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AUSTRIA

PUBLICATION OF FINANCIAL SECTOR ASSESSMENT PROGRAM DOCUMENTATION—TECHNICAL NOTE ON BANK RESOLUTION AND CRISIS MANAGEMENT

March 2020

This paper on Austria was prepared by a staff team of the International Monetary Fund. It is based on the information available at the time it was completed on June 5, 2019.

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FINANCIAL SECTOR ASSESSMENT PROGRAM

February 20, 2020

TECHNICAL NOTE

BANK RESOLUTION AND CRISIS MANAGEMENT

Prepared By
**Monetary and Capital
Markets Department**

This Technical Note was prepared by IMF staff in the context of the Financial Sector Assessment Program in Austria. It contains technical analysis and detailed information underpinning the FSAP's findings and recommendations. Further information on the FSAP can be found at

<http://www.imf.org/external/np/fsap/fssa.aspx>

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Glossary

AMV	Asset Management Vehicle
BaSAG	Bank Recovery and Resolution Act
BaSaPV	Bank Recovery Plan Regulation (of the FMA)
BRRD	European Union Bank Recovery and Resolution Directive (2014/59/EU)
BRD	Bank Resolution Department (of the FMA)
BU	Banking Union
BSD	Bank Supervision Department (of the FMA)
BWG	Banking Act
CRD IV	EU Capital Requirements Directive IV (2013/36/EU)
CRR	EU Capital Requirements Regulation (Regulation (EU) 575/2013)
CSE	Crisis Simulation Exercise
D-SIB	Domestically Systemically Important Bank
DGS	Depositor Guarantee Scheme
DG Comp	Directorate General for Competition (of the EC)
DGSD	European Union Deposit Guarantee Scheme Directive (2014/49/EU)
DSG	Domestic Standing Group
EBA	European Banking Authority
EC	European Commission
ECB	European Central Bank
ECJ	European Court of Justice
ELA	Emergency Liquidity Assistance
ERC	European Resolution College
ESA	Uniform Deposit Guarantee Scheme of Austria
ESAEG	Deposit Guarantee Schemes and Investor Compensation Act
EU	European Union
FinStaG	Financial Market Stabilization Act
FMA	Financial Market Authority
FMABG	Financial Market Authority Act
FMI	Financial Market Infrastructure
FMSB	Financial Market Stability Board
FOLTF	Fail or Likely to Fail
FSAP	Financial Sector Assessment Program
GSA	Act on Creation of a Wind-down Entity
G-SIB	Globally Systemically Important Bank
HP-LSI	High Priority LSI
IO	Insolvency Code
IRT	Internal Resolution Team
JST	Joint Supervisory Team
LFA	Loan Facility Agreement
LSI	Less Significant Institution
MOF	Ministry of Finance

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MOJ	Ministry of Justice
MREL	Minimum Requirement for Own Funds and Eligible Liabilities
NCA	National Competent Authority
NCWO	No Creditor Worse off than in Liquidation
NRA	National Resolution Authority
OeNB	Austrian National Bank
P&A	Purchase and Assumption
PRS	Preferred Resolution Strategy
RA	Resolution Authority
REFBA	Office for Specific Bank Resolution Matters (of the OeNB)
RLB	Regional (Raiffeisen) Landesbanken
S-Haftungs	Sparkassen Deposit Guarantee Scheme
SI	Significant Institution
SME	Small and Medium Enterprise
SRB	Single Resolution Board
SRF	Single Resolution Fund
SRM	Single Resolution Mechanism
SRMR	Single Resolution Mechanism Regulation
SSM	Single Supervision Mechanism

EXECUTIVE SUMMARY

This note assesses and makes recommendations regarding bank resolution and crisis management arrangements. The scope of the assessment includes the institutional arrangements for recovery, resolution, and crisis management; the supervision of banks' recovery plans; the legal regime for bank bankruptcy and resolution; resolution planning by the authorities and addressing impediments to resolution; assuring funding to support resolution; the two deposit guarantee schemes; and the government authorities' collective preparedness to deal with financial crisis. The authorities relevant to this note are the Ministry of Finance (MOF), the Financial Market Authority (FMA), and the Austrian National Bank (OeNB).

Main findings: Recovery and resolution planning are well advanced. Key impediments to resolution have been identified and are being addressed, yet adequate means to ensure sufficient funding in resolution remains to be determined. The legal framework is sound, although additional flexibility could be provided in the bankruptcy regime. The authorities' collective contingency planning for financial crisis and testing of plans should be intensified. The following paragraphs elaborate on these and other matters.

Institutional arrangements are generally sound, and capacity is good. There is appropriate operational separation of supervisory and resolution functions within the FMA and good coordination between the functions, as well as between the FMA and the OeNB. Ultimate decision making for supervisory and resolution matters in the FMA are unified, and the MOF and FMA should separate them to avoid potential conflicts of interest, or the appearance of conflicts. The FMA's resolution function is adequately resourced, including supporting staff from within the OeNB.

Recovery planning requirements are comprehensive and well implemented. Recovery planning is reaching maturity in the largest banks, where plans are integrated into overall strategic and risk management, and management is beginning to test elements of plan implementation. The FMA should promote plan testing as a routine business practice among, at least, the largest banks.

The legal regime for bankruptcy and liquidation of banks that are not systemic in failure, and for resolution as going-concerns of banks that may be systemic, is sound. Under the current bankruptcy and deposit guarantee scheme (DGS) regimes, the main function of the DGSs is to pay out the covered (insured) deposits and to liquidate the bank's assets under a court-led process. The regime for banks that are systemic in failure adheres to the internationally agreed standard and provides a range of options. These are the ability to bail in creditors to recapitalize an otherwise failing bank or, alternatively, to transfer the bank's critical assets and liabilities either to an acquiring institution, or to a temporary bridge institution owned by the government, for subsequent sale. The MOF should consider recommending to the Ministry of Justice (MOJ) to make explicitly available the ability to transfer a non-systemic bank's covered deposits and its sound assets to an acquirer under the bankruptcy regime. As a last resort, government support may be required to successfully resolve a bank that is systemic in failure, and steps can be taken by the MOF to enhanced preparedness to do so as a contingency.

Resolution planning for banks that may be systemic in failure is well advanced. The key remaining challenges are to ensure for most banks that they have issued a sufficient volume of bail-inable liabilities, so that the FMA has the practical ability to recapitalize the bank by bailing in those liabilities; for a smaller number of banks, that the FMA can transfer their critical assets and liabilities to an acquirer or a bridge institution; and for all banks that the bank in resolution can maintain sufficient liquidity before, during, and subsequent to resolution. Good progress is being made in ensuring bail-inable liabilities are in place and that critical assets and liabilities can be transferred. Ensuring that a bank in resolution can maintain sufficient liquidity is a remaining challenge.

The options for ensuring that a bank can maintain sufficient liquidity while in resolution are limited. Beyond the bank's own capacity and any liquidity related to the application of resolution tools, these are the provisions of Emergency Liquidity Assistance (ELA) by OeNB, accessing the resources of the European Single Resolution Fund (SRF), and in the last resort, government support. The OeNB's ELA framework can be enhanced by formulating a policy on lending to a bank in resolution, and by expanding the types of assets it deems eligible as collateral for ELA. The criteria, terms, and conditions for accessing the Single Resolution Board-controlled SRF have yet to be articulated, and so the FMA should continue its efforts to gain clarity. The MOF should consider what scope it has to provide funding in resolution and take steps to be able to do so without requiring additional legislation at time of need.

Deposit guarantee arrangements are sound and have suitable funding. As a last resort, the schemes can borrow, and the MOF may guarantee such borrowings. Here, too, the MOF should take steps to be able to do so without requiring additional legislation at time of need. The capacity to rapidly pay out deposits is in place and is being tested.

Institutional arrangements for ensuring crisis preparedness can be improved. A senior interagency body involving the three authorities should be assigned a mandate to ensure that each authority has an up-to date contingency plan in place; that the individual authority's plans are of comparable character and quality, and dovetail into a coherent national plan; that all three authorities have in place a plan testing program that feeds into plan improvements; and that interagency tests are regularly conducted.

Table 1. Austria: Summary of Key Recommendations

Recommendation	Authority	Time
<i>Institutional Arrangements</i>		
1. Separate ultimate decision making for supervisory and resolution matters at the FMA Board.	FMA, MOF MOF	I NT
2. Ensure that managers of bridge institutions and asset management vehicles benefit from legal protections comparable to those available to FMA staff.		
<i>Recovery Planning and Early Intervention</i>		
3. Set minimum recovery indicator thresholds at levels well above the point of likely supervisory intervention.	BSD	I
4. Testing implementation of recovery plans should be promoted as a routine business practice.	BSD	NT
<i>Legal Regime for Bankruptcy and Resolution</i>		
5. Explicitly provide for purchase and assumption transactions in the bankruptcy regime.	MOF/MOJ	NT
6. Agree on a policy on how to apply the elements of the FOLTF determination.	BSD, BRD	I
7. Formulate internal written policies and procedures as to when and how the government stabilization tools might be utilized.	MOF	I
<i>Resolution Planning</i>		
8. Continue efforts to fully articulate MREL and subordination requirements and strive to ensure all banks meet their MREL requirements as soon as possible.	BRD	I
9. Discuss with OeNB regarding provision of ELA and continue to engage the SRB on policies and procedures for use of the SRF as a source of liquidity funding in resolution.	BRD	I
<i>Resolution Funding</i>		
10. Adopt internal policy guidance for granting ELA in specific circumstance to a bank in resolution that includes criteria to be evaluated in assessing the credibility of a recapitalization plan and expanding eligible collateral beyond that used for Euro system monetary policy operations.	OeNB	I
11. Explore mechanisms under which a MOF guarantee or other arrangements could be prepositioned to support ELA as a contingency.	OeNB, MOF MOF	I NT
12. Seek legislation for standing authority to implement government stabilization measures.		
<i>Deposit Protection</i>		
13. Explore mechanisms under which a MOF guarantee could be prepositioned to support borrowing by either DGS.	MOF	NT
<i>Contingency Planning and Crisis Management</i>		
14. Update the crisis management manual and related contingency plans.	FMA	NT
15. Develop a crisis management manual and contingency plan.	MOF	NT
16. Adopt and expand annual contingency plan testing programs.	MOF, FMA, OeNB	NT
17. Update the mandate of the DSG and establish a regular meeting schedule.	MOF, FMA, OeNB	I
18. Assign a senior-level interagency body the mandate to ensure adequate contingency planning and testing of plans at the individual authority and national level.	MOF	I
C–Continuous; I–Immediate: within 1 year; NT–near term: 1 to 3 years; MT–medium term: 3–5 years.		

