

FEDERAL ACT on the Oesterreichische Nationalbank

Nationalbankgesetz 1984

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Chapter I	General Provisions	4
Chapter II	Capital and Shareholders	8
Chapter III	General Meeting	9
Chapter IV	Management and Administration of the Bank	14
Chapter V	Auditors	25
Chapter VI	Staff of the Bank	25
Chapter VII	State Commissioner	26
Chapter VIII	Cooperation Between Authorities and Obtaining Information	28
Chapter IX	Confidentiality Obligation	35
Chapter X	Business of the Oesterreichische Nationalbank	36
Chapter XI	Banknotes	38
Chapter XII	Accounting	39
Chapter XIII	Special Rights of the Bank	42
Chapter XIV	Liquidation of the Bank	45
Chapter XV	Procedural and Penal Provisions	46
Chapter XVI	Transitional and Final Provisions	49

Chapter I

General Provisions

Article 1

The legal status of the Oesterreichische Nationalbank shall be governed by the Treaty establishing the European Community (Treaty), the Protocol on the Statute of the European System of Central Banks and the European Central Bank (ESCB/ECB Statute), and this federal act. The provisions of the *Aktiengesetz* (Stock Corporation Act) 1965, BGBl. No. 98/1965, shall be applicable to the Oesterreichische Nationalbank unless otherwise provided for by the Treaty, the ESCB/ECB Statute or this federal act.

Article 2

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

(2) The Oesterreichische Nationalbank shall, in accordance with the provisions of the Treaty, the Protocol on the Statute of the European System of Central Banks and the European Central Bank, the directly applicable Community legislation adopted there under, and this federal act, be obliged to work towards the achievement of the objectives and fulfillment of the tasks of the ESCB. Within the framework of Community law, in particular Articles 2 and 105 of the Treaty, the Oesterreichische Nationalbank shall use all the means at its disposal to maintain the objective of price stability. To the extent that this does not interfere with the objective of price stability, the

needs of the national economy with regard to economic growth and employment trends shall be taken into account and the general economic policies in the Community shall be supported.

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

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

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

Article 3

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

Article 4

(1) Furthermore, the Oesterreichische Nationalbank shall be empowered to effect transactions other than those covered

by the remit of the ESCB unless the ECB Governing Council finds, by a majority of two thirds of the votes cast, that these interfere with the objectives and tasks of the ESCB. Such transactions shall be performed on the responsibility and liability of the Oesterreichische Nationalbank and shall not be regarded as being part of the functions of the ESCB.

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

Article 5

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

(2) Without prejudice to paragraph 1, the Governing Board may decide that the actions of certain employees of the Oesterreichische Nationalbank, effected alone or together with certain other employees of the Oesterreichische Nationalbank, may authorize or be binding on the Oesterreichische Nationalbank. In this event, the Governing Board shall determine in what form and in which cases the representative actions of these employees authorize or are binding on the

Oesterreichische Nationalbank. It shall make this decision known by public notice displayed in the Bank's offices, together with a register of the signatures of the employees concerned.

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

Article 6

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

Article 7

(1) Unless otherwise provided for in directly applicable Community legislation, the *Allgemeines Verwaltungsverfahrensgesetz* (Act on General Administrative Procedure) 1991, BGBl. No. 51/1991, shall apply to the Oesterreichische Nationalbank in performing public authority functions in matters relating to money, credit and banking; unless expressly determined to the contrary by federal law, however, no appeal may be lodged against decisions of the Oesterreichische Nationalbank.

(2) Regulations issued by the Oesterreichische Nationalbank shall be published in the *Amtsblatt zur Wiener Zeitung* (Official Gazette). Unless otherwise provided for therein, they shall enter into force on the day following their publication.

(3) Draft laws which contain provisions of importance for financial market policy or which otherwise affect the interests of the Oesterreichische Nationalbank shall, prior to being

introduced before the legislative body, be submitted to the Oesterreichische Nationalbank for its opinion, with an appropriate time period being allowed for this purpose.

(4) With regard to the admissibility of the transmission of data in accordance with Article 7 paragraph 2 of the *Datenschutzgesetz* (Data Protection Act), BGBl. No. 565/1978, to the Oesterreichische Nationalbank, the Oesterreichische Nationalbank shall be deemed to be equivalent to a body of the Bund (Federation).

Chapter II

Capital and Shareholders

Article 8

(1) The capital of the Oesterreichische Nationalbank shall be 12 million euro and shall be divided equally into 150,000 registered shares. The Bank may issue composite certificates in denominations of 100, 500 and 1,000 shares.

(2) The names of shareholders shall be entered in a shareholders' register at the Oesterreichische Nationalbank. Shareholders of the Oesterreichische Nationalbank shall be deemed to be those entered as such in the shareholders' register.

(3) Each transfer of shares shall require the express approval of the General Meeting to be legally effective.

(4) Profits on the shares shall be distributed to the shareholders when due.

