Global Financial Services Regulatory Guide - Austria

| Contents |
| --- |
| To generate table of contents, right-click here and select **Update Field.** |

To get started, select a topic from the list on the left side of the screen

Last updated: May 2024

# 1. Who regulates banking and financial services in your jurisdiction?

## Who regulates banking and financial services in your jurisdiction?

In Austria, banking and other financial services are regulated by the Austrian Financial Market Authority (Finanzmarktaufsichtsbehörde or FMA), in cooperation with the Austrian National Bank (Oesterreichische Nationalbank or OeNB).

The FMA is responsible for the authorization and supervision of banks, providers of insurance services and other financial institutions, to the extent such authority does not vest with the European Central Bank (ECB). In this regard, the FMA performs solvency supervision, market and conduct supervision as well as supervision of compliance with anti-money laundering provisions. The FMA is authorized to conduct on-site inspections at financial services providers. The FMA may pass legally binding regulations (Verordnungen) on the basis of existing laws. It also regularly issues rules and guidelines (Rundschreiben), which are not legally binding, but set out FMA’s legal position on particular regulatory matters and should be observed by the supervised institutions.

The OeNB is responsible for the macro-economic supervision of the banking and financial services industries in Austria. As such, the OeNB in particular monitors and analyzes the Austrian financial market and is consulted by the FMA in many of the latter’s proceedings.

The supervisory authorities of the European Union (i.e., the European Banking Authority, the European Securities and Markets Authority, and the European Insurance and Occupational Pension Schemes Authority) play an important role in the supervision process, especially as they are responsible for issuing guidelines, recommendations and technical standards in relation to EU legislation.

Pursuant to the Single Supervisory Mechanism (SSM) introduced by Council Regulation (EU) No 1024/2013, the ECB is responsible for monitoring the financial stability of banks in the Eurozone (including Austria). Under the SSM, the ECB — in cooperation with the respective national supervisory authorities — directly supervises (groups of) so-called significant credit institutions, which are deemed to be relevant to the functioning of the Eurozone banking system. Seven Austrian banks qualify as significant institutions. All significant institutions are listed on the European Commission’s website. The other credit institutions continue to be subject to supervision by the FMA and will only be indirectly supervised by the ECB.

# 2. What are the main sources of regulatory laws in your jurisdiction?

## What are the main sources of regulatory laws in your jurisdiction?

The main sources of regulatory law in Austria are listed as follows:

The provision of banking services is regulated by the Austrian Banking Act (Bankwesengesetz or BWG; implementing, inter alia, the EU Capital Requirements Directive – CRD V) as well as the EU Capital Requirements Regulation (CRR).

The activities of insurance companies are regulated by the Austrian Insurance Supervision Act (Versicherungsaufsichtsgesetz or VAG; implementing, inter alia, the Solvency II Directive).

The provision of investment services is regulated by the Austrian Securities Supervision Act (Wertpapieraufsichtsgesetz 2018 or WAG 2018; implementing MiFID II).

The provision of payment services is regulated by the Austrian Payment Services Act (Zahlungsdienstleistungsgesetz 2018 or ZaDiG 2018; implementing the Payment Services Directive II).

The issuance of e-money is regulated by the Austrian E-Money Act (E-Geldgesetz 2010 or E-GeldG; implementing the E-Money Directive).

The public offering of securities and other investments is regulated by the Austrian Capital Market Act (Kapitalmarktgesetz 2019 or KMG 2019; implementing the Prospectus Regulation).

The establishment, management and distribution of Undertakings for Investments in Transferable Securities (UCITS) is regulated by the Austrian Investment Fund Act (Investmentfondsgesetz or InvFG; implementing the UCITS Directives).

The management of alternative investment funds (AIF), including the distribution of AIFs in Austria, is regulated by the Austrian Alternative Investment Fund Manager Act (Alternative Investmentfonds Manager-Gesetz or AIFMG; implementing the Alternative Investment Fund Managers Directive).

In general, all supervised entities are subject to the AML and KYC provisions of the Federal Act on the Prevention of Money Laundering and Terrorist Financing in Financial Markets (Finanzmarkt-Geldwäschegesetz or FM-GwG; implementing the Anti Money Laundering Directive).

As in other EU member states, the majority of the applicable rules in Austria are based on EU directives and regulations.

