS: non-maturing assets and liabilities) are assigned to time bands according to the judgment and past experience of CIs. Material changes to assumptions underlying the distribution of interest-sensitive assets, liabilities and OBS into the time bands must be clearly documented by CIs and reported to OeNB. Additionally to the standardized reporting, CIs have to provide (on a quarterly basis) the results of their internal measurement systems that are pursuant to Article 39 para. 2 of the Banking Act in terms of the threat to economic value using a standard rate shock. The standard interest rate shock is currently defined as a parallel 200 basis point shift. The accuracy and completeness of the content of notifications and reports (including the interest rate statistics) to FMA/OeNB must be reviewed by the internal audit unit. The reported interest rate figures are subject to off-site analysis performed by OeNB and further on-going supervision by FMA. According to Article 70 para. 1 no. 1 of the Banking Act FMA may demand additional information (reports in specified forms and layout, audit reports, etc.) from CIs at any time. CIs' modeling assumptions for interest rate risk statistics and possible differences between the regulatory interest rate risk reporting and any internal models used by CIs are examined in detail in the course of on-site inspections.</p>
AC2	The supervisor assesses whether the internal capital measurement systems of banks adequately capture interest rate risk in the banking book.
Description and findings re AC2	The Supervisory Review Evaluation Process pursuant to Article 69 para. 2 of the Banking Act monitors the adequacy of the capital available for the quantitative coverage of material risks from CIs activities as well as the adequacy of the procedures given in Article 39 paras. 1 and 2 and Article 39a of the Banking Act, with special regard to the risks given in Article 39 para. 2b of the Banking Act. As indicated in Article 69 para. 3 of the Banking Act (see above EC 4) the supervisory review process must include the interest rate risk in the banking book.

	<p>The administrative, accounting and control mechanisms of CIs for the capture, assessment, management and monitoring of risks must include the interest rate risk in the banking book (Article 39 paras. 2 and 2b of the Banking Act). Moreover, the procedures pursuant to Article 39 para. 2c of the Banking Act must ensure that risks arising from new transactions as well as concentration risks are captured and assessed to the fullest possible extent. The suitability and enforcement of the procedures pursuant to Article 39 para. 2 and Article 39a of the Banking Act must be reviewed by the internal audit unit (Article 42 para. 4 no. 5 of the Banking Act). The main sources of information for FMA/OeNB are on-site inspections, assessing whether the corresponding control and administrative procedures (Article 39 paras. 1, 2 and Article 39a of the Banking Act) are in place, and also information provided by the bank auditor (Article 63 para. 3 of the Banking Act). Furthermore, the FMA may at any time demand from CIs information on all business matters, e.g. reports in specified forms and using specified layouts, audit reports (Article 70 para. 1 no. 1 of the Banking Act).</p> <p>The adequacy of CIs' internal capital adequacy system in general and their adequacy with respect to interest rate risk are treated in detail in the annual SREP/JRAD (see CP15/EC1) and in the framework of on-site inspections.</p>
Assessment of Principle 23	Compliant
Comments	The requirements in respect of interest rate risk in the banking book are based on the European regulatory framework (CRD and CAD) and accordingly incorporate Basel 11 requirements. They also take into account various relevant papers issued by the Basel Committee, e.g. "Principles for the Management and Supervision of Interest Rate Risk,"
Principle 24	Liquidity risk. The supervisor sets prudent and appropriate liquidity requirements (which can include either quantitative or qualitative requirements or both) for banks that reflect the liquidity needs of the bank. The supervisor determines that banks have a strategy that enables prudent management of liquidity risk and compliance with liquidity requirements. The strategy takes into account the bank's risk profile as well as market and macroeconomic conditions and includes prudent policies and processes, consistent with the bank's risk appetite, to identify, measure, evaluate, monitor, report and control or mitigate liquidity risk over an appropriate set of time horizons. At least for internationally active banks, liquidity requirements are not lower than the applicable Basel standards.
Essential criteria	

EC1	Laws, regulations or the supervisor require banks to consistently observe prescribed liquidity requirements including thresholds by reference to which a bank is subject to supervisory action. At least for internationally active banks, the prescribed requirements are not lower than, and the supervisor uses a range of liquidity monitoring tools no less extensive than, those prescribed in the applicable Basel standards.
Description and findings re EC1	<p>Article 39 of the Banking Act sets general due diligence obligations for CIs being explicitly applicable to liquidity risk (see Article 39 para. 2c of the Banking Act; CP 7 EC 1).</p> <p>According to Article 25 para. 1 of the Banking Act, CIs have to ensure, that they are able to meet payment obligations at any time. For this reason they have to establish a company specific financial and liquidity planning, they have to sufficiently ensure their ability to compensate for any future imbalances of incoming and outgoing payments by constantly maintaining sufficient liquid funds. They must have in place documentation on the basis of which the CI's financial situation can be calculated with reasonable accuracy at all times.</p> <p>In addition, CIs have to comply with two different ratios stipulated by Article 25 of the Banking Act: first and second degree liquidity.</p> <p>First degree liquidity is the ratio of highly liquid assets such as cash in hand, balances with the national bank, Euro sight deposits with the respective central institution in relation to liabilities of the first degree as demand deposits or deposits with periods of notice or terms less than 6 months.</p> <p>Second degree liquidity is the ratio of second degree liquid assets such as checks, bonds due, fixed income securities, which are admitted to an Austrian stock exchange or a regulated stock exchange of a member state of the EU, demand moneys and forward deposits with CIs subject to periods of notice or terms less than six months in relation to second degree liabilities. First degree liquidity has to exceed 1.0 percent, second degree liquidity 20 percent of the corresponding liabilities (see Article 25 of the Banking Act and Article 1 of the 5th Regulation on Liquidity (5. <i>Liquiditätsverordnung</i>)).</p> <p>When calculating first and second degree liquidity ratios, CIs have to consider off-balance sheet exposures arising from repurchase transactions.</p> <p>The FMA also operates a cash-flow liquidity measurement system introduced in 2008. Data is therefore available for almost five years. Approx. 30 Austrian banks (on a consolidated / sub-consolidated level) report on a weekly basis, covering more than 80 percent of total assets of the consolidated Austrian banking system. Cash inflows (broken down by 14 positions) and outflows (16 positions) as well as</p>

	<p>available counter-balancing capacity (11 positions) are reported and analyzed every Friday. Each position is available by maturity buckets (up to 5 days / 1 month / 3 months / 6 months / 1 year) and currencies (EUR, USD, CHF, GBP, JPY, Other). In addition to regular liquidity risk reports, the cash-flow data serves as primary data source for the OeNB's liquidity stress test.</p> <p>Furthermore, CIs have to establish a capital commitment balance sheet and have to report it to the FMA and OeNB (residual maturity statistics). Thereby all on-balance sheet positions subject to a maturity are segregated into different buckets ranging from falling due daily to above five years.</p> <p>The Liquidity Risk Management Regulation (<i>Liquiditätsrisikomanagementverordnung—LRMV</i>) which complements Articles 25 and 39 of the Banking Act is described in CP 4 and CP 15 EC 1.</p>
EC2	The prescribed liquidity requirements reflect the liquidity risk profile of banks (including on- and off-balance sheet risks) in the context of the markets and macroeconomic conditions in which they operate.
Description and findings re EC2	<p>According to Article 25 para. 1 of the Banking Act, CIs have to ensure, that they are able to meet payment obligations at any time. For this reason they have to establish a company specific financial and liquidity planning, they have to sufficiently ensure their ability to compensate for any future imbalances of incoming and outgoing payments by constantly maintaining sufficient liquid funds. They must have in place documentation on the basis of which the CI's financial situation can be calculated with reasonable accuracy at all times. Article 25 is complemented by the Liquidity Risk Management Regulations (LRMV). Inter alia, it provides that institutions are obliged to consider alternative scenarios on liquidity positions and on risk mitigants and review the assumptions underlying decisions concerning the funding position (also with regard to established relationships with relevant market counterparties) at least annually. Institutions shall adjust their strategies internal policies and limits on liquidity risk and develop effective contingency plans, taking into account the outcome of the alternative scenarios. According to Article 25 of the LRMV CIs shall have in place different liquidity risk mitigation tools, including a system of limits and liquidity buffers in order to be able to withstand a range of different stress events and an adequately diversified funding structure and access to funding sources. .</p>
EC3	The supervisor determines that banks have a robust liquidity management framework that requires the banks to maintain sufficient liquidity to withstand a range of stress events, and includes appropriate policies and processes for managing liquidity risk that have been approved by the banks' Boards. The supervisor also determines that these policies and processes provide a comprehensive bank-wide view of liquidity risk and are consistent with the banks'

	risk profile and systemic importance
Description and findings re EC3	According to the legal framework in Austria it is each CI's director's responsibility to ensure that adequate strategies and processes are established and that liquidity risk is adequately monitored and limited (Article 39 para.1 of the Banking Act).
EC4	<p>The supervisor determines that banks' liquidity strategy, policies and processes establish an appropriate and properly controlled liquidity risk environment including:</p> <ul style="list-style-type: none"> (a) clear articulation of an overall liquidity risk appetite that is appropriate for the banks' business and their role in the financial system and that is approved by the banks' Boards; (b) sound day-to-day, and where appropriate intraday, liquidity risk management practices; (c) effective information systems to enable active identification, aggregation, monitoring and control of liquidity risk exposures and funding needs (including active management of collateral positions) bank-wide; (d) adequate oversight by the banks' Boards in ensuring that management effectively implements policies and processes for the management of liquidity risk in a manner consistent with the banks' liquidity risk appetite; and (e) regular review by the banks' Boards (at least annually) and appropriate adjustment of the banks' strategy, policies and processes for the management of liquidity risk in the light of the banks' changing risk profile and external developments in the markets and macroeconomic conditions in which they operate.
Description and findings re EC4	The Liquidity Risk Management Regulation (LRMV), which complements Article 25 of the Banking Act, specifies the qualitative minimum requirements regarding liquidity risk. They specify the application of the relevant CEBS guidelines ("CEBS guidelines on Liquidity Buffers & Survival Periods" and "CEBS Guidelines on Liquidity Cost Benefit Allocation") for Austrian CIs. Compliance with the LRMV is assessed on a regular basis via on-site and off-site supervision process. The LRMV has the legal status of a regulation and states that competent authorities (FMA/OeNB) shall ensure that institutions have robust strategies, policies, processes and systems for the identification, measurement, management and monitoring of liquidity risk over an appropriate set of time horizons, including intra-day, so as to ensure that institutions maintain adequate levels of liquidity buffers. Those strategies, policies, processes and systems shall be tailored to business lines,

	<p>currencies, branches and legal entities and shall include adequate allocation mechanisms of liquidity costs, benefits and risks. Strategies, policies, processes and systems shall be proportionate to the complexity, risk profile, scope of operation of the institutions and risk tolerance set by the management body and reflect the institution's importance. The LRMV also specifies the obligation to exercise due care of the management board in Article 11 concerning monitoring, judgement, supervision and assessment of liquidity risk in conjunction with a permanent evaluation of the CIs position within market environment on an on-going basis. The bank management is responsible for a permanent compliance with the minimum standards as defined in the LRMV.</p>
EC5	<p>The supervisor requires banks to establish, and regularly review, funding strategies and policies and processes for the ongoing measurement and monitoring of funding requirements and the effective management of funding risk. The policies and processes include consideration of how other risks (e.g. credit, market, operational and reputation risk) may impact the bank's overall liquidity strategy, and include:</p> <ul style="list-style-type: none"> (a) an analysis of funding requirements under alternative scenarios; (b) the maintenance of a cushion of high quality, unencumbered, liquid assets that can be used, without impediment, to obtain funding in times of stress; (c) diversification in the sources (including counterparties, instruments, currencies and markets) and tenor of funding, and regular review of concentration limits; (d) regular efforts to establish and maintain relationships with liability holders; and (e) regular assessment of the capacity to sell assets.
Description and findings re EC5	<p>The Liquidity Risk Management Regulation (LRMV) (Article 40 linked with GL2, Article 46 of CEBS GL on Liquidity Buffers & Survival Periods) states that institutions are obliged to consider alternative scenarios on liquidity positions and on risk mitigants and review the assumptions underlying decisions concerning the funding position (also with regard to established relationships with relevant market counterparties) at least annually. Institutions shall adjust their strategies, internal policies and limits on liquidity risk and develop effective contingency plans, taking into account the outcome of the alternative scenarios. According to Article 25 of the LRMV CIs shall have in place different liquidity risk mitigation tools, including a system of limits and liquidity buffers in order to be able to withstand a range of different stress events and an adequately diversified funding</p>

	structure and access to funding sources.
EC6	The supervisor determines that banks have robust liquidity contingency funding plans to handle liquidity problems. The supervisor determines that the bank's contingency funding plan is formally articulated, adequately documented and sets out the bank's strategy for addressing liquidity shortfalls in a range of stress environments without placing reliance on lender of last resort support. The supervisor also determines that the bank's contingency funding plan establishes clear lines of responsibility, includes clear communication plans (including communication with the supervisor) and is regularly tested and updated to ensure it is operationally robust. The supervisor assesses whether, in the light of the bank's risk profile and systemic importance, the bank's contingency funding plan is feasible and requires the bank to address any deficiencies.
Description and findings re EC6	The LRMV (Articles 45 to 47) states that institutions have in place liquidity recovery plans setting out adequate strategies and proper implementation measures in order to address possible liquidity shortfalls, including in relation to branches and subsidiaries established in third countries. The plans shall be tested at least annually, updated on the basis of the outcome of the alternative scenarios. The assessment of the contingency funding plans is done via on-site and off-site supervision on a regular basis.
EC7	The supervisor requires banks to include a variety of short-term and protracted bank-specific and market-wide liquidity stress scenarios (individually and in combination), using conservative and regularly reviewed assumptions, into their stress testing programs for risk management purposes. The supervisor determines that the results of the stress tests are used by the bank to adjust its liquidity risk management strategies, policies and positions and to develop effective contingency funding plans.
Description and findings re EC7	Article 5 of the LMRV: "Alternative scenarios on liquidity positions and on risk mitigants shall be considered and the assumptions underlying decisions concerning the funding position shall be reviewed regularly. For these purposes, alternative scenarios shall address, in particular, off-balance sheet items and other contingent liabilities, including those of SSPEs or other special purpose entities, in relation to which the CI acts as sponsor or provides material liquidity support. CIs shall consider the potential impact of institution-specific, market-wide and combined alternative scenarios. Different time horizons and varying degrees of stressed conditions shall be considered." Article 4 of the LMRV: "CIs shall adjust their strategies, internal policies and limits on liquidity risk and develop effective contingency plans, taking into account the outcome of the alternative scenarios."

	Article 6 para. 1 of the LMRV: "CIs have to establish contingency funding plans which take into account the results of alternative scenarios pursuant to Article 5."
EC8	The supervisor identifies those banks carrying out significant foreign currency liquidity transformation. Where a bank's foreign currency business is significant, or the bank has significant exposure in a given currency, the supervisor requires the bank to undertake separate analysis of its strategy and monitor its liquidity needs separately for each such significant currency. This includes the use of stress testing to determine the appropriateness of mismatches in that currency and, where appropriate, the setting and regular review of limits on the size of its cash flow mismatches for foreign currencies in aggregate and for each significant currency individually. In such cases, the supervisor also monitors the bank's liquidity needs in each significant currency, and evaluates the bank's ability to transfer liquidity from one currency to another across jurisdictions and legal entities.
Description and findings re EC8	The relevant legal provision is Article 1 para. 2 of the LMRV "These strategies, policies, processes and systems have to be adapted to ... the respective currencies and have to include adequate internal fund transfer prices." Article 5 of the LMRV also applies to significant foreign currencies.
Additional criteria	
AC1	The supervisor determines that banks' levels of encumbered balance-sheet assets are managed within acceptable limits to mitigate the risks posed by excessive levels of encumbrance in terms of the impact on the banks' cost of funding and the implications for the sustainability of their long-term liquidity position. The supervisor requires banks to commit to adequate disclosure and to set appropriate limits to mitigate identified risks.
Description and findings re AC1	The relevant legal provision is Article 3 of the LRMV: CIs shall distinguish between pledged and unencumbered assets that are available at all times, in particular during emergency situations. They shall also take into account the legal entity in which assets reside, the country where assets are legally recorded either in a register or in an account as well as their eligibility and shall monitor how assets can be mobilised in a timely manner.
Assessment of Principle 24	Compliant
Comments	The FMA has detailed requirements regarding the liquidity needs of banks, many based on EU rules and guidelines. It oversees the liquidity management by banks in a number of ways—through on-site/off-site surveillance and compliance with its two liquidity stock ratios. Its main tool is the weekly reporting template covering

	<p>all currencies and 14 time periods.</p> <p>Austrian banks have a stable funding profile relying heavily on retail and corporate funding. Its loan to deposit ratio both within Austria and including foreign subsidiaries is comparatively low and has been decreasing somewhat in recent years- about 125 percent. The recently introduced sustainability package includes provisions designed to strengthen local deposits in the foreign subsidiaries. Under the package the FMA will monitor a Loan to Local Stable Funding Ratio of 110 to 100 (local loans to local deposits).</p> <p>One possible liquidity problem facing Austrian banks relates to FX loans. (See “Comments” under Principle 18—Problem assets, provisions and reserves). Essentially, these are FX loans (typically Swiss Francs in Austria) and Euros (in the CESEE region) and some are long term (e.g. mortgages). The FMA is paying particular attention to any possible currency exposure in banks arising from these loans— which currently stand at about EUR 50 billion. From discussions with the banks, they too are very conscious of such exposures and appear to have appropriate swap arrangements in place to deal with the issue.</p>
Principle 25	Operational risk. The supervisor determines that banks have an adequate operational risk management framework that takes into account their risk appetite, risk profile and market and macroeconomic conditions. This includes prudent policies and processes to identify, assess, evaluate, monitor, report and control or mitigate operational risk ⁷⁷ on a timely basis.
Essential criteria	
EC1	Law, regulations or the supervisor require banks to have appropriate operational risk management strategies, policies and processes to identify, assess, evaluate, monitor, report and control or mitigate operational risk. The supervisor determines that the bank’s strategy, policies and processes are consistent with the bank’s risk profile, systemic importance, risk appetite and capital strength, take into account market and macroeconomic conditions, and address all major aspects of operational risk prevalent in the businesses of the bank on a bank-wide basis (including periods when operational risk could increase).
Description and	Regarding the legal framework, the provisions relative to the existence of effective and adequate operational risk management policies and processes derive from