Article 9

Shareholders may only be Austrian citizens or legal persons or partnerships under commercial law which are based and have their head office in Austria and which are neither directly nor indirectly majority-owned by foreigners. Should a shareholder no longer fulfill one of these preconditions, he shall be obliged to report this fact to the General Council without delay and to dispose of his shares. All his shareholders' rights shall be suspended as soon as he no longer fulfills the preconditions set out in the first sentence. Article 8 paragraph 3 shall apply to the transfer of shares. Should no legally effective transfer of shares have occurred within four months of the shareholder no longer fulfilling the preconditions set out in the first sentence, the shares shall be transferred to a party appointed by the General Meeting after the approval of this party has been obtained. This party shall pay the shareholder the selling value of the shares in accordance with Article 62 paragraph 3 of the *Aktiengesetz*.

Chapter III

General Meeting

Article 10

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

(2) At the written request of shareholders holding at least one fourth of the capital, and for the purposes of passing a resolution with regard to the approval of a transfer of shares (Article 8 paragraph 3), an extraordinary General Meeting

shall be convened within thirty days, unless this matter can be dealt with in the ordinary General Meeting. This period shall commence with the receipt by the Oesterreichische Nationalbank of the relevant written proposals.

(3) The General Meeting shall be convened, based on a resolution of the General Council, through an announcement by the Bank at least twenty-one days before the meeting is to be held.

Article 11

Every shareholder entered in the register as holding at least one hundred shares on the day the convention of the meeting is announced shall be entitled to take part in the General Meeting.

Article 12

(1) Every one hundred shares shall confer one vote at the General Meeting.

(2) Every shareholder entitled to vote may arrange to be represented by a proxy.

(3) Documents authorizing proxies shall be presented eight days before the General Meeting at the latest. Legal and statutory representatives need no special authorizing document, but must produce evidence of their power of representation eight days before the General Meeting at the latest.

Article 13

(1) The General Meeting shall be quorate if attending shareholders or their proxies represent at least half the capital.

(2) If a duly convened General Meeting is not quorate, a new General Meeting shall be convened immediately, for which the period of notice given need not be more than eight days. This newly convened General Meeting is quorate regardless of the amount of capital represented; however, decisions may only be taken on matters contained in the original agenda.

Article 14

(1) Within the last eight days prior to the ordinary General Meeting, the annual accounts for the preceding financial year shall be made available for examination at the head office of the Oesterreichische Nationalbank in Vienna.

(2) No later than eight days prior to each General Meeting, the meeting's agenda shall be published. Proposals introduced in due time by shareholders (Article 17) shall be included in the agenda.

Article 15

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

Article 16

The General Meeting shall be entitled:

1. to receive the report of the General Council on the conduct of business during the previous financial year;
2. to approve the annual accounts and discharge the General Council and the Governing Board from liability for the financial period after hearing the report of the Auditors;
3. to decide on profit appropriation and to fix the dividend to be distributed to shareholders;
4. to approve the transfer of shares of the Oesterreichische Nationalbank (Article 8 paragraph 3);
5. to appoint two Auditors and two alternate Auditors;
6. to elect six members of the General Council;
7. to remove members of the General Council from office (Article 23 paragraph 3);
8. to fix the level of remuneration to be paid to the President and Vice President;
9. to decide on any other proposals introduced by shareholders.

Article 17

(1) Every shareholder entitled to vote shall have the right to introduce proposals at the General Meeting; however, decisions may be taken only on proposals relating to matters already on the agenda of the General Meeting at which they are introduced.

(2) Shareholder proposals (Article 14), together with a statement of supporting reasons, have to be submitted to the President in writing at least fourteen days prior to the General Meeting.

(3) If a request for an extraordinary General Meeting is made in accordance with Article 10 paragraph 2, the proposals to be introduced shall be submitted simultaneously with this request.

Article 18

(1) For the purpose of the election of six members of the General Council (Article 22) by the General Meeting, shareholders other than the *Bund* may propose one person for each 1 million euro of capital they represent. Where no such proposals are made, the right of proposal shall rest with the *Bund*. The term of office of these members of the General Council shall run until the fifth ordinary General Meeting following their election (Article 10 paragraph 1).

(2) With regard to the election, the General Meeting shall be bound by proposals submitted to it in accordance with paragraph 1.

Article 19

Insofar as they do not fall under Article 18 paragraph 2, decisions of the General Meeting shall be taken by simple majority.

Chapter IV

Management and Administration of the Bank

A. General Council

Article 20

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

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

Article 21

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

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

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

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

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

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

(5) The power of the General Council to take and approve decisions on matters set out in paragraphs 1 and 2 shall be

restricted to the extent that decisions it takes shall not interfere with the performance of the tasks of the ESCB.

Article 22

(1) The General Council shall consist of the President, one Vice President and twelve other members.

(2) The President, the Vice President and six other members of the General Council shall be appointed; the remaining six members of the General Council shall be elected.

(3) Only persons holding Austrian citizenship who are not debarred from voting in elections for the *Nationalrat* (National Council) may be members of the General Council. The Members of the General Council should be persons prominent in some business sector or jurists or economists. They shall include representatives of:

1. credit institutions,
2. industry,
3. small business and trade,
4. agriculture, and
5. salaried employees and wage-earners.

