

## OVERVIEW

No. RADAR

5181

Responsible level

Germany

Competent authority

BaFin – Federal Financial Supervisory Authority

Standard designation

Fourth Ordinance amending the Advertising Ordinance

Title of Standard 

Fourth Regulation amending the notification regulation

Abbreviation (standard)

Short Title 

Abbreviation (standard)

Abbreviation 

Implementation status of the standard

published

Industry relevance

Banking industry

category

01. Banking and banking supervisory law

Document type

Regulation

### Management Summary

With the *Financial Market Integrity Strengthening Act (FISG, dataset 4501)* Section 24 (1) No. 19 of the German Banking Act (KWG) introduced a reporting requirement for the intention to significantly outsource, its implementation, as well as significant changes and serious incidents within the scope of existing significant outsourcing arrangements. The reporting requirement, which will apply from January 1, 2022, is intended to provide the supervisory authority with a comprehensive overview of the outsourced activities and processes of the supervised institutions.

This regulation amending the notification regulation specifies the notification obligations of

Institutions regarding detailed information on their significant outsourcing and the outsourcing companies and creates transparency for the supervised institutions with regard to the supervisory requirements. The contents of the notification are explained in detail and illustrated with standard examples. Furthermore, the technical requirements for the transmission of the notifications are specified. At the same time, the regulation specifies the requirements of the *EBA Guidelines on outsourcing arrangements (EBA/GL/2019/02, Dataset 3141)* implemented into national law.

The requirement to report all outsourcing arrangements existing at the time the regulation came into force has been removed. Instead of a planned requirement applicable to all companies, BaFin has opted for a survey of a selection of supervised companies.

In addition, provisions are included in Section 9a of the Advertising Ordinance that govern the implementation of the notification obligations pursuant to Section 24 Paragraph 1a Nos. 5 and 6 of the German Banking Act (KWG). These provisions specify the type, scope, timing, and form of annual advertisements with a reference to remuneration.

## Management Summary

The *Act on strengthening the integrity of the financial market (FISG, data set 4501)* introduced an obligation in section 24(1) no. 19 of the Banking Act (KWG) to notify the intention of a material outsourcing, its execution as well as material changes and serious incidents in the context of existing material outsourcing. The notification obligation, which will apply from 1 January 2022, is intended to provide the supervisory authority with a comprehensive overview of the outsourced activities and processes of the supervised institutions.

The present regulation amending the notification regulation specifies the obligations of the institutions with regard to detailed information on their material outsourcings and the outsourcing companies and creates transparency for the supervised institutions with regard to the requirements of supervision. The contents of the notification are explained in detail and illustrated with standard examples. In addition, the technical requirements for the transmission of the notifications are specified. At the same time, the regulation transposes the requirements of the *EBA Guidelines on Outsourcing Arrangements (EBA/GL/2019/02, Dataset 3141)* into national law.

The regulation on the notification of all outsourcings existing at the time of the entry into force of the regulation has been deleted. Instead of a planned obligation applicable to all companies, BaFin has opted for a query of a selection of supervised companies.

Furthermore, provisions are included in section 9a of the notification regulation that determine the execution of the notification obligations pursuant to section 24(1a) nos. 5 and 6 KWG. These provisions specify the type, scope, time and form of the annual notifications with reference to remuneration.

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## CONTENTS

### Main content

#### **Amendment to the Advertising Ordinance (AnzV) (Art. 1)**

##### 1. Submission procedure (Section 1 AnzV)

With the expansion of the exemption for notifications to include Section 24 (1a) Nos. 5 and 6 of the German Banking Act (KWG) regarding remuneration in CRR credit institutions, submission via the association is no longer necessary. According to the new Section 9a (3) Sentence 1 of the AnzV, notifications must be submitted electronically only. The newly added Section 1 (4) AnzV enables both BaFin and the Bundesbank to offer flexible electronic notification options and to make their use mandatory.

2. Notifications pursuant to Section 24 Paragraph 1 Number 19 of the Banking Act (Significant Outsourcing) (Section 3 AnzV) The revised Section 3 AnzV specifies in more detail the notifications pursuant to Section 24 (1) No. 19 KWG regarding the intention and implementation of a material outsourcing transaction. Paragraph 1 explains in detail, in the form of 20 sub-sections, the information content of the relevant notifications required for the supervisory assessment of outsourcing transactions. In this context, outsourcing agreements need only be submitted upon request by the supervisory authority, as the contractual details are generally evident from the individual notification components. Paragraph 2 specifies in which cases notifications must be submitted that are likely to significantly influence the institution's business activities. The submission of notifications is required, among other things, in the event of material contract changes, the conclusion of new sub-outsourcing transactions, and the termination or other termination of the outsourcing agreement (see source for details). The notifications pursuant to Paragraphs 1 and 2 must be submitted electronically via the BaFin's reporting and publication platform (MVP Portal). Paragraph 4 lists the scenarios of particular practical relevance for serious incidents that could impair the institution's continued business operations. These include, among others, significant breaches of contract by the outsourcing company, inadequate risk and emergency management by the outsourcing company, and impending insolvency of the outsourcing company (see source for details).