⁷⁷ The Committee has defined operational risk as the risk of loss resulting from inadequate or failed internal processes, people and systems or from external events. The definition includes legal risk but excludes strategic and reputational risk.

findings re EC1	<p>(i) the general managerial duties according to Article 39 para. 2 of the Banking Act, which explicitly mentions operational risk among other risk categories and</p> <p>(ii) specific rules regulating the calculation of minimum capital requirements according to one of the three admissible approaches to measure operational risk.</p> <p>Article 22i para. 1 of the Banking Act provides CIs with a choice of three approaches with regard to calculating their minimum requirements to cover their operational risk, namely the Basic Indicator Approach (BIA), the Standardized Approach (STA) or the Advanced Measurement Approach (AMA). These approaches are based on the relevant provisions in the CRD. The approaches strongly differ with regard to their complexity and risk sensitivity, as well as with regard to the requirements to the CI's risk management (see also Articles 22k and 22m of the Banking Act).</p> <p>With regard to the Austrian banking sector, CIs covering a share of approximately 70% in terms of total capital requirements and therefore risk weighted assets (credit risk, market risk and operational risk) use either AMA or STA as of June 2012 and are therefore required to fulfill high risk management and reporting standards determined in the Banking Act.</p> <p>In order to ensure that the chosen approach applied is, and remains, adequate to the CI's risk profile, Article 22i of the Banking Act stipulates that a "downward adjustment" to one of the less risk-sensitive approaches is subject to approval by the supervisor (see Article 22i paras. 2 and 3 of the Banking Act). In a similar fashion, the use of a combination of approaches will only be authorized by the Austrian supervisor under certain restrictive conditions set out in Article 22m para. 1 no 1 of the Banking Act.</p> <p>In addition to the Banking Act the Austrian supervisor published a detailed guideline on the management of operational risk in November 2005 in order to communicate to CIs the supervisor's expectations in the light of the new Basel II regulations. The guideline can be found under http://www.fma.gv.at/en/about-the-fma/publications/fmaoenb-guidelines.html(http://www.fma.gv.at/en/about-the-fma/publications/fmaoenb-guidelines.html).</p> <p>The above mentioned Austrian guideline describes expectations in more detail on subjects such as risk identification and –assessment (self-assessment, loss data collection, business process analysis, scenario analysis, risk indicators, risk quantification, risk handling (prevention, mitigation, transfer, continuity management), risk monitoring and risk reporting. Furthermore, there are chapters devoted to specific operational risk types (legal risk, technology risk, external risks etc.).</p> <p>Furthermore, as of December 31, 2010, the supervisory commitment to apply fully</p>
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	<p>the EBA Guidelines has been formalized by an amendment to the Banking Act (Article 69 para. 5) by which the Austrian supervisory authority commits itself to adhere to all EBA Guidelines. By these existing legislations, regulations and national guidelines together with the regulatory commitment to adhere to the EBA Guidelines (see Article 69 para. 5 of the Banking Act) the following EBA Guidelines have been integrated in the supervisory process:⁷⁸</p> <ul style="list-style-type: none"> • Guidelines on AMA extensions and changes • Guidelines on the management of operational risks in market-related activities • Guidelines on operational risk mitigation techniques • Compendium of Supplementary Guidelines on Implementation Issues of Operational Risk • Guidelines on Outsourcing
EC2	<p>The supervisor requires banks' strategies, policies and processes for the management of operational risk (including the banks' risk appetite for operational risk) to be approved and regularly reviewed by the banks' Boards. The supervisor also requires that the Board oversees management in ensuring that these policies and processes are implemented effectively.</p>
Description and findings re EC2	<p>CI's are required by the Austrian supervisor to submit an in-depth ICAAP (Internal Capital Adequacy Approach) questionnaire annually. Next to several other supervisory tools and actions (e.g. on-site examinations, validation analyses regarding risk models, regulatory reporting) this questionnaire serves as information source to evaluate the fulfillment of the before mentioned Article 39 para. 2 of the Banking Act (general managerial duties). Within this questionnaire in-depth information about (risk-) strategies, risk policy principles and processes are given for each risk type, therefore also operational risk. The CI's are also required to submit additional internal documents together with the questionnaire, in cases where these documents are necessary to proof stated answers.</p> <p>The Austrian supervisor requires that risk appetite, which can be set by the CI, must be derived from the overall target rating and must be consistently implemented among all risk types. For example a CI, which communicates to the market a target rating of AA and uses a LDA (loss-distribution approach) for calculating operational risk capital, must implement a confidence level of 99.95% or higher and a one year time horizon in the calculation of the operational Value-at-Risk. The same confidence level and "holding period" is then also required for other risk categories.</p>

⁷⁸ www.eba.europa.eu/Publications/Guidelines.aspx.

	<p>The necessary information for this kind of analysis is stated in the ICAAP questionnaire.</p> <p>This annual questionnaire has to be signed by the chief risk officer assuring that the CRO can be held responsible for the content. The actual effective implementation is then evaluated via on-site examinations carried out by OeNB.</p>
EC3	<p>The supervisor determines that the approved strategy and significant policies and processes for the management of operational risk are implemented effectively by management and fully integrated into the bank's overall risk management process.</p>
Description and findings re EC3	<p>The necessity for effective implementation of approved strategies and significant policies in the CIs daily business is determined by law in any case where the CI uses the TSA or AMA for the calculation of capital requirements.</p> <p>Article 22k paras. 5, 6 and 7 of the Banking Act, referring to CIs using the TSA, provides that:</p> <ul style="list-style-type: none"> • CIs must have in place a well-documented and effective assessment and management system for operational risk, • clear responsibilities assigned to this risk management system, • CIs have in place a reporting system that provides operational risk reports to the management, • the assessment and management system for operational risk must be integrated into the overall risk management processes and its output must be an integral part of the process of monitoring and controlling operational risk, • perform annual reviews of processes and risk measurement systems by bank auditors. <p>For CIs applying for or using the AMA the Banking Act lays down several additional requirements which are assessed within the process of approval.</p> <p>With regard to policies and processes the Austrian supervisor for example requires CIs using the AMA to:</p> <ul style="list-style-type: none"> • have an independent operational risk function with qualified staff with the necessary experience, technical capabilities and access to resources, • have operational risk managers in each area of the entity and in the various business units within the group, • assure adequate separation of responsibilities between operational risk control functions, business lines and support functions in order to avoid conflicts of interest, • have an Operational Risk Committee to guide the senior management,

	<ul style="list-style-type: none"> • have lines of communication among those responsible for managing operational risk at business unit level and to coordinate their performances with regard to the operational risk, • closely integrate their risk measurement system into daily risk management processes. <p>However, as it is not within the supervisor's power to force CIs into a certain approach, whenever the Austrian supervisor comes to the conclusion that a certain CI's operational risk approach for calculating minimum capital requirements is not appropriate for the size or complexity of the CI, above mentioned requirements are enforced by referring to general managerial duties according to Article 39 para. 2 the Banking Act.</p>
EC4	The supervisor reviews the quality and comprehensiveness of the bank's disaster recovery and business continuity plans to assess their feasibility in scenarios of severe business disruption which might plausibly affect the bank. In so doing, the supervisor determines that the bank is able to operate as a going concern and minimize losses, including those that may arise from disturbances to payment and settlement systems, in the event of severe business disruption.
Description and findings re EC4	An effective and in-depth revision of business continuity management (BCM) can only be achieved by on-site examinations. BCM is examined either during the approval process of an AMA application, during a dedicated operational risk examination, during an ICAAP (overall bank risk) examination or during an IT examination.
EC5	The supervisor determines that banks have established appropriate information technology policies and processes to identify, assess, monitor and manage technology risks. The supervisor also determines that banks have appropriate and sound information technology infrastructure to meet their current and projected business requirements (under normal circumstances and in periods of stress), which ensures data and system integrity, security and availability and supports integrated and comprehensive risk management.
Description and findings re EC5	The duty to put appropriate IT policies and processes in place is derived from Article 39 paras. 1 and 2 of the Banking Act. The term "mechanisms" used in this context is to be understood as encompassing all IT policies and processes necessary for the discharge of these duties of diligence. It is equally understood that the fulfillment of Article 39 of the Banking Act is impossible without well-functioning and actively maintained IT systems. The same conclusions can be drawn with respect to Article 22k para. 5 of the Banking Act, which requires CIs applying the Standardized Approach (TSA) to have an " <i>effective assessment and management system for operational risk</i> ", and with respect to Article 21d para. 2 of the Banking Act, which requires AMA CIs to have well-functioning internal risk

	<p>management systems in place.</p> <p>Clear and well-documented processes have to be established to regulate competences, responsibilities and procedures. To achieve an appropriate level of protection in the field of IT security, a comprehensive enterprise IT security policy has to be in place that lists all the measures to be taken in the context of IT-related precautions. The security policy has to constitute a binding catalogue of instructions on IT security for all employees of the CI. Guidelines established by a CI shall also cover the following areas:</p> <ul style="list-style-type: none"> • Information security objectives and strategy; • Organisational structure (responsibilities and competences) of the security field; • Risk analysis strategies (including reflections on the acceptable residual risk); • Considerations on data protection; <p>However the Austrian supervisor is aware of the fact that technology risk is increasing and shall be of higher importance and priority for the planning of on-site examinations. This year for example IT examinations were conducted in two of Austria's largest CIs.</p>
EC6	<p>The supervisor determines that banks have appropriate and effective information systems to:</p> <ol style="list-style-type: none"> (a) monitor operational risk; (b) compile and analyze operational risk data; and (c) facilitate appropriate reporting mechanisms at the banks' Boards, senior management and business line levels that support proactive management of operational risk.
Description and findings re EC6	<p>Article 22k of the Banking Act referring to banks using the TSA states that:</p> <ul style="list-style-type: none"> • CIs must assess the exposure to operational risk and collect relevant data for this purposes including relevant operational loss data, • CIs must have in place a reporting system that provides operational risk reports to the management, • procedures must exist for taking appropriate action according to the information within these operational risk reports. <p>For CIs using the AMA these aspects are required in a more demanding way.</p> <p>Since the supervisor may not force CIs into a certain approach, whenever it comes to the conclusion that a certain CI's operational risk approach (e.g. BIA) for</p>

	calculating minimum capital requirements is not appropriate for the size or complexity of the CI, above mentioned requirements are enforced by referring to general managerial duties according to Article 39 para. 2 Banking Act.
EC7	The supervisor requires that banks have appropriate reporting mechanisms to keep the supervisor apprised of developments affecting operational risk at banks in their jurisdictions.
Description and findings re EC7	<p>Significant organizational changes or changes in the CIs business model affecting the operational risk structure would in any case be instantly recognized by the Austrian supervisor, as every CI in Austria is assigned to SPOCS, assuring a constant monitoring and regular contact in order to be informed about current developments. (Please see CP 2 EC 4 and CP 9 EC 1.)</p> <p>However, with respect to the handling of operational risk within the CIs under its jurisdictions the Austrian supervisor receives information from multiple sources.</p> <p>In Austria Article 74 para. 4 of the Banking Act in combination with the Loss-Data-Reporting Regulation (<i>Verlustdatenmeldungs-Verordnung</i>) requires CIs using the TSA or the AMA to report to the supervisor on a yearly basis for each loss-event above a certain loss threshold (determined by the CI) the:</p> <ul style="list-style-type: none"> • subsidiary where a loss due to operational risk accrued • gross loss amount • loss mitigation • business line • event type • date of loss • verbal description. <p>At the moment all CIs have chosen to collect and report losses either above EUR 1,000 or EUR 5,000. Therefore the Austrian supervisor gets very detailed information about loss events stemming from operational risk.</p> <p>Furthermore, the supervisor receives standardized information as part of the regular reporting framework. This includes information submitted via the <i>Ordnungsnormenausweis-Verordnung (ONA-V)</i>, i.e., a monthly reporting on the own funds held against the CI's operational risk as well as a quarterly, more detailed reporting on the minimum capital requirements for operational risk.</p> <p>The Regulation on the Annex to the Audit Report on the Annual Financial Statements (Prudential Report) will requires substantial information to be provided on both the fulfillment of all provisions relative to operational risk in both the</p>

	<p>Banking Act and the Solvency Regulation.</p> <p>CIs applying the AMA are additionally required to submit every three years to the supervisor a system description of the AMA model they use and yearly a validation report for the AMA.</p>
EC8	<p>The supervisor determines that banks have established appropriate policies and processes to assess, manage and monitor outsourced activities. The outsourcing risk management program covers:</p> <ul style="list-style-type: none"> (a) conducting appropriate due diligence for selecting potential service providers; (b) structuring the outsourcing arrangement; (c) managing and monitoring the risks associated with the outsourcing arrangement; (d) ensuring an effective control environment; and (e) establishing viable contingency planning. <p>Outsourcing policies and processes require the bank to have comprehensive contracts and/or service level agreements with a clear allocation of responsibilities between the outsourcing provider and the bank.</p>
Description and findings re EC8	<p>A CI has to have in place a comprehensive policy to guide the assessment of whether and how activities can be appropriately outsourced. Senior Management retains responsibility for the outsourcing policy and related overall responsibility for activities undertaken under that policy.</p> <p>The CI has to establish a comprehensive outsourcing risk management program to address the outsourced activities and the relationship with the service provider. It has to ensure that outsourcing arrangements neither diminish its ability to fulfill its obligations to customers and regulators, nor impede effective supervision by regulators. Moreover, it has to conduct appropriate due diligence in selecting third-party service providers.</p> <p>Outsourcing relationships shall be governed by written contracts that clearly describe all material aspects of the outsourcing arrangement, including the rights, responsibilities and expectations of all parties.</p> <p>The CI and its service providers have to establish and maintain contingency plans, including a plan for disaster recovery and periodic testing of backup facilities.</p>

	<p>The CI has to take appropriate steps to insure that service providers protect confidential information of both the CI and its clients from intentional or inadvertent disclosure to unauthorized persons.</p> <p>The Austrian guidelines on operational risk management as well as the CEBS guidelines on outsourcing, both mentioned in EC 1, describe in more detail the above listed outsourcing requirements.</p>
Additional criteria	
AC1	The supervisor regularly identifies any common points of exposure to operational risk or potential vulnerability (e.g. outsourcing of key operations by many banks to a common service provider or disruption to outsourcing providers of payment and settlement activities).
Description and findings re AC1	The Austrian supervisor holds annual management meetings with the CIs. The management meetings include general questions asked to all CIs as well as bank-specific issues. The objective is to identify trends and react if necessary. In cases where operational risk deficiencies are identified with one CI, an assessment of other CIs with similar business models and/or operational settings shall be undertaken.
Assessment of Principle 25	Compliant
Comments	The FMA's operational risk requirements are based on EU rules and regulations. Compliance with these rules and regulations is achieved through the ICAAP regime and on-site examination.
Principle 26	Internal control and audit. The supervisor determines that banks have adequate internal control frameworks to establish and maintain a properly controlled operating environment for the conduct of their business taking into account their risk profile. These include clear arrangements for delegating authority and responsibility; separation of the functions that involve committing the bank, paying away its funds, and accounting for its assets and liabilities; reconciliation of these processes; safeguarding the bank's assets; and appropriate independent ⁷⁹ internal audit and compliance functions to test adherence to these controls as well

⁷⁹ In assessing independence, supervisors give due regard to the control systems designed to avoid conflicts of interest in the performance measurement of staff in the compliance, control and internal audit functions. For example, the remuneration of such staff should be determined independently of the business lines that they oversee.

	as applicable laws and regulations.
Essential criteria	
EC1	<p>Laws, regulations or the supervisor require banks to have internal control frameworks that are adequate to establish a properly controlled operating environment for the conduct of their business, taking into account their risk profile. These controls are the responsibility of the bank's Board and/or senior management and deal with organizational structure, accounting policies and processes, checks and balances, and the safeguarding of assets and investments (including measures for the prevention and early detection and reporting of misuse such as fraud, embezzlement, unauthorized trading and computer intrusion). More specifically, these controls address:</p> <ul style="list-style-type: none"> (a) organizational structure: definitions of duties and responsibilities, including clear delegation of authority (e.g. clear loan approval limits), decision-making policies and processes, separation of critical functions (e.g. business origination, payments, reconciliation, risk management, accounting, audit and compliance); (b) accounting policies and processes: reconciliation of accounts, control lists, information for management; (c) checks and balances (or "four eyes principle"): segregation of duties, cross-checking, dual control of assets, double signatures; and (d) safeguarding assets and investments: including physical control and computer access.
Description and findings re EC1	<p>a) Organizational Structure</p> <p>According to Article 39 para. 2 of the Banking Act, CIs have to establish adequate administrative, accounting and control procedures. As stated in Article 42 para. 4 no. 5 of the Banking Act the adequacy of these procedures and their enforcement is reviewed by the internal audit unit at least once a year.</p> <p>In line with the provisions under Article 39 para. 2 of the Banking Act, the FMA and the OeNB require CIs to apply best practice methods in their internal control system. This involves, inter alia, the requirement that the position of a risk manager is in place and that in foreign exchange trading and lending, front office and back office activities are strictly separated. The organizational chart must reflect this separation up to the level of directors. A clear definition of duties and responsibilities is particularly required in risk-exposed areas. The internal audit unit</p>

must examine whether these rules have been established and are complied with.

In accordance with Article 42 para. 1 of the Banking Act, CIs are obliged to set up an internal audit unit which reports directly to the Executive Board and which serves the exclusive purpose of ongoing and comprehensive reviews of the legal compliance, appropriateness and suitability of the entire undertaking. Accordingly, the internal audit unit must periodically examine all relevant fields of activities of the CI—including oversight of compliance with relevant legislation and limits; risk-exposed areas must be subject to reviews (or systemic examinations) more frequently. The areas of review by the internal audit unit are listed in Article 42 para. 4 of the Banking Act.

As a rule, all areas exposed to high risk must be reviewed annually:

- Article 27 para. 18 of the Banking Act requires an internal audit review on an annual basis of administrative, accounting and control procedures for the purpose of recording large exposures and for monitoring these exposures; similarly, Article 39 para. 2 of the Banking Act requires such reviews for the purpose of recording the risks resulting from the CI's business and operation.
- According to Article 17 Securities Supervision Act (WAG) CIs and investment firms shall have sound administrative and accounting procedures, internal control mechanisms, effective procedures for risk assessment, and effective control and safeguard arrangements for information processing systems.
- Pursuant to Article 20 of the Security Supervision Act, the internal audit unit must review the adequacy and application of appropriate control and security provisions with regard to electronic data processing and compliance with the rules for personal transactions of bank employees at least once a year.