(4) No person who is in the active service of the Bund or of a *Land* or of one of the bodies of the European Community or who is a member of the *Nationalrat*, *Bundesrat* (Federal Council), a *Landtag* (parliament of a *Land*) or the European Parliament, the Federal Government or the government of a *Land*, or the European Commission may be a member of the General Council. The restriction with regard to persons in the active service of the *Bund* shall not apply to university professors of law and economics. No more than four members of the General Council may be members of the management of

credit institutions as their chief occupation; they may not be President or Vice President.

(5) The body representing the employees under the provisions of Article 40 of the *Arbeitsverfassungsgesetz* (Labor Charter), BGBl. No. 22/1974, shall be entitled to send two representatives to participate in negotiations on personnel, social and welfare matters. These representatives shall, in exercising their functions, have the same rights and duties as the members of the General Council.

Article 23

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

(2) Should a member of the General Council elected by the General Meeting resign during his term of office, the General Meeting shall elect a new member. Article 18 shall apply correspondingly to this election. Elected members of the General Council who have served a full term may be reelected.

(3) Members of the General Council elected by the General Meeting may be removed by the General Meeting during their term of office only if they no longer fulfill the conditions for holding office (Article 22 paragraphs 3 and 4). The nonfulfillment of conditions for holding office shall also include being prevented from performing the duties of office for a period of more than one year. In cases of serious misconduct, the member of the General Council in question shall be removed from office by the General Meeting.

Article 24

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

Articles 25 to 27

(deleted)

Article 28

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

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

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

Article 29

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

(2) A member of the General Council may arrange to be represented by another member of the Council. An authorizing document shall be submitted in writing for each meeting. No member of the Council may exercise more than two votes in addition to his own.

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

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

Article 30

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

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

Article 31

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

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

B. Governing Board

Article 32

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

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

(3) The Governing Board shall recruit the employees of the Oesterreichische Nationalbank, insofar as this is not reserved to the Federal President. The Governing Board shall also be responsible for the retirement, notice or dismissal of employees recruited by it.

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

(5) The Governor and the Vice Governor shall report to the Finance Committee of the *Nationalrat* at least twice a year on the measures taken in the field of monetary policy, while

observing the obligation of professional secrecy laid down in Article 38 of the ESCB/ECB Statute.

Article 33

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

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

(3) Members of the Governing Board may only perform their function as their chief occupation and may only be persons who hold Austrian citizenship and whose right to vote in elections to the *Nationalrat* has not been suspended. No person who is in the active service of the *Bund* or of a *Land* or of one of the bodies of the European Community or who is a member of the *Nationalrat*, the *Bundesrat*, a *Landtag* or the European Parliament, the federal government or the government of a *Land*, or the European Commission may be a member of the Governing Board. Furthermore, the members of the Governing Board may not be involved in any other activity which might interfere with their independence.

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

Article 34

(1) The Governor shall be a member of the Governing Council of the ECB (Article 109a paragraph 1 of the Treaty, Article 10 of the ESCB/ECB Statute) and of the General Council of the ECB (Article 45 of the ESCB/ECB Statute). The Governor and his deputy shall not be bound, in performing these functions, either by the decisions of the Governing Board or by those of the General Council, nor shall they be subject to any other instructions.

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

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

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

Article 35

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

procedure laid down for the Governing Board or by decisions of the Governing Board.

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

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

Article 36

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

(2) The Governing Board shall be quorate if at least two members of the Governing Board are present; one of these members shall be the Governor or the Vice Governor. The rules of procedure for the Governing Board may provide for circular decisions to be taken.

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

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

Chapter V

Auditors

Article 37

(1) The General Meeting shall, in observance of Article 27 of the ESCB/ECB Statute, elect two Auditors and two alternate Auditors each year. The Auditors shall audit the annual accounts and shall submit a written report on the results of their audit.

(2) The Auditors shall be entitled to ask the Governing Board for any information they require for the performance of their tasks, and in particular they shall have the right to inspect the books of the Bank.

(3) The Auditors shall be obliged to carry out their audit conscientiously and impartially and to observe confidentiality.

Chapter VI

Staff of the Bank

Article 38

(1) The Bank staff's employment status shall be governed by private law.

(2) The conditions of employment, the duties and rights of office as well as the remuneration and pensions of the Bank employees shall be subject to the provisions laid down by the

General Council. The emoluments payable under these provisions shall, for purposes of tax and social security legislation, be treated in the same way as emoluments paid in accordance with statutory regulations.

(3) The employees of the Oesterreichische Nationalbank that are entitled to retirement and survivor's benefits (pensions) under the Bank's pension regulations shall be exempt from participating in the accident, disability and employees' insurance (pension insurance).

Article 39

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

Chapter VII

State Commissioner

Article 40

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

Prohibition of Credit Facilities for Public Institutions

Article 41

(1) Overdrafts and any other type of credit facility with the Oesterreichische Nationalbank in favor of institutions or bodies of the European Community, central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of EC Member States shall be prohibited under the terms of Article 104 of the Treaty together with Council Regulation (EC) 3603/93 of 13 December 1993 (Official Journal L 332/1 of 31 December 1993). The direct purchase by the Oesterreichische Nationalbank of debt instruments from such entities shall also be prohibited. This prohibition shall not apply to publicly owned credit institutions, which, in the context of the provision of central bank money, shall be given the same treatment as private credit institutions.

