

Banking Regulation 2025

12th Edition

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Introduction

Banking regulation serves as the foundation for the stability and security of the financial market. Due to its fundamental role in the economy, the banking sector is among the most heavily regulated industries in Austria. Comprehensive regulations at both the European and national levels, along with rigorous banking oversight by specialised authorities, guarantee proper functioning and continuous stability of the banking sector.

Nevertheless, the stringent regulatory requirements and intensive supervisory measures largely driven by the European Union (EU) present significant challenges for the industry. The upcoming implementation of the Capital Requirements Regulation (CRR III) will introduce significant changes to capital requirements, while the Anti-Money Laundering Package aims to strengthen measures against money laundering and terrorist financing. Additionally, the Digital Operational Resilience Act (DORA) will enforce stricter cybersecurity and operational resilience standards. The Financial Data Access and Payments Package, which aims to amend and modernise PSD2 as part of a new Payment Services Directive (PSD3), will also pose certain challenges for Austria.

Despite these challenges, the continuous adaptation to regulatory developments strengthens the resilience and integrity of the Austrian banking sector, ensuring its long-term stability in an evolving financial landscape.

Regulatory architecture: Overview of banking regulators and key regulations

Regulatory framework

Austrian banking regulation is strongly shaped by EU legislative acts. The EU can issue either regulations, which are directly applicable in all Member States, or directives, which provide a regulatory direction but leave the implementation to the Austrian legislator, the Austrian Parliament. Certain matters that contribute to the development of the European Single Rulebook are addressed by the European Banking Authority (EBA), which adopts technical standards and guidelines. Furthermore, the Austrian Financial

Market Authority (FMA) takes on a significant role in banking regulation, as the FMA publishes a number of minimum standards, circulars and other forms of soft law interpreting the main federal law enactments.

Key regulatory bodies overseeing banks

On the basis of the Single Supervisory Mechanism (SSM) of the EU, the system of banking supervision in Austria comprises the European Central Bank (ECB) and the national supervisory authorities. Austria's national supervisory authorities are the FMA and Austria's National Bank (OeNB).

The following Austrian significant credit institution groups have been directly supervised by the ECB per 1 November 2024:

- Addiko Bank AG.
- BAWAG Group AG.
- Erste Group Bank AG.
- Raiffeisen Bank International AG.
- Raiffeisenbankengruppe Oberösterreich Verbund eGen.
- RAIFFEISEN-HOLDING NIEDERÖSTERREICH-WIEN registrierte Genossenschaft mit beschränkter Haftung.
- Volksbank Wien AG.

The prudential supervision for less significant banks and credit institution groups is delegated to the FMA, whereas OeNB is responsible for the macroprudential analysis of the Austrian financial market.

Furthermore, the FMA is conducting horizontal supervision, supervision for insurance companies, pension funds, investment firms, management companies, payment service providers and crypto-asset service providers. The FMA is also the competent resolution authority for Austrian less significant institutions (LSIs).

OeNB's role in banking supervision is as an expert as well as a fact-finding entity for the FMA and the ECB. OeNB conducts on-site inspections on behalf of the FMA and the ECB, provides expert opinions and is responsible for processing the regulatory reporting of credit institutions.

Key legislation for banks

The key pieces of legislation for banks are the following:

- Austrian Banking Act (BWG).¹
- Austrian Building Society Act (BSpG).²
- Beneficial Owners Register Act (WiEReG).³
- Deposit Guarantee Schemes and Investor Compensation Act (ESAEG).⁴
- E-Money Act 2010 (E-Geldgesetz 2010).⁵
- Federal Act implementing Regulation (EU) 2022/2554 on Digital Operational Resilience in the Financial Sector (DORA-VG).⁶
- Federal Act on the Recovery and Resolution of Banks (BaSAG).⁷
- Financial Markets Anti-Money Laundering Act (FM-GwG).⁸
- Financial Market Authority Act (FMABG).⁹
- Payment Services Act 2018 (ZaDiG).¹⁰
- Covered Bonds Act (PfandBG).¹¹
- Savings Bank Act (SpG).¹²
- STS Securitisation Enforcement Act (STS-VVG).¹³

Consumer Protection Legislation with respect to financial services:

- Consumer Credit Act (VKrG).¹⁴
- Consumer Payment Account Act (VZKG).¹⁵
- Distance Financial Services Act (FernFinG).¹⁶
- Mortgage and Real Estate Credit Act (HIKrG).¹⁷

Restrictions on the activities of banks

The conduct of the following banking activities requires a licence by the FMA/ECB (Article 1 para. 1 BWG):

- No. 1: the acceptance of funds from other parties for the purpose of administration or as deposits (deposit business);
- No. 2: the provision of non-cash payment transactions, clearing services and current account services for other parties (current account business);
- No. 3: the conclusion of money lending agreements and the extension of monetary loans (lending business);
- No. 4: the purchase of cheques and bills of exchange, and in particular the discounting of bills of exchange (discounting business);
- No. 5: the safekeeping and administration of securities for other parties (custody business);
- No. 6: the issuance and administration of payment instruments such as credit cards, bankers' drafts and traveller's cheques, with no limitation applicable to the term of crediting in the case of credit cards;
- No. 7: trading for one's account or for the account of a third party in foreign means of payment or certain financial instruments (e.g. money markets instruments, futures and options, transferable securities and derivative instruments based on the previous) except for trading for private assets;
- No. 7a: trading for one's own account or for the account of third parties in financial instruments in accordance with Article 1 no. 7 (e) to (g), (j) and (k) of the Austrian Securities Supervision Act 2018 (WAG 2018), except for trading by persons in accordance with Article 2 para. 1 nos 6, 12 and 13 WAG 2018 and trading for private assets;
- No. 8: the assumption of suretyships, guarantees and other forms of liability for other parties where the obligation assumed is monetary in nature (guarantee business);
- No. 9: the issuance of covered bonds in accordance with the PfandBG (securities underwriting business);
- No. 10: the issuance of other fixed-income securities for the purpose of investing the proceeds in other banking transactions (miscellaneous securities underwriting business);
- No. 11: participation in underwriting third-party issues of one or more of the instruments listed under no. 7 (b) to (f) as well as related services (third-party securities underwriting business);
- No. 12: the acceptance of building savings deposits and the extension of building loans in accordance with the BSpG (building savings and loan business);
- No. 13: the management of investment funds in accordance with the Investment Fund Act 2011 (InvFG 2011) (investment fund business);
- No. 13a: the management of real estate investment funds in accordance with the Real Estate Investment Fund Act (ImmoInvFG) (real estate investment fund business);
- No. 15: the business of financing through the acquisition and resale of equity shares (capital financing business);

- No. 16: the purchase of receivables from the delivery of goods or services, assumption of the risk of non-payment associated with such receivables – with the exception of credit insurance – and the related collection of such receivables (factoring business);
- No. 17: the operation of money brokerage transactions in the interbank market;
- No. 18: the brokering of business according to:
 - No. 1, except through contractual insurance companies;
 - No. 3, except for the brokering of mortgage loans and personal loans by real estate agents, personal loan and mortgage loan brokers, and investment advisors;
 - No. 7 as far as it relates to foreign exchange transactions; and
 - No. 8;
- No. 21: the acceptance and investment of severance payment contributions from salaried employees and self-employed persons (severance and retirement fund business); and
- No. 22: the purchase of foreign means of payment (e.g. notes and coins, cheques, traveller's letters of credit and payment orders) over the counter and the sale of foreign notes and coins as well as traveller's cheques over the counter (exchange bureau business).

Licences may be issued subject to conditions and requirements and including one or several types of banking transactions listed above. The issue of licences granted to an entity in Austria is publicly available in the FMA's Company Database.¹⁸

The EU defines a credit institution in Article 4 para. 1 CRR as an undertaking that takes deposits or other repayable funds from the public and grants credits for its own account. Member States can define themselves which business activities should fall under the scope of activities of a credit institution. The Austrian legislator set out a wider scope for the definition of a credit institution than the CRR as, according to the BWG, all entities fall under the definition of a credit institution if licensed for any of the business activities stated above. In particular, Austrian credit institutions do not necessarily have to be licensed for deposit business. Hence, there are credit institutions in Austria that are only credit institutions according to the BWG but do not qualify as credit institutions according to the CRR (non-CRR credit institutions but CRR financial institutions).