Article 63a para. 4 no. 2 of the Banking Act states CIs of any legal form whose total assets exceed EUR 1 billion or which have issued transferable securities that are admitted to listing on a regulated market pursuant to Article 1 para. 2 of the Stock Exchange Act 1989 (Börsegesetz 1989, BörseG), the CI's supervisory board or other supervisory body competent according to applicable law or the articles of association must appoint an audit committee consisting of at least three members of the supervisory body. The audit committee shall convene at least twice in a business year. The bank auditor shall attend the meetings of the audit committee and shall report in writing on the main findings gained from the annual audit at least once a year and explain the report orally upon request of any committee member.

b) Accounting Procedures

According to Article 43 para. 1 of the Banking Act, the Executive Board must ensure the legal compliance of the CIs' annual financial statements and consolidated financial statements as well as annual reports and group annual

reports. The provisions of Book III ("Accounting") of the UGB (Company Code) apply to these statements and reports of CIs. According to Article 189 para. 1 of the UGB the bookkeeping and accounting has to correspond with the (general) principles of proper accounting. The UGB as well as the Banking Act contain extensive accounting and valuation rules (Article 201 and following of the UGB and Article 43 and following of the Banking Act). The Executive Board is jointly responsible for the accounting and annual financial statements and reports. Furthermore, the Executive Board has to deliver quarterly reports to the supervisory board according to Article 81 of the Stock Corporation Act and Article 28a of the Limited Liability Companies Act.

According to Article 4 of Regulation (EC) No. 1606/2002 public traded companies governed by the law of a Member State are obliged to prepare their consolidated accounts in conformity with the international accounting standards adopted in accordance with the procedure laid down in Article 6(2) Regulation (EC) No. 1606/2002 if, at their balance sheet date, their securities are admitted to trading on a regulated market of any Member State. This provision is applicable for each financial year starting on or after 1 January 2005.

The bank auditor examines whether accounting procedures are in place to ensure an adequate information flow to the Executive Board.

According to Article 44 para. 1 of the Banking Act the financial statements and annual reports as well as the relevant bank auditors' reports must be submitted to the FMA and the OeNB within six months after the end of the financial year.

c) Checks and balances

Separation of duties, dual control of assets and double signatures are central principles in the Austrian banking system. Accordingly, pursuant to Article 5 para. 1 no. 12 of the Banking Act, the CI has an Executive Board, which comprises of at least two members and the articles of association must rule out individual powers of representation, individual powers of commercial representation and individual commercial powers of attorney for the entire business operation, or, in the case of credit co-operatives, the management of the business is restricted to the Executive Board.

The separation of duties also applies to the issuing of directives concerning the internal audit (Article 42 para. 3 of the Banking Act), i.e., instructions involving the internal audit unit must be made jointly by a minimum of two directors.

The separation of duties must be registered in the company register. The internal audit unit monitors compliance with the separation of duties and with the segregation of functions in all areas of banking activities. Since the internal audit

	<p>unit examines whether the system of internal control measures is effective, it also supports management in monitoring business operations. The adequacy and efficiency of the following areas are subject to a comprehensive assessment by the internal audit unit: reporting by various business areas to management, risk management, accounting, compliance with regard to measures to prevent money laundering and insider trading as well as compliance with prudential rules including supervisory reporting. If the internal audit function identifies and reports shortcomings, management has to ensure that the reported deficiencies are remedied immediately.</p> <p>According to Article 63 paras. 4 to 7 of the Banking Act and the Regulation on the Bank Supervision Audit Report, the bank auditor is required to prepare annually a Bank Supervision Audit Report and thus review in detail compliance with prudential legal provision.</p> <p>d) Safeguarding</p> <p>The safeguarding of assets is stipulated in Article 39 paras. 1 and 2 and in Article 39a of the Banking Act in general.</p>
EC2	<p>The supervisor determines that there is an appropriate balance in the skills and resources of the back office, control functions and operational management relative to the business origination units. The supervisor also determines that the staff of the back office and control functions have sufficient expertise and authority within the organization (and, where appropriate, in the case of control functions, sufficient access to the bank's Board) to be an effective check and balance to the business origination units.</p>
Description and findings re EC2	<p>According to Article 39 para. 2 of the Banking Act CIs have to establish such administrative, accounting and control procedures as are necessary for the purpose of recording and evaluating the risks of the CI's banking transactions and of operating the CI, and to record and evaluate as far as possible the potential risks resulting from new business and parallel risks.</p> <p>Article 39 para. 2 of the Banking Act implies that the skills and resources of the back office and control functions have to be equivalent to those of the front office/business, as otherwise the evaluation of potential risks resulting from new business and parallel risks cannot be executed and guaranteed. Moreover, Article 42 para. 2 no. 1 of the Banking Act mentions reasons for disqualification in connection with the internal audit function; for example, if a person does not have adequate banking expertise and experience. There are no further specific provisions or guidelines concerning appropriate balance of skills in the Banking Act.</p>

However, there are Minimum Standards for Internal Auditing published by the FMA, which state that *the internal auditing staff has to have adequate theoretical and practical knowledge for auditing a CI. Special requirements shall apply to the qualifications of the head of internal audit. Apart from sound theoretical knowledge of internal auditing, s/he shall have extensive practical knowledge of banking, which s/he acquired while working for the same company or a company engaging in a comparable business for at least three years. Moreover, the Minimum Standards state that appropriate measures shall be taken to ensure that all staff working for the internal audit has the necessary up-to-date knowledge.*

Although there are no specific provisions on this issue in force in Austria, CIs have to maintain, in their own interest, state-of-the-art organizational structures. During on-site inspections, the OeNB and the FMA examine whether CIs have sufficient processes and staff resources in the back office, in risk management divisions and in internal control division. These areas must also be examined by bank auditors.

Regarding the organisational structure, the Minimum Standards for Internal Auditing state additionally, that internal audit shall be immediately subordinate to the senior management and shall exclusively serve the purpose of continuously and comprehensively reviewing the legality, propriety and expediency of the entire CI. The Minimum Standards also provide that the principle of proper compliance, which is part of the standard compliance code of the Austrian banking industry⁸⁰ states that the Executive Board has to ensure that the compliance organisation can act independently and autonomously and promote adherence to compliance-relevant instructions. The compliance officer shall report exclusively to the entire management board.

If there is evidence that the Executive Board does not fulfill its duty of diligence according to Article-39 paras. 1 and 2 of the Banking Act, FMA will take the necessary and adequate measures (see Article 70 para. 4 of the Banking Act) if softer measures like proceedings in the form of management discussions do not lead to satisfactory results.

Finally, the new regulations on remuneration according to Article 39b of the Banking Act and their disclosure according to Article 15a of the Disclosure Regulation (*Offenlegungsverordnung—OffV*) explain and specify the balance between risk takers, back office and control functions of a CI.

⁸⁰ This Code is a voluntary self-binding regulation issued by the supervised institutions.
<http://www.fma.gv.at/en/legal-framework/rules-of-conduct-and-compliance/standard-compliance-code-of-the-austrian-banking-industry.html>.

EC3	The supervisor determines that banks have an adequately staffed, permanent and independent compliance function ⁸¹ that assists senior management in managing effectively the compliance risks faced by the bank. The supervisor determines that staff within the compliance function are suitably trained, have relevant experience and have sufficient authority within the bank to perform their role effectively. The supervisor determines that the bank's Board exercises oversight of the management of the compliance function.
Description and findings re EC3	<p>In one narrow respect, there is a requirement for the banks to have an independent compliance function. This derives from the transposition by Austria of the EU MiFID. The requirement for CIs to have an independent compliance function affects investment services related to MiFID. According to 1 No. 2 of Securities Supervision Act 2007 (WAG 2007) this covers</p> <ul style="list-style-type: none"> lit. a reception and transmission of orders in relation to one or more financial instruments.. lit. b execution of orders on behalf of the client lit. c dealing on own account lit. d portfolio management by way of managing portfolios in accordance with mandates given by clients on a discretionary client-by-client basis where such portfolios include one or more financial instruments; lit. e investment advice in relation to financial instruments; lit. f underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis. lit. g placing of financial instruments without a firm commitment basis lit. h operation of Multilateral Trading Facilities. <p>In this respect, many Austrian banks (e.g., smaller cooperatives) would not engage in investment services and the transposed MiFID would not be relevant for them.</p> <p>With this exception there is no specific requirement that banks must have an overall compliance function (although in practice larger banks appear to have one).</p>
EC4	The supervisor determines that banks have an independent, permanent and effective internal audit function ⁸² charged with:

⁸¹ The term "compliance function" does not necessarily denote an organizational unit. Compliance staff may reside in operating business units or local subsidiaries and report up to operating business line management or local management, provided such staff also have a reporting line through to the head of compliance who should be independent from business lines.

⁸² The term "internal audit function" does not necessarily denote an organizational unit. Some countries allow small banks to implement a system of independent reviews, e.g. conducted by external experts, of key internal controls as an alternative.

	<p>(a) assessing whether existing policies, processes and internal controls (including risk management, compliance and corporate governance processes) are effective, appropriate and remain sufficient for the bank's business; and</p> <p>(b) ensuring that policies and processes are complied with.</p>
Description and findings re EC4	<p>The relevant legal provision is Article 42 Banking Act.</p> <p>Instructions concerning the internal audit unit have to be made jointly by a minimum of two members of the executive (Article 42 para. 3 of the Banking Act).</p> <p>A more detailed interpretation of Article 42 is provided by the FMA Minimum Standards for Internal Auditing, published in February 2005.</p> <p>Amongst others, the following minimum standards are to be maintained:</p> <ul style="list-style-type: none"> • The responsibility for establishment and functioning of the internal audit function lies with the management board and cannot be delegated. The management board is responsible for the provision of organizational guidelines regarding internal audit to all staff members. • The internal audit function is established permanently and fulfills its duties over the whole business year. The required intensity of auditing depends on size and nature of the CI in question, as well as on extent, complexity and risk of its business. • CIs are required to notify the FMA of the appointment of the head of the internal audit unit and to provide detailed evidence for the qualifications of the nominated person. • Identified deficiencies need to be reported to the respective head of the audited organizational unit. The rectification of any identified deficiencies is audited within an appropriate time limit. <p>Moreover the CI bank auditor has to confirm the existence of an adequate internal audit function in his Annex to the Audit Report on the annual financial statements (prudential report), which he has to present on an annually basis to the FMA.</p> <p>Furthermore, in the course of on-site inspections, the OeNB/FMA are entitled to request all information and business documents from the Executive Board and the bank auditor according to Article 71 para. 3 of the Banking Act.</p>
EC5	<p>The supervisor determines that the internal audit function:</p> <p>(a) has sufficient resources, and staff that are suitably trained and have relevant experience to understand and evaluate the business they are auditing;</p>

	<p>(b) has appropriate independence with reporting lines to the bank's Board or to an audit committee of the Board, and has status within the bank to ensure that senior management reacts to and acts upon its recommendations;</p> <p>(c) is kept informed in a timely manner of any material changes made to the bank's risk management strategy, policies or processes;</p> <p>(d) has full access to and communication with any member of staff as well as full access to records, files or data of the bank and its affiliates, whenever relevant to the performance of its duties;</p> <p>(e) employs a methodology that identifies the material risks run by the bank;</p> <p>(f) prepares an audit plan, which is reviewed regularly, based on its own risk assessment and allocates its resources accordingly; and</p> <p>(g) has the authority to assess any outsourced functions.</p>
Description and findings re EC5	<p>Legal Framework and Practical Application</p> <p>a) Sufficient resources and Training</p> <p>As mentioned above in EC 4, CIs must set up an internal audit unit which reports directly to the Executive Board and which serves the exclusive purpose of ongoing and comprehensive reviews of the legal compliance, appropriateness and suitability of the entire undertaking. With due consideration of the scope of the institution's business, the internal audit unit must be equipped in such a way that it can perform its duties as intended. The duties of the internal audit unit must not be entrusted to persons if reasons for exclusion exist.</p> <p>Requirements for the staff of the internal audit unit are regulated in Article 42 para. 2 of the Banking Act.</p> <p>Pursuant to Article 73 para. 1 no. 11 of the Banking Act, CIs must notify the FMA of the person responsible for internal auditing as well as any changes in that person; the supervisor has the right to reject the appointment of persons it deems not qualified.</p> <p>Moreover the FMA Minimum Standards on Internal Auditing specify the following:</p> <ul style="list-style-type: none"> • CIs are required to notify the FMA of the appointment of the head of internal audit and to provide detailed evidence for the qualifications of the nominated person; • the internal auditing staff shall have adequate theoretical knowledge (necessary know-how) and practical knowledge (necessary banking

	<p>experience) for auditing a CI;</p> <ul style="list-style-type: none"> • Special requirements shall apply to the qualifications of the head of the internal audit. Apart from sound theoretical knowledge of internal auditing, s/he shall have extensive practical knowledge of banking, which s/he acquired while working for the same company or a company engaging in a comparable business for at least three years; • Appropriate measures shall be taken to ensure that all staff working for the internal audit has the necessary up-to-date knowledge. <p>b) Appropriate independence</p> <p>According to Article 42 para. 3 of the Banking Act instructions involving the internal audit unit must be made jointly by at least two directors. The internal audit unit must report to the entire Executive Board. This unit must also report on a quarterly basis the material results of audits to the chairperson of the CI's supervisory board or other supervisory body competent according to applicable law or the articles of association.</p> <p>The FMA Minimum Standards for Internal Audit of CIs include the following:</p> <ul style="list-style-type: none"> • CIs shall establish an internal audit unit, which shall exclusively serve the purpose of continuously and comprehensively reviewing the legality, propriety and expediency of the entire enterprise; • the internal audit unit shall perform its duties independently, objectively and impartially; • When it comes to planning the audit, its performance, reporting and assessing the audit results as well as deciding about the initiation of special audits, it shall not be bound by any instructions. This shall not affect the right to order special audits by at least two members of the Executive Board; • the staff of the internal audit unit shall, on principle, only be in charge of internal auditing at the CI to be audited and of performing the duties involved; • by no means shall they audit areas where they themselves work (prohibition of self-audit); • they must not be part of decision-making or business processes or perform other duties that are not in line with their auditing activities; • the heads of the audited organizational units shall be demonstrably informed of the audit findings, principally within the framework of a final conference. They shall be entitled to use this occasion to make comments; • shortly after each audit, a written audit report shall be prepared, which shall be demonstrably submitted to the heads of the audited organizational units as well as their immediate superiors; • the audit report shall as a minimum list the audit area and the audit findings (in particular located deficiencies and the necessary and recommended
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measures taken including an appropriate time limit for their correction or implementation), putting special emphasis on the significant deficiencies, threats or risks. In addition, it details the beginning and end of the audit as well as the kind of audit and the methods employed with the individual audits. The heads of the audited organizational units shall make comments on the deficiencies detected as well as on the necessary and recommended measures, which should already be considered in the audit report, if possible;

- If not the entire Executive Board receives all comprehensive audit reports, all members of the Executive Board shall be regularly informed of the audit findings of all audits performed in the reporting period in written summaries, putting special emphasis on the significant deficiencies, threats and risks. The Executive Board shall determine the reporting frequency in the organizational guidelines for internal auditing;
 - Irrespective of these reports, the internal audit unit shall without delay and demonstrably inform the entire Executive Board if it believes the continued existence of the CI or its ability to function, its development or the performance of its obligations towards its creditors is at risk or significantly impaired.
- c) Adequate information process regarding material changes to bank's risk management strategy, policies or processes

In accordance with Article 42 paras. 1 and 4 of the Banking Act internal audit reports directly to the Executive Board and has to audit several areas on an annual basis. This implies that internal audit needs all relevant information in a timely manner in order to be able to fulfill these requirements. To ensure this, CIs have to implement appropriate reporting and information structures.

The FMA Minimum Standards for Internal Auditing of CIs include the following:

- The staff of the internal audit shall be entitled to a comprehensive and unlimited right to demand and submission, and a right of inspection and of investigation. These rights shall also be applicable towards third parties active on behalf of the credit institution (provided that no legal impediments exist) as well as towards all credit institutions of the group of credit institutions including superordinate financial holding companies or mixed-activity companies, provided this is necessary to ensure that the internal audit can fulfill its function.
- The head of the unit shall be informed immediately and without having to ask about instructions and decisions of managers and other bodies of the credit institution which may be of significance to internal auditing. The internal audit shall be informed of significant changes in the audit areas in a timely manner.

d) Access to Information

As mentioned above pursuant to Article 42 para. 1 of the Banking Act CIs are to set up an internal audit unit which reports directly to the Executive Board and which serves the exclusive purpose of ongoing and comprehensive reviews of the legal compliance, appropriateness and suitability of the entire undertaking.

Thus, in order to be able to fulfill all its tasks the internal audit unit needs to be granted access to all the CI's business lines and support departments even if this is not explicitly mentioned in the Banking Act. This is also valid for the methodology applied by the internal audit unit.

e,f,g) Material risk methodology and audit planning

In addition to the on-going and comprehensive review of the legality, propriety and expedience of the entire enterprise the internal audit unit must review a number of areas which are listed under EC 1 (see above) according to Article 42 para. 4 of the Banking Act.

Furthermore, the adequacy and enforcement of a CI's administrative, accounting and control procedures for the purpose of recording large exposures and subsequent changes to them as well as for monitoring these exposures in the light of the CI's exposure policy must be reviewed by the internal audit unit at least once a year (Article 27 para. 18 of the Banking Act).