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

Banking Transactions for Public Entities

Article 42

The Oesterreichische Nationalbank shall be obliged to carry out all banking transactions affecting the federal administration insofar as they are permitted under the terms of this federal act. No such transaction may involve the granting of any loan or credit by the Oesterreichische Nationalbank in

accordance with Article 104 of the Treaty (Article 41 paragraph 1). The Oesterreichische Nationalbank may also carry out other transactions on a commission basis for account of the federal administration, and may act as a fiscal agent for the entities set out in Article 41 paragraph 1 first sentence. Article 41 paragraph 1 shall also apply to these transactions.

Chapter VIII

Cooperation Between Authorities and Obtaining Information

Article 43

The Oesterreichische Nationalbank shall, for the purposes of fulfilling the objective set out in Article 105 paragraph 5 of the Treaty, provide support within its statutory purview to the supervisory authorities listed thereunder of Member States participating in the third stage of EMU.

Article 44

(1) Subject to the provisions of Community law, the Oesterreichische Nationalbank shall be empowered, insofar as is required for the performance of the tasks assigned to it within the framework of the ESCB, to obtain and collect information and data from any source and to process and communicate such information and data. The right to obtain information and to collect data shall also include authorization to obtain documentation and to determine the deadline, form and breakdown of the returns to be submitted. In accordance with Article 106 paragraph 6 of the Treaty, the group of

natural and legal persons subject to reporting requirements as well as the provisions on confidentiality shall be laid down by the Council of the EC.

(2) For the purpose of obtaining statistical information on behalf of the *Bund* or in connection with statistical surveys of international organizations or in performing duties assigned to it under the terms of federal law, the Oesterreichische Nationalbank shall be empowered to obtain, in accordance with Annex A of Council Regulation (EC) No. 2223/96 of 25 June 1996 (Official Journal No. L 310 of 30 November 1996) on the European system of national and regional accounts in the Community, statistical data, information and documentation from credit and financial institutions and from financial corporations, to determine the deadline, form and breakdown of the returns to be submitted by them and to process these data in anonymous form. Should the information and documentation obtained not be adequate or should there be reasonable doubts as to the correctness or completeness of the information or documentation, the Oesterreichische Nationalbank shall be empowered to request appropriate explanations or substantiating evidence.

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

Payment Systems Oversight

Article 44a

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

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

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

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

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

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

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

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

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

1. the measures they have taken with a view to ensuring the systemic safety of the payment system, and
2. the type and volume of the payments processed through the payment system,

and shall submit the relevant documentation. If the required information is not or only inadequately provided by an operator within an appropriate period, the Oesterreichische Nationalbank, threatening sanctions under paragraph 11, shall order the provision of information by setting a new deadline for submission.

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

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

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

(10) If an operator or participant does not comply with the regulations issued by the Oesterreichische Nationalbank in accordance with paragraph 3, the Oesterreichische Nationalbank, threatening sanctions under paragraph 11 or 12, shall call upon this operator or participant to remedy these shortcomings within an appropriate period.

(11) If the operator of a payment system does not comply with or only inadequately complies with the duty to provide information under paragraph 7 or if a request to remedy

shortcomings in accordance with paragraph 10 is not or only inadequately complied with, the Oesterreichische Nationalbank may, with the consent of the FMA, prohibit the operation of the payment system or revoke the recognition of the system in accordance with Article 2 paragraph 1 item 3 of the *Finalitätsgesetz*, if this is deemed appropriate to the type and gravity of the violation and if the required lawful situation cannot be attained otherwise.

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

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

(14) The Oesterreichische Nationalbank shall be empowered to publish the content of a supervisory measure imposed under paragraphs 11 or 12 in the *Amtsblatt zur Wiener Zeitung* or in another official publication circulating nationwide, if this is necessary in the interest of systemic safety or of payment system clients and justified by the type and gravity of the unlawful behavior.

(15) The Oesterreichische Nationalbank shall demonstrably take those organizational measures that are needed to avoid conflicts of interest due to its own economic activities. In

particular, information stemming from supervisory activities shall be limited to the competent staff.

Article 44b

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

(2) The FMA shall make available to the Oesterreichische Nationalbank, on the latter's demand, data relating to all financial firms (Article 2 no. 7 *Finanzkonglomeratengesetz* – Financial Conglomerates Act, BGBl. Part I No. 70/2004) and pension funds which the Oesterreichische Nationalbank needs in order to fulfill its tasks specified in paragraph (1). The Oesterreichische Nationalbank must record those data in the database specified in Article 79 paragraph 4 a *Bankwesengesetz* (Banking Act) and may process the data. Insofar as this is appropriate, the FMA may input those data directly into the database. Should the FMA not have available data requested by the Oesterreichische Nationalbank, the FMA shall compile the data, record them in the database specified in Article 79 paragraph 4 a *Bankwesengesetz*, and inform the OeNB accordingly. Required data that the FMA does not have available may also be compiled from credit institutions by the OeNB directly; again, these data must be recorded in the database specified in Article 79 paragraph 4 a *Bankwesengesetz*.