PART 1: BACKGROUND¹

A. Scope of the Note

1. This Technical Note assesses and makes recommendations for the authorities' consideration regarding the bank failure mitigation and resolution regime, as well as arrangements for preparing for and managing a financial crisis. It summarizes the findings of the FSAP mission undertaken during the period May 21–June 4, 2019. The Note addresses: (i) the supervision of recovery plans prepared by banks, including the supervisory authorities' ability to intervene in respect of recovery plans; (ii) resolution planning by the resolution authorities; (iii) the institutional and legal framework for resolving bank failures and for financial safety nets; and (iv) the authorities' preparedness to deal with a potential systemwide crisis. The assessments are based on an analysis of legislation and of documentation relating to policies and procedures, and on discussions with, and representations made by, the authorities and the private sector. The Note does not represent an assessment of adherence to relevant international standards, such as the Key Attributes of Effective Resolution Regimes for Financial Institutions (Key Attributes) and the Core Principles for Effective Deposit Insurance Systems, although those standards serve as a frame of reference for certain recommendations cited in this Note.

B. Financial Sector Landscape

2. The structure of ownership, control, and financial linkages in the Austrian banking system is complex. The three “decentralized sectors” comprise the majority of the number of banks in Austria. (See Figure 1.) The largest Austrian bank, Erste Group Bank AG (EGB), is the lead bank of the Sparkassen (savings bank) sector. The Sparkassen sector holds €236 billion in total assets² (24 percent of total bank assets) and €40 billion in covered (insured) deposits (20 percent of covered deposits) in Austria. The EGB wholly owns the largest savings bank, EBOe.³ Together with the other 47 Sparkassen throughout the country, they form an FMA-recognized institutional protection scheme (IPS) by means of contracts entered into by the banks and Haftungsverbund GmbH (HVG).⁴ The HVG is owned by the EGB (52 percent) and the other saving banks.⁵ The EGB owns banks in several countries. Raiffeisen Bank International AG (RBI), the second largest bank in Austria, is the lead bank of the Raiffeisen sector, which holds €356 billion in total assets (36 percent of bank assets) and €72.6 billion in covered deposits (33 percent of covered deposits). The RBI is owned

¹ This note was prepared by David H. Scott, External Expert for the Monetary and Capital Markets Department.

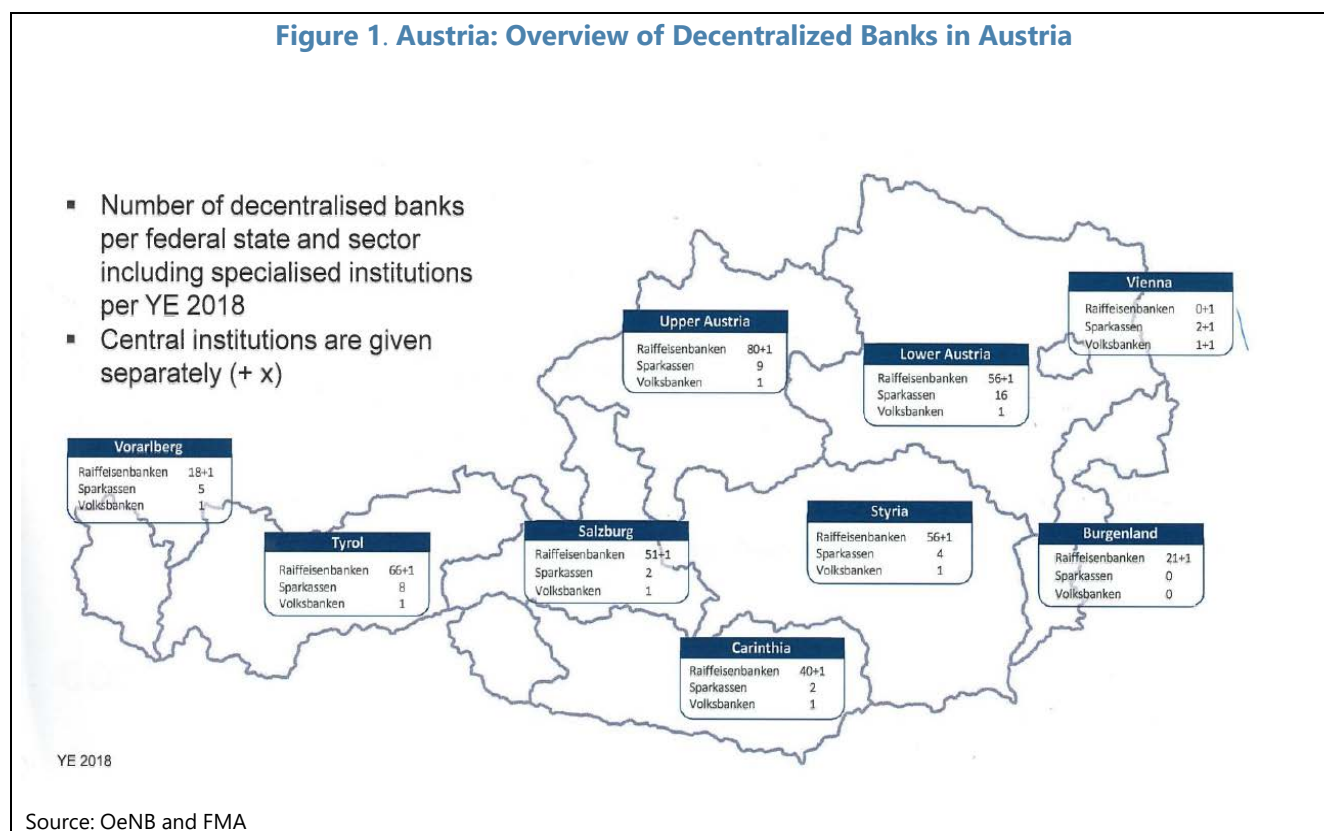
² Data is as of year-end 2018.

³ Erste Bank der oesterreichischen Sparkassen AG, based in Vienna.

⁴ The HVG owns one of the two FMA-recognized deposit guarantee schemes in Austria. See Section F of the Part 2 of this note.

⁵ Historically, the savings banks had a unique corporate structure (neither joint stock company or cooperative, and thus, essentially without owners) but many have converted to joint stock companies. They are largely governed (“steered” in local terms) by the HVG under the contractual arrangements of the IPS.

(58.8 percent) by the eight Regional Landesbanken (RLB),⁶ which in turn are owned by the 386 cooperative Raiffeisen banks in their respective provinces. Six of the eight provincial RLBs, along with the local Raiffeisen banks in each region, form, by contract, six FMA-recognized regional IPSs. The eight RLBs, along with RBI, form, also by contract, a separate federal FMA-recognized IPS (the Bundes-IPS).⁷ The RBI owns banks in several other countries. The third decentralized sector, the Volksbanken (VB) sector, holds €30 billion in total assets (4 percent of bank assets) and €14.3 billion in covered deposits (7 percent of covered deposits). It comprises the lead bank VB Vienna and a VB each in eight of the nine provinces.⁸ The VB sector has not formed a recognized IPS but has entered into an unlimited cross-guarantee scheme,⁹ the consequence of which is that they together increasingly operate as a single centralized institution.



3. There are other major banks operating in the market. The third largest bank is a subsidiary of an FSB-designated G-SIB, as are two other Austrian banks.¹⁰ The fourth largest is a

⁶ One RLB covers both Vienna and Lower Austria.

⁷ The Raiffeisen in two provinces have elected not to form an IPS, though the RLBs in those provinces are members of the Bundes-IPS.

⁸ VB Vienna conducts business in the ninth province.

⁹ An "association" under the CRR.

¹⁰ The Financial Stability Board of the G20 has designated some 30 banking groups as globally-systemically important banks, or G-SIBs.

domestic banking group. Two RLB are the next largest banks. Also significant in size is one of the Hypo banks. The Hypo banks were originally founded by the individual provinces,¹¹ were mainly engaged in mortgage lending, and were funded in significant part by issuing covered bonds¹² and/or bonds guaranteed by the provincial government owner.¹³ Austria is also the headquarters of a bank that owns the European subsidiaries of a major Russian bank.