The FMA Minimum Standards for Internal Auditing of CIs include the following:

- the audit frequency on which the review schedule is based shall be determined in the organizational guidelines for internal auditing as follows:
 - *audit areas for which there are explicit orders concerning audit frequency shall be audited according to these orders;*
 - *all other audit areas shall be audited at appropriate intervals according to the risk they entail; high-risk areas shall, therefore, be audited more frequently, while less frequent audits may be sufficient for low-risk areas, such as ancillary areas.*

In case of groups of CIs the internal audit unit of the superordinate CI has to fulfill the tasks of the internal group control (Article 42 para. 7 of the Banking Act) as this CI is responsible for compliance with the provisions of the Banking Act that are applicable to the Group of CI (Article 30 para. 6 of the Banking Act). According to Article 30 para. 7 of the Banking Act institutions belonging to the group of CIs have to establish adequate internal control procedures and provide the superordinate CI with all data and information required for consolidation. They

	<p>must also give each other all information deemed necessary to ensure for the group of CIs an appropriate risk limitation within the meaning of Article 39 of the Banking Act. Furthermore, companies in which a CI holds a participating interest must provide the information on those participations required to determine the superordinate CI's duty to consolidate in respect of indirect participations.</p> <p>The CI's bank auditor as well as the OeNB and FMA within the framework of on-site inspections assess whether the internal audit unit is correctly established.</p>
Assessment of Principle 26	Largely compliant
Comments	<p>Re EC3—there is a legal requirement for banks to have a compliance function under Articles 15 in conjunction with Article 18 Securities Supervision Act (WAG 2007) in accordance with the Directive 2004/39/EC (MiFID). For further details on the organizational requirements of the Securities Supervision Act 2007 according to compliance, risk management and internal audit, the FMA has published a circular.⁸³</p> <p>There is a very restrictive requirement for Austrian banks to have a compliance function. This relates to securities services. There is no specific requirement for banks to have a total business-wide compliance function.</p> <p>From discussions with some banks, including larger ones, it seems that the compliance officer reports to the audit committee. It is recommended that such banks be required to establish a separate compliance committee to deal with all aspects of banking business, given that the role of the internal auditor should include an assessment of the work of the compliance function.</p> <p>EC 4 and EC 5 touch upon the role of the internal auditor. The fact that the internal auditor's first point of reporting is to the executive board and thereafter to the supervisory board is dealt with at some length in Principle 14 Corporate Governance which has been allocated a LC rating—because of the lack of independent reporting on the part of the internal auditor.</p> <p>In relation to ECI and specifically to the fact that the obligation to establish an audit committee applies to banks with assets above EUR 1 billion, this threshold seems somewhat large and the FMA should consider introducing a lower limit, e.g.</p>

⁸³ "Rundschreiben betreffend die organisatorischen Anforderungen des Wertpapieraufsichtsgesetzes 2007 im Hinblick auf Compliance, Risikomanagement und interne Revision"
http://www.fma.gv.at/typo3conf/ext/dam_download/secure.php?u=0&file=4098&t=1366301328&hash=858f9e872114d8e835e9213f1c2c8fa3

	EUR 500 million.
Principle 27	Financial reporting and external audit. The supervisor determines that banks and banking groups maintain adequate and reliable records, prepare financial statements in accordance with accounting policies and practices that are widely accepted internationally and annually publish information that fairly reflects their financial condition and performance and bears an independent external auditor's opinion. The supervisor also determines that banks and parent companies of banking groups have adequate governance and oversight of the external audit function.
Essential criteria	
EC1	The supervisor ⁸⁴ holds the bank's Board and management responsible for ensuring that financial statements are prepared in accordance with accounting policies and practices that are widely accepted internationally and that these are supported by recordkeeping systems in order to produce adequate and reliable data.
Description and findings re EC1	<p>The Executive Board of CIs is responsible for the legal compliance of the CIs annual financial statements and consolidated financial statements as well as management reports and group management reports. Articles 43 and 44 of the Austrian Banking Act refer to the legal accounting regulations in the Austrian Company Code (UGB). Those regulations must be followed by CIs.</p> <p>The FMA issues forms which are used by CIs for the preparation of CIs annual financial statements and consolidated financial statements as well as management reports and group management reports. The FMA changes these forms whenever necessary due to changes of the accounting standards (Article 43 para. 2 of the Banking Act).</p> <p>Banks are required to prepare their solo (unconsolidated) financial accounts on using Austrian GAAP. The consolidated financial statements of listed companies (including those that have publicly issued bonds) must be prepared on an IFRS basis. Other groups have the option to prepare their consolidated financial statements in accordance with IFRS. Accordingly, almost all group accounts are prepared on an IFRS basis.</p> <p>The Executive Board of CIs has to submit the CIs' audited annual financial</p>

⁸⁴ In this Essential Criterion, the supervisor is not necessarily limited to the banking supervisor. The responsibility for ensuring that financial statements are prepared in accordance with accounting policies and practices may also be vested with securities and market supervisors.

	<p>statements and consolidated financial statements, the audited management reports and group management reports as well as an audited bank specific questionnaire in a special Annex to the Audit Report (<i>Anlage zum Prüfbericht—AzP</i>), within 6 months after accounting year end to the FMA and OeNB due to Article 44 para. 1 of the Banking Act.</p> <p>Where CIs exceed the time limit of 6 months the FMA has the power to punish the CI with up to EUR 50,000 according to Article 98 para. 2 no. 11 of the Banking Act.</p> <p>Furthermore the Executive Board is responsible for the correct and in-time submission of monthly and quarterly reports according to Article 74 of the Banking Act as well as of the reports on major loans according to Article 75 of the Banking Act (see Article 99 para. 1 nos. 8 and 9 of the Banking Act).</p> <p>Note that the internal audit unit has to check the factual accuracy and completeness of notifications and reports submitted to the FMA and the OeNB (Article 42 para. 4 no. 1 of the Banking Act). On a quarterly basis, it has also to report material audit results based on audits performed to the chairman of the supervisory board or to the competent supervisory body of the CI (Article 42 para. 3 of the Banking Act).</p>
EC2	<p>The supervisor holds the bank's Board and management responsible for ensuring that the financial statements issued annually to the public bear an independent external auditor's opinion as a result of an audit conducted in accordance with internationally accepted auditing practices and standards.</p>
Description and findings re EC2	<p>The audit of financial statements including consolidated financial statements as well as management reports and group management reports is regulated in Article 60 para. I of the Banking Act.</p> <p>The accounting rules and principles of the Company Code (UGB) and the Banking Act comply with the EC's harmonized accounting standards as defined in the EC's accounting directives (e.g. the Council Directive 86/635/EEC on the annual accounts and consolidated accounts of CIs and other financial institutions, OJ No. L 372/1).</p> <p>A superordinated CI which prepares consolidated financial statements in accordance with international accounting standards pursuant to Article 245a para. 1 of the UGB must fulfill the requirements of Article 245a paras. 1 and 2 of the UGB and include the disclosures pursuant to Article 64 para. 1 nos. 1 to 15 and para. 2 of the Banking Act in the notes of the consolidated financial statements. Article 60 of the Banking Act regulates that the annual financial statements of each CI and the consolidated financial statements of each group of CIs must be audited by bank auditors, including bookkeeping, the management report and the group</p>

	<p>management report</p> <p>Furthermore, Article 62 of the Banking Act standardizes among other stipulations that the bank auditor has to ensure that his/her knowledge and experience are up to date through ongoing continuing education and training; annual confirmations of up-to-date quality assurance must be obtained from a qualified agency; in this context, the bank auditor must specifically provide evidence of the required knowledge of the relevant provisions applicable to CIs regarding the legal compliance of annual financial statements as well as the other provisions set in force in Article 63 paras. 4 to 6 of the Banking Act.</p> <p>Concerning the audit and disclosure of CIs' annual financial statements, consolidated financial statements, management reports and group management reports Article 43 para. 1 of the Banking Act refers to Article 274 paras. 1 to 6 of the UGB which defines the wording of the audit opinion (the "<i>Bestätigungsvermerk</i>"). This opinion is based on the wording of the International Standards of Auditing (ISA 700).</p> <p>According to Article 61 para. 1 of the Banking Act bank auditors are external certified auditors or external audit companies as well as auditors from legally competent auditing organizations for certain banking sectors like the Auditing Agency of the Savings Banks and the Auditing Associations of Cooperative Banks.</p> <p>According to Article 65 of the Banking Act CIs are obliged to publish the annual financial statements and the consolidated financial statements immediately after their approval by the supervisory board respectively the Executive Board (depending on the legal form—public or private limited company—of the entity) pursuant to Article 59 and Article 59a para. 1 of the Banking Act in the Official Gazette attached to the "<i>Wiener Zeitung</i>" or in a generally available publication, e.g. the Savings Bank Journal ("<i>Sparkassenzeitung</i>") available at all domestic branches of savings banks. Those reports have to be kept at the corporate seat of the CI for inspection by the public (Article 65 para. 1 of the Banking Act). The notes (the extent depends on the size of the company) have to be published as well (Article 65 para. 2 of the Banking Act). Similar rules apply pursuant to Article 65 para. 3 of the Banking Act to branches of foreign CIs (i.e., branches of CIs outside the EEA).</p>
EC3	<p>The supervisor determines that banks use valuation practices consistent with accounting standards widely accepted internationally. The supervisor also determines that the framework, structure and processes for fair value estimation are subject to independent verification and validation, and that banks document any significant differences between the valuations used for financial reporting purposes and for regulatory purposes.</p>

Description and findings re EC3	<p>Accounts and valuations must comply with the principles set forth in Article 189 para. 1 and Article 201 para. 1 of the UGB. The annual accounts have to present a true and fair view of the values, financial positions and results of the company (Article 222 para. 2 of the UGB).</p> <p>Valuation rules according to the Banking Act</p> <p>In addition to the basic rules, the accounts and valuations must comply with the specific rules of Articles 55 to 58 of the Banking Act.</p> <p>Consolidated financial statements of listed companies have to be prepared in accordance with IFRS, consolidated financial statements of non-listed companies have the option to prepare their statements in accordance with IFRS or in accordance with national accounting law regulated in the UGB.</p> <p>If the CIs prepare their consolidated financial statements in accordance with IFRS, the valuation rules of IFRS have to be complied.</p>
EC4	<p>Laws or regulations set, or the supervisor has the power to establish the scope of external audits of banks and the standards to be followed in performing such audits. These require the use of a risk and materiality based approach in planning and performing the external audit.</p>
Description and findings re EC4	<p>In a narrow sense the scope of the external audit and the use of a risk and materiality-based approach in planning and performing the external are fixed by the external auditor. In a wider context, however, company law sets down the relevant requirements for external auditors. Thus, according to Article 268 para I of the company code and to Article 60, para. I of the Banking Act all financial statements and consolidated financial statements including management reports of companies and credit institutions must be audited by an external auditor. The duties of external auditors including the audit scope are regulated in their professional rules and in the regulations of the Chamber of Accountants and Licensed Auditors and the Institute of Auditors. These rules and regulations, which are mandatory, are in accordance with International Standards on auditing.</p> <p>Together with the external audit of the (consolidated) financial statements Article 63 para. 5 of the Banking Act demands auditors to audit an Annex to the Audit Report on the annual financial statements. The bank auditor has to answer specific questions belonging to banking law and the situation in the CI.</p> <p>This Annex must be submitted along with the audit report on the financial reports to the Executive Board, the CIs' supervisory bodies under applicable law or the articles of association in such a timely manner that the submission deadline due to Article 44 para. 1 of the Banking Act (6 months from the accounting date) can be</p>

	<p>observed. The annex is not published.</p> <p>According to Article 63 para. 5 of the Banking Act the FMA issued a regulation defining the form and layout of this annex and of the annexes indicated in Article 63 para. 7 of the Banking Act—Regulation on the Appendix to the Audit Report on the Annual Financial Statements (<i>Verordnung über den Anhang zum Prüfbericht—AP-VO</i>).</p> <p>The bank auditor must also review whether reserves are accounted for appropriately (Article 68 para. 1 of the Banking Act).</p> <p>Article 277 paras. 1 to 8 of the UGB and Article 65 paras. 1 to 4 of the Banking Act regulate the publication of the audited and approved (consolidated) annual financial statements</p>
EC5	Supervisory guidelines or local auditing standards determine that audits cover areas such as the loan portfolio, loan loss provisions, non-performing assets, asset valuations, trading and other securities activities, derivatives, asset securitizations, consolidation of and other involvement with off-balance sheet vehicles and the adequacy of internal controls over financial reporting.
Description and findings re EC5	<p>Such guidelines are provided by the Banking Act and in the regulation according to the additional Annex to the Audit Report (AP-VO). They ensure that such areas as the loan portfolio, loan loss reserves, non-performing assets, asset valuations, trading and other securities activities, derivatives, asset securitization, and the adequacy of internal controls over financial reporting are covered by the audits. These topics are part of Section V of the Annex to the Audit Report on the annual financial statements.</p> <p>In order to ensure the adequate quality of public auditing in general the Austrian Chamber of Accountants and Licensed Auditors (<i>Kammer der Wirtschaftstreuhänder—KWT</i>) and the Austrian Association of Auditors (<i>Institut Österreichischer Wirtschaftsprüfer—IWP</i>) regularly publishes guidelines concerning specific subject areas in auditing.</p>
EC6	The supervisor has the power to reject and rescind the appointment of an external auditor who is deemed to have inadequate expertise or independence, or is not subject to or does not adhere to established professional standards.
Description and findings re EC6	<p>According to Article 63 paras. 1 and 1c of the Banking Act the FMA has the power to reject and rescind the appointment of a bank auditor for several reasons outlined in Article 62 nos. 1 to 17 of the Banking Act.</p> <p>These actions may be taken against the bank auditor as a natural person or</p>

	<p>against the external audit firm, depending on the specific reason according to which the action is taken.</p> <p>CIs have the legal obligation to submit the name of the audit firm elected in their shareholders' meeting within 2 weeks of the meeting. In case of the submission of an audit firm the natural person(s) responsible for the audit/signing the audit report have also be named to the FMA and the FMA can raise an objection if there is a reason for rejection or another reservation exists.</p> <p>Article 62 of the Banking Act provides a demonstrative list of circumstances which are deemed to be reasons for exclusion of a bank auditor or an external audit firm. This list includes criteria such as the lack of professional qualification and appropriate education, cases where the auditor has no financial, economic or personal independence, is a member of the Executive Board or the Supervisory Board or an employer of the company audited or has no peer review qualification. Another reason would be the lack of having done audits with the care required under objective measurements within the last 5 years.</p> <p>In practical terms the FMA receives a letter of declaration from every bank auditor stating that they are independent. The FMA assesses the given information and—if deemed necessary—requires additional information from the bank auditor concerned. This assessment process takes place every year for every CI and every bank auditor separately.</p> <p>In case of any reason for (suspected) independence, the FMA has the opportunity and obligation to reject the notification of the bank auditor at the responsible Commercial Court.</p> <p>Please note that since the establishment of the FMA in April 2002 there were no official cases where the FMA had to start such a rejection at Court. But in fact, there were some cases leading to the rejection of specific bank auditors due to several reasons set out in Article 62 of the Banking Act.</p>
EC7	The supervisor determines that banks rotate their external auditors (either the firm or individuals within the firm) from time to time.
Description and findings re EC7	<p>According to Article 271a of the UGB and special regulations in the Banking and the Insurance and Pension Funds Act "internal rotation" is determined for listed companies, companies exceeding special size criteria ("very big companies") and CIs, Insurance Companies and Pension Funds.</p> <p>After a period of five years having signed the audit report/being responsible for the audit the individual(s) who has/have signed has to change. In cases of only one certified bank auditor working in an external audit firm the whole firm has to</p>

	<p>rotate, in cases of external audit firms with more individual professionals with the qualification of a bank auditor the individual has to change for at least two years (“cooling-off”).</p> <p>Bank auditors of mutual savings banks and auditors of cooperative banks also have to observe the internal rotation rules within their institutions (i.e., Auditing Associations of Cooperative Banks and the Auditing Agency of the Savings Banks).</p>
EC8	The supervisor meets periodically with external audit firms to discuss issues of common interest relating to bank operations.
Description and findings re EC8	<p>The FMA has the power to demand information from the bank auditors at any time (Article 70 para. 1 no. 2 of the Banking Act). In this respect meetings can be arranged at any time not only to discuss the outcome of the auditor’s work but also general issues relating to CI operations.</p> <p>Meetings are held between the FMA and the external audit firms (especially the Auditing Associations of Cooperative Banks and the Auditing Agency of the Savings Banks as statutorily appointed bank auditors) on a quarterly basis for a broader discussion on all important issues. There are also periodical meetings with bank auditors, especially with members of the Big 4 audit firms and the professional Associations (KWT and IWP), taking place at least two times per year.</p> <p>Additionally, the responsible analyst within the FMA Off-Site Analysis divisions (Off-Site Analysis for System-Relevant CIs and groups of CIs and Off-Site Analysis for decentralized CIs and joint-stock banks) stays in close contact with the respective bank auditors and will meet them as appropriate.</p>
EC9	The supervisor requires the external auditor, directly or through the bank, to report to the supervisor matters of material significance, for example failure to comply with the licensing criteria or breaches of banking or other laws, significant deficiencies and control weaknesses in the bank’s financial reporting process or other matters that they believe are likely to be of material significance to the functions of the supervisor. Laws or regulations provide that auditors who make any such reports in good faith cannot be held liable for breach of a duty of confidentiality.
Description and findings re EC9	<p>The bank auditor is obliged to report ad-hoc matters of material significance to the FMA and OeNB directly according to Article 63 para. 3 of the Banking Act. The reporting duty has to be fulfilled in case of material violations of law, in case of the risk for the CI of being unable to fulfill its obligations or in case of potential risk to the CI’s existence.</p> <p>If a bank auditor (or a natural person acting on behalf of an audit firm) does not</p>

	report as required by Article 63 para. 3 of the Banking Act, that person can be punished by the FMA up to EUR 50,000 unless it constitutes a criminal offense to be punished by court.
Additional criteria	
AC1	The supervisor has the power to access external auditors' working papers, where necessary.
Description and findings re AC1	<p>As explained under EC 9, bank auditors have the duty to report to the supervisor all facts of material legal non-compliance and substantial risks for the CI.</p> <p>But the supervisor has no power to access the bank auditors' internal working papers due to their professional confidentiality. This also includes their reports to the authority. Under certain circumstances, certain auditors may be exempted from their professional confidentiality (e.g. certain court proceedings).</p> <p>The FMA states that in the light of the extensive regulatory functions and reporting requirements of bank auditors in Austria, regular inspection of the auditors' working papers is expected to have a minor additional value to an effective banking supervision and is therefore not provided for in the Banking Act. Besides, it is common practice to communicate and exchange additional information with the supervisor.</p> <p>Regular supervision of auditors is not a competence of the FMA, but a duty of the Austrian auditors' quality review authority (peer review following the <i>Abschlussprüfungs-Qualitätssicherungsgesetz— A-QSG</i>, a two tier-system with auditors from other companies on the first stage, and an authority on the second stage).</p>
Assessment of Principle 27	Largely compliant
Comments	<p>As indicated in EC1, all Austrian banks (as well as Austrian companies in general) must prepare their unconsolidated financial statements in accordance with Austrian GAAP. (This, apparently, is for tax purposes.) This raises the question, as posed in ECI, as to whether "financial statements are calculated in accordance with accounting policies and practices that are widely accepted internationally". Without in any way calling into question the integrity of Austrian (or indeed German) GAAP, the fact, for instance, that Austrian banks have to use IFRS when raising public funds would indicate that Austrian GAAP is not widely accepted internationally.</p>

	Regarding the Additional Criterion, although having no influence on the grading, it is recommended that the FMA be given the power to access external auditors' papers, where necessary.
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Principle 28	Disclosure and transparency. The supervisor determines that banks and banking groups regularly publish information on a consolidated and, where appropriate, solo basis that is easily accessible and fairly reflects their financial condition, performance, risk exposures, risk management strategies and corporate governance policies and processes.
Essential criteria	
EC1	Laws, regulations or the supervisor require periodic public disclosures ⁸⁵ of information by banks on a consolidated and, where appropriate, solo basis that adequately reflect the bank's true financial condition and performance, and adhere to standards promoting comparability, relevance, reliability and timeliness of the information disclosed.
Description and findings re EC1	<p>The Banking Act requires periodic public disclosures, including PIII information. Articles 26 and 26a of the Banking Act stipulate for CIs and the superordinate CIs the publication of information relating to their organizational structure, risk management and risk capital position at least once per year. CIs must also publish information with regard to the Internal Ratings Based Approach, credit risk mitigation techniques and the Advanced Measurement Approach for operational risk.</p> <p>Specification with regard to disclosure is furthermore stipulated on the basis of Article 26 para. 7 Banking Act by the FMA's Disclosure Regulation (<i>Offenlegungsverordnung—OffV</i>). Based upon this Regulation, CIs must disclose their risk management objectives and policies separately for each individual risk category. Such disclosures must include:</p> <ul style="list-style-type: none"> • the strategies and processes to manage those risks; • the structure and organization of the relevant risk management functions; • the scope and nature of risk reporting and measurement systems; and • the policies for hedging and mitigating risk, and the strategies and processes used to monitor the continuing effectiveness of hedges and mitigants. <p>Pursuant to Article 26 para. 4 Banking Act, CIs must ensure the adequacy of disclosed information by means of binding internal policies, including verification of the</p>

⁸⁵ For the purposes of this Essential Criterion, the disclosure requirement may be found in applicable accounting, stock exchange listing, or other similar rules, instead of or in addition to directives issued by the supervisor.