3. Notifications pursuant to Section 24 Paragraph 1a Numbers 5 and 6 of the Banking Act (Information on remuneration in CRR credit institutions) (Section 9a AnzV)

The new Section 9a provides more detailed provisions for the disclosure of remuneration in CRR credit institutions pursuant to Section 24 (1a) Nos. 5 and 6 of the German Banking Act (KWG). The regulations are derived from the *EBA Guidelines on remuneration comparison (EBA/GL/2014/08, Dataset 1199)* and on *data collection with regard to high-income individuals (EBA/GL/2014/07, Dataset 1200)*.

The notification pursuant to Section 24 (1a) No. 5 of the German Banking Act (KWG) in conjunction with Section 9a (1) of the German Banking Ordinance (Annexes 13, 14, and 15) includes three forms (Annexes 13, 14, and 15) and must be submitted by all significant CRR credit institutions pursuant to Section 1 (3c) of the German Banking Act (KWG). Should notification by additional institutions be required, they will be requested to do so separately (see source for details).

The notification pursuant to Section 24 (1a) No. 6 of the German Banking Act (KWG) in conjunction with Section 9a (2) of the German Reporting Ordinance (AnzV) is made using one of the forms listed in Annexes 16, 17, and 18 (VAM, VAMFEHL, REM HE). The use of the individual forms depends, among other things, on the responsible supervisory authority and the number of millionaires (see source for details).

The notifications described above must be submitted to the Deutsche Bundesbank annually by June 30th using a paperless electronic procedure, based on the status of the financial year ending December 31st of the previous year. The data formats to be used and the submission method are published online by the Deutsche Bundesbank (see source for details).

4. Annexes to the AnzV

Annexes 3, 5, 7 and 8 to 12 of the AnzV are amended or rewritten, and Annexes 13 to 18 are added in the version shown in the Annex to this Regulation. The amendment to Annexes 3, 5 and 7 enables institutions to also include financial institutions as participating undertakings or shareholders in accordance with Article 4 (1) No. 26 of the *Regulation (EU) No. 575/2013 (CRR - Part I, Dataset 558)* and insurance undertakings from a third country pursuant to Section 7 No. 34 of the Insurance Supervision Act (VAG) must be disclosed in the shareholding notification. Due to confidentiality regulations within the SSM (Single Supervisory Mechanism), Annexes 8 to 12 are marked "ECB-CONFIDENTIAL." The added Annexes 13 to 15 serve to report remuneration trends and practices pursuant to Section 9a Paragraph 1 of the AnzV. Annexes 16 to 18 contain forms for providing information on specific employees, managing directors, and members of the administrative or supervisory body (see source for details).

## CATEGORIZATION

### Keywords

Notification transmission, notification obligation, outsourced activities, outsourced processes, outsourcing company, outsourcing contract, income millionaire, serious incident, REM HE, VAM, VAMFEHL, remuneration, material outsourcing

### Legal and information bases

- Act to Strengthen Financial Market Integrity (Financial Market Integrity Strengthening Act, FISG) (data set 4501)
- EBA Guidelines on outsourcing arrangements (EBA/GL/2019/02) (Dataset 3141)
- EBA Guidelines on data collection with regard to high-income individuals (Dataset 1200)
- EBA Guidelines on Remuneration Comparison (Dataset 1199)
- Regulation (EU) No. 575/2013 (CRR - Part I) (Dataset 558)
- Banking Act (KWG)
- Insurance Supervision Act (VAG)
- Advertisement Ordinance (AnzV)

### Related Standards

- Act on strengthening the integrity of the financial market (FISG) (dataset 4501)
- EBA Guidelines on Outsourcing Arrangements (EBA/GL/2019/02) (Dataset 3141)
- Banking Act (KWG)
- Regulation Concerning Reports and the Submission of Documentation under the Banking Act (AnzV)

Target group – credit institutions

Yes

Target group – financial services institutions

Yes

Target group – Other companies in the financial sector

Yes

Target group – payment institutions

No

Target group – insurance companies

No

## Target group – supplement

Comments 

## Statement by (date)

Implementation status Explanation

Status – Further Details 

## Date of entry into force/publication

November 29, 2022

Entry into force estimated?

No

## Date of first application

November 29, 2022

Application appreciated?

No

## Date Standard repealed

## Remark (Entry into force/Publication)

The regulation will enter into force on the day following its publication (publication on 28 November 2022).

Comments 

The regulation shall enter into force on the day following that of its promulgation (promulgation on November 28, 2022).

## Sources

*The sources are not shown in this working paper.*