Any Austrian licensed credit institution is also authorised to render specified investment services and payment services, trade in gold bullion and provide data reporting services without being subject to licence requirements for investment firms or payment institutions. Such business activities are already included in the scope of their statutory licence.

Recent regulatory themes and key regulatory developments in Austria

Besides the implementation of Basel IV, the FMA and OeNB set the following thematic focuses for fulfilling their duties in banking supervision in 2025:

- Focus on credit and real estate risk for resilience of the banking sector: in 2025, the banking sector will continue to feel the impact of two years of negative economic growth, along with the shift away from a low-interest rate environment. Geopolitical factors could further exacerbate these challenges. It is essential to ensure that the resilience built up in the Austrian banking sector over recent years remains intact even in challenging times. Therefore, credit and real estate risks, in particular, will be carefully analysed and mitigated through appropriate supervisory measures. Where necessary, intensified on-site inspections will be conducted, especially for banks with particularly high exposures.
- Digital transformation, cybersecurity and artificial intelligence (AI): the effects of AI applications on business models shall be examined more thoroughly and integrated into the risk assessment of credit institutions. Ongoing dialogue with national AI authorities and credit institutions should

be maintained. Furthermore, the processes for the practical implementation of the new DORA and Markets in Crypto-Assets Regulation (MiCAR) frameworks should be continuously improved.

- Sustainability (ESG) risks: sustainability risks should be more deeply embedded in ongoing supervision, with a strong emphasis on proportionality. The ESG-related regulatory changes from the CRR/CRD (Capital Requirements Directives) package should be seamlessly integrated into ongoing supervisory activities and the Supervisory Review and Evaluation Process (SREP). Furthermore, the outcomes of the “Fit for 55” climate stress tests exercise should be thoroughly analysed and appropriately addressed.
- Governance: the enforcement of governance requirements for credit institutions will be further strengthened by clarifying supervisory expectations and strengthening cooperation, particularly with bank auditors and in the area of anti-money laundering (AML). Efforts to combat money laundering should be intensified, notably by fostering closer ties with the newly established European Anti-Money Laundering Authority (AMLA).

These priorities must be considered in alignment with the content of the SSM’s supervisory priorities for 2025 and remain consistent with the objectives and work programme of the EBA.

In light of the increased systemic risks from residential real estate financing in relation to the high increase in real estate prices during the COVID-19 pandemic, the subsequently changing interest rates, the fragile economic environment, as well as lending practices, the FMA issued a regulation for sustainable lending standards for residential real estate financing (KIM-V)¹⁹ in 2022. The regulation intends to ensure compliance with certain criteria when granting residential financing. This regulation will generally expire on 30 June 2025; however, the FMA expects banks to keep the high standards.

In addition, real estate risks came into focus in 2024 due to high-profile bankruptcies of real estate developers. Therefore, the introduction of a sectoral systemic risk buffer of 1% for commercial real estate at the consolidated and unconsolidated level for all banks is currently under political discussion.

Furthermore, Austria will be reviewed by the international Financial Action Task Force on Money Laundering (FATF) for the implementation and enforcement of AML and terrorist financing provisions in 2025. The review will also focus on the activities of the Financial Intelligence Unit (A-FIU) and the integration of obliged entities.

Due to deficiencies in money laundering prevention, an Austrian bank was banned by the FMA in 2024 from taking on new business. An expert supervisor (*Regierungskommissär* – an Austrian governance measure similar to a preliminary administrator) was then appointed alongside the bank’s management body. Eventually, the FMA prohibited the continuation of the bank’s business operations entirely. This constitutes an event of default within the meaning of the ESAEG.

Bank governance and internal controls

According to Article 5 para. 1 BWG, the banking licence may only be issued if the entity has the legal form of a joint stock company (AG), a limited liability company (GmbH), a cooperative society (*Genossenschaft*) or a savings bank (*Sparkasse*). Credit institutions cannot be established in the corporate form of joint partnerships (OG) or limited partnerships (KG).

Credit institutions must have at least two managing directors that meet specific fit and proper requirements (i.e. professional qualification and personal suitability). An independent compliance function, AML function and internal audit have to be established.

The initial capital or initial endowment amounts to at least EUR 5 million and must be freely available to the directors without restrictions or charges in Austria.