(3) The Oesterreichische Nationalbank shall, in the field of financial stability, report observations and findings of a fundamental nature or of special significance to the Federal Minister of Finance and to the FMA, and upon request it shall

provide any factual explanations which appear necessary as well as relevant documents and opinions.

Chapter IX

Confidentiality Obligation

Article 45

The Oesterreichische Nationalbank, its shareholders, the members of its decision-making bodies, its employees, other persons acting for the Oesterreichische Nationalbank as well as the State Commissioner and his deputy shall be obliged to observe confidentiality with regard to all confidential facts which become known to them as a direct consequence of their service or function. This shall apply unless information about such facts is to be provided as a consequence of an obligation to provide information within the framework of the ESCB or as a consequence of the existence of circumstances as set out in Article 38 paragraph 2 of the *Bankwesengesetz* BGBl. No. 532/1993. 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 Oesterreichische Nationalbank or after the end of any other service or function.

Article 46

(deleted)

Chapter X

Business of the Oesterreichische Nationalbank

Article 47

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

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

Article 48

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

Article 49

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

bank shall respect the definitions laid down by the EU Council in accordance with Article 20.2 of the ESCB/ECB Statute.

Article 50

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

Article 51

Furthermore, the Oesterreichische Nationalbank shall be empowered:

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

Article 52

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

interest and to impose other sanctions with comparable effect.

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

Articles 53 to 60

(deleted)

Chapter XI

Banknotes

Article 61

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

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

Article 62

(1) The Oesterreichische Nationalbank shall be obliged, upon demand, to exchange banknotes which are legal tender

in Austria against banknotes of other denominations which are legal tender in Austria.

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

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

Article 63

The withdrawal of banknotes shall be regulated by the ECB.

Articles 64 to 66

(deleted)

Chapter XII

Accounting

Article 67

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

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

(3) The provisions of the third volume of the *Handelsgesetzbuch* (Commercial Code) shall be applicable only insofar as they are compatible with this federal act. In particular, Articles 199 and 244 to 267 of the *Handelsgesetzbuch* shall not apply.

Article 68

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

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

(3) The provisions of Article 243 paragraphs 1 to 3 (with the exception of paragraph 2 last sentence and paragraph 3 items 2 and 5) of the *Handelsgesetzbuch* shall apply to the report.

Article 69

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

1. The book value of exchange gains accrued over the year (i.e. the difference between the book value and the mid

rate of nondomestic assets), insofar as these gains are to be transferred directly, in accordance with paragraph 4, to a reserve fund which serves to cover any exchange risks connected with the holding of nondomestic assets;

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

(2) From the profit for the year in accordance with paragraph 1, up to 10% shall be transferred to the pension reserve. When the pension reserve has achieved a level which, according to actuarial calculations, provides the necessary capital coverage to meet the pensions claims of the staff of the Oesterreichische Nationalbank, no further contribution shall be made to this reserve.

(3) Of the remaining profit, the *Bund* shall first receive 90%. Of the then remaining retained earnings, the shareholders shall, by decision of the General Meeting, receive a dividend of up to 10% of their share of the capital. The portion

then remaining shall be appropriated as decided by the General Meeting.

(4) The obligation to create and release the reserve referred to in paragraph 1 item 1 shall depend on the assessment of the risk associated with the nondomestic assets. Releases shall be accounted for in the profit and loss account.

Article 70

(deleted)

Chapter XIII

Special Rights of the Bank

Article 71

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

Article 72

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

(2) Legal transactions undertaken or documents produced by the Oesterreichische Nationalbank in fulfillment of its ESCB-related tasks or otherwise in the public interest shall be exempt from stamp duties and legal dues. Furthermore, the

legal transactions based on and regulated in this federal act shall be exempt from taxes on capital transactions.

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

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

Article 73

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

Article 74

(deleted)

Article 75

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

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

Article 76

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

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

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

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

Article 77

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

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

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

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

Chapter XIV

Liquidation of the Bank

Article 78

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

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

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

Chapter XV

Procedural and Penal Provisions

Article 79

(1) The Oesterreichische Nationalbank, Münze Österreich Aktiengesellschaft, credit institutions, exchange bureaus and public cash offices shall be obliged to withhold for examination against a certificate of receipt any notes and coins coming into their hands in any way whatsoever which are fit for circulation and are suspected of being counterfeit or having been falsified. The authority competent to undertake or arrange such an examination shall be, in the case of coins which are legal tender in Austria, Münze Österreich Aktiengesellschaft and, in the case of other coins and of banknotes, the Oesterreichische Nationalbank.

(2) Banknotes and coins which are found, as a result of this examination, to be counterfeit or to have been falsified shall be held for the criminal courts to take further action. The authorities competent to hold notes and coins in this way shall be, in the case of coins which are legal tender in Austria,

Münze Österreich Aktiengesellschaft and, in the case of other coins and of banknotes, the Oesterreichische Nationalbank. The Oesterreichische Nationalbank and Münze Österreich Aktiengesellschaft shall submit a written report on the outcome of the examination to the Federal Minister of Internal Affairs, and shall make this information known to the person from whom the banknotes or coins were withheld.