	<p>information itself as well as the frequency of its publication.</p> <p>CIs must further define the medium in which they make such disclosures and publish all such information in the same medium. This medium must be generally accessible. Disclosure in the audited annual financial statements is considered to fulfill the requirement of general accessibility. In cases where information is not provided in the annual financial statements, the notes to these statements must clearly indicate where the information can be found.</p> <p>In this respect and further to the Disclosure Regulation, the FMA has published a circular on disclosure (<i>“Rundschreiben der FMA zu Sonderfragen der Offenlegung gemäß §§ 26 und 26a BWG”</i>) in February 2009⁸⁶. It specifies the medium of disclosure as well as the disclosure date. Pursuant to Article 26 para. 9 Banking Act the FMA has to collect information on remuneration policy of CIs and to submit this information to EBA. The EBA would publish this information in an aggregate form.</p> <p>According to Article 98 para. 2 no. 11 Banking Act directors of CIs must ensure the submission deadline pursuant to Article 44 Banking Act otherwise the FMA has the power to punish the CI for the administrative offense with up to EUR 60,000.</p> <p>The directors are, furthermore, responsible for the timely and correct submission of monthly and quarterly reports according to Article 74 Banking Act as well as of the reports on major loans according to Article 75 Banking Act (see Article 99 para. 1 nos. 8 and 9 Banking Act). However, such prudential returns are not published.</p> <p>The general provisions on accounting are found in Articles 43 and 44 Banking Act. The directors of CIs must ensure the legal compliance of the CIs annual financial statements and consolidated financial statements as well as annual reports and group annual reports.</p> <p>Based upon the requirements in the Commercial Code (UGB), all supervised institutions need to disclose their annual financial statements.</p> <p>In practice, financial disclosure is either made in the notes to the annual report or on the CI’s website. With regard to large CIs, most of the relevant information is published in the notes to the accounts. Most of the banking groups use for their consolidated financial statements IAS/IFRS. For a few banking groups which are not focused on the capital market, national law applies and they are subject to Volume 3 of the Commercial Code (UGB). On a non-mandatory basis additional IAS/IFRS information can be provided.</p>
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⁸⁶ Fehler! Hyperlink-Referenz ungültig. <http://www.fma.gv.at/de/rechtliche-grundlagen/rundschreiben/banken.html>.

EC2	The supervisor determines that the required disclosures include both qualitative and quantitative information on a bank's financial performance, financial position, risk management strategies and practices, risk exposures, aggregate exposures to related parties, transactions with related parties, accounting policies, and basic business, management, governance and remuneration. The scope and content of information provided and the level of disaggregation and detail is commensurate with the risk profile and systemic importance of the bank.
Description and findings re EC2	<p>The required disclosures have an adequate level of detail in quantitative and qualitative terms. Pursuant to Article 43 para. 2 Banking Act balance sheets and income statements of all CIs on a solo basis are to be drawn up in accordance with the layout used in the forms (templates for balance sheet and p&l accordingly) provided in Annex 2 to Article 43 to the Banking Act. A different template is used for building societies which are also licensed as special purpose CIs due to Article 1 para. 1 no. 12 Banking Act. Consolidated financial statements must also be prepared in accordance with the structure of those forms, if IAS/IFRS is not the chosen accounting standard.</p> <p>Pursuant to Article 59a Banking Act superordinate CIs which prepare consolidated financial statements in accordance with internationally recognized accounting principles pursuant to Article 245a para. 1 or 2 Commercial Code (UGB) must fulfill the requirements of Article 245a paras. 1 and 3 Commercial Code (UGB) and include the disclosures pursuant to Article 64 para. 1 nos. 1 to 15 and para. 2 Banking Act in the notes to the consolidated financial statements.</p> <p>Annual and consolidated financial statements must be prepared in a timely manner so that the submission deadline (i.e., 6 months after the end of the financial year) pursuant to Article 44 para. 1 Banking Act is met. Further subdivisions of the forms are only permissible where they are necessary in order to avoid confusion or where provided for by other legal provisions.</p> <p>The FMA may issue a regulation amending the forms where this is necessary due to changing accounting standards. Pursuant to Article 59 para. 1 Banking Act the superordinate CI must prepare consolidated financial statements and a consolidated annual report for its group of CIs. The scope of consolidation for a group of CIs (for prudential supervision) is determined by Article 30 Banking Act.</p> <p>According to Article 15a of the FMA's Disclosure Regulation, CIs have to disclose their remuneration policies, the interdependences between remuneration and income and key elements, parameters and principles of the remuneration system.</p> <p>With respect to disclosure intervals Article 26 para. 3 Banking Act states that CIs must disclose part or all of the information more frequently than once per year if this is necessary due to:</p>

	<ul style="list-style-type: none"> • the scope of their activities; • the nature of their activities; • their presence in different countries; • their involvement in various areas of the financial markets; • their activities on international financial markets; or • their participation in payment, settlement and clearing systems. <p>In practice, especially larger CI's disclose their PIII information more frequently, normally semi-annually.</p> <p>Subordinate CIs pursuant to Article 30 para. 1 or 2 Banking Act whose superordinate institution complies with the disclosure obligations on the basis of its consolidated financial situation are not required to comply with the disclosure obligations. In case a CI (that constitutes a parent CI in the EEA) is however considered as an important subsidiary as laid down in Article 26a (5), extra disclosure requirements exist, as specified in the Disclosure Regulation, sections 4, 5 and 17 which specify amongst others the a disclosure of own funds, of own funds requirements and of credit risk mitigation. An example of such disclosures could be found on the webpage of Bank Austria. http://www.bankaustria.at/ueber-uns-investor-relations-basel-ii-offenlegung-pillar-3.jsp</p> <p>Special consideration must also be given to a potential requirement to disclose further information regarding the structure of own funds and minimum capital requirements as well as information relating to high-risk exposures and other items which are subject to rapid change. In practice, this provision has not been used.</p>
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EC3	Laws, regulations or the supervisor require banks to disclose all material entities in the group structure.
Description and findings re EC3	<p>Disclosure for all material entities is regulated in FMA's Disclosure Regulation in paragraph 3. The following information is to be provided:</p> <ul style="list-style-type: none"> • name of the entity within the group • composition of the entity, in case itself is a group • type of consolidation of the entity within the group: <ul style="list-style-type: none"> • fully consolidated • proportional consolated • treated as a deduction from equity • not consolidated and not treated as a deduction from equity.
EC4	The supervisor or another government agency effectively reviews and enforces compliance

	with disclosure standards.
Description and findings re EC4	<p>All CIs have to submit their financial statements, consolidated financial statements, notes and the PIII information to the FMA and OeNB. All these reports are recorded and stored in a database and analyzed periodically by the supervisor.</p> <p>In case of any inadequateness or error in disclosure, CIs are prompted by OeNB and FMA to make a comment. In case of material errors in disclosure standards CIs are instructed by the FMA, on pain of fines, to restore legal compliance within a certain period of time which is appropriate in light of the circumstances or in cases of repeated or continued violations, the FMA prohibits the directors to conduct banking business completely or partly, unless this would be inappropriate (based on the nature and severity of the violation and if the restoration of legal compliance can be expected soon).</p> <p>Enforcement by the FMA with regard to compliance with IAS/IFRS disclosure is currently established, and thus expected for 2014.</p> <p>PIII information is not being externally audited. As far as this information is included in the notes to the financial statements, the consistency with the audited accounts will be assessed.</p>
EC5	The supervisor or other relevant bodies regularly publishes information on the banking system in aggregate to facilitate public understanding of the banking system and the exercise of market discipline. Such information includes aggregate data on balance sheet indicators and statistical parameters that reflect the principal aspects of banks' operations (balance sheet structure, capital ratios, income earning capacity, and risk profiles).
Description and findings re EC5	<p>FMA and OeNB periodically publish reports on the banking system in the form of ad-hoc press releases, and in their annual reports.</p> <p>Besides, OeNB publishes regularly the Banking Stability Report (<i>Finanzmarktstabilitätsbericht</i>) and special reports (Facts on CIs in Austria, Banking Supervision in Austria, FMA/OeNB Guidelines) on aggregated data of the banking system.</p>
Additional criteria	
AC1	The disclosure requirements imposed promote disclosure of information that will help in understanding a bank's risk exposures during a financial reporting period, for example on average exposures or turnover during the reporting period.

Description and findings re AC1	<p>CI related public reports provided by OeNB and FMA can be downloaded from the supervisor's websites.⁸⁷ The report on Banking Supervision in Austria as well as all the published FMA/OeNB Guidelines (e.g. on operational risk, credit risk) help to get a good understanding of the risk development of the CI's business in Austria.</p> <p>Furthermore, for individual CI's, detailed risk information is disclosed every year which gives a good view of the risk development on a bank specific level. No specific indicators have been prescribed that provide risk information from one to the other year for individual CI.</p>
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Assessment of Principle 28	Compliant
Comments	<p>For individual CI's, detailed risk information is disclosed every year which gives a good view of the risk development on a bank specific level. No specific indicators have been prescribed that provide risk information from one to the other year for individual CI.</p> <p>We recommend to develop such indicators.</p>

Principle 29	Abuse of financial services. The supervisor determines that banks have adequate policies and processes, including strict customer due diligence (CDD) rules to promote high ethical and professional standards in the financial sector and prevent the bank from being used, intentionally or unintentionally, for criminal activities. ⁸⁸
Essential criteria	
EC1	Laws or regulations establish the duties, responsibilities and powers of the supervisor related to the supervision of banks' internal controls and enforcement of the relevant laws and regulations regarding criminal activities.
Description and	FMA's duties, responsibilities and powers related to the supervision of CIs' internal

⁸⁷ http://www.oenb.at/de/presse_pub/presse_und_publicationen.jsp and <http://www.fma.gv.at/de/footer/downloads.html>

⁸⁸ The Committee is aware that, in some jurisdictions, other authorities, such as a financial intelligence unit (FIU), rather than a banking supervisor, may have primary responsibility for assessing compliance with laws and regulations regarding criminal activities in banks, such as fraud, money laundering and the financing of terrorism. Thus, in the context of this Principle, "the supervisor" might refer to such other authorities, in particular in Essential Criteria 7, 8 and 10. In such jurisdictions, the banking supervisor cooperates with such authorities to achieve adherence with the criteria mentioned in this Principle.

findings re EC1	<p>controls and enforcement of AML/CFT laws and regulations are defined in the following acts and provisions:</p> <ul style="list-style-type: none"> • Articles 1 para. 1 and 2 para. 1 of the Financial Market Authority Act (FMABG) in conjunction with Article 69 of the Federal Banking Act (Banking Act) establish the FMA as competent authority for the purpose of enforcement of supervisory acts, including the Federal Banking Act containing, inter alia, provisions regarding AML/CFT* as set out in Articles 40–41 of the Banking Act. • Article 3 para. 9 of the Banking Act grants the FMA the power to perform on-site inspections related to AML/CFT supervision. • Article 70 para. 1 no. 1 of the Banking Act and Article 22b of the FMABG grant the FMA the power to request information and to inspect relevant documents and data. • Article 70 para. 4 of the Banking Act provides for enforcement measures to restore legal compliance. • Article 22 of the FMABG grants the FMA the right to provide information on or make public any measures taken as a result of certain violations specified therein. • Articles 98 para. 5 and 99 para. 1 no. 9 of the Banking Act establishes the FMA's sanctioning powers in case of violation of the Banking Act. <p>*Criminal activities are not regulated in the Banking Act. These are regulated in the Austrian Criminal Code (StGB). Merely the prevention and combating of ML/FT is regulated in the Federal Banking Act.</p>
EC2	<p>The supervisor determines that banks have adequate policies and processes that promote high ethical and professional standards and prevent the bank from being used, intentionally or unintentionally, for criminal activities. This includes the prevention and detection of criminal activity, and reporting of such suspected activities to the appropriate authorities.</p>
Description and findings re EC2	<p>FMA supervises CIs' compliance with AML/CFT legal provisions and due diligence obligations as set out in Articles 40–41 of the Banking Act.</p> <p>Pursuant to Articles 40–41 Banking Act CIs, inter alia, are required to:</p> <ul style="list-style-type: none"> • Apply customer due diligence (CDD), i.e.: <ul style="list-style-type: none"> ○ Identification and verification of the identity of customers, authorized representatives and beneficial owners. ○ Risk-based and appropriate measures to obtain information on the purpose and nature of the intended business relationship. ○ Risk-based and appropriate monitoring of the business relationship. ○ Simplified and Enhanced CDD. ○ Record keeping.

	<ul style="list-style-type: none"> • Report cases of suspicion / file suspicious transaction reports (STRs). • Nominate AML/CFT compliance officer. • Implement and apply appropriate internal AML/CFT policies and processes. • Perform ML/FT risk analysis. • Provide staff with AML/CFT training and guidelines. • Pay attention to reliability and attachment to legal values when selecting staff. <p>The FMA determines CIs' compliance with the above obligations by performing on-site inspections (duration 1-2 weeks), company visits (half a day) and off-site investigation proceedings.</p>
EC3	In addition to reporting to the financial intelligence unit or other designated authorities, banks report to the banking supervisor suspicious activities and incidents of fraud when such activities/incidents are material to the safety, soundness or reputation of the bank. ⁸⁹
Description and findings re EC3	In addition to reporting to the A-FIU (Article 41 para. 1 of the Banking Act) CIs are required to submit quarterly risk statements to the FMA containing, inter alia, AML/CFT compliance relevant information (Article 74 para. 1 in conjunction with Article 39 para. 2b no. 11 of the Banking Act).
EC4	If the supervisor becomes aware of any additional suspicious transactions, it informs the financial intelligence unit and, if applicable, other designated authority of such transactions. In addition, the supervisor, directly or indirectly, shares information related to suspected or actual criminal activities with relevant authorities.
Description and findings re EC4	Pursuant to Article 41 para. 5 of the Banking Act the FMA is obliged to report suspicious transactions to the A-FIU. In addition the FMA is obliged to notify the public prosecutor's offices in cases where it becomes aware of instances (e.g. suspicious transactions) indicating a potential criminal offence and subsequently share all relevant information (Articles 78 and 79 of the Criminal Procedure Act (StPO)).
EC5	The supervisor determines that banks establish CDD policies and processes that are well documented and communicated to all relevant staff. The supervisor also determines that such policies and processes are integrated into the bank's overall risk management and there are appropriate steps to identify, assess, monitor, manage and mitigate risks of money laundering and the financing of terrorism with respect to customers, countries and regions, as well as to products, services, transactions and delivery channels on an ongoing basis. The CDD management programme, on a group-wide basis, has as its

⁸⁹ Consistent with international standards, banks are to report suspicious activities involving cases of potential money laundering and the financing of terrorism to the relevant national centre, established either as an independent governmental authority or within an existing authority or authorities that serves as an FIU.

	<p>essential elements:</p> <ul style="list-style-type: none"> (a) a customer acceptance policy that identifies business relationships that the bank will not accept based on identified risks; (b) a customer identification, verification and due diligence programme on an ongoing basis; this encompasses verification of beneficial ownership, understanding the purpose and nature of the business relationship, and risk-based reviews to ensure that records are updated and relevant; (c) policies and processes to monitor and recognize unusual or potentially suspicious transactions; (d) enhanced due diligence on high-risk accounts (e.g. escalation to the bank’s senior management level of decisions on entering into business relationships with these accounts or maintaining such relationships when an existing relationship becomes high-risk); (e) enhanced due diligence on politically exposed persons (including, among other things, escalation to the bank’s senior management level of decisions on entering into business relationships with these persons); and (f) clear rules on what records must be kept on CDD and individual transactions and their retention period. Such records have at least a five year retention period.
Description and findings re EC5	<p>In accordance with Article 39 para. 2 of the Banking Act CIs must have in place, inter alia, control mechanisms for the capture, assessment, management and monitoring of risks arising from banking transactions and banking operations. These mechanisms must be appropriate to the type, scope and complexity of the banking transactions conducted. Pursuant to Article 39 para. 2b no. 11 of the Banking Act such mechanisms must in particular cover ML/FT risks.</p> <p>According to Article 40 para. 2b of the Banking Act CIs must subject their business to risk analysis using suitable criteria—in particular products, customers, the complexity of transactions, customer business and geography—with regard to the risk of abuse for the purposes of ML/FT. CIs must be able to demonstrate to the FMA that the extent of the measures taken on the basis of the analysis is appropriate in view of the risks of ML/FT.</p> <ul style="list-style-type: none"> (a) Pursuant to Article 41 para. 4 no. 1 of the Banking Act CIs are required to establish adequate policies and procedures of CDD in order to forestall and prevent operations related to ML/FT, e.g. formulation of an adequate customer acceptance policy based on the CI’s risk analysis as a measure pursuant to Article 40 para. 2b of the Banking Act.