Member State credit institutions are entitled to provide their services in Austria either by establishing a subsidiary that is subject to the licence requirements of the BWG, establishing a branch under the EU

freedom of establishment, or conducting business under the EU freedom to provide services, both through “passporting”.

Corporate bodies – corporate governance

Corporate bodies depend on the corporate form chosen. For example, the organisational structure of the Austrian stock corporation rests on three bodies: the general meeting; the supervisory board; and the management board. The annual general meeting elects a supervisory board for a maximum period of five years, but may prematurely terminate this appointment by a (qualified) majority. The supervisory board elects a chairperson for a maximum period of five years; it is possible for the supervisory board to call for the resignation of the chairperson prematurely for good cause (violation of duties, vote of no confidence by the general meeting). The management board is solely responsible for running the credit institution and shall neither be subject to instructions from the general meeting nor from the supervisory board.

The supervisory board has to convene on a regular basis (at least four times a year). The annual projections and quarterly reports as well as special reports in case of imminent crisis must be presented to the supervisory board. The supervisory board may at any time conduct exhaustive audits itself or commission experts to conduct such audits. It approves the annual financial statements and has to arrange for the audit of the consolidated financial statements and approve them. The supervisory board may request experts to take part in these meetings. The supervisory board may establish committees. With regard to larger credit institutions, certain committees are mandatory (e.g. nomination committee, audit committee or risk committee).

The BWG also specifies that the Federal Minister of Finance must appoint a state commissioner and a deputy state commissioner for a maximum of five years in case the total assets of a credit institution exceed EUR 1 billion. The state commissioner and deputy state commissioner must be invited by the credit institution to all general meetings, the meetings of the supervisory board as well as all existing committees of the supervisory board. The state commissioners and their deputies act as functionaries of the FMA and report the content of the meetings to the FMA on a quarterly basis. If the state commissioners consider a resolution to violate legal or other provisions or administrative decisions of the FMA, they must object to the respective resolution and report immediately to the FMA.

Credit institutions are required to establish and maintain an independent compliance function that regularly monitors and assesses the adequacy and effectiveness of compliance and adherence to the law (Article 39 para. 6 no. 2 BWG). The FMA’s Minimum Standards on BWG Compliance²⁰ can be used as guidance for the implementation of the compliance function.

Mandatory committees of the supervisory board of Austrian credit institutions

Austrian credit institutions of any legal form that are of significant relevance according to the BWG (i.e. with a balance sheet total that exceeds EUR 5 billion) are obliged to appoint a nomination committee of the supervisory board preparing appointments of members of the management body. Furthermore, such credit institutions have to appoint a remuneration committee of the supervisory board responsible for monitoring the remuneration policy and practices, as well as a risk committee of the supervisory board advising the management body on risk matters. In addition, credit institutions of any legal form, whose total assets exceed EUR 1 billion or which have issued transferable securities that are admitted to trading on a regulated market, have to appoint an audit committee of the supervisory board to monitor the accounting process and the effectiveness of the internal control system. One member of the audit committee has to be a financial expert.

Supervision of management

Management supervision is firstly carried out by the supervisory board. The size of the supervisory board is defined in the articles of incorporation; it must consist of at least three members (excluding works

council representatives). Moreover, works council representatives are entitled to delegate one representative for two shareholder representatives to the supervisory board (e.g. in case of three members, two additional works council representatives).

To ensure transparency in relation to suitability and the independence of supervisory board members, the following must be presented before election: expert knowledge of the candidate; professional experience; and any circumstances that might constitute reasons for conflicts of interest. The FMA published a Circular on Fit & Proper Assessments²¹ on the basis of the respective EBA Guidelines²² as guidance for credit institutions to assess the suitability of managing directors, key function holders and members of the supervisory board.