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

Article 79 a

Whoever, contrary to Article 79 paragraph 1, fails to take out of circulation and submit to the Oesterreichische Nationalbank or Münze Österreich Aktiengesellschaft any notes or coins which are fit for circulation and are suspected of being counterfeit or having been falsified, shall be guilty, unless the act constitutes an offense falling into the jurisdiction of the courts or an offense punishable by a stricter penalty in

accordance with other penal provisions under administrative law, of an administrative offense which shall be punishable by the *Bezirksverwaltungsbehörde* (District Administrative Authority) by a fine of up to 7,000 euro.

Article 80

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

Article 81

The issue and use for payments of banknote imitations denominated in euro and intended for circulation shall constitute an administrative offense which shall be punishable by a fine of up to 3,000 euro by the *Bezirksverwaltungsbehörde*, unless the act constitutes an offense falling into the jurisdiction of the courts or constitutes another administrative offense punishable by a higher fine.

Article 82

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

(2) Whoever fails to comply with the requests of the Oesterreichische Nationalbank based on Article 44 paragraph 2 or whoever deliberately gives incomplete or incorrect information shall be guilty, unless the act is punishable in accordance with paragraph 1 or constitutes an offense falling into the

jurisdiction of the courts, of an administrative offense which shall be punishable by a fine of up to 1,000 euro.

Article 82a

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

(2) Whoever, notwithstanding the prohibition contained in Article 44a paragraph 11, operates a payment system or, notwithstanding the prohibition in Article 44a paragraph 12, participates in a payment system shall be guilty, unless the act constitutes an offense falling into the jurisdiction of the courts, of an administrative offense which shall be punishable by a fine of up to 7,000 euro.

Chapter XVI

Transitional and Final Provisions

Article 83

(1) To facilitate the financing of ERP investment loans, the Oesterreichische Nationalbank may discount three-month finance bills up to the maximum amount laid down in Article 3 paragraph 2 of the *ERP-Fonds-Gesetz* BGBl. No. 207/1962.

(2) The bills must bear the signatures of the borrower and of a credit institution duly authorized in accordance with Article 13 of the *ERP-Fonds-Gesetz*. Discounts of these bills

may be renewed until the credit made available has been repaid or converted into some other form of finance.

(3) The Oesterreichische Nationalbank shall be empowered to finance loans to be granted by the ERP-Fund by collateralization other than the discounting of bills of exchange. The provisions of Article 3 paragraph 5 of the *ERP-Fonds-Gesetz* regarding the Fund's obligation to cover losses and of Article 12 of the *ERP-Fonds-Gesetz* regarding the right of the Fund to set the rate of interest shall apply correspondingly to such financing.

Other Legal Provisions and Equal Treatment in Language Terms

Article 84

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

Article 85

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

Implementation

Article 86

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

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

General Transitional Provisions

Article 87

1. (concerning Article 8) The *Bund* and the other shareholders shall be obliged, within a period of three months from the date of the entry into force of Article 8 paragraph 1 as amended by federal act BGBl. Part I No. 60/1998, to pay to the capital referred to in Article 8 as amended by federal act BGBl. No. 532/1993 the difference arising from the increase of the capital to 12 million euro. The scope of each shareholder's obligation to make an additional contribution shall be governed by the shareholding of the foregoing at the time of the entry into force of Article 8 paragraph 1 as amended by federal act BGBl. Part I No. 60/1998. As soon as payment has been effected in full and the existing share certificates of the shareholder have been submitted, the Oesterreichische Nationalbank shall be obliged to issue new share certificates to the shareholder in question within a period of one month. Should shareholders not fulfill, in whole or in part, their obligation to make an additional contribution, their rights of membership with respect to the new stake shall cease from the first day after expiry of the period for payment until the outstanding sum is paid. Article 57 paragraph 2 and Article 58 of the *Aktiengesetz* 1965 as amended by BGBl. No. 304/1996 shall apply correspondingly.

2. (concerning Articles 22 to 26)
 - a) Any member of the General Council whose term of office has not expired upon entry into force of Article 22 paragraphs 1 and 2 as well as Article 23 as amended by federal act BGBl. Part I No. 60/1998 shall remain in office until the end of his term of office. The President (Articles 22 and 23 as amended by federal act BGBl. No. 532/1993) shall hold the office of President, the first Vice President (Articles 22 and 24 as amended by federal act BGBl. No. 532/1993) shall hold that of Vice President, and the second Vice President (Articles 22 and 24 as amended by federal act BGBl. No. 532/1993) shall hold that of a further member of the General Council. Upon expiry of these remaining terms of office, the new appointments shall be made in accordance with the provisions of this federal act as amended by federal act BGBl. Part I No. 60/1998, with the General Meeting being the competent body to make a new appointment in those cases in which a member elected by the General Meeting leaves office. In all other cases, the Federal Government shall be the competent body to make the new appointment.
 - b) The level of the legal claim for remuneration by the President, the Vice President and the former second Vice President during their remaining terms of office shall be determined in accordance with Articles 23 and 24 as applicable on the day before the entry into force of federal act BGBl. Part I No. 60/1998.
3. (concerning Articles 33 and 34) The terms of office of Governing Board members valid on the day on which the