4. Several banking groups in Austria fall under the direct remit of the European authorities. Eleven Austrian banking groups are under the remit of the Single Resolution Board (SRB) for resolution purposes. Eight of these are headquartered in Austria, while the other three are subsidiaries of banks headquartered in other Banking Union (BU) states.¹⁴ Six banks headquartered in Austria, representing some 60 percent of total system assets, are designated as "Significant Institutions" (SIs) by the ECB for supervisory purposes and are under the ECB's remit.¹⁵ The European headquarters bank of the major Russian bank falls under the remit of the SRB and the ECB. All other banks are designated as Less Significant Institutions (LSIs), or High Priority-LSIs (HP-LSIs).¹⁶

C. Legal Framework

5. The legal framework for managing problem and failing banks in Austria was amended and enhanced with the transposition of the EU Bank Recovery and Resolution Directive (BRRD) and Deposit Guarantee Scheme Directive (DGSD) in 2015. The BRRD was transposed by means of the Bank Recovery and Resolution Act (BaSAG), effective January 1, 2015. The DGSD was transposed by means of the Deposit Guarantee Schemes and Investor Compensation Act (ESAEG), effective August 15, 2015. Legislation relevant for this Note also includes the Banking Act (BWG), the Financial Market Authority Act (FMABG), the Financial Market Stability Act ("FinStaG"), the Insolvency Code (IO), the Act on Creation of a Wind-down Entity (GSA), the Public Liability Act, and the Bank Intervention and Recovery Act.

6. Austrian banks and the authorities were early adopters of recovery and resolution planning. Under the Bank Intervention and Restructuring Act, effective January 1, 2014, Austrian banks and groups with over €30 billion in assets were required to prepare both recovery and resolution plans by mid-year and year-end 2014, respectively. As such, the industry and authorities were among the first to pursue a recovery and resolution planning agenda guided by the Key

¹¹ Some of the Hypo banks are now fully privatized. Three remain controlled by the provinces.

¹² Bonds secured by mortgages.

¹³ The provincial government guarantees have been phased out as a condition of EU membership.

¹⁴ All three are G-SIBs.

¹⁵ As of January 1, 2019, the six Austrian SIs include Erste Group Bank AG, Raiffeisen Bank International AG, BAWAG Group AG, Raiffeisenbankengruppe OÖ Verbund eGen, Volksbank Wien AG, and Sberbank Europe AG. The third largest bank, Bank Austria UniCredit, is a systemic subsidiary of UniCredit headquartered in Italy.

¹⁶ Banks are designated as HP-LSIs based on a joint ECB-FMA annual assessment. The designation implies more detailed reporting by the FMA to the ECB regarding its supervision of the bank and the preparation by the banks of full-scope recovery plans. See Section B, Recovery Planning and Early Intervention, in Part 2 of this note.

Attributes which were originally promulgated in late 2011. This is reflected in the good progress that has been made by the authorities in recovery and resolution planning in Austria.

D. Recent Crisis Experience

7. There are three instances of bank failures in Austria during and subsequent to the global financial crisis that were still undergoing resolution subsequent to the prior FSAP until the time of the current FSAP. These involved the failure and nationalization of Hypo Alpe Adria Bank International AG, the failure and nationalization of Kommunalkredit Austria AG, and the failure of the Austria Volksbanken AG and the ongoing restructuring of the VB sector. All three were subject to EC-approved restructuring and state aid programs. The remaining element of each of these cases is a wind-down entity established under provisions of the BaSAG and the GSA,¹⁷ respectively, not found in the BRRD, which allows an institution to apply to be converted into a wind-down entity.¹⁸ Each case is briefly summarized below.

8. HETA Asset Resolution AG (HETA) is the wind-down entity ultimately resulting from the resolution of the failure of Hypo Alpe Adria Bank International AG (HB Intl). At the time of its nationalization by the government in December 2009, HB Intl operating in Austria owned banking or leasing subsidiaries in 11 Southeastern European (SEE) countries. A provisional State Aid decision was rendered by the EC that month and a final decision was rendered in September 2013. The final decision required the government to sell the Austrian and SEE operations of the group, among other restructuring measures. To facilitate the sales and restructuring, the group's Italian bank subsidiary, shares in various nonfinancial companies, and bad assets from several group entities were segregated for wind-down. The government passed special legislation, the GSA, effective August 2014, to facilitate the wind-down. HETA became a wind-down entity under this legislation in October 2014 to hold the residual assets and liabilities.¹⁹ In February 2015, an asset quality review conducted by management determined that HETA had significant negative capital. The government, as 100 percent owner, decided not to provide further government support to HETA. The BRRD then rendered a "Fail or Likely to Fail" (FOLTF) decision²⁰ on March 1, 2015 that HETA was not viable, and imposed a 15-month debt moratorium; both actions were taken under the newly enacted BaSAG. A preliminary decision on bailing-in creditors under the BaSAG was taken in April 2016. After a valuation process, as required under the law,²¹ and after hearing appeals provided

¹⁷ Act on Creation of a Resolution Entity.

¹⁸ Art. 162 BaSAG. This provision only applies to KA Finanz and immigon and cannot be used in any other circumstance.

¹⁹ Other wind-down assets and liabilities were packaged to be resold.

²⁰ See Section C (Legal Regime for Bankruptcy and Resolution) of Part 2 of this note for a description of the FOLTF decision.

²¹ The so-called Valuation 2 as called for under the BRRD and BaSAG which is required to support, among others, specific decisions on the bail-in of different classes of creditors and, potentially, individual creditors within a class. See Section C of Part 2 of this Note.

for under administrative law, the bail-in decision was finalized in May 2017.²² Under this decision, the shareholder (the government), holders of other capital instruments, and subordinated debtholders were written off and other creditors were written down to 64 percent. Upon the write-off of the shareholder, the FMA Board as the NRA took control of the wind-down entity. Bailed-in creditors have subsequently been written up to 86 percent, as the realization of value on assets has exceeded projections inherent in the valuation supporting the original bail-in decision.

9. KA Finanz AG (KF) is the wind-down entity ultimately resulting from the resolution of the failure of Kommunalkredit Austria AG (KA). At the time of its nationalization by the government in November 2008, KA was the seventh largest Austrian bank, and 51 percent of its shares were owned by Österreichische Volksbanken AG (see next paragraph) and 49 percent by Dexia Crédit Local. In March 2011, the EC rendered a State Aid decision approving a restructuring plan proposed by the government that resulted in assets with strategic long-run value being held by KA, and non-strategic assets being held by KF. KA was to be sold. Under the terms of an amended State Aid decision of July 2013, which was required due to the inability to sell KA in the timeframe stipulated in the original decision, KA ceased undertaking new banking business and was to run down its operations while attempts to sell it, or its assets, continued. In September 2015, KA concluded the sale of some 40 percent of its assets, and the remaining assets were merged into KF, which still retained a banking license. In June 2017, KF made application to the FMA to convert into a wind-down entity. In September 2017, the application was approved.

10. immigon is the wind-down entity ultimately resulting from the resolution of the failure of Österreichische Volksbanken AG (VBAG). VBAG was the central institution for the Volksbanken sector in Austria. The government had provided various public support to the bank. In September 2012, the EC rendered a State Aid decision approving the recapitalization and restructuring of VBAG.²³ The ECB Comprehensive Assessment in 2014 determined there remained a significant shortfall in capital. In part as a means to address the shortfall, in May 2015 the shareholders resolved to split-up VBAG by transferring to Volksbanken Wien VBAG's assets, liabilities, and functions associated with its role as the central institution for the Volksbanken sector and converting its remaining business into a wind-down entity.²⁴ In May 2015, VBAG made application to the FMA for the conversion into a wind-down entity, which the FMA approved. An amended State Aid decision was rendered, and the transaction was affected, in July 2015.²⁵ immigon completed the wind-down of its asset portfolio in January 2019. Its liabilities are expected to be paid in full when due over the next several years.²⁶

²² Steps are being taken to ensure the ability to substantially shorten what was the lengthy period of time between the preliminary and final bail-in decision. See Section D (Resolution Planning) of Part 2 of this note.

²³ The public support resulting in a 43 percent equity participation by the government in VBAG.

²⁴ The transaction and certain prior government support led to the government having a 25 percent equity participation in Volksbanken Wien. Upon repayment of that support the equity participation will be extinguished.

²⁵ The transaction also resulted in the merger of the 50 primary banks into the current Volksbanken sector structure.

²⁶ Early repayment is not possible due to negative tax consequences for the creditors.

PART 2: STRENGTHENING THE FRAMEWORK

A. Institutional Framework

11. As in other members of the BU, the ECB, and the SRB play a significant role in bank supervision and resolution in Austria. The roles of the ECB under the Single Supervision Mechanism (SSM) and the SRB under the Single Resolution Mechanism (SRM) mainly fall into three categories: (i) the exercise of direct supervision powers by the ECB, and resolution planning and resolution decision-making powers by the SRB over the institutions under their respective remits²⁷; (ii) the oversight of the National Competent (Supervisory) Authorities (NCAs) by the ECB and National Resolution Authorities (NRAs) by the SRB; and (iii) if deemed necessary, to ensure consistent application of supervisory and resolution standards, the direct exercise by the ECB and SRB of their respective powers for institutions under the purview of NCAs and NRAs. To date, the ECB and the SRB have not exercised such powers in Austria.