Internal governance

Banks are subject to a number of organisational requirements. The EBA has published a detailed set of guidelines on internal governance.²³ The application and/or scope of the organisational regulations depend on the type, scope and complexity of the business activities. The credit institution has to establish an internal reporting system to maintain adequate and systematic records of its business activities and internal organisation and to ensure the proper, fair and professional performance of tasks even if relevant staff take on several functions. The institution has to establish mechanisms to safeguard security and confidentiality of information and establish effective and transparent procedures for the prompt processing of complaints filed by retail customers. Risk management is a key function in every credit institution for which the BWG provides detailed requirements. Accordingly, credit institutions are required to have administrative, accounting and control procedures that are appropriate for the nature, scope and complexity of the banking transactions conducted for capturing, assessing, controlling and monitoring of risks arising from banking transactions and banking operations, also including such risks that arise from their macroeconomic environment while taking into consideration the phase of the respective business cycle, the risk of money laundering and terrorist financing as well as their remuneration policy and practices.

Internal audit plays a major role within the overall regulatory structure. Alongside the supervisory board and the bank auditor, it forms an important control instance and is therefore an essential point of contact for the supervisory authorities. If certain size-related criteria are met, Article 42 BWG provides the mandatory establishment of a separate organisational unit for internal auditing tasks (otherwise, internal audit may be outsourced).

Internal audit also plays an important role as a control function within the credit institution. The three lines of defence model requires that risks should be addressed and managed at three levels. While the operational areas as first line of defence have to recognise and manage risks that they encounter in the course of their activities, the risk management and compliance function as the second line of defence have to identify, measure, monitor and report on risks across all areas.

The internal audit function as third line of defence has to conduct both general and event-driven audits of all areas, processes, procedures and systems and to inform management and the competent supervisory authorities about the extent to which the governance framework, including the risk management framework, is effective and the corresponding procedures and policies have been established and are being complied with on an ongoing basis.

The FMA published Minimum Standards on Internal Auditing containing interpretations of statutes and practical recommendations regarding all aspects of the respective function in credit institutions.²⁴

Remuneration

The credit institution's supervisory board is in charge of examining and approving the remuneration policy. A remuneration committee must be established in credit institutions of significant relevance. The management board, however, remains responsible for the implementation of the remuneration policy.

The regulatory framework regarding a sound remuneration policy is strongly influenced by EBA Guidelines (EBA/GL/2021/04) as well as the Guidelines on Remuneration Policies and Practices related to the sale and provision of retail banking products and services (EBA/GL/2016/06).

Remuneration policies shall differentiate between principles applying to all employees and those that apply to specific groups of employees only, such as management board members, risk-takers and staff engaged in control functions (“identified staff”). Any credit institution has to determine which of its staff fall within the group of risk-takers. According to the FMA’s current practice, staff that are remunerated with a high variable remuneration component are generally regarded as identified staff.

The FMA issued a Circular²⁵ on remuneration policies and practices that interprets the Austrian transposition of the CRD on remuneration statutes in light of the EBA Guidelines.²⁶

The remuneration policy, and in particular the variable compensation of management boards, has come under regulatory scrutiny due to the interest rate environment in recent years and the resulting high profits of Austrian banks.

Bank capital requirements

The Austrian prudential requirements for banks are heavily influenced by the Basel framework and the respective EU banking regulation underpinned by the CRR, CRD and the Bank Recovery and Resolution Directive (BRRD), including total loss-absorbing capacity (TLAC) and the Single Resolution Mechanism (SRM) Regulation.

Minimum capital requirements of credit institutions are stipulated in Article 92 CRR, whereas credit institutions must satisfy the following own funds requirements at all times, which are expressed as a percentage in relation to the risk-weighted assets (Pillar 1 requirement):

- Common Equity Tier 1 capital ratio of 4.5%.
- Tier 1 capital (Common Equity Tier 1 and Additional Tier 1 capital) ratio of 6%.
- Total capital ratio of 8% (Tier 1 capital and attributable Tier 2 capital).

On top of the legislative minimum requirements for own funds, a bank-specific SREP capital add-on is imposed by the FMA/ECB to cover additional risks of the respective bank, taking into account the business model, internal governance, capital risks and risks to liquidity and funding (Pillar 2 requirement, on average 2.5% in 2024). The combination of the legal and regulatory minimum capital requirements forms the total SREP capital requirements (TSCR). Violations of TSCR can trigger supervisory sanctions similar to the violation of capital requirements in Pillar 1.

The introduction of capital buffers by the CRD has been transposed into Austrian law in Articles 22 to 23f BWG (also expressed as a percentage in relation to the risk-weighted assets).