Council meeting in the composition of the Heads of State or Government confirms which Member States fulfill the necessary conditions for the adoption of the single currency in accordance with Article 109j paragraph 4 of the Treaty shall be unaffected. Until such time as a new Governor is appointed by the Federal President, the functional designations Chief Executive Director and Deputy Chief Executive Director shall be maintained and the office pursuant to Article 34 paragraph 1 shall be held by the President of the General Council and, should he be absent or unable to perform his duties, by his deputy. Article 34 paragraph 1 second sentence shall be applicable. The appointment of a new Governor shall occur by July 15, 1998 with effect from September 1, 1998.

4. (concerning Article 61)

- a) The following regulation shall apply instead of Article 61 as amended by federal act BGBl. Part I No. 60/1998 from the date of Austria's participation in the third stage of EMU until the expiry of the day immediately preceding the date of first issue for euro banknotes determined under Community law:
 - (1) The Oesterreichische Nationalbank shall have the exclusive right to issue banknotes denominated in schillings. Such issue shall require the authorization of the ECB.
 - (2) Banknotes denominated in schillings issued by the Oesterreichische Nationalbank shall be legal tender and shall be accepted at their full nominal value without restriction, unless a liability is to be met by an otherwise specified currency.

- (3) Before issuing a new form of banknotes, the Oesterreichische Nationalbank shall publish a precise description of the note in the *Amtsblatt zur Wiener Zeitung*.
- b) During the period from the date of first issue for euro banknotes determined under Community law until the expiry of a day to be laid down by federal law, the banknotes denominated in schillings issued by the Oesterreichische Nationalbank before the date of first issue for euro banknotes given above shall be legal tender in Austria in addition to the euro and shall be accepted at their full nominal value without restriction, unless a liability is to be met by an otherwise specified currency.
5. (concerning Article 62) During the period from the date of first issue for euro banknotes determined under Community law until the expiry of the day laid down by federal law upon which all banknotes denominated in schillings which are still in circulation in addition to euro banknotes shall cease to be legal tender, Article 62 paragraph 1 as amended by federal act BGBl. Part I No. 60/1998 shall apply with the proviso that banknotes and coins denominated in euro shall not be exchanged for banknotes and coins denominated in schillings.
6. (concerning Article 63)
- a) Schilling banknotes issued by the Oesterreichische Nationalbank prior to the date of first issue for euro banknotes determined under Community law and not yet called in for withdrawal shall cease to be legal tender upon expiry of a day laid down specifically

by federal law. They may be exchanged for legal tender with the Oesterreichische Nationalbank for an unlimited period after this date.

- b) During the period from the first day of Austria's participation in the third stage of EMU until the date laid down by federal law after which schilling banknotes which are in circulation shall cease to be legal tender, the Oesterreichische Nationalbank shall be empowered to call in for withdrawal schilling banknotes which are in circulation by setting a withdrawal period which does not end after the date given above. These banknotes shall cease to be legal tender upon expiry of the withdrawal period. They may be exchanged for legal tender with the Oesterreichische Nationalbank for an unlimited period after this date.
 - c) With regard to those banknotes already called in for withdrawal prior to Austria's participation in the third stage of EMU, the duration of the withdrawal period and of the exchange period (Articles 63 and 66 as amended by federal act BGBl. No. 532/1993) shall be unaffected insofar as these periods have not yet expired. Articles 63 and 66 as amended by federal act BGBl. No. 532/1993 shall continue to apply to such banknotes. However, withdrawal periods which have not yet expired on the date laid down by federal law upon expiry of which schilling banknotes in circulation cease to be legal tender shall end upon expiry of this date.
7. a) Without prejudice to regulations to the contrary issued by the ECB, the Oesterreichische Nationalbank shall

- exchange incomplete schilling banknotes the exchange period of which has not yet expired for legal tender if those parts of one and the same banknote submitted are larger than one half of a banknote of the denomination and form in question or if evidence can be provided that the missing part of the note has been destroyed.
- b) The Oesterreichische Nationalbank shall not be obliged to replace schilling banknotes which have been destroyed or lost. It shall also be empowered, without prejudice to regulations to the contrary issued by the ECB, to confiscate without compensation schilling banknotes which have been altered in their external form, in particular banknotes which have been written on, overprinted, painted over, stamped, perforated or where additions have been attached using adhesive. In cases where alterations are neither willful nor result from gross negligence, the Oesterreichische Nationalbank shall be entitled to exchange such banknotes against payment of a fee to cover expenses.
8. a) Whoever produces, before expiry of the day laid down by federal law upon which circulating schilling banknotes cease to be legal tender and without the authorization of the Oesterreichische Nationalbank, images of the OeNB's circulating schilling banknotes or of parts thereof, or who produces or distributes products similar to such banknotes, commits an administrative offence, provided that the act does not

constitute a criminal offense falling into the jurisdiction of the courts or an offense punishable by a stricter penalty in accordance with other penal provisions under administrative law.