# 3. What types of activities require a license in your jurisdiction?

## What types of activities require a license in your jurisdiction?

The provision of financial services on a commercial scale in Austria generally constitutes a regulated business activity and is subject to Austrian licensing requirements. The following list includes examples of regulated financial services:

Banking services that are subject to licensing requirements under the BWG, including the following:

The acceptance of funds for the purpose of administration or as deposits (deposit business)

The provision of non-cash payment services, clearing services and current-account services (current account business)

Lending (irrespective of whether loans are provided to consumers or businesses)

The safeguarding and administration of securities (custody business)

The issuance and administration of payment instruments

The trading in securities or other investments on one’s own account or on behalf of others

The issuance of guarantees or the assumption of other forms of liability for third parties (guarantee business)

Factoring

The brokerage of certain banking services, including the deposit and the lending business, whereas for the brokerage of loans, a trade license as commercial asset advisor under the Austrian Trade Code (Gewerbeordnung) may also suffice

Investment services that are subject to licensing requirements under the WAG 2018, including the following:

The provision of investment advice in relation to financial instruments

Individual portfolio management

The receipt and transmission of orders relating to financial instruments

Insurance services that are subject to licensing requirements under the VAG and insurance distribution activities that are subject to licensing requirements under the Austrian Trade Code (Licensing requirements set out in the EU Insurance Distribution Directive have, to date, not been transposed into the Austrian Trade Code.)

E-money services that are subject to licensing requirements under the E-GeldG, including the issuance of electronic money by means of a prepaid electronic payment product based on either a card or an account

Payment services that are subject to licensing requirements under the ZaDiG, including, inter alia, the operation of payment accounts and the execution of payment transactions, money remittance, payment card issuance, and acquiring card transactions

Collective portfolio/UCITS management activities that are subject to licensing requirements under the InvFG, and the management of AIF subject to licensing requirements under the AIFMG

The provision of investment services subject to licensing requirements either under the WAG 2018 (if in relation to financial instruments) (see item (b) above) or under the Austrian Trade Code (requiring a trade license as commercial asset advisor)

A particular license may also include the authorization to pursue activities regulated by other supervisory laws (e.g., an Austrian bank does not require a separate license under the WAG 2018 to provide investment services, but it is required to observe the respective provisions of the WAG 2018 when rendering investment services).

**Crypto-assets**

A general definition of "crypto-assets" does not exist in Austria. However, with the implementation of the AMLD5, the definition of "virtual currency" as "a digital representation of value that is not issued or guaranteed by a central bank or a public authority" (e.g., Bitcoin, Ether), has been introduced to the FM-GwG, which requires "providers in relation to virtual currencies" (i.e., a crypto exchange) to register with the FMA for AML purposes, if one of the following services is offered (exhaustive list):

Services to safeguard private cryptographic keys, to hold, store and transfer virtual currencies on behalf of a customer (custodian wallet providers)

Exchange of virtual currencies into fiat money and vice versa

Exchange of one or more virtual currencies among each other

Transfer of virtual currencies

Provision of financial services for issuing and selling virtual currencies

Currently, the treatment of crypto assets other than virtual currencies (i.e., security tokens, e-money tokens) is not explicitly regulated under Austrian law. The FMA has published a brief guidance in this regard, stating that crypto-related payment services, banking activities, e-money activities, investment services, insurance activities or exchange services might be subject to additional authorization requirements under the abovementioned Austrian supervision regime. Additionally, obligations to publish a prospectus under the KMG could also arise if security tokens akin to shares or other investments are offered to the public (initial coin offering).

Further, the European Union has adopted a new regulation, which sets out a regulatory framework for crypto-assets, crypto-assets issuers, and crypto-asset service providers ("**MiCA Regulation**"). The MiCA Regulation will become applicable in part (provisions regarding asset-referenced tokens and e-money tokens) from 30 June 2024, and in other parts from 30 December 2024 onwards. As of its applicability date, the MiCA Regulation will be directly applicable in all EU member states, including Austria.

While no Austrian supplementary legislation to the MiCA Regulation is available today to set the legal framework for its application in Austria (e.g., the nomination of the FMA as the national competent authority in Austria), the FMA has already published a roadmap to obtain an authorization as a Crypto Asset Service Provider, a new form of authorization to be introduced by the MiCA Regulation. According to this roadmap, the FMA expects to start the formal authorization application phase in October 2024.

# 4. How do the licensing requirements apply to cross-border business in your jurisdiction?

## How do the licensing requirements apply to cross-border business in your jurisdiction?

Austrian licensing requirements are triggered if a regulated service is rendered in or cross-border into Austria. The (financial) service provider will therefore need to consider whether it needs to comply with local Austrian licensing obligations (and/or local marketing rules, as applicable) prior to rendering and/or offering its services to Austrian-domiciled customers.