The capital conservation buffer of 2.5% applies to all credit institutions licensed in Austria, and the following additional capital buffers can be prescribed by the FMA individually for each credit institution:

- Countercyclical capital buffer, which is intended to ensure that the own funds requirements in the banking sector take into account the macroeconomic situation (economic/business cycle) in which the credit institution is operating.
- Systemic risk buffer, which is intended to counteract systemic risks that could lead to a disruption with potentially significant adverse effects on the domestic financial system or the domestic real economy (between 0.5% and 1.75% in 2025 according to the Capital Buffer Regulation of the FMA).²⁷
- Buffer for global systemically important institutions (the G-SII buffer, which is not relevant in Austria).

In the event that the credit institution fails to meet minimum capital requirements and the combined capital buffer requirements (Article 24b BWG), this results in restrictions on distributions (Article 24 BWG) and the obligation to prepare a capital conservation plan (Article 24a BWG).

With regard to liquidity requirements, the CRR adopts two liquidity standards to ensure that financial institutions are stable and which are equally applicable in Austria:

- The Liquidity Coverage Ratio (LCR) is expressed by dividing the sum of high-quality liquid assets by the net fund outflow under gravely stressed conditions over 30 days (Article 412 CRR).
- The Net Stable Funding Requirement (NSFR) is calculated by dividing the sum of stable funding instruments by the requirement for net stable funding instruments for long-term debt of one year under both normal and stressed conditions (Article 413 CRR).

Both LCR and NSFR must equal or exceed 100% expressed as a ratio to risk-weighted assets. For small and non-complex credit institutions, credit institutions can apply for a simplified NSFR (Article 428ai CRR).

A recent regulatory development in Austria in connection with the implementation of Basel IV is the expiration of the CRR Hard Test for commercial real estate loans on 31 December 2024. The Hard Test allows for reduced own funds requirements in real estate financing, provided that certain loss rates are not exceeded. Even though the threshold values are currently not being exceeded, the FMA is exercising its regulatory discretion for commercial real estate and will restrict the scope of the Hard Test for credit institutions using the standardised approach to so-called IPRE (Income Producing Real Estate) risk positions with the CRR III entering into force on 1 January 2025. With respect to residential properties, the FMA has not yet made use of its regulatory discretion.

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

The business relationship between banks, their customers and other third parties is governed by general civil law, as Austria does not have a specific law regulating banks in this regard. The Austrian Civil Code (ABGB) provides a general legal framework for relationships with clients and third parties. However, when a bank conducts business with a consumer, all clauses in the general terms and conditions must comply with the control mechanisms established by the Consumer Protection Act (KSchG). In transactions with third parties who are not classified as consumers, the KSchG does not apply, although the ABGB contains provisions regarding the validity of clauses in standardised contractual documents and terms and conditions.

Most banking transactions with consumers are also subject to specific consumer protection laws. These include the VKrG, HIKrG, FernFinG, and VZKG. The provisions of these consumer protection laws are mandatory and cannot be waived or altered.

The Austrian Supreme Court of Justice (OGH) is the highest authority in civil matters, including rulings on consumer rights issues. Since 2022, several landmark decisions have been made regarding credit processing fees. Agreements concerning these fees are generally permissible, but only provided they are sufficiently specific and clearly outline the costs involved. The OGH ruled that several wordings of respective clauses did not outline the costs accordingly, so the respective clauses were deemed null and void. Those rulings allowed consumers in Austria to claim repayments from banks. However, transactions between banks and companies are not affected, and the credit processing fees of B2B business relationships are not subject to the same scrutiny.

Many consumer rights can be enforced through legal actions by organisations such as the Chamber of Labour (AK) or the Association for Consumer Information (VKI). Since May 2024, the European Directive on representative actions has been incorporated into Austrian law. This marks the first time in Austria that a legal framework has been established allowing so-called qualified entities to file collective actions for redress against companies on behalf of consumers.

Endnotes

- 1 <https://www.fma.gv.at/wp-content/plugins/dw-fma/download.php?d=468&nonce=1b3bc847f1bb594e>
- 2 <https://www.fma.gv.at/wp-content/plugins/dw-fma/download.php?d=3284&nonce=19128d596956d8b8>
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