

# WSG Banking Group Meeting

Session 3

**Sanction procedures in Europe in the  
event of non-compliance with AML-CFT  
regulations: Austria**

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**D O R D A**

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## Overview of the AML-CFT framework in Austria /1

- Main legislation in Austria for the financial industry
  - Financial Markets Anti-Money Laundering Act ("**FM-GwG**");
  - Has implemented EU 4<sup>th</sup>/5<sup>th</sup> AML Directive;
  - Competent supervisory authority: Austrian Financial Market Authority ("**FMA**");
  - FMA has published four circulars on AML-CFT → important guidelines in practice.
  
- Sanction regime of the FM-GwG in a nutshell
  - Sec 34 to 41 FM-GwG (Penal provisions and disclosures);
  - Harsh sanction regime;
  - Sanctions for individuals (natural persons) and/or legal entities → sanctions may also be imposed **exclusively against the legal entity**;
  - Other sanction regimes exist in addition (**criminal law**; "**name and shame**" on the **FMA website**).

## Overview of the AML-CFT framework in Austria /2

- Sanction regime for **individuals** (Sec 34 FM-GwG)
  - Fine can be imposed against any responsible person (Sec 9 Administrative Penal Act –"**VStG**") of an obliged entity (e.g., credit institution) who breaches an obligation (e.g., conducting, documenting and updating the risk assessment);
  - Such a breach is an **administrative offence**;
  - Fine up to **EUR 150,000**;
  - In case specific obligations any severe, **repeated or systematic breaches** or a combination of breaches, the fine **is up to EUR 5 million** or up to **double the amount of the gain** arising from the breach (where this amount can be determined).

## Overview of the AML-CFT framework in Austria /3

- Sanction regime for **legal entities** (Sec 35 FM-GwG)
  - If a breach was committed for the benefit of a legal entity by a person, who acted individually or as part of an governing body of the legal person; or lack of monitoring of employees;
  - Depending on the breach: Fines up to EUR 150,000 or **EUR 5 million** or **10% of the (consolidated) annual turnover.**
  
- Penalty for multiple offences
  - FM-GwG follows the "**principle of absorption**" (imposing of a single administrative penalty even in the case of multiple infringements);

## The AML-CFT sanction regime in practice: Two case studies /1

### □ The Raiffeisen case

- March 2018: FMA imposed a fine in the **amount of EUR 2.7 million** → highest (published) fine the FMA has ever imposed;
- Violation of AML due diligence obligations (Panama papers; inadequate verification of the ownership and control structure of high-risk customers);
- Raiffeisen filed a complaint with the Federal Administrative Court ("**BVerwG**") → the complaint was dismissed;
- December 2019: The Supreme Administrative Court ("**VwGH**") **annulled the decision;**
- **Reason:** FMA made a formal mistake in their administrative penalty because they did not state explicitly the provision on which they base their allegation ("**either** Sec 35/1 **or** Sec 35/2 FM-GwG");
  - violation of the principle of determination (*Bestimmtheitsgebot*);
  - **FMA had to pay back the EUR 2.7 million.**

## The AML-CFT sanction regime in practice: Two case studies /2

- Anglo Austrian Bank ("**AAB**", former MeInl Bank) case
  - March 2018: FMA imposed fine (EUR 867,000) for breaches of AML due diligence obligations (i.a., offshore destinations/high-risk; UBO identification);
  - February 2019: BVerwG reduced fine to EUR 500,000;
  - May 2019: VwGH dismissed the final right of appeal against the decision due to the lack of material legal questions;
  - November 2019: European Central Bank ("**ECB**") revoked AAB's licence due to continuous breaches of AML provisions;
  - Appeal against this decision → The General Court of the EU ("**EGC**") temporarily suspended the immediate effect of the withdrawal of the license by emergency decision;
  - February 2020: The EGC finally rejected the application for interim measure → because AAB had already decided to wind-up the business → unable to demonstrate serious and irreparable damage
  - **EuG still has to decide** on the complaint against the license withdrawal.

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