Austrian law itself does not specify which criteria have to be fulfilled for services to qualify as services rendered in or cross-border into Austria, and no official FMA guidance has been published in this regard. The Austrian Supreme Court has found that the assessment of whether banking or other financial services are being rendered in or cross-border into Austria always has to take place on a case-by-case basis, considering, among other things, pre-contractual circumstances (such as the place where negotiations took place) and the contents of the contractual relationship.

Austrian laws and regulations can be applicable whenever a financial service provider domiciled outside of Austria actively solicits and/or provides services to customers located in Austria. Consequently, no Austrian licensing requirements apply under the following circumstances:

The services themselves are not carried out in Austria (e.g., the respective accounts/deposits are maintained outside of Austria).

The foreign entity does not carry out any active solicitation in Austria, and the business relationship was thus established outside of Austria or solely upon the customer’s unsolicited request (reverse solicitation).

In this respect, reverse solicitation is always subject to the precondition that the request by the customer has not been solicited in any manner by prior marketing activities of the offeror targeting the Austrian market.

To avoid qualification as services rendered in or into Austria, it is further recommended that the relevant agreement with the customer be signed by both parties outside of Austria and that specific legal advice be sought before "tapping" into the Austrian market.

Marketing and communication activities are crucial for determining whether financial services are rendered in or into Austria. If an entity's marketing activities specifically target customers domiciled in Austria, such activities may trigger Austrian licensing requirements.

# 5. What are the requirements to obtain authorization in your jurisdiction?

## What are the requirements to obtain authorization in your jurisdiction?

Generally, an Austrian license may only be obtained by an Austrian company (this means that in the case of foreign financial services providers, an Austrian subsidiary needs to be established). Under some laws, including the BWG, a license may also be granted to a non-EEA branch office of a foreign financial services provider. Note that EEA financial institutions may also passport their home-country license into Austria (see "Passporting" in question 7).

The licensing procedure itself will also depend on the license/activity in question. Typical requirements include the following:

Location of place of establishment and head office in Austria

Legal form of the entity (often a limited liability company or a stock company)

Size, composition and qualification of management body, including residence and capabilities of directors

Aptitude of qualified shareholders

Appropriate resources, usually including minimum initial capital amounts and amounts at the management's free disposal

A forward-looking business plan (that is usually the most complex document in the licensing procedure)

Organizational (with regard to monitoring, controlling and limiting business risks and operational risks, establishment of a compliance organization) and staffing requirements (fitness, training and capabilities of certain officers)

Appropriateness of articles of association / statute

Availability of the entity for effective supervision by the FMA, meaning the absence of impediments arising from the applicant’s close relation to other natural or legal persons or the applicability of third-country regulations preventing the FMA from carrying out its monitoring duties

This list represents typical requirements only; specific requirements will depend on the type of license sought.

**Sanctions**

The unauthorized provision of regulated services constitutes a punishable administrative offense and can constitute a criminal offense (such as fraud) punishable by the courts. The administrative fine for the unauthorized provision of regulated deposit or lending services amounts up to EUR 5 million or twice the amount of the benefit received from the breach.

The unauthorized provision of other banking, insurance or investment services may be subject to a fine of up to EUR 100,000.

In addition, whoever conducts a regulated financial activity without the necessary authorization may not be entitled to any consideration for such activity, such as, in particular, interest and commissions. Agreements to the contrary as well as sureties and guarantees relating to such unauthorized transactions would be without legal effect.

# 6. What is the process for becoming authorized in your jurisdiction?

## What is the process for becoming authorized in your jurisdiction?

To obtain an Austrian license, the applicant must submit an application form together with the required documentation to the FMA. The FMA will then review the application and determine whether additional information needs to be presented and/or whether the license can be granted. Austrian law generally does not stipulate a certain minimum or maximum assessment period for license applications. In practice, the process for obtaining a banking license takes at least one year.

The documentation requirements depend on the type of license and the nature of the regulated activities. The documentation requirements are typically dependent on, and linked to, the requirements of the relevant authorization (see question 5 above).

The FMA does not have discretion on whether to authorize an entity. If the (formal and material) requirements for an authorization are met, the FMA is required to provide the authorization to the applicant.