- b) An administrative offense is also committed where printing plates or other technical aids intended for the manufacture of the images or products referred to in paragraph a) are produced or acquired without the authorization of the Oesterreichische Nationalbank before expiry of the day laid down by federal law upon which circulating schilling banknotes cease to be legal tender, provided that the act does not constitute a criminal offense falling into the jurisdiction of the courts or an offense punishable by a stricter penalty in accordance with other penal provisions under administrative law.
- c) Administrative offenses in accordance with paragraphs a) or b) shall be punishable by the *Bezirksverwaltungsbehörde* by a fine of up to 3,000 euro. The images forming the subject of the offense (paragraph 1) shall be declared forfeit.
- d) Authorization in accordance with paragraphs a) or b) may be granted where the manufacture or production of the images, products or technical aids specified in these provisions and the distribution and purchase of the foregoing are in the interest of safeguarding monetary transactions.

Provisions Applicable until Participation in the Third Stage of EMU

Article 88

(1) Article 67 as amended by federal act BGBl. Part I No. 60/1998 shall apply with the following amendment to financial years the balance sheet day of which falls after December 31, 1997, and prior to the entry of Austria into the third stage of EMU without derogation within the meaning of Article 109 k of the Treaty:

Article 67 paragraph 2 shall read:

“(2) The financial statements of the Oesterreichische Nationalbank shall comprise the balance sheet and the profit and loss account. They shall reflect the principles of generally accepted accounting practice, shall be drawn up taking into consideration the tasks of the Oesterreichische Nationalbank and shall be explained by means of an annual report. The securities held by the Oesterreichische Nationalbank shall be entered in the balance sheet at the market price ruling on December 31. If, however, this price is higher than their book value, the latter shall be applied for purposes of the entry into the accounts.”

(2) *(Paragraph 2 not cited, as no longer applicable as of January 1, 1999)*

Provision Regarding Entry into Force

Article 89

(1) Article 67 paragraphs 1 and 3, Article 69 paragraph 1 item 1, paragraphs 3 and 4, the title above Article 88 and Article 88 paragraph 1 as amended by federal act BGBl.

Part I No. 60/1998 shall enter into force on 1 January 1998. Article 69 paragraph 1 item 1, paragraphs 3 and 4 as amended by federal act BGBl. Part I No. 60/1998 shall be first applicable to the annual accounts of the financial year 1997.

(2) Article 6, Article 8 paragraphs 2 and 3, Article 9, Article 10 paragraph 2, Article 16 item 4, Article 22 paragraph 4, Article 32 paragraph 3, Article 33, Article 34 paragraphs 1 and 4, Article 35 paragraph 3, Article 41, Article 83 paragraph 3, Article 84, Article 85, Article 87 item 3 and Article 88 paragraph 2 as amended by federal act BGBl. Part I No. 60/1998 shall enter into force upon expiry of the day on which the Council meeting in the composition of the Heads of State or Government confirms which Member States fulfill the necessary conditions for the adoption of a single currency in accordance with Article 109j paragraph 4 of the EC Treaty.

(3) Article 1, Article 2, Article 3, Article 4, Article 5, Article 7 paragraphs 1 to 3, Article 8 paragraph 1, Article 10 paragraph 1, Article 14 paragraph 1, Article 15, Article 16 items 2, 5, 6, 7, 8 and 9, Article 18 paragraph 1, Article 20, Article 21, Article 22 paragraphs 1 and 2, Article 23, Article 24, the deletion of Articles 25 to 27, Article 28, Article 29 paragraph 1, Article 30 paragraphs 1 and 2, Article 31 paragraph 1, Article 32 paragraphs 1, 2 and 5, Article 34 paragraphs 2 and 3, Article 35 paragraphs 1 and 2, Article 36, Article 37 paragraph 1, Article 39, the title above Article 40, Article 40, Article 42, Article 43, Article 44, Article 45, the deletion of Article 46, Article 47, the deletion of the title above Article 48, Article 48, Article 49, Article 50, the deletion of the title above Article 51, Article 51, Article 52, the deletion of Articles 53 to 60, Article 61, Article 62, Article 63, the

deletion of Articles 64 to 66, Article 67 paragraph 2, Article 68, the introductory sentence to Article 69 paragraph 1, Article 69 paragraph 2, the deletion of Article 70, Article 72 paragraph 2, the deletion of Article 72 paragraph 3 and the redesignation of paragraphs 4 and 5, the deletion of Article 74, Article 75 paragraph 1, Article 76 paragraph 1, Article 77 paragraph 4, Article 79, Article 80, the deletion of Article 81, Article 82, Article 83 paragraph 1, Article 86 and Article 87 items 1 and 2 and items 4 to 8 as amended by federal act BGBl. Part I No. 60/1998 shall enter into force on the day on which Austria participates in the third stage of EMU without derogation within the meaning of Article 109k of the Treaty.

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

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

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