- (b) Article 40 para. 1, 2 and 2a no. 1 of the Banking Act require CIs to identify and verify the identity of customers, authorized representatives and beneficial owners.

Pursuant to Article 40 para. 2a no. 2 and 3 of the Banking Act CIs are obliged to apply risk-based and appropriate measures to obtain information on the purpose and nature of the intended business relationship and to ensure that the documents, data and information held are kept up to date.

- (c) Article 40 para. 2a no. 3 of the Banking Act requires CIs to take risk-based and appropriate measures to conduct ongoing monitoring of the business relationship and transactions in order to ensure that the transactions are consistent with the CI's knowledge of the customer.

In accordance with Article 41 para. 1 of the Banking Act CIs must pay special attention to any activity which they regard as particularly likely by its nature to be related to ML/FT in particular complex or unusually large transactions and all unusual patterns of transactions which have no apparent economic or visible lawful purpose; likewise, they shall, where possible, check the background of these activities and transactions, in particular if these, according to reliable sources, are in connection with states in which there is an increased risk of ML/FT.

- (d) Pursuant to Article 40b of the Banking Act CIs must apply additional due diligence measures on a risk sensitive basis as well as conduct enhanced ongoing monitoring of the business relationship in situations which by their nature can present a higher risk of ML/FT.

The FMA's Regulation on Money Laundering and Terrorism Financing Risk (GTV) identifies cases of an increased risk of ML/FT in relation to listed countries where enhanced CDD and monitoring obligations are to be applied. The regulation includes countries identified by the FATF in its Public Statement as having strategic deficiencies.

- (e) Pursuant to Article 40b para. 1 no. 3 of the Banking Act CIs are required to implement appropriate procedures to determine whether a customer is a PEP. CIs must obtain senior management approval before establishing business relationships with PEP. Furthermore CIs must take adequate measures to establish the source of funds and conduct enhanced ongoing monitoring of the business relationship.

Article 40 para. 3 of the Banking Act requires CIs to retain CDD documents and documentation and records of all transactions for a period of at least five years. The FMA has the power to issue regulations extending the retention period to no longer than 15 years.

	<p>In the course of on-site inspections (duration 1–2 weeks), company visits (half a day) and off-site investigation proceedings, the FMA conducts a thorough evaluation of the CI's application of CDD policies and processes as well as its internal guidelines and staff training in order to determine the CI's legal compliance. CIs' adherence to CDD obligations is assessed by conducting sample case assessments in the course of on-site inspections.</p>
EC6	<p>The supervisor determines that banks have in addition to normal due diligence, specific policies and processes regarding correspondent banking. Such policies and processes include:</p> <ul style="list-style-type: none"> (a) gathering sufficient information about their respondent banks to understand fully the nature of their business and customer base, and how they are supervised; and (b) not establishing or continuing correspondent relationships with those that do not have adequate controls against criminal activities or that are not effectively supervised by the relevant authorities, or with those banks that are considered to be shell banks.
Description and findings re EC6	<p>Correspondent banking relationships are subject to enhanced due diligence pursuant to Article 40b para. 1 no.2 of the Banking Act</p> <ul style="list-style-type: none"> a) Article 40b para. 1 no. 2 lit. a of the Banking Act requires CIs to gather sufficient information about a correspondent bank to understand fully the nature of its business and be able to ascertain the reputation of the institution and the quality of supervision on the basis of publicly available information. In accordance with Article 40b para. 1 no. 2 lit. c of the Banking Act CIs must obtain approval from senior management before establishing new correspondent banking relationships. b) Article 40b para. 1 no. 2 lit. b of the Banking Act CIs must satisfy themselves of the correspondent banks AML/CFT controls. <p>Pursuant to Article 40d of the Banking Act CIs must not enter into or continue a correspondent banking relationship with a shell bank and must take appropriate measures to ensure that they do not engage in or continue correspondent banking relationships with a CI which is known to permit its accounts to be used by a shell bank.</p> <p>In the course of on-site inspections (duration 1–2 weeks), company visits (half a day) and off-site investigation proceedings, the FMA determines whether CIs appropriately apply enhanced due diligence regarding correspondent banking relationships. Furthermore, correspondent relationships serve as selection criteria, inter alia, for sample case assessments conducted in the course of FMA's on-site inspections.</p>

EC7	The supervisor determines that banks have sufficient controls and systems to prevent, identify and report potential abuses of financial services, including money laundering and the financing of terrorism.
Description and findings re EC7	<p>In accordance with Article 41 para. 4 no. 1 of the Banking Act CIs are obliged to establish adequate and appropriate policies and procedures of CDD, reporting, record keeping, internal control, risk assessment, risk management, compliance management and communication in order to forestall and prevent operations related to ML/FT and to develop appropriate strategies to prevent the abuse of new technologies for the purposes of ML/FT.</p> <p>In accordance with Article 41 para. 1 of the Banking Act CIs must pay special attention to any activity which they regard as particularly likely by its nature to be related to ML/FT in particular complex or unusually large transactions and all unusual patterns of transactions which have no apparent economic or visible lawful purpose; likewise, they shall, where possible, check the background of these activities and transactions, in particular if these, according to reliable sources, are in connection with states in which there is an increased risk of ML/FT.</p> <p>The FMA determines the CIs' compliance with the above obligations by performing on-site inspections (duration 1–2 weeks), company visits (half a day) and off-site investigation proceedings. Systems evaluation represents a core audit module in the FMA's on-site inspections.</p>
EC8	The supervisor has adequate powers to take action against a bank that does not comply with its obligations related to relevant laws and regulations regarding criminal activities.
Description and findings re EC8	<p>EC2 of Principle 11 (Corrective and Sanctioning Powers) sets out the remedial actions which apply to all infringements of the Banking Act including infringements of AML rules.</p> <p>Accordingly, in cases where a CI violates the relevant laws, regulations or an administrative ruling:</p> <ul style="list-style-type: none"> • The FMA has the power to instruct the CI on pain of penalties to restore legal compliance pursuant to Article 70 para. 4 of the Banking Act. • In cases of repeated or continued violations the FMA is empowered to completely or partly prohibit the directors from managing the CI where deemed fit. • In cases where other measures cannot ensure the functioning of the CI the FMA has power to revoke the license. <p>Pursuant to Article 98 para. 5 of the Banking Act the FMA has the power to issue administrative penal sanctions where persons responsible for the CI's compliance with AML/CFT obligations are found guilty of violation, even through mere negligence, of the</p>

	relevant provisions. Such persons are to be punished by the FMA with a term of imprisonment of up to 6 weeks or a fine of up to EUR 150,000.
EC9	<p>The supervisor determines that banks have:</p> <ul style="list-style-type: none"> (a) requirements for internal audit and/or external experts⁹⁰ to independently evaluate the relevant risk management policies, processes and controls. The supervisor has access to their reports; (b) established policies and processes to designate compliance officers at the banks' management level, and appoint a relevant dedicated officer to whom potential abuses of the banks' financial services (including suspicious transactions) are reported; (c) adequate screening policies and processes to ensure high ethical and professional standards when hiring staff; or when entering into an agency or outsourcing relationship; and (d) ongoing training programs for their staff, including on CDD and methods to monitor and detect criminal and suspicious activities.
Description and findings re EC9	<p>The FMA supervises CIs' compliance with the following provisions:</p> <ul style="list-style-type: none"> (a) Article 42 para. 1 of the Banking Act requires CIs to set up an internal audit unit which reports directly to the directors and which serves the exclusive purpose of ongoing and comprehensive reviews of the legal compliance, appropriateness and suitability of the entire undertaking. In particular the internal audit unit is obliged to review compliance with AML/CFT requirements. The FMA must be granted access to the relevant documents pursuant to Articles 3 para. 9 and 70 para. 1 of the Banking Act. <p>Pursuant to Article 63 para. 4 no.3 of the Banking Act the external auditor must assess the CI's compliance with inter alia, AML/CFT provisions. The result of the audit is to be presented in an annex to the audit report on the annual financial statements (Article 63 para. 5 of the Banking Act). In accordance with Article 63 para. 5 in conjunction with Article 44 para. 1 of the Banking Act the annex must be submitted to the FMA by the CI. The external auditor is obliged to report facts indicating violations of, inter alia, AML/CFT provisions directly to the FMA (Article 63 para. 3 of the Banking Act). The FMA inspects any and all annexes to the audit report in order to determine whether an investigation proceeding is to be initiated.</p>

⁹⁰ These could be external auditors or other qualified parties, commissioned with an appropriate mandate, and subject to appropriate confidentiality restrictions.

	<p>Please refer also to CP 26 and CP 27.</p> <p>(b) Article 41 para. 4 no. 6 of the Banking Act obliges CIs to nominate a special AML/CFT compliance officer. The AML/CFT compliance shall only be responsible and accountable to and only report to the board of directors. He/she shall be vested with sufficient authority and be granted free access to any and all information, data, records and systems which might possibly be connected to ML/FT. The FMA has issued a circular on the responsibilities and competencies of the AML/CFT compliance officer providing guidance for CIs.</p> <p>(c) In accordance with Article 5 para. 1 of the Banking Act the FMA shall determine whether a CI's directors and holders of a qualified participation meet the requirements stipulated in the interest of a sound and prudent management of the institution. This includes determining, inter alia, their personal reliability as well as a director's professional qualification and expertise. (See also CP 5).</p> <p>Article 41 para. 4 no. 3 of the Banking Act requires CIs to pay attention to reliability and attachment to legal values when selecting staff members; likewise, to pay attention to the candidate's attachment to legal values prior to electing supervisory board members.</p> <p>The FMA's Circular on Identification and Verification of Identity for Credit Institutions stipulates that CIs, when entering into an agency or outsourcing relationship, must take appropriate measures to familiarize agents, in the same way as employees, with CDD for combating ML/FT, and specifically with identification obligations. This purpose is served in particular by participation in training measures and by regularly receiving information on any changes of law or current developments in preventing ML/FT.</p> <p>(d) Pursuant to Article 41 para. 4 no. 3 of the Banking Act CIs must take suitable measures to familiarize the staff responsible for the execution of transactions with the provisions intended to prevent or combat ML/FT; these measures must also include the participation of the responsible employees in special training programs in order to train the employees to recognize transactions which may be connected to money laundering or terrorist financing and to act accordingly.</p> <p>The FMA determines CIs' compliance with the above obligations by performing on-site inspections (duration 1–2 weeks), company visits (half a day) and off-site investigation proceedings.</p>
EC10	<p>The supervisor determines that banks have and follow clear policies and processes for staff to report any problems related to the abuse of the banks' financial services to either local management or the relevant dedicated officer or to both. The supervisor also determines that banks have and utilize adequate management information systems to provide the banks' Boards, management and the dedicated officers with</p>

	timely and appropriate information on such activities.
Description and findings re EC10	<p>In accordance with Article 41 para. 4 no. 1 of the Banking Act appropriate and suitable strategies shall be implemented for the reporting of suspicious transactions.</p> <p>The FMA's Circular on Suspicious Transaction Reports further elaborates that such strategies shall include, inter alia, appropriate internal written instructions on the procedures for filing STRs. These instructions should include information on who is responsible for the assessment of suspicious cases and the filing of STRs. The instructions should also indicate the cases in which a report should be made to the AML/CFT compliance officer. The reporting hierarchy and the administrative channels to be used in the event of suspicious indicators e.g. from the staff member at the counter up to the compliance officer should also be defined.</p>
EC11	Laws provide that a member of a bank's staff who reports suspicious activity in good faith either internally or directly to the relevant authority cannot be held liable.
Description and findings re EC11	Article 38 para. 2 no. 2 of the Banking Act states that obligations to maintain banking secrecy do not apply in the case of disclosing suspicious transactions. Also, Labor laws ensure that staff who act in good faith in the carrying out of their function cannot be held liable for their actions. Additionally, in accordance with Article 41 para. 7 of the Banking Act damage claims may not be asserted due to the fact that a credit institution or financial institution or one of its employees has delayed or omitted the execution of a transaction in negligent ignorance of the fact that the suspicion of money laundering or terrorist financing or of violations pursuant to Article 40 para. 2 was incorrect.
EC12	The supervisor, directly or indirectly, cooperates with the relevant domestic and foreign financial sector supervisory authorities or shares with them information related to suspected or actual criminal activities where this information is for supervisory purposes.
Description and findings re EC12	The passing of information with other supervisory authorities is permitted under Article 77 of the Banking Act which is based on EU Directives 2006/48/EC and 2002/87/EU. See CP3 for more details.
EC13	Unless done by another authority, the supervisor has in-house resources with specialist expertise for addressing criminal activities. In this case, the supervisor regularly provides information on risks of money laundering and the financing of terrorism to the banks.
Description and findings re EC13	<p>In 2011 the FMA consolidated the responsibilities for supervising compliance with AML/CFT legislation in one division with currently 12 staff and an additional AML/CFT expert tasked with international AML/CFT affairs situated in "International Affairs and European Integration" division.</p> <p>In order to raise awareness of ML/FT risks the FMA takes, inter alia, the following</p>

	<p>measures:</p> <ul style="list-style-type: none"> • AML/CFT workshops for CIs (in-house and on-site) and training courses at educational institutions. • Processing legal requests. • Publication of circulars. <ul style="list-style-type: none"> ○ Circular on Identification and Verification of Identity for Credit Institutions ○ Circular on Suspicious Transaction Reports ○ Circular on the Risk Sensitive Approach ○ Circular on the Transmission of Payer Information ○ Circular on AML Officer <p>In accordance with Article 41 para. 4 no. 6 of the Banking Act the A-FIU must provide CIs with access to up to date information on the practices of money launderers and terrorist financiers and in indications leading to the recognition of suspicious transactions (i.e., specific typologies).</p>
Assessment of Principle 29	Compliant
Comments	<p>Austria was the subject of a FATF Mutual Evaluation Assessment in June 2009. It was criticized on an number of fronts, including:</p> <ul style="list-style-type: none"> • having exemptions from CDD rather than simplified due diligence; • (not requiring to identify the beneficial owner and to verify the identification of the holder of saving accounts with a balance lower than EUR 15,000 and that are not registered in the customer's name; • having a too limited list of suggested high-risk customers and • not having issued guidelines on the risk-based approach for financial institutions. <p>The Mutual Evaluation Assessment of June 2009 was followed up by two follow-up reports (in 2011 and 2012). A third follow-up report is scheduled for later in 2013. According to the FMA, there is just one issue outstanding relating to the definition of terrorist financing. It believes that the issue is one of interpretation and will be cleared up at forthcoming meeting. Accordingly, the FMA has asked of FATF that this be the last follow-up meeting.</p> <p>As a consequence of the 2009 Mutual Evaluation Assessment, the FMA has introduced a number of new provisions, including raising the upper limit of sanctions for violations of AML/CFT obligations from EUR 75,000 to EUR 150,000.</p>

SUMMARY COMPLIANCE WITH THE BASEL CORE PRINCIPLES

A. Summary Compliance with the Basel Core Principles—Detailed Assessment Report

Core Principle	Grade	Comment
1. Responsibilities, objectives and powers	C	<p>EC 2: The FMA's mandate includes that it must consider the national economic interest in maintaining an efficient banking system and financial market stability. Taking into account the national economic interest when executing banking supervision, might endanger the primary objective to promote the safety and soundness of banks. This issue is further considered in the context of CP 2, EC 1.</p> <p>EC 6: The assessors view that a number of powers are lacking with respect to taking timely corrective actions, imposing sanctions to CI's, directly taking a supervisory measure against a director and on triggering resolution. This is further considered in the context of CP 11.</p>
2. Independence, accountability, resourcing and legal protection for supervisors	LC	<p>EC 1: There is a number of findings that might endanger the operational independence of the supervisory authority :</p> <ul style="list-style-type: none"> representatives of the industry are present in the supervisory board, although they do not have voting rights. the supervisory board, with representatives from the MoF, the OeNB, the FMA and the industry, has to confirm new FMA staff that operate at the second level. given the rules laid down on the starting dates in combination with the length of the terms of the individual members of the supervisory board, normally all members of the supervisory board would start and end their term at the same point in

		<p>time. Given that the MoF will nominate the members of the supervisory board, this could be envisaged as appointments of supervisory board members along the lines of the political cycle.</p> <ul style="list-style-type: none"> • Pursuant to Article 16 para. 4 FMABG, the Federal Minister of Finance is authorized to commission the FMA with conducting on-site inspections. Effectively, this right of the MoF could potentially set the priorities for undertaking on-site inspection activities and thereby endanger the FMA's operational independence, though in practice this right has only been used once. • The FMA must obtain consent from the MoF when issuing new regulations that are mandated by the Banking Act to the FMA.; in providing consent, the MoF would especially determine whether the FMA would continue to act within its scope of activities and the mandate provided, though it is not clear whether this would be the only consideration. • The MoF has the right to receive all the information from the FMA that in its view is necessary to effectively oversee the operations by the FMA. In case the frequency would be too high, this may have adverse effect on the independent operations of the FMA, though we have understood that to date only a few queries for information have been made by the MoF. • In CP 1, the assessors already noted that FMA's objectives as defined by law prescribe that it must consider the national economic interest in maintaining an efficient banking system and financial market stability, when monitoring compliance with the provisions of the Banking Act. Taking into account the national economic interest when executing banking supervision, might endanger the primary objective to promote the safety and soundness of banks and might also endanger its operational independence. In practice the assessors have not identified any circumstances
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		<p>whereby the national economic interest has impeded the FMA's supervisory objectives. However, given its potential negative influence on FMA's operational independence, it should be clarified that considering the national economic interest might never impede FMA's supervisory considerations.</p> <p>There is no direct access from Internal Audit to the Supervisory Board for all topics that it considers relevant.</p> <p>EC 2: There is no legal obligation to publicly disclose the reasons for the dismissal of a member of the Executive Board.</p> <p>EC 9: The following weaknesses have been identified in consultation with the FMA and OeNB legal experts: (i) there is no cap on the liability of FMA/OeNB bodies and staff; (ii) there are no safeguards for FMA/OeNB bodies and staff to protect them against self-incrimination while assisting the Bundes Finanzprokurator; and (iii) FMA/OeNB bodies and staff are also held liable in cases where courts have found supervised financial institutions or their managers non-compliant with prudential rules.</p>
3. Cooperation and collaboration	C	EC 2: In practice, with a number of foreign supervisory authorities outside the EEA that supervise subsidiaries of an Austrian parent CI, arrangements on confidential supervisory information exchange are absent, which means that confidential supervisory information cannot be exchanged. Please see the comments under BCP 13 Home-host relationships.
4. Permissible activities	C	
5. Licensing criteria	MNC	EC 2: The FMA has no specific powers to set itself criteria for licensing banks, though the criteria set in law are quite detailed and in practice have not hindered a thorough examination of an application.