Appeals against decisions of the FMA can be filed with the Federal Administrative Court (Bundesverwaltungsgericht) and ultimately, subject to additional requirements, with the Supreme Administrative Court (Verwaltungsgerichtshof) and/or the Constitutional Court (Verfassungsgerichtshof).

To support ambitious new business models of fintechs, which might be discouraged by the rather formal licensing procedure described above, the FMA initiated a "regulatory sandbox" program in September 2020, under which obtaining a license is facilitated by close support and supervision of the FMA. The aim of this program is to help fintechs on their way to becoming licensed entities, rather than lowering supervisory standards. According to publicly available data, eight fintechs joined the program by the beginning of 2023.

# 7. What financial services passporting arrangements does your jurisdiction have with other jurisdiction?

## What financial services passporting arrangements does your jurisdiction have with other jurisdiction?

As Austria is a member state of the EEA, EEA passporting rules apply into and out of Austria. An institution authorized to perform financial services in a member state under a local license may carry out regulated activities in other member states, including Austria. This enables the institution in question to provide cross-border services and establish a branch in the host member state.

An EEA financial institution intending to passport into Austria is required to file a notification and certain documentation with its home country regulator, which will forward the notification and documents to the FMA (being the competent regulatory authority within Austria). The institution may then be permitted to render their services in Austria through an Austrian branch (under the freedom of establishment passport) or cross-border into Austria (under the freedom of services passport) without being required to obtain an Austrian license.

Similarly, an institution authorized to perform financial services in Austria under an Austrian license may carry out business in other EEA member states by means of passporting. For this purpose, the institution must submit a notification together with any required documentation to the FMA, which will then be passed on to the regulatory authority of the respective host member state.

# 8. Authors and contact information

# Latest Insights

## Alerts

 [European Union: Navigating the New EU Regulation on Digital Operational Resilience (DORA)](https://bakerxchange.com/collect/click.aspx?u=OXBhOFY1L0Jxc0x5M24zelYyYWdvcmJ6TUo1dFFtaXNBYkpPSDdpTnhEbENjNStGODcxZVkzdURSZ2owSlduN2k4OHZNcjRqMi8rNExJYml3c0lhQTdkbU5tRDhVYVgrVzJnbUd6UGxhSExkVFNEY3NobjFaenZrczJxQXRraU5SZTRQZjNEMkNOM0dwc3hSMFNLYWdMbk8rYjRNbTNjc3pjSlNDU2E0MDAxU0lIRExCQ2VXMlM0QXo0TWtUcDcrWWZMNzZXaXhldzA9&amp;rh=ff00e2ac6a4c36bc208bfc53ea43abf2a3690bb7)

[European Union: ELTIF 2.0 regulatory technical standards published](https://bakerxchange.com/collect/click.aspx?u=OXBhOFY1L0Jxc0x5M24zelYyYWdvcmJ6TUo1dFFtaXNBYkpPSDdpTnhEbE9wYWU5VjhSbnNUbkRMM0sraW44cmZ6SitJSkxETTZMWEFreS9WUFNZaU5zVmJMbHhhRE9mSExvc1YwdFNqcWI5bFBjcjRWenlYa1MrRkd5ck9zRGdOQVI4cHUyWmNUS3VobDZMY3lQbGpqU05DOVV6ZEFSVitTOXdXcHh1c2FvUThSb2VvRi8wN2xwR05nbnVUMDFJMmlKQ09ZbS9kTlU9&amp;rh=ff00e2ac6a4c36bc208bfc53ea43abf2a3690bb7)

[European Union: EU Listing Act: Changing EU Capital Markets for the Better](https://bakerxchange.com/collect/click.aspx?u=OXBhOFY1L0Jxc0x5M24zelYyYWdvcmJ6TUo1dFFtaXNBYkpPSDdpTnhEbE9wYWU5VjhSbnNUbkRMM0sraW44cmZ6SitJSkxETTZMWEFreS9WUFNZaUJXOVdJYTJKc3lNaVcrakQ1NkJJaXp1RjFCUXlJZS92R0lnakRNcmhyK3dRZklXd2xSa1g2c2tTMzcwRmVKdVRRPT0=&amp;rh=ff00e2ac6a4c36bc208bfc53ea43abf2a3690bb7)