12. The domestic financial authorities continue to play critical roles. The domestic authorities relevant to this Note are the FMA, the OeNB, and the MOF. The FMA is both Austria's NCA and NRA. It contributes substantially to the work of the ECB and SRB with respect to Austrian banks by participating in ECB Joint Supervisory Teams (JSTs) and SRB Internal Resolution Teams (IRTs). It is responsible for all banks/groups not under the remit of those two institutions. The FMA, as the NRA, is responsible also for executing all failure resolution actions, including those decided upon by the SRB,²⁸ and for the monitoring of resolution entities.²⁹ The OeNB is Austria's national central bank (NCB) and contributes substantially to FMA's supervisory and resolution functions. The OeNB, too, participates in JSTs and IRTs. Within the MOF, the Directorate General for Economic Policy, Financial Markets, and Customs Duties deals with economic and financial policy at the domestic and international level and has roles in dealing with bank failures and crises, particularly with respect to extraordinary funding needs.³⁰

13. The FMA's organization arrangements ensure an adequate functional separation of its tasks as the NCA and the NRA, but ultimate decision making for supervisory and resolution matters is unified. The two-person FMA Executive Board (FMA Board) takes decisions on both supervisory and resolution matters. Its decisions relate to the HP-LSIs and LSIs under the FMA's authority, and to the Austrian position on and input to matters relevant to SIs and other banks under the remit of the ECB or SRB. Operationally, the FMA's Banking Supervision Department (BSD)

²⁷ The SRB is the resolution authority for (i) SIs and banks in relation to which the ECB has decided to exercise directly all of the relevant supervisory powers; and (ii) other cross-border groups, where both the parent and at least one subsidiary bank are established in two different participating Member States of the BU.

²⁸ The FMA also participates in SRB governance by means of its representation in SRB Extended Executive Sessions and Plenary Sessions.

²⁹ For example, the three wind-down entities, or bridge institutions or asset management vehicles established in the future.

³⁰ See Section F (Resolution Funding) in Part 2 of this note.

reports directly to the FMA Board. It has five divisions whose duties include supervision of all banks and supervision of the Deposit Guarantee Schemes (DGSs). The Banking Resolution Department (BRD), established for the purpose of performing the FMA's tasks as Austria's NRA, reports separately and directly to the FMA Board and is comprised of two teams, one for resolution planning and one for resolution execution.³¹ Neither department has automatic access to the files of the other, though when necessary to fulfill their respective roles, they receive access to relevant files for the most part.³² The FMA Board takes key resolution-related decisions; others are delegated to the BRD. Decisions taken by the FMA Board include, among others, approving resolution plans, the choice and application of resolution tools, appointment of valuation auditors, ordering banks to hold specific amounts of own fund, and liabilities eligible for bail-in, as well as significant decisions in ongoing resolution activities in a bank or other entities under resolution.

14. Similarly, the OeNB's supervisory and resolution functions are operationally separate.

The Financial Stability, Banking Supervision and Statistics group, headed by a vice governor, includes the Department for the Supervision of SIs, the Department for Financial Stability and for the Supervision of LSIs, and the Statistics Department. The former two support the FMA as NCA. The Office for Specific Bank Resolution Matters (REFBA) of the Statistics Department engages with and supports the FMA as NRA.

15. There is a high degree of cooperation within and between the FMA and the OeNB with respect to supervisory and resolution functions.

Much of the cooperation derives from the requirements of the BRRD as transposed by means of the BaSAG. It is also a result of the significant workload and inter-agency cooperation over the past decade in dealing with the consequences of the global financial crisis for the Austrian financial system.

16. The FMA and the MOF should consider separating ultimate decision making for supervisory and resolution matters in the FMA.

The BRRD provides that Member States "may exceptionally provide for the resolution authority to be the competent authorities for supervision,"³³ and, in this case, requires that structural arrangements be in place to ensure operational independence and avoid conflicts of interest. The operational separation of the BSD and the BRD goes far in meeting these requirements, and the FMA structure is in line with EC law and guidance, but unification of ultimate decision making at the FMA Board could give rise to potential conflicts of interest, and to the appearance of potential for conflicts. For example, a situation may arise where the supervisory function advocates for resolution of a failing LSI as a going-concern,³⁴ whereas the resolution function advocates for use of bankruptcy proceedings. While under the BaSAG, the FMA Board as NRA is the decision maker in this case; the FMA Board is nonetheless placed in a conflict

³¹ The resolution execution team is also responsible for monitoring resolution entities

³² See Section B (Recovery Planning and Early Intervention) and Section C (Legal Regime for Bankruptcy and Resolution) of Part 2 of this note for recommendations for ensuring adequate sharing of information.

³³ Art. 3 (3).

³⁴ Using the resolution tools in the BaSAG. See details in Section C (Legal Regime for Bankruptcy and Resolution) of Part 2 of this note.

situation under the current arrangements. Similarly, under the BRRD the NRA serves in effect as a backstop in the event the NCA fails to take timely action to make a determination as to whether an LSI remains viable; in that event, the NRA can make the determination.³⁵ This possibility of the NRA is set out in the Austrian transposition of the BRRD. The FMA as NRA applies the FOLTF policy of the SRB, highlighting cases where the RA shall on its own initiative initiate an FOLTF proceeding. However, these decisions are reserved in both instances for the FMA Board, acting as both NRA and NCA, and therefore no such backstop exists in Austria.³⁶

17. Deposit guarantee scheme (DGS) arrangements were reorganized on January 1, 2019.

Four of the previous five sectoral DGSs were, in effect, merged into Einlagensicherung AUSTRIA Ges.m.b.H. (ESA), and the funds of those four schemes were transferred to ESA. The savings bank (Sparkassen) sector continues to operate its own separate DGS, the Sparkassen-Haftungs GmbH (S-Haftung), which is an institutional protection scheme (IPS) recognized by the FMA pursuant to the ESAEG as both an IPS and a DGS.³⁷ Both ESA and S-Haftung are supervised by the FMA.

18. The BRD is reasonably well resourced on an actual and contingent basis. The department currently has a permanent staff of 24. This includes the department head, 12 staff in the resolution planning team, 10 in the resolution execution team, and 1 support staff. Among resolution planning team staff, five are focused on resolution planning for SIs and seven for LSIs. Among other additional tasks, they examine the recovery plans for 140 Austrian banks with a view to identify options that potentially adversely impact the resolvability of the banks. Among resolution execution team staff, five are focused on supervision and monitoring of the three wind-down entities, and the others are involved in making preparations to be able to exercise resolution options and implement resolution tools, among other tasks. Further staff increases are not envisioned at this time. As noted, the BRD is supported by OeNB's REFBA, which has a staff of six that work full-time on resolution matters and serve as the focal point of interaction between the BRD and other OeNB units.³⁸ The REFBA prepares analyses for consideration by BRD's staff by drafting resolution plans. The BRD regularly utilizes outside experts to support its work.³⁹ It has entered into contingency contracts with five audit firms to undertake required valuations⁴⁰ and other work, and five law firms to deal with the many legal issues that arise in resolution execution. It is considering contracting for investment banking expertise as well (e.g., merger and acquisition). In addition, appropriately skilled staff in other FMA departments who can be temporarily seconded to the BRD have been identified in advance.

³⁵ The so-called Failing or Likely to Fail (FOLTF) determination described in Section C of Part 2 of this note.

³⁶ Authorities inform that conflicts of interest have not risen in practice and that there are mitigating factors. The instances where the Board of the FMA takes decisions in its capacity as NCA and in its capacity as NRA are clearly regulated, and all draft decisions of the FMA as NRA have to be provided for review by the SRB before they are taken at the national level.

³⁷ See details in Section F (Deposit Protection) of Part 2 of this note.

³⁸ Under proposed financial supervision reforms, REFBA would be transferred to the FMA BRD.

³⁹ In recent time, most notably to support the disposition of the wind-down entities.

⁴⁰ In particular the valuation required under the BaSAG in order to support decisions on the use of the resolution tools, so-called Valuation 2.

19. Legal protections for the staff of the FMA and OeNB are adequate, but the protections should be extended to other parties acting under the direction of the FMA Board as NRA.

Under the FMABG, the FMA as well as its employees and bodies are not liable towards an injured party. If, under the provisions of the Public Liability Act, the Federal Government reimburses any damages awarded to injured parties it could demand reimbursement from the FMA's bodies or employees. The bodies of the FMA would have to reimburse the Federal State if it was found that they acted with gross negligence. Under the BaSAG, reimbursement is further limited when administering tasks concerning banking resolution which can only be demanded from the FMA's bodies or employees and from the bodies or employees of the OeNB if they have intentionally committed a breach of law. This also applies to seconded staff and external third-party experts if they are hired or working under the direction of the FMA, but does not apply to the managers of bridge institutions or asset management vehicles unless FMA staff fulfill these functions. Managers of bridge institutions and asset management vehicles may act to execute a resolution scheme directed by the FMA Board as NRA.⁴¹ The FMA should ensure that the managers benefit from protections comparable to those available to FMA staff.

20. Summary of recommendations:

- The MOF and the FMA should consider separating ultimate decision making for supervisory and resolution matters at the level of the FMA Board; and
- The FMA should ensure that the managers of bridge institutions and asset management vehicles benefit from protections comparable to those available to FMA staff.