		<p>EC 7: The FMA performs a fit & proper test on all directors that comprise the management board irrespective of the balance sheet and on the chairman of the supervisory board for CI's with total assets exceeding EUR 750 million. The FMA does not have the legal powers to undertake a fit and proper test on any other senior employee of the CI, on members of the supervisory board, or on the chairman of the supervisory board in CIs with total assets below EUR 750 million. Additionally, the supervisor does not have the power or legal basis to require changes in the composition of the supervisory board if members of the supervisory board are not fulfilling their duties relating to these requirements. In case the chairman of the supervisory board would no longer qualify, the FMA could address measures towards the CI, not directly towards the persons concerned. The FMA would then order the CI to have the chair of the supervisory board removed. In second instance the FMA could prevent senior management from taken decisions that need approval of the supervisory board and/or the FMA could make its order towards the CI about the chairman of its supervisory board public.</p> <p>We understand that as of May 2013 based upon new EBA guidelines on fit and proper testing, the FMA performs fit & proper testing on all new supervisory board members and on existing members on a risk based manner and that the respective articles in the Banking Act are expected to be changed as of 1st Jan 2014.</p> <p>EC 11: New entrants are subject to all relevant regulations as of the time of their licensing. No specific supervisory regime applies to new entrants.</p>
6. Transfer of significant ownership	C	<p>EC 6: There is no explicit notification requirement in the Austrian legislative framework for CIs to notify to the supervisor as soon as they become aware of any material information which may negatively affect the suitability of a major shareholder or a party that has a controlling interest.</p>

7. Major acquisitions	MNC	<p>EC 1: There is no prior approval process for investments by CIs in non-bank financial institutions outside the EEA or for non-bank non-financial institutions inside or outside the EEA. We were also informed that no prior approval is necessary for setting up a credit institution in a third country when this would be done by means of a greenfield operation.</p>
8. Supervisory approach	C	<p>EC 1: There is no specific unit or functionary responsible for the further development of the supervisory approach and methods, nor is there a quality control unit or quality manager responsible for the accompanying monitoring of the supervisory processes.</p> <p>EC 6: The obligation to draw up recovery and resolution plans currently exists for the 3 largest internationally active Austrian banking groups (i.e., Erste Bank Group, Raiffeisen Zentralbank, UniCredit Bank Austria) which cover almost half of the total bank assets as part of the Austrian Sustainability Package. The process between these three Austrian CIs and FMA/OeNB started in December 2011. End 2012 the CI's have provided the FMA/OeNB with their draft plans which are now being assessed. In addition, the Bank Reorganisation Act has been passed by Parliament mid this year and will enter into force on 1st January 2014. It will oblige all institutions to draft recovery and resolution plans that will be assessed by the FMA. Restructuring plans will have to be submitted by 1st July 2015, with the exception of the following credit institutions that will have to submit these plans by 1st July 2014: credit institutions with a balance sheet total exceeding 30 billion euros and credit institutions that receive funds directly from the ESFS or the ESM. Resolution plans will have to be submitted by 31st December 2015, with the exception of the credit institutions mentioned above that will have to submit these plans by 31st December 2014. Furthermore the FMA will be given a set of early intervention tools.</p>

9. Supervisory techniques and tools	C	<p>EC 2: An overall multi-year planning process has not been established, although specific multi-year planning cycles exist for CI's that would not be examined each year.</p> <p>AC 1: No specific framework exists for a periodic independent review on the supervisory processes undertaken by FMA and OeNB.</p>
10. Supervisory reporting	C	<p>EC 2: In practice, most CI's report based upon national GAAP. Just a few CI's provide their prudential reports, based upon IAS/IFRS accounting. However, most large CI's do use IFRS for their published financial statements, either because they are listed on the stock-exchange or issue debt securities. These CI's will need to change their accounting principles used for their prudential reporting in the near future, as soon as the Basel III requirements come into force in the EEA, which is expected as of 2014. The draft Directive implementing Basel III namely requires CI's to use IFRS for prudential purposes, in as far it is already used for their financial purposes. In this regard, please see Article 4 No.53 of the proposed CRR that refers to an 'applicable accounting framework', which means the accounting standards to which the institution is subject under Regulation (EC) No 1606/20021.</p>
11. Corrective and sanctioning powers of supervisors	LC	<p>EC 3: The FMA does not have the powers to directly intervene at an early stage by issuing an order to remedy a deficiency in for instance the CI's risk management systems or by issuing an order that would prohibit, limit or set other conditions on the business activities or exposures of</p> <p>EC 5: Not the CI, but only natural persons can be penalized for administrative and criminal offences respectively. Changes in that respect will enter into force on 1st of January 2014 by the transposition of CRD IV/CRR.</p> <p>EC 5: In case a director of a CI or a chairman of the supervisory board do not fulfill the conditions of Article 5 para. 1 nos. 6 to 13 Banking Act concerning fit & properness, the FMA itself cannot directly take a</p>

		supervisory measure against such a person and relieve that person out of his or her position but would need to address the CI.
12. Consolidated supervision	C	
13. Home-host relationships	LC	<p>EC 1 / 2: In practice, with a limited number of foreign supervisory authorities that supervise subsidiaries of a parent Austrian CI, arrangements on confidential supervisory information exchange are not in place due to legal restriction on national and European level, which means that confidential supervisory information between the home and host authorities cannot be exchanged and the foreign supervisor cannot take part in the college.</p> <p>EC 6: At the moment, except for the 3 largest CI's (Erste, Raiffeisen and UniCredit Bank Austria) which account for almost half of total bank assets in Austria, resolution plans are not prescribed for CI's. For the three institutions mentioned, the plans are still under development. There is no European framework for the resolution plans yet. As of 1st January 2014 the Bank Reorganisation Act will be applied. Amongst others, this act will prescribe credit institutions to develop resolution plans.</p>
14. Corporate governance	LC	The internal auditor reports directly to the board of directors. Material audit results based on audits performed must be reported quarterly to the chairman of the supervisory committee. In keeping with best international practice, it would be more appropriate for the internal auditor to report directly to the chairman of the supervisory committee and have full access to the chairman on an on-going basis.
15. Risk management process	LC	<p>There is no explicit requirement for larger and more complex banks to have a dedicated risk management unit overseen by a Chief Risk Officer or equivalent function.</p> <p>It is planned to introduce an explicit requirement for CIs to have a dedicated risk management function in</p>

		<p>the course of the year 2013. The main task of the risk management function, which will be independent from operational functions, will be to ensure that all material risks are identified, measured and properly reported. Moreover, there will be the obligation for CIs to establish a “risk committee” as a subcommittee of the supervisory board. The risk committee shall advise the executive board on the CI’s overall risk strategy and will assist the supervisory board in overseeing the implementation of the risk strategy.</p>
16. Capital adequacy	C	
17. Credit risk	LC	<p>There are no specific provisions requiring banks to make credit decisions free of conflicts of interest and on an arm’s length basis.</p>
18. Problem assets, provisions, and reserves	C	<p>The FMA should ensure that it has appropriately trained staff who are familiar with local laws and regulations in the CESEE region, particularly in the area of collateral valuations (e.g. real estate).</p> <p>For legal questions outside its jurisdictions, the Austrian Supervisor is in full confidence that it will receive the information of local laws and regulation in the CESEE region to the extent necessary by the supervisory colleagues from the CESEE region.</p>
19. Concentration risk and large exposure limits	C	
20. Transactions with related parties	MNC	<ol style="list-style-type: none"> 1. There is no explicit requirement to the effect that transactions with related parties must not be undertaken on more favourable terms than corresponding transactions with non-related counterparties. 2. There is no requirement that the write-off of related party exposures exceeding specific amounts or otherwise posing special risks are subject to prior approval by the bank’s board. 3. There is no explicit prohibition on board members with conflicts of interests from managing related party

		<p>transactions.</p> <p>4. Banks have policies and processes to identify individual exposures to and transactions with related parties as well as the total amount of exposures and to monitor and report on them through an independent credit review or audit process. However, there is no explicit provision for exceptions to policies, processes and limits to be reported to the appropriate level of the bank's senior management and, if necessary, to the board, for timely action.</p> <p>5. The supervisor should receive a specific listing of related party lending.</p> <p>The FMA can directly request such a listing at any time.</p>
21. Country and transfer risks	C	
22. Market risk	C	
23. Interest rate risk in the banking book	C	
24. Liquidity risk	C	
25. Operational risk	C	
26. Internal control and audit	LC	There is a very restrictive requirement for Austrian banks to have a compliance function. This relates to securities services. There is no general requirement for banks to have a total business-wide compliance function.
27. Financial reporting and external audit	LC	It is questionable whether Austrian local GAAP through which all Austrian banks must prepare their unconsolidated financial statements—though based on harmonized EC law—can be regarded as widely accepted internationally.
28. Disclosure and transparency	C	
29. Abuse of financial services	C	

RECOMMENDED ACTIONS TO IMPROVE COMPLIANCE WITH THE BASEL CORE PRINCIPLES AND THE EFFECTIVENESS OF REGULATORY AND SUPERVISORY FRAMEWORKS

Reference Principle	Recommended Actions
1. Responsibilities, objectives and powers	
2. Independence, accountability, resourcing and legal protection for supervisors	<p><i>On independence:</i></p> <ul style="list-style-type: none"> • Delete the confirmation by the supervisory board of the second level staff, just below the level of the supervisory board. • Discontinue the presence of the industry in the Supervisory Board of the FMA, by creating a separate industry forum or panel not linked to the supervisory board • Consider a staggered scheme for the starting and ending of the terms of the supervisory board members. • Introduce the legal obligation to publicly disclose the reasons for the dismissal of a member of the Executive Board. • Clarify at a minimum ex ante based upon which considerations and criteria the MoF could make use of Article 16 para 4. • Clarify ex ante that the MoF will always give its consent on a proposed FMA regulation, in case this regulation would fall within the scope of its mandate to set up such a regulation • Consider a more limited and focused right for the MoF to receive information in the context of its oversight of the operations of the FMA • Clarify that considering the national economic interest might never impede FMA's supervisory considerations and might consequently not in any way weaken its operational independence <p><i>On governance:</i></p> <ul style="list-style-type: none"> • Provide internal audit direct access to the Supervisory Board for all topics that it considers relevant. <p><i>On resourcing:</i></p> <ul style="list-style-type: none"> • Consider developing a multi-year audit planning.

	<p><i>On legal protection:</i></p> <ul style="list-style-type: none"> Remedy the weaknesses identified, especially in light of the envisaged resolution powers for the FMA, which are more intrusive and more publicly scrutinized than prudential measures.
3. Cooperation and collaboration	
4. Permissible activities	
5. Licensing criteria	<p>Introduce fit and proper criteria for all members of supervisory boards.</p> <p>Provide the supervisor with the legal basis and powers to require changes in the composition of the Supervisory Board</p> <p>Implement a more hands-on regime for new entrants in their first years of establishment, which is used to monitor the progress of new entrants in meeting their business and strategic goals, and to determine that supervisory requirements are met.</p>
6. Transfer of significant ownership	<p>Introduce an explicit notification requirement for CI's to notify to the supervisor as soon as they become aware of any material information which may negatively affect the suitability of a major shareholder or a party that has a controlling interest.</p>
7. Major acquisitions	<p>Provide the FMA with the necessary powers that will enable it to pre-approve investments or acquisitions in non-bank financial institutions as well as in non-bank non-financial institutions, given the risks involved.</p> <p>Clarify or revise the current Banking Act in such a way that greenfield operations when undertaken via setting up a subsidiary in another country, would also need pre-approval by the FMA.</p>
8. Supervisory approach	<p>Consider introducing a specific unit or functionary responsible for the further development of the supervisory approach and methods and for the quality control of the supervisory processes.</p> <p>Provide the FMA the powers to require CI's to set up recovery and resolution plans and to assess thereon the bank's resolvability, and to require banks to adopt appropriate measures in case barriers for an orderly resolution would be identified and that it will be provided with a clear framework or process for handling CI's in times of stress, such that any decisions to require or undertake recovery or resolution actions are made in a timely manner, in line with international best practices. The assessors have noted in this regard the legislative changes that will make it compulsory for CI's to make recovery and resolution plans and that will provide the FMA with additional powers to assure that such plans exist and can be enforced.</p>

9. Supervisory techniques and tools	<p>Consider using a supervisory planning process beyond the time frame of one year, which also facilitates a multi-year audit plan. (See Recommendation under CP2).</p> <p>Consider to implement a periodic independent review on the supervisory processes undertaken by the FMA and OeNB.</p>
10. Supervisory reporting	<p>Implement the current draft Article 4 No.53 of the CRR as soon as possible, concerning the changeover for prudential purpose of national GAAP to IFRS.</p>
11. Corrective and sanctioning powers of supervisors	<p>Provide the supervisor with the powers to directly intervene at an early stage by issuing an order to remedy a deficiency in for instance the CI's risk management systems or by issuing an order that would prohibit, limit, or set conditions on the business activities or exposures of a CI, when risks are building up or are not properly captured by the CI.</p> <p>Consider extending the FMA's power in applying penalties to the CIs in addition to natural persons, which might also impact the maximum level of these penalties.</p> <p>Provide the FMA with the power to directly take a measure against a person (more specifically the director or member or chairman of the supervisory board of the CI) which is not deemed fit & proper.</p>
12. Consolidated supervision	
13. Home-host relationships	<p>Evaluate the measures that have been taken to effectively exercise supervision in the absence of arrangements to exchange confidential information with other supervisory authorities, amongst others in the context of the effective handling of a crisis situation.</p> <p>Assess in the context of the supervisory college, the recovery and resolution plans that will be developed by the CI's and assessed by the supervisory authority as a result of the changes to the law in Austria, in conjunction with the host authorities concerned.</p>
14. Corporate governance	<p>Require the internal auditor to report to the supervisory board in the first instance.</p>
15. Risk management process	<p>Introduce explicit requirements for all larger and complex banks to have a dedicated risk management unit overseen by a Chief Risk Officer or equivalent function.</p>
16. Capital adequacy	
17. Credit risk	<p>Introduce specific provisions requiring banks to make credit decisions free of conflicts of interest and on an arm's length basis.</p>

18. Problem assets, provisions, and reserves	Ensure that the supervisor has appropriately trained staff who are familiar with local laws and regulations in the CESEE region, particularly in the area of collateral valuations (e.g. real estate).
19. Concentration risk and large exposure limits	
20. Transactions with related parties	There are quite a number of deficiencies in the area of related party lending, although in certain areas there are indirect mitigants. It is recommended that the Austrian authorities re-examine the whole area of related party regulations. They should also consider introducing new, more restrictive, limits on such lending than that which exists currently.
21. Country and transfer risks	
22. Market risk	
23. Interest rate risk in the banking book	
24. Liquidity risk	
25. Operational risk	
26. Internal control and audit	<p>Introduce an explicit requirement for banks to have a total business wide compliance function (as opposed to the current restrictive securities-related one).</p> <p>Consider lowering the threshold for the need for banks to establish an audit committee from €1 billion to, say, €500,000 in total assets.</p>
27. Financial reporting and external audit	<p>Consider allowing banks to prepare their non-consolidated financial statements using IFRS.</p> <p>It is recommended that the FMA be given the power to access external auditors' working papers, where necessary.</p>
28. Disclosure and transparency	Consider developing specific indicators for publication that provide risk information from one to the other year for individual CI.
29. Abuse of financial services	

AUTHORITIES' RESPONSE

The Austrian authorities, i.e., the Ministry of Finance (hereinafter "MoF"), the Austrian Financial Market Authority (hereinafter "FMA") and the OeNB (hereinafter "OeNB") appreciated the good discussions and the extensive analysis contained in this report. Nevertheless, it seems necessary to comment on the following issues:

CP 2: Independence, accountability, resourcing and legal protection for supervisors

On independence:

For constitutional reasons (accountability and governance) even independent bodies such as the FMA are subject to legal supervision. This legal supervision is limited on whether the FMA carries out their business within the legal framework. The legal supervision does not interfere with the operational work of the FMA as it is limited on cases of wrongful action or omission. § 16 FMABG deals with this legal supervision and has to be read together with § 1 FMABG. Considering the compliance with the essential and additional criteria of BCP 2 relating to the operational independence of the FMA and the already very limited form of legal supervision stipulated in § 16 FMABG we can't agree to amending Article 16 FMABG in the proposed way. As the assessors noted, the FMA has been commissioned only once with an on-site examination. The consent of the MoF on regulations of the FMA is limited to a small number of cases. Article 16 para. 1 allows requests for information only to ensure that the FMA fulfills its statutory tasks and does not violate laws and regulations or overstep its scope of duties. As regards the participation of representatives of the industry in the supervisory board it should be noted that they participate in the meetings only on specific, cost-related topics, do not receive the full set of documents and have no voting rights. This way the effect is de facto the same as with a special panel, but less time consuming.

As regards the appointment of members of the supervisory board of the FMA, it is the general approach for all corporations that members are appointed for the same period of office. Thus, there is no particularity or difference with regard to the appointments of supervisory board members of the FMA compared with the relevant procedures of any other Austrian corporation.

Possible reasons for dismissals of members of the Executive Board of the FMA are clearly stipulated in Article 7 para. 3 FMABG. In case of a dismissal conducted by the MoF, information on the case is subject to the general obligation of all governmental entities to give information according to the "*Auskunftspflichtgesetz*" (Duty of Information Act) as well as the case is subject to the Parliament's information right.