[European Union: The new EU third country branch framework - What firms need to know](https://bakerxchange.com/collect/click.aspx?u=OXBhOFY1L0Jxc0x5M24zelYyYWdvcmJ6TUo1dFFtaXNBYkpPSDdpTnhEbE9wYWU5VjhSbnNUbkRMM0sraW44cmZ6SitJSkxETTZMWEFreS9WUFNZaU5zVmJMbHhhRE9mSExvc1YwdFNqcWJpUTRDOTdhTHlOOUt3L3JkTTNVaTFOUkZ6b1hNZGVzaExZVmptSlFFVmVSSEZzZTd4RTRhdkhEdTFucGRuSGdnQ3hEcTZXMFI3Qk05YjdOeVJYQjhvNVhpbkdtay9QTmM9&amp;rh=ff00e2ac6a4c36bc208bfc53ea43abf2a3690bb7)

Global: 2025: What's on the Radar for Financial Institutions (14 Jan 2025)

[Global Disputes Forecast 2025 (8 Jan 2025)](https://www.bakermckenzie.com/-/media/files/insight/publications/2025/01/global-disputes-forecast-2025.pdf)

[European Union: ELTIF 2.0 regulatory technical standards published (7 Nov 2024)](https://insightplus.bakermckenzie.com/bm/banking-finance_1/european-union-eltif-20-regulatory-technical-standards-published)

[MICAR Compliance Toolkit (24 October 2024)](https://www.bakermckenzie.com/en/insight/publications/resources/micar-compliance-toolkit)

[European Union: The new EU third country branch framework - What firms need to know (21 Oct 2024)](https://insightplus.bakermckenzie.com/bm/banking-finance_1/the-new-eu-third-country-branch-framework-what-firms-need-to-know)

[Europe: EU Listing Act: Changing EU Capital Markets for the Better (17 Oct 2024)](https://insightplus.bakermckenzie.com/bm/capital-markets/europe-eu-listing-act)

[Multijurisdiction: Transition Finance - Where are we going from both a market and regulatory perspective (10-Jul-2024)](https://insightplus.bakermckenzie.com/bm/investigations-compliance-ethics/international-transition-finance-where-are-we-going-from-both-a-market-and-regulatory-perspective)

[European Union: CSDDD - No escape for the financial sector? (05-Jul-2024)](https://insightplus.bakermckenzie.com/bm/banking-finance_1/european-union-csddd-no-escape-for-the-financial-sector)

[Multijurisdiction: Cloud based solutions for financial institutions (4-Jul-2024)](https://financialinstitutions.bakermckenzie.com/2024/07/04/cloud-based-solutions-for-financial-institutions/)

Multijurisdiction: Sustainability-Linked Derivatives - ISDA's Case for Standardisation in a Globalised World (24-Jan-2024)

[International: What's on the radar for Financial Institutions in 2024? (22-Jan-2024)](https://insightplus.bakermckenzie.com/bm/banking-finance_1/international-whats-on-the-radar-for-financial-institutions-in-2024)

[European Union: ELTIF 2.0 regime enters into force (10-Jan-2024)](https://insightplus.bakermckenzie.com/bm/banking-finance_1/european-union-eltif-20-regime-enters-into-force)

©Copyright © 2025 Baker & McKenzie. All rights reserved. **Ownership**: This documentation and content (Content) is a proprietary resource owned exclusively by Baker McKenzie (meaning Baker & McKenzie International and its member firms). The Content is protected under international copyright conventions. Use of this Content does not of itself create a contractual relationship, nor any attorney/client relationship, between Baker McKenzie and any person. **Non-reliance and exclusion**: All Content is for informational purposes only and may not reflect the most current legal and regulatory developments. All summaries of the laws, regulations and practice are subject to change. The Content is not offered as legal or professional advice for any specific matter. It is not intended to be a substitute for reference to (and compliance with) the detailed provisions of applicable laws, rules, regulations or forms. Legal advice should always be sought before taking any action or refraining from taking any action based on any Content. Baker McKenzie and the editors and the contributing authors do not guarantee the accuracy of the Content and expressly disclaim any and all liability to any person in respect of the consequences of anything done or permitted to be done or omitted to be done wholly or partly in reliance upon the whole or any part of the Content. The Content may contain links to external websites and external websites may link to the Content. Baker McKenzie is not responsible for the content or operation of any such external sites and disclaims all liability, howsoever occurring, in respect of the content or operation of any such external websites. **Attorney Advertising**: This Content may qualify as “Attorney Advertising” requiring notice in some jurisdictions. To the extent that this Content may qualify as Attorney Advertising, PRIOR RESULTS DO NOT GUARANTEE A SIMILAR OUTCOME. **Reproduction**: Reproduction or copying of the Content on this Site without express written authorization is strictly prohibited.