B. Recovery Planning and Early Intervention

21. The supervision of Austria banks, including recovery planning and early intervention with respect to those plans, is a joint exercise between the ECB, the FMA, and the OeNB. The ECB-led JSTs are responsible for supervision of SIs, whereas the FMA's BSD and the OeNB's Department for Financial Stability and the Supervision of LSIs supervise HP-LSIs and other LSIs. The JSTs are led by ECB coordinators, with a sub-coordinator and staff from the FMA and the OeNB. In the assessment of SI recovery plans, the JSTs are supported by an ECB horizontal specialized expertise team.⁴²

⁴¹ The Executive Board of a bridge institution in particular likely would be working under the instruction of the FMA Board as NRA in carrying out the restructuring of the resolved institution set in the adopted resolution scheme, and as such would be agents deserving protection per the Key Attributes (Essential Criteria 2.6 of the Key Attributes Assessment Methodology).

⁴² The Crisis Management Division within DG MS IV.

Recovery Planning

22. Guidelines on recovery planning requirements, as specified in the BRRD, were first disseminated in 2014 and have been regularly enhanced and refined.⁴³ The FMA/OeNB joint guidance has been updated to reflect the subsequent transposition of the BRRD in Austria, and the various EBA and ECB guidelines and standards that have been issued. Additional guidance has been provided to banks by means of workshops and meetings with the industry, and in response to the assessment of individual banks' plans.

23. SIs, HP-LSIs, and the central institutions of IPSs are required to prepare full-scope plans, while other banks can prepare plans under simplified obligations.⁴⁴ The FMA's Bank Recovery Plan Regulation (BaSaPV) sets out arrangements for applying simplified obligations to LSIs. Under this regulation, banks are clustered into four categories and may be granted simplified obligations regarding: (i) the number of indicators; (ii) the number of stress scenarios; and (iii) the frequency of updates of the recovery plan. At a minimum, the smallest banks (category 1: consolidated assets under €350 million) are required to use six indicators that address capital, liquidity, profitability, and nonperforming loan growth, to envision a systemic stress scenario and to update plans every other year. Category 2 banks (with consolidated assets up to €5 billion⁴⁵) must employ an idiosyncratic stress scenario in addition to the systemic stress scenario and must update plans annually. Category 3 banks (banks not in categories 1, 2, or 4) are additionally required to employ a combined systemic/idiosyncratic scenario and to use more indicators. The central institutions of IPSs (category 4 institutions) are required to draw up full-scope plans.⁴⁶

24. The central institution of each IPS is required to prepare a full-scope recovery plan for the IPS, while LSIs members of the IPS are not required to have individual recovery plans. IPS recovery plans cover: (i) the IPS itself; (ii) the central institution of the IPS; (iii) subsidiaries of the central institution⁴⁷; and (iv) the individual IPS members. The IPS recovery plans do describe possible recovery measures at the level of the individual IPS members, but at a less granular level than an individual recovery plan would require.⁴⁸ However, if deemed necessary, the BSD can request an individual IPS member to prepare a recovery plan. For the time being, the BSD has not deemed it necessary to do so.

⁴³ The BRRD was promulgated in May 2014.

⁴⁴ This is in accordance with EBA guidance on simplified obligations and the ECB's Joint Standard on Recovery Planning.

⁴⁵ More specifically, institutions that are not in category 1 and have consolidated total assets up to €5 billion with cross-border business not exceeding 30 percent of total assets and interbank business not exceeding 50 percent of total assets.

⁴⁶ As noted, SIs are required to prepare full-scope plans as well.

⁴⁷ And any subsidiaries of other IPS members where relevant.

⁴⁸ The IPS plan must contain a description of the escalation process, indicators and recovery measures at the level of the individual IPS members and should quantify the recovery measures and the effects of the stress scenarios for a typical IPS member.

25. The FMA/OeNB have set the thresholds (triggers) for when an LSI must decide whether to take recovery actions at levels that may correspond to minimum prudential requirements in some instances. When thresholds are breached, a bank is to escalate that information so that a decision on whether to take recovery action can be made, and to notify the FMA. As an example, the LSI threshold with respect to the total capital ratio is set at 250 basis points above the bank's total capital requirement, but excluding buffers. As buffers aggregate 250 basis points for most LSIs, the minimum threshold requirement is at a same level that normally would trigger supervisory intervention for breach of a buffer. Setting the threshold at the level of the regulatory requirement tends to make redundant the supervisory notification requirement when a threshold indicator has been breached. While the current requirement is consistent with EBA guidance, the BSD should consider setting minimum thresholds at levels well above the point of likely supervisory intervention.⁴⁹

26. SIs have prepared recovery plans annually since 2015. As noted, the ECB's JSTs lead this effort with substantial support from BSD and OeNB staff and a specialized unit at the ECB. The recovery plan assessment follows a standardized process. Recovery plans for SIs are shared with the SRB, the BRD and EU NRAs outside the BU, which may identify actions in the plan that could adversely affect the resolvability of the institution and make any concerns known to the ECB. All SIs have received feedback letters from the ECB after it has completed each assessment. To date no material deficiencies in plans of Austrian SIs has been identified.⁵⁰

27. All LSIs, including IPSs, were requested to submit initial recovery plans in 2015. Since then, large and medium LSIs (categories 2-4) have updated their plans at least three times; small LSIs (category 1) have updated their plans at least once. Recovery plans are submitted electronically and BSD/OeNB have built and refined a well-developed system supported by extensive automation for processing, analyzing and identifying red flags and deficiencies in plans. The BSD routinely forwards the plans to OeNB and to the BRD (and SRB when relevant) for assessment and comment. Using criteria set out by the ECB,⁵¹ the BSD/OeNB assesses the plans, including the feedback from OeNB and BRD, and prepares requests for improvements to banks. Thus far, the assessment of LSI recovery plans has always led to written requests for improvements via feedback letters to the banks. The number of material deficiencies has decreased since 2015, mainly due to improvement in the recovery indicator system (e.g., thresholds for triggering escalation). A key issue yet to be fully addressed is the credibility of the overall recovery capacity of LSIs. Other typical deficiencies concern the description and severity of the stress scenarios, and deficiencies regarding the description of recovery options. In addition to feedback letters, the FMA/OeNB have provided general feedback to LSIs in workshops and meetings with banking associations.

⁴⁹ The BSD does in fact do this in the case of the Liquidity Coverage Ratio, for example, where the minimum threshold is 110 percent and the minimum regulatory requirement is 100 percent.

⁵⁰ The identification of "material deficiencies" triggers a timebound process to ensure the deficiency is remedied in short order.

⁵¹ The criteria address the (i) completeness; (ii) quality (particularly in terms of the range and detail of identified recovery options); and (iii) credibility (especially the likelihood of being able to implement identified recovery options successfully) of the plans.

28. Recovery planning in Austria is reaching a state of maturity and the systematic testing of plans has begun. Discussions with the authorities and market participants indicate that recovery planning is well imbedded into the risk management systems within the larger banks. Under general guidance from the ECB and encouragement from the BSD, the largest banks are beginning to undertake “dry-runs” designed to test the implementation of aspects of their plans. As more experience is gained, the FMA should develop and refine over time guidance to banks in this regard, so as to institutionalize the testing of recovery plans as a routine business practice.

Early Intervention to Improve Recovery Capacity

29. The BaSAG provides ample powers for the authorities to intervene to improve recovery plans. The ECB and the FMA are responsible for the application of intervention measures to SIs and LSIs respectively.⁵² When material deficiencies in recovery plans are identified, the JST or the FMA Board, as NCA, requires the bank to submit an improved recovery plan within no more than three months. If the deficiency has not been remedied by the bank, the supervisor can direct the bank to make specific changes to the plan. There have been only a very limited number of instances where this has been required.

30. The BaSAG similarly provides ample powers for early intervention to deal with emerging problems. Among these powers as they relate to recovery plans, the supervisor can require the directors: (i) to execute measures set out in the bank’s recovery plan within a specific timeframe; (ii) to update the recovery plan and its envisioned measures; and (iii) to identify measures to overcome any problems identified by the supervisors and draw up an action plan to overcome those problems within a specific timetable. These powers are adequate and have not yet been used.

31. Summary of Recommendations:

- The BSD should consider setting minimum recovery indicator thresholds at levels well above the point of likely supervisory intervention; and
- The BSD, in due course, should develop and refine guidance on the testing of recovery plan implementation (e.g., via dry-runs), so as to institutionalize plan testing as a routine business practice in banks.

C. Legal Regime for Bankruptcy and Resolution⁵³

32. The legal frameworks governing the failure of banks are those for bankruptcy proceedings and for resolution outside of bankruptcy when certain conditions are met, including that of being in the public interest. Banks that are non-systemic in failure are subject to

⁵² Certain uses of intervention powers by the FMA must be communicated to the ECB.

⁵³ The BRRD definition of “resolution” is narrower than that used in the KAs. Under the BRRD, resolution is the application of one or more of the four default resolution tools. The KAs identify 12 powers, including, notably, the closure and orderly wind-down (liquidation) of a failing firm, which the BRRD considers to be outside of resolution.

bankruptcy proceedings as regulated by the Insolvency Code (IO) as modified by the BWG. Banks that are potentially systemic in failure are resolved using the powers in the BaSAG.

Bankruptcy Proceedings

33. Bank bankruptcy proceedings are a court-led process. In the case of material insolvency of a bank, following an FOLTF assessment by the BSD and a determination by the FMA Board, as NRA, on the advice of BRD that use of resolution tools is not in the public interest (see details below), the FMA Board as NCA may petition the court to open bankruptcy proceedings.⁵⁴ In general, material insolvency exists when a bank is unable to make payments or is over-indebted based on an evaluation of assets at liquidation value. If the court agrees to open bankruptcy proceedings, it appoints a bankruptcy administrator in consultation with the FMA. The bankruptcy administrator divests the bank's assets with the aim of maximizing the creditors' recovery.⁵⁵ The opening of bankruptcy proceedings triggers a deposit payout and the relevant DGS, subrogating the claims of covered depositors, becomes a preferred creditor in the bankruptcy proceedings.⁵⁶ The conditions of material insolvency are either illiquidity (the inability to pay deposits or debts) or over-indebtedness. A bank is considered over-indebted when its assets are insufficient to cover its liabilities. In bankruptcy proceedings, the FMA has the status of a party to the proceedings. The court must consult the FMA regarding the dismissal of the bankruptcy administrator. As a party to the proceedings, the FMA has all procedural rights (e.g., the right to appeal against court decisions, to attend hearings, and to have access to relevant documents).

34. The creditor hierarchy in the IO has been modified in the case of banks by the BaSAG. The uncovered deposits of households and SMEs are given preference to a broad class of general creditors (which includes senior bond holders, uncovered corporate depositors, and claims of tax authorities, among other unsecured claims). Covered deposits have a higher ranking, as do the DGSs in subrogation of covered depositors in the case of a payout.

35. There is no scope to transfer the covered deposits and sound assets of a failing bank to an acquirer under the bankruptcy regime. The DGSs can only pay out deposits⁵⁷ and the assets can only be sold by the bankruptcy administrator. Compared to transactions involving both the purchase (of sound assets) and assumption (of covered deposits) by an acquirer (purchase and assumption (P&A) transaction), in a payout: (i) the realizable value of the failed bank's assets will likely be diminished, particularly if sold piecemeal; (ii) the counterparts to the assets will be inconvenienced (particularly small businesses whose only or main banking relationship is with the failed bank) and will incur additional costs (establishing a banking relationship with a new bank); and

⁵⁴ A petition for bank bankruptcy can only be made by FMA.

⁵⁵ The legal regime also provides for special receivership procedure as an alternative to bankruptcy for which the FMA can petition the court. A necessary requirement for the receivership procedure is that it must be likely that the bank's problems can be remedied by a court appointed receiver. The FMA does not envision using this option.

⁵⁶ See more on the creditor hierarchy below.

⁵⁷ See Section F (Deposit Protection) of Part 2 of this note.

(iii) the DGSs will have higher upfront cash outlays and, potentially, higher long-run costs.⁵⁸ Under the current legal regime, a P&A transaction can only be executed under the BaSAG (using the sale of business tool—see below), the prerequisites for which few banks will meet (e.g., the “public interest” test). The MOF should consider recommending to the MOJ to provide explicitly for P&A transactions in the bankruptcy regime, thus making the tool available for use in all bank failures.⁵⁹

Resolution Regime for Systemic Banks

36. The BRD has available the tools and underlying resolution powers set out in the international standard⁶⁰ and in the BRRD. These are: (i) the “bridge institution” tool (based on the power of the FMA to establish an institution temporarily owned by the government⁶¹ to acquire assets and liabilities⁶² from a bank in resolution in order to ensure continuity of functions deemed critical until a buyer can be found); (ii) the “sale of business” tool (the power to transfer assets and liabilities from a bank in resolution without shareholder or creditor consent to third parties or to a bridge institution); (iii) the “bail-in” tool (the power to write-down⁶³ and/or convert into equity eligible liabilities to absorb losses and recapitalize a bank in resolution⁶⁴) and; (iv) the “asset separation” tool (the power to transfer assets that were not transferred when using the sale of business tool, or not retained when undertaking a whole bank bail-in transaction, again without shareholder or creditor consent, to an asset management vehicle (AMV) established by the FMA for the purpose of managing and maximizing the value of the assets). The SRB can make use of these tools and powers, and its decision to do so is implemented directly by the FMA/BRD under procedures described below.

37. The legal framework guiding the circumstances under which these resolution powers can be used is in place. In general, the powers are available for use when the use of bankruptcy proceedings is determined by the BRD, with input from the OeNB, likely to give rise to unacceptable financial or economic consequences.⁶⁵ More specifically, the resolution powers may be used when (i) the bank is deemed to be FOLTF⁶⁶; (ii) the BRD/SRB in consultation with the BSD/ECB determines that there are no reasonable prospects that sufficient and timely private sector measures will be taken; and (iii) use of the resolution powers is deemed by the BRD/SRB to be in the public interest. The FOLTF determination is the responsibility in the first instance of the BSD/ECB, but as a safeguard in the event they fail to act in a timely manner, the determination may be made by the BRD/SRB.

⁵⁸ To the extent the DGS is not able to recover its payout costs from the proceeds of liquidation.

⁵⁹ The authorities indicate that this would be in line with developments in the European Union.

⁶⁰ The Key Attributes.

⁶¹ Or other public entity and, potentially, bailed-in creditors.

⁶² Or, alternatively, an equity position in a company holding those assets and liabilities.

⁶³ Including to zero value (i.e., write-off).

⁶⁴ And, potentially, to help capitalize a bridge institution.

⁶⁵ The decision is the sole discretion of the BRD and FMA Board as NRA.

⁶⁶ The FOLTF determination is subject to guidance published by the EBA in 2015.

The BSD's or BRD's judgement must be approved by the FMA board, acting respectively as NCA or NRA.⁶⁷ The public interest determination is to be based on a judgment that the use of bankruptcy proceedings would not ensure that the objectives of resolution, namely ensuring continuity of the bank's critical functions, maintaining financial stability, safeguarding public funds, protecting covered depositors and covered investors and protecting client funds and assets, will be met. When requested by the BRD in order to support its decision making, the OeNB will provide an opinion on the existence of a public interest in use of resolution powers. The BRD should routinely seek such an opinion.

38. The BSD and the BRD have adopted internal procedures for coordination. But have not yet agreed on a policy on how to apply certain discretionary elements in the FOLTF determination. Important in this regard is determining when a bank no longer meets the requirements for continuing authorization in a manner that would justify the withdrawal of its authorization. The BSD and the BRD established a working group to address matters related to FOLTF determinations and should come to agreement on such a policy as soon as practical. One key objective should be to ensure that an FOLTF assessment is triggered well prior to balance sheet insolvency,⁶⁸ in part so as to promote better outcomes for creditors in bankruptcy proceedings (where the public interest assessment following the FOLTF determination deems that use of resolution tools is not required).

39. Procedures for use of resolution powers and tools are well established. The FMA Board as NRA, on the BRD's advice, initiates resolution actions⁶⁹ by means of an emergency administrative decision⁷⁰ without a formal preceding investigation (i.e., no requirement for formal input—a right-to-be-heard—from the effected bank) and without a requirement for any *ex ante* action by the court. The decision is issued by means of an edict published on the FMA's website. Upon publication, the decision is deemed effective towards the bank and all parties whose rights may be affected. The bank and other parties whose rights may be affected (e.g., shareholders, creditors) may challenge the decision within three months of publication. A challenge does not suspend the effects of the decision. Upon expiry of the three months, the BRD will officially initiate an investigation, will address any challenges against the emergency administrative decision, and the FMA Board as NRA will render a final decision by means of an administrative decision.⁷¹ This administrative decision, too, will be announced by means of an edict published on the FMA website. Affected parties then have the right to appeal in the Federal Court system. If a resolution decision is repealed or amended by a court, it generally will not remove the legal effect of the administrative decision. The removal of the legal effect is only possible if, among other conditions, it does not place the resolution objectives at risk and would not constitute a threat to the interests of third parties that require protection (such as purchasers of assets and liabilities of the bank in resolution). In the case that the

⁶⁷ As noted, the lack of differentiation for ultimate decision-making at the FMA Board for the FMA's responsibilities as NCA and NRA undermines the effectiveness of this safeguard.

⁶⁸ As required under the Key Attributes.

⁶⁹ Potentially, as instructed by the SRB for banks under its remit.

⁷⁰ Mandatsbescheid

⁷¹ Vorstellungsbescheid

legal effect cannot be removed, an affected party may pursue a claim against the federal government for compensation of any unlawfully caused disadvantages as a result of the administrative decisions issued by the FMA Board.

40. SRB decisions are subject to challenge at the local level and also at the European level.

Most decisions of the SRB relevant to Austria must be implemented by the FMA, as NRA, and are thus subject to challenge locally. Certain SRB decisions also are subject to challenge to the SRB's Appeals Panel. Among the most relevant of these are SRB requirements that banks hold a required volume of own funds and liabilities for bail-in (so-called MREL, described in Section D, below) and that banks make extraordinary contributions to the Single Resolution Fund (SRF, described in Section E, below).⁷² However, all SRB decisions as well as those of the Appeals Panel are subject to challenge at the European Court of Justice (ECJ). There is legal uncertainty as to the interaction between the two jurisdictions of possible appeal by affected parties. It should be clarified in that either an appeal to the SRB Appeals Panel or the ECJ suspends the appeal period in the national courts until there is a final judgement by the European authorities, or that the national judicial proceedings should be stayed until the European authorities have rendered a ruling. In any case, SRB decisions implemented by the FMA should be given effect as any other FMA administrative decision and should not be suspended by virtue of an appeal.

41. The FMA has the power to write down and convert capital instruments of a bank as a standalone tool, or in conjunction with taking resolution action. Under the BaSAG, a bank's equity can be written down or off, and its additional Tier 1 and Tier 2 capital instruments can be converted in equity or written down or off. The FMA Board, as NCA, on the BSD's advice, can do so in order to ensure a bank's viability. The FMA Board, as NRA, on the BRD's advice, can do so prior to or simultaneously with taking resolution action (as described below), and must do so where extraordinary public support (also as described below) is required. Prior to exercising the power to write down and/or convert capital instruments, the BRD may obtain a professional third-party valuation to determine the extent of losses on assets, with a view to ensure that they are fully absorbed by existing capital instruments. In case this is not expedient, as may well be the case, the BRD can perform its own provisional valuation subject to adjustment⁷³ based on an ex post third-party definitive valuation.

42. In certain circumstances, the finance minister must provide consent prior to the FMA Board, as NRA, exercising resolution powers and also can provide extraordinary public support to a resolution. The FMA Board must seek the minister's written approval prior to taking any actions that may have a direct fiscal impact or which have systemic implications. The BRD and MOF are working to an agreed interpretation of these requirements and should reach agreement as soon as possible. In addition, in the extraordinary circumstance in which the resolution tools prove inadequate, the minister may, in consultation with the OeNB and the FMA Board, acting as both NCA and NRA, direct the use of the so-called government stabilization tools involving equity

⁷² Resolution actions directed by the SRB are not subject to challenge to the Appeals Panel.

⁷³ In terms of the financial consequences for shareholders and holders of other capital instruments.

support from the state and/or temporary public ownership.^{74,75} The MOF should formulate internal written policies and procedures as to when and how the government stabilization tools might be utilized.

43. The legal safeguards for shareholders and creditors set out in the international standard are in place. Among these safeguards, shareholders and creditors are protected from incurring losses in the context of the use of resolution powers greater than they would have incurred under bankruptcy proceedings (the so-called “no-creditor-worse-off” (NCWO) principle). If left financially worse off, based on a professional third-party valuation,⁷⁶ they are entitled to compensation from the SRF. While the resolution powers must be exercised in a manner that respects the hierarchy of claims set out in the BaSAG, the power to deviate from *pari passu* treatment of creditors under specifically defined and limited circumstances is in place, but explicitly so only when using the bail-in tool. The ability to depart from the *pari passu* treatment of creditors in a class should also be explicitly available when using the sale-of-business tool and the bridge-institution tool. This may be necessary, for example, to allow for the transfer of certain liabilities (e.g., uncovered corporate deposits), but not other liabilities within the same creditor class (e.g., senior unsecured bonds). The MOF should amend the BaSAG to make explicit the power to deviate from *pari passu* treatment of creditors when using any resolution tool, so as to reduce the potential that the lack of express authority gives rise to legal challenge.

44. The legal framework provides the FMA Board, acting as NRA, with wide-ranging powers to seek to remedy impediments to resolution. It has adequate powers to require changes to enhance resolvability of banks and groups, including banks. These measures include, inter alia, requiring a bank to limit its maximum individual and aggregate exposures, divest specific assets, limit or cease specific activities, and change its legal or operational structure. These powers have not been exercised to date, as banks have made satisfactory progress to address impediments.

45. The FMA Board, as NRA, has made use of certain of the BaSAG powers and tools. In the case of the HETA resolution, the FMA Board applied the bail-in tool after rendering an FOLTF determination. It also utilized a general resolution power that allows it to alter the maturity of debt instruments issued by the institution in resolution, in the HETA case in the form of a 15-month creditor moratorium.

46. The HETA resolution highlighted a provision in the Austrian tax code that treats restructuring gains as taxable income. Such gains would arise, for example, when the liabilities of a bank in resolution are written down in bail-in. The GSA that was enacted for the purpose of the HETA resolution provided an exemption from this requirement. The MOF should explore the scope for making explicit in legislation that restructuring gains are not taxable.

⁷⁴ These tools are optional under the BRRD. The government also elected to transpose the BRRD provisions for precautionary recapitalization.

⁷⁵ Subject to prior approval by EC DG-Comp in line with the EU State Aid framework.

⁷⁶ The so-called Valuation 3.

47. Summary of Recommendations:

- Consider providing for P&A transactions in the bankruptcy regime;
- The BRD should routinely seek the opinion of OeNB on the existence of a public interest in the use of resolution powers;
- The BSD and BRD should agree on a policy on how to apply the elements of the FOLTF determination;
- The MOF should seek to clarify in the legal framework the interaction of potential simultaneous appeals of SRB decisions at the local and European levels;
- The BRD and MOF should agree on a shared interpretation of the requirement that the BRD seek the minister's written approval prior to taking any actions that may have a direct fiscal impact, or which have systemic implications;
- The MOF should formulate internal written policies and procedures as to when and how the government stabilization tools might be utilized;
- The MOF should amend the BaSAG to make explicit the power to deviate from *pari passu* treatment of creditors when using any resolution tool; and
- The MOF should explore the scope for making explicit in legislation that restructuring gains are not taxable.

D. Resolution Planning

48. The SRB and the BRD are responsible for resolution planning. For the 11 banking groups under the SRB's authority resolution plans are prepared by the SRB IRTs, with substantial support from BRD and OeNB staff.⁷⁷ These include: (i) eight groups which are (or have) parent entities based in Austria⁷⁸; and (ii) three subsidiaries of banks based in another EU countries. The BRD prepares the resolution plans for all other groups/banks. Resolution plans prepared by the BRD are submitted routinely to the BSD (and the ECB where relevant) and to the SRB for comment.⁷⁹ Essential decisions concerning resolution planning are approved by the FMA Board as NRA (e.g., MREL setting—on which see more below). Every six months, the FMA Board is briefed on the progress of resolution planning by the BRD. As resolution planning takes place on an annual cycle, the FMA Board annually reviews and approves an annual and multi-year plan for resolution planning work proposed by the BRD.

⁷⁷ BRD staff serve as sub-coordinators of the 11 IRTs. Sub-coordinators seek to align all work undertaken within the IRTs for Austrian banks and groups.

⁷⁸ Six of which are SIs.

⁷⁹ The SRB may express its views on the resolution plans themselves and on MREL requirements.

49. Resolution planning involves a number of essential components. One such component is to decide upon the preferred resolution strategy (PRS) for each group or bank. The PRS could specify the use of one or more of the resolution tools, or alternatively, the use of bankruptcy proceedings.⁸⁰ In addition, fallback resolutions strategies need to be identified for the eventuality that the PRS is deemed not feasible at the time of resolution. Another essential component of resolution planning is to decide upon the most suitable approach to the points of resolution action. In most cases the decision is for a single point of entry (a so-called SPE approach) involving a single resolution group, whereas in some cases a multiple point of entry (MPE) approach involving multiple resolution groups (e.g., in different jurisdictions) is deemed more appropriate. Impediments to implementing resolution strategies are also identified as part of the planning process, in the form of formal resolvability assessments—see more below. The ultimate goal of resolution plans is that they be credible⁸¹ and feasible.⁸²

50. The BRD, supported by the OeNB, has grouped the banks under its remit into three categories for resolution planning purposes. For the 2019 planning cycle, the first category consists of 16 banks, including most HP-LSIs,⁸³ for which “fully-fledged” resolution plans are prepared. Under EBA guidelines⁸⁴ these banks are not eligible for simplified obligation and the BRD has determined that the use of bankruptcy proceedings for these banks would jeopardize the objectives of resolution set out in the BaSAG, in particular the maintenance of critical functions and the avoidance of significant adverse effects on the financial system. The second category consists of 12 “deposit-focused” banks, for which the BRD has judged that the use of bankruptcy proceedings may be credible and feasible in the case of idiosyncratic problem, but likely not in a time of broader financial instability or system-wide events. All banks in this category are eligible for simplified obligations, and the BRD produces proportionate resolution plans focusing on the sale-of-business tool as a resolution strategy in times of systemic distress.⁸⁵ The banks were identified based on an analysis of the volume of their covered deposits in relation to certain estimates of the resources that would be available to the DGSs.⁸⁶ The final category of banks consists of 404 “harmonized” banks for which use of bankruptcy proceedings is deemed credible and feasible, without putting in jeopardy

⁸⁰ As noted, the use of resolution tools must meet a series of tests, including that of being in the public interest.

⁸¹ Credible in the sense that the authorities have the necessary legal and operational capacity to implement the plan.

⁸² Feasible in the sense that the plan can be implemented without causing substantial disruption to the financial system.

⁸³ Resolution planning for a HP-LSI is under the remit of the SRB.

⁸⁴ EBA guidelines /EBA RTS/ Commission Delegated Regulation (EU) 2019/348.

⁸⁵ While these banks generally are not deemed to provide critical functions, the BRD considers that in time of broader financial instability or system wide events, a significant DGS pay-out event could lead to a substantial level of uncertainty by depositors and therefore potentially increase the level of instability. In such a case the use of resolution tools could be more likely to ensure and foster financial market stability than the use of bankruptcy proceedings.

⁸⁶ As the volume of DGS resources grows via regular contributions from members, the number of banks in this category will fall. There were 33 banks in this category in the 2018 planning cycle.

any resolution objective. These banks receive a standardized resolution plan under which the resolution strategy is use of bankruptcy proceedings.