On governance:

The recommendation concerning the reporting line of the Internal Audit does not adequately reflect the two-tier governance system prevailing in Austria. Contrary to the one-tier governance model in which one body (usually the « Board ») exercises both executive and supervisory functions and is

composed of executive and non-executive members, the task of the supervisory board within a two-tier system is limited to monitoring and overseeing the performance of the executive board including the implementation of the company's strategic objectives. The day-to-day management of the organisation is the sole responsibility of the executive board which has the power to issue binding instructions in relation to (all) managers and employees. This is mirrored in the reporting line (first executive board, then supervisory board). The audit function should thus in principle remain as a tool of the executive board. Furthermore, the Internal Audit must report quarterly on significant findings to the chair of the supervisory board. Direct and constant access of the Internal Audit to the supervisory board does not fit within the two-tier governance system as applicable in Austria.

On legal protection:

Currently, the arrangements for protection of employees of the FMA "acting in good faith" are comprehensive. The FMA staff cannot be held directly (personally) liable by third parties. Damages must be claimed against the Republic of Austria. If a court rules that the Republic is to be held liable, the Republic may (but need not) decide to claim compensation from liable staff, but with major limitations. According to the "Amtshaftungsgesetz - AHG", no compensation can be claimed by the Republic for minor or ordinary negligence, and even in cases of gross negligence, the deciding court can reduce damages to be paid by the employees. In situations which could cause compensation claims against employees of the FMA but which do not fall within the scope of the "Amtshaftungsgesetz", the employees of the FMA are protected by the rules of the "Organhaftpflichtgesetz—OrgHG" or the "Dienstnehmerhaftpflichtgesetz—DNHG". In such cases, no compensation can be claimed for minor negligence and even in cases of ordinary negligence, the deciding court can reduce or completely release employees from paying damages. In general, any court ruling to pay damages must not threaten the livelihood of the employee. For the very unlikely case that an employee is sued for damages in practice, the FMA has to grant adequate legal protection to its employees according to Article 14 para. 3 FMABG. However, we share the view expressed by the IMF that with the introduction of the SSM, in particular when the FMA's bodies and staff act on behalf of the ECB, complementary arrangements in the public liability framework will need to be considered. Similarly, the forthcoming resolution powers may raise new issues regarding the effectiveness of the public liability framework to ensure legal protection of the FMA's bodies and staff, which also will need to be considered.

CP 5: Licensing criteria

The recommended action to introduce fit and proper criteria for all members of supervisory boards will be fulfilled by May 22, 2013, when the EBA Guidelines on the Assessment of the Suitability of the Members of the Management body and Key Function Holders (EBA/GL/2012/06, "F&P-GL") enter into force. According to Article 69 para. 5 Banking Act these Guidelines are directly applicable by the FMA.

The F&P-GL apply to competent authorities and CIs. Financial and mixed financial holding companies are also included in the scope of the Guidelines, because they have significant influence

on their CIs. In order to inform the public (most notably CIs and their boards members) about the new requirements and supervisory approach and to ultimately ensure maximal compliance by CIs the FMA published a Circular setting out the criteria and minimum requirements for assessing the fitness and propriety of members of the management body and key function holders (*Rundschreiben zur Eignungsprüfung von Geschäftsleitern, Aufsichtsratsmitgliedern und Inhabern von Schlüsselfunktionen (Fit & Proper—Rundschreiben)* as of May 2013). (Please refer to CP 5 EC 7 for further details).

According to the F&P-GL “key function holders” are those staff members whose positions give them significant influence over the direction of the CI, but who are not members of the management body. Key function holders might include heads of significant business lines, EEA branches, third countries subsidiaries, support and internal control functions. The fit and proper assessment has to be undertaken on newly appointed members of the management body, supervisory board and key function holders as well as on ongoing review. In this context “key functions holders” are considered as equivalent to “senior employees”.

Already now, the FMA monitors the suitability of the internal auditor of the CI according to Article 42 paras. 1 and 2 Banking Act and—as appropriate—verifies that the persons in question have the required expertise and experience in banking. According to Article 42 para. 1 Banking Act the duties of the internal audit must not be entrusted to persons who lack the required expertise and experience in banking. The internal auditor has to be notified to the FMA and all documents that prove the required expertise and experience have to be presented, too. The FMA has the power to require the exclusion of an inappropriate internal auditor by an administrative ruling according to Article 70 para. 4 Banking Act.

The FMA has to make every effort to comply with the F&P-GL, which set out prerequisite conditions on the assessment of the suitability of the members of the supervisory board and will not accept any breach of these requirements. The FMA is currently incorporating the F&P-GL into its supervisory practices and expanding the scope of fit and proper assessments to all members of the supervisory board in risk based manner. Whenever a supervisory board member is not considered suitable, the FMA will order the CI to reestablish lawful conditions by having a supervisory board in line with the legal requirements according to Article 70 para. 4 Banking Act.

Upon an amendment of the respective articles in the Banking Act as of 1st January 2014, the FMA will have the direct power in the Banking Act to ensure a greater scope for action following a breach and to ultimately require changes in the composition of the supervisory board if members of the supervisory board are not fulfilling their duties relating to these requirements.

It is correct that no specific supervisory regime applies to new entrants, as the new entrants have to fulfill all relevant regulations as of the time of their licensing.

However, in the course of application for a license (according to Articles 4 to 6 Banking Act) new entrants are obliged to present the business plan, budget calculation and all other processes, systems, models etc. which are necessary to run the applied banking business. The license will only

be granted if the analysed plans, processes, models, etc. (in accordance with the OeNB) are considered as plausible and effective. Considerable differences between the budget calculation in the business plan presented with the application and the results later-on would be detected through the monthly/quarterly and annual reports to be submitted by the CI to the OeNB. Adequate measures would then be taken immediately by the FMA, starting within the framework of routine management discussions. Furthermore, the FMA takes new entrants into due consideration, when establishing its yearly planning (together with the OeNB) for on-site inspections of CIs, so that such new entrants are audited in due time after the start of their business activities.

The FMA notes the recommendation to implement a more hands-on regime for new entrants in their first years of establishment to monitor the progress of new entrants in meeting their business and strategic goals, and to determine that supervisory requirements are met. However, the FMA already considers the current procedure regarding new entrants as a hands-on regime.

On the one hand the new entrants are individually monitored in the course of their application for license, as they have to present the business plan, budget calculation and all other processes, systems, models etc which are necessary to run the applied banking business. The license will only be granted if the presented and analysed plans and processes etc are considered as plausible and effective. On the other hand the new entrants are continually monitored after being licensed through the monthly/quarterly and annual reports to be submitted by the CI to the OeNB.

Considerable differences between the budget calculation in the business plan presented with the application and the results later-on would be detected and the adequate measures would then be taken immediately by the FMA, starting within the framework of routine management discussions. Furthermore, the FMA takes new entrants into due consideration, when establishing its yearly planning (together with the OeNB) for on-site inspections of CIs, so that such new entrants are audited in due time after the start of their business activities.

CP 7: Major acquisitions

It is planned to introduce an obligation for prior approval for setting up a CI in a third country by means of a greenfield operation by amending the relevant provision in Article 21 Banking Act.

Regarding the recommendation to provide the FMA with additional powers to pre-approve investments or acquisitions in non-bank financial institutions it should be noted that the FMA is already able to prohibit such investments if it is deemed necessary (see also CP 11). Concerning the risks involved with such investments, the Austrian authorities would like to point out that

- The OeNB and the FMA have regular meetings and discussions with the executive board of CIs, which also cover cross-border participations in particular. Additional information on emerging risks in participations may be obtained by the state commissioner, if applicable.
- An individual acquisition of a non-bank non-financial institution is permitted up to 15 percent of own funds. The total share of such non-bank non-financial activities must not exceed 60 percent

of own funds. Any exceeding amount must be fully covered by own funds due to Article 29 Banking Act which is audited regularly by the internal auditor and the bank auditor. An individual acquisition of non-bank non-financial institution must not exceed 25 percent of own funds in any case.

- Furthermore, the risks connected with participations in non-bank financial institutions are monitored by the supervision on a consolidated group level (Article 30 Banking Act).

Hence, there are rules in place to mitigate the risks connected with such investments.

Furthermore, the Austrian authorities would like to point out that of all CP 7's essential criteria only the aspect of prior permission of certain—but not all—types of investments (mainly concerning investments in non-bank non-finance institutions) is not fully covered by legislation.

CP 8: Supervisory approach with respect to recovery and resolution

Only if the corresponding recommendation is not deleted: The Bank Reorganisation Act has entered into force (Federal Law Gazette I Nr. 160/2013). Accordingly all institutions are obliged to draw up recovery and resolution plans that will be assessed by the FMA. This obligation is subject to the proportionality principle. Furthermore the FMA has a set of early intervention tools at its disposal.

CP 11: Corrective and sanctioning powers of supervisors

Within the supervision of CIs, it is the main task of the FMA to ensure that the arrangements, processes and mechanisms of credit institutions are comprehensive and proportionate to the nature, scale and complexity of the risks inherent in the credit institutions' business activities. If the FMA concludes that risks stemming from certain activities are not adequately covered, supervisory measures (e.g., the order to cease a certain conduct) will be imposed.

The FMA notes the recommendation to be provided with extra powers to issue an administrative order that would prohibit, limit, or set conditions on the business activities and exposures of a CI, due to a deterioration of its financial position. However, the FMA has already a range of corrective and sanctioning powers at its disposal: Article 70 Banking Act provides the FMA with a broad range of corrective and sanctioning powers if the fulfillment of the CI's obligations to its creditors is jeopardized. As pointed out in EC 6, for instance, in case of a quick deterioration in the financial position of a CI the FMA may issue administrative rulings under threat of penalty as remedial action according to Article 70 para. 2 Banking Act. This administrative ruling may (fully or partly) prohibit the withdrawal of capital and earnings as well as distributions of capital and earnings, appoint an expert supervisor (i.e., government commissioner) who prohibits transactions that are deemed to exacerbate the mentioned jeopardy or—in case that the CI has been enjoined to refrain from certain or all types of business—allows individual transactions that are deemed to not exacerbate the mentioned jeopardy. Further the administrative ruling may (partly) prohibit directors from managing the CI or (partly) prohibit the continuation of business operations.

Further on, the FMA will be informed of a “problem situation” immediately by the bank auditor (Article 63 para. 3 Banking Act), the state commissioner (Article 76 para. 8 Banking Act), the CI e.g., on circumstances that allow a prudent director to recognize that the ability to fulfill obligations is endangered, on the occurrence of insolvency or of over-indebtedness, any non-compliance in excess of one month with standards prescribed by the Banking Act (Article 73 Banking Act).

Nevertheless, it is planned to further clarify the range of possible supervisory tools of the FMA in more detail, enabling the FMA explicitly by law to restrict or limit the business, operations or network of credit institutions or to request the divestment of activities that pose excessive risk to the soundness of a CI or to require the reduction of the risk inherent in the activities, products and systems of CIs.

Taking the above into account, the Austrian supervisor has already under the present set of rules the possibility to intervene directly in case of a risk of the fulfillment of the CI’s obligation to its creditors by issuing an administrative ruling that would prohibit, limit, or set other conditions on the business activities or exposures. Furthermore, some early intervention measures for the supervisor are provided in the Austrian Bank Reorganisation Act.

CP 13: Home-host relationships

FMA is fully committed to information exchange and cross border cooperation. Austria is in line with the requirements set by EBA and the European framework on the establishment of supervisory colleges. Therefore the recognition of equivalence of a respective country has to be assessed and determined within these parameters on a European level and be in line with the confidentiality regime of the participating countries.

According to Article 131a Directive (EC) 2006/48 (=CRD) the main requirement to conclude arrangements for the confidential exchange of supervisory information with competent authorities of third countries is that these third country competent authorities are subject to confidentiality requirements that are equivalent to Articles 44 to 52 CRD. Therefore, according to the European framework, the Austrian supervisor must not conclude arrangements on confidential supervisory information exchange with third-country competent authorities not being subject to equivalent confidentiality requirements.

There is no European framework for resolutions plans yet. Ahead of the regulation to come the Austrian supervisor received resolution plans from the three largest CI’s accounting for almost half of total bank assets of the Austrian market. The recovery and resolution plans will be part of the discussions within the colleges.

CP14: Corporate Governance

There is the legal obligation for the internal audit to report quarterly to the chair of the supervisory board and the audit committee. It has to be stated that an audit committee is obligatory for all banks with a balance sheet exceeding EUR 1 billion. The committee guarantees a frequent and direct

reporting line to the relevant committee of the supervisory board. Please refer also to the Austrian comments with respect to CP 2 on the reporting line of internal audit.

CP 15: Risk management process

Currently, there is no explicit legal requirement for the appointment of a dedicated risk officer. However, the FMA Minimum Standards for the Credit Business and other Transactions entailing Credit Risks (FMA-MS-K) stipulate a clear functional separation between front office and risk management / back office functions. Also in all other lines of business the supervisory expectations concerning the segregation of duties between risk-taking and risk management units are following the same standards as set out for the area of credit risk. In fact, a dedicated CRO is in place in all larger banks, as well as a strict separation of market/control-functions.

It is planned to introduce an explicit requirement for CIs to have a dedicated risk management function in the course of 2013. The main task of the risk management function, which has to be independent from operational functions, will be to ensure that all material risks are identified, measured and properly reported. Moreover, there will be the obligation for CIs to establish a "risk committee" as a subcommittee of the supervisory board as the Banking Act has been amended accordingly. The risk committee shall advise the executive board on the CI's overall risk strategy and will assist the supervisory board in overseeing the implementation of the risk strategy.

CP 17: Credit Risk

The Austrian supervisor has set comprehensive rules and regulations regarding credit risk in credit institutions. Regarding credit decisions free of conflict of interest and on an arm's length (EC 5) it needs to be pointed out that even though there is no specific provision requiring banks to make such credit decisions the FMA relies on „Minimum Standards for the Credit Business and other Transactions entailing Counterparty Risks" and other requirements. The detailed assessment of the IMF rightly notes that according to these Minimum Standards "prudent lending practices imply a segregation of duties and the involvement of more than one person when granting a loan. Depending on the amount of the loan, different hierarchies are involved. This system of involvement of different groups in the lending process (loan officer, risk manager, credit committee, supervisory board, etc.) provides a high level of safety against a possible conflict of interests or pressure from outside parties." However, this aspect is not adequately reflected in the assessment.

CP 18: Problem assets, provisions and reserves

The setup of the supervisory colleges guarantees mutual exchange with colleagues from the host countries that have broad knowledge of the laws, procedures and specific risks within their home jurisdiction. Furthermore, supervisory actions in (CESEE-) host countries may take place in various forms of inspections of host subsidiaries in coordination with the respective supervisory authorities. On-site actions have taken place in several CESEE-countries in the past years, dedicated experience with respect to local laws and regulations as well as risk management issues have been built up; furthermore OeNB supervisory staff is partly from CESEE-countries.

CP 20: Transactions with related parties

Provisions relating to related party transactions are primarily aimed at protecting shareholders (as reflected by IFRS transparency requirements) and not at contributing to the reduction of supervisory risks. Liability and criminal law provisions also have to be taken into account as well as the fact that in practice, based on our supervisory findings transactions with related parties are not a major concern. According to the current legal regime, any transaction requires unanimous consent of the Board and approval of the Supervisory Board, there is annual reporting about these transactions towards the Supervisory Board, and the Supervisory Board has access to individual cases. The current comprehensive framework is based on experience and external recommendations.

CP 26: Internal Control and Audit

The assessment does not adequately take into consideration that there is already an explicit legal requirement in Art. 15 and 18 Securities Supervision Act⁹¹ for all CIs carrying out investment services⁹² to have a compliance function with duties as enshrined in Directive 2004/39/EC (MiFID).

CP 27: Financial Reporting and external audit

The Austrian authorities would like to draw attention to the fact that the accounting rules and principles of the Company Code (Austrian GAAP) comply with the EC's harmonized accounting standards as defined in the EC's accounting directives (as indicated in EC2):

- Fourth Council Directive 78/660/EEC on the annual accounts of certain types of companies
- Seventh Council Directive 83/349/EEC on consolidated accounts of certain types of companies
- EC Regulation 1606/2002 on the application of international accounting standards

The rules of the EC Regulation are binding in Austria, please see Article 5 of EC Regulation 1606/2002:

Options in respect of annual accounts and of non publicly-traded companies

Member States may permit or require:

⁹¹ Article 18 para. 3 Securities Supervision Act, Article 18 para. 4 no. 2 Securities Supervision Act, Article 15 para. 1 Securities Supervision Act.

⁹² According to Article 1 Securities Supervision Act, investment services are defined as reception and transmission of orders in relation to one or more financial instruments, execution of orders on behalf of the client, dealing on own account, portfolio management by way of managing portfolios in accordance with mandates given by clients on a discretionary client-by-client basis where such portfolios include one or more financial instruments, investment advice in relation to financial instruments, underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis, placing of financial instruments without a firm commitment basis, and operation of Multilateral Trading Facilities.

- a) *the companies referred to in Article 4 to prepare their annual accounts,*
- b) *companies other than those referred to in Article 4 to prepare their consolidated accounts and/or their annual accounts,*
- c) *in conformity with the international accounting standards adopted in accordance with the procedure laid down in Article 6(2).*

Due to the European regulation, Austrian GAAP are widely accepted in the EC, respectively internationally.

According to the preparation of (un-)consolidated financial statements in accordance with IFRS, the Austrian situation can be summarized as follows:

It is a fact that due to the Austrian legislation, Austrian banks have to prepare their unconsolidated financial statements in accordance with Austrian GAAP, whereas consolidated financial statements are usually prepared in accordance with IFRS, binding or on an optional basis. But this fact cannot be connected with the raising of public funds.

There are several ways for banks of raising public funds:

- 1) Small banks within the banking sectors use Austrian GAAP for their unconsolidated financial statements. Those banks never come in the position of raising public funds, because they will be financed by the rest of the sector.
- 2) If the whole sector comes in the position of raising public funds, the consolidated financial statements of the sector are prepared in accordance with IFRS.

Also under the aspect of raising public funds, it can be subsumed that financial statements are calculated in accordance with accounting policies and practices that are widely accepted internationally.

Consolidated accounts have to be prepared according to Article 59a Banking Act by using IFRS. According to FINREP consolidated financial statements have to be prepared by using IFRS, beginning in 2014. Also within the COREP-context IFRS will be used if this enhances the data quality of institutions.