51. Good progress is being made to agree upon PRSs and approaches to points of entry for those banks/groups likely to subject to resolution. These decisions are taken in close consultation with the groups. For most SIs and banks in the “fully-fledged” category, the PRS is recapitalization via bail-in under an SPE approach.⁸⁷ For two groups with subsidiaries in multiple neighboring jurisdictions (some of which are significant banks in those jurisdictions), bail-in under an MPE approach involving multiple resolution groups (one per relevant jurisdiction) has been deemed more appropriate.⁸⁸ These groups are characterized as operating on a relatively decentralized basis across jurisdictions, in part as a result of supervisory requirements imposed upon the groups during and subsequent to the global financial crisis. For two other groups, the PRS is a transfer strategy (using the sale of business tool) under an SPE approach. The determination of fallback resolution strategies for these banks is pending further analysis. For the “deposit-focused” category of banks, the PRS in the context of a systemic crisis envisions use of the sale of business tool with an acquiring institution, and the alternative resolution strategy is a transfer to a bridge institution.

52. While progress has been good, particularly in recognition of the large number of plans that the BRD needs to prepare and update each year, resolution planning remains an ongoing task. The main focus in the 2019 planning cycle is on the plans for the 11 banks under the SRB’s remit and the 16 banks in the “fully-fledged” category. For the SRB banks, resolution plans were prepared starting in 2015 and are undergoing their fourth annual iteration as part of the SRB’s 2018/2019 cycle. Formal resolvability assessments under the PRS for these banks have identified barriers to resolution, though no formal designation of “substantive impediments” to resolution have yet been made (see following paragraphs for details.) The BRD initiated resolution planning for the largest banks in 2016. It created and extended planning to the “fully-fledged” category of banks in 2017. The second iteration of plans was prepared in the 2018 planning cycle. In 2019, the resolution plans for these banks would continue to be further elaborated, especially in terms of a more detailed analysis and specification of the PRSs, further assessment of resolvability under the PRSs, and determining and prioritizing the impediments that need to be addressed. For the “deposit-focused” category of banks, plans were first developed in the 2016 planning cycle and are being finalized, taking into account FMA and SRB comments. In 2019, the focus would be on developing more detailed strategies for being able to execute the PRS (sale of business). Further assessment of resolvability will take place subsequent to this work. The second iteration of the plans

⁸⁷ In simplest terms, losses from any entities in the group would be passed up to the parent, which would, if those losses (or its own losses) impaired its viability, be put into resolution and recapitalized via bail-in.

⁸⁸ In simplest terms again, should losses in the subsidiary in that jurisdiction impair its viability, it would be put into resolution and recapitalized via bail-in within the jurisdiction. Losses would be passed to the parent in Austria only to the extent of the parent’s equity investment (assumed to be written-off) and any write-down or write-off of bailed-in debt of the subsidiary that the parent held. Other loss absorption and/or sources of recapitalization funds would come from other creditors of the subsidiary, for example the holders of debt it issued in the local market.

for the “harmonized” category of banks has been finalized and is considered largely complete, though some updating will be undertaken in 2019.

53. Based on the PRS for each bank, a Minimum Requirement for Eligible Liabilities (MREL) is determined. The ultimate goal of MREL is to help ensure the existence of adequate loss-absorbing capacity and recapitalization funding to support the implementation of the PRS.⁸⁹ This is particularly important for those banks where the PRS is bail-in. The process of setting MREL is ongoing and while most banks are already likely to meet the eventual requirements, some will not, representing an impediment to resolution until their MREL is in place, required by January 1, 2024 at the latest. For banks under the SRB’s remit, binding MREL target at the consolidated group (parent) level and at the solo level for material group entities will be set for the first time in 2019.⁹⁰ For banks in the “fully-fledged” category, a binding consolidated MREL requirement was set in 2019.⁹¹ Requirements for material entities in the groups (solo-level) will likely be set in 2020.⁹² All banks in the “harmonized” category (where the PRS is bankruptcy proceedings) were informed in the 2017 and 2018 resolution planning cycles that their MREL requirement will equal their capital requirements (including buffers).⁹³ For “deposit-focused” banks, where the PRS is transfer strategy, the BRD likely would set indicative (nonbinding) MREL targets at consolidated group levels in 2019, with binding targets likely to be set in 2020 or 2021. Additional work would be undertaken in 2019 to determine potential subordination requirements associated with MREL, so as to increase the practicality of bail-in as a resolution tool.⁹⁴ This will involve negotiations with the SRB, whose standard approach to subordination, if applied to central institutions of IPSs and some other banks in Austria, would lead to a requirement to issue substantial volumes of senior nonpreferred debt. The BRD is advocating a more tailored bank-by-bank approach to setting subordination requirements. The BRD should continue its efforts to fully articulate MREL and subordination requirements and strive to ensure all banks meet their MREL requirements as soon as possible.

54. The envisioned MPE approach to bail-in for two Austrian groups gives rise to the need for subsidiaries in neighboring jurisdictions in which a resolution group has been designated to issue MREL into the local market. This may present a challenge to the local NRAs. Given the

⁸⁹ Eligible (potentially bail-inable) debt instruments include subordinated debt, senior nonpreferred debt (a relatively new class of liability that only one Austrian bank has yet issued), and senior debt. Other eligible liabilities include uncovered (uninsured) corporate deposits of greater than one-year maturity, though not those of corporates that qualify as small and medium enterprises (SMEs), whose uncovered deposits have preference to other corporates’ uncovered deposits and are not eligible as MREL.

⁹⁰ The target for three SIs is a function of the total loss-absorbing capital requirement applicable to G-SIBs.

⁹¹ The FMA Board, as NRA, adopted a policy in November 2018 to guide MREL setting in banks under its remit.

⁹² Solo-level requirements reportedly will not differ substantially from the consolidated requirements.

⁹³ In other words, there is no requirement to hold additional MREL.

⁹⁴ As a significant number and amount of uncovered deposits are potentially subject to bail-in (even if they do not count toward meeting MREL requirements), the so-called subordination requirement would specify an amount of MREL that is contractually subordinated to such deposits, and thus subject to full bail-in prior to the bail-in of depositors. This would have the effect of potentially substantially reducing the number of counterparties subject to bail-in (facilitating the operational implementation of bail-in) and reducing the need to bail-in depositors (with its attendant negative political and economic ramifications).

less-developed state of capital markets in some jurisdictions, there may be limited capacity to issue MREL-eligible debt. Given the small size of some of the banks, issuing into international markets may not be feasible. The SRB and BRD recognize this constraint and are considering assisting relevant local NRAs by providing a transitional period during which required MREL could be held by a group entity in Austria, with an agreed phase-out period during which internally issued MREL would be replaced by MREL instruments issued to third parties. In the meantime, the SRB and the BRD have taken account of potential contagion risks within the group.

55. As noted, impediments to implementing resolution strategies are being identified as part of the resolution planning process, initially for banks under the SRB’s remit and for the fully-fledged banks under the BRD’s remit. Resolvability assessments undertaken for banks under the SRB’s remit⁹⁵ have identified a number of potential barriers to resolution arising from characteristics of the groups. However, no such barriers have yet been determined to be “substantive impediments,”⁹⁶ and, therefore, no barriers have been addressed as such thus far.^{97,98} For banks under the BRD’s remit, barriers also are already being identified, and none have yet been determined to be “substantive impediments.” As the details of strategies are further developed, work to identify impediments will sharpen in focus.

56. Ensuring the ability to provide for adequate liquidity for a bank undergoing resolution remains perhaps the key likely impediment to resolution. Supplemental liquidity funding support beyond the banks own resources may be required prior and subsequent to resolution action, and therefore must be envisioned and prepared for as a contingency. The two last-resort sources of liquidity funding are emergency liquidity assistance (ELA) from the OeNB, particularly in the context of liquidity support prior to pending resolution action, and the Single Resolution Fund. With respect to ELA, notwithstanding the fact the resolution planners cannot assume access to ELA,⁹⁹ the BRD (and banks) need to be as cognizant as possible of the OeNB’s ELA framework,¹⁰⁰ so as to help ensure that a bank in resolution is able to meet the OeNB’s requirements in the event the OeNB Board deems the bank eligible for ELA at the time of resolution. The BRD should pursue discussions with the OeNB in this regard.¹⁰¹ With respect to the SRF as a source of liquidity funding concurrent and subsequent to resolution, the BRD has pursued discussions with the SRB. To date,

⁹⁵ Using guidelines adopted by the SRB in 2018.

⁹⁶ As defined in the BaSAG, the BRRD and the SRMR.

⁹⁷ The BaSAG, the BRRD and the SRMR set out procedures for formally notifying banks of “substantive impediments,” for ensuring that the banks take steps to remove or mitigate them, or if this is not achieved, for the SRB/BRD to impose on the banks alternative measures to address the impediments.

⁹⁸ This is reportedly the status in all BU jurisdictions.

⁹⁹ Or other extraordinary official support.

¹⁰⁰ For example, its policies on eligible alternative collateral, valuation procedures, information requirements and haircuts, and documentation requirements to support perfecting liens on collateral.

¹⁰¹ See Section E (Resolution Funding) in Part 2 of this note for recommendations regarding the OeNB’s ELA Framework.

there are no formal policies or procedures addressing the potential use of the SRF for this purpose. The BRD should continue to engage with the SRB on this matter.

57. The feasibility and credibility of the bail-in tool can be constrained by compensation claims that can arise when departing from pari passu treatment of creditors. In bail-in, the BRD can depart from pari passu treatment of creditors in the same class under certain circumstances.¹⁰² Under the creditor hierarchy, uninsured depositors (with the exception of uninsured household and SME depositors) and senior unsecured bondholders rank in the same creditor class. With pari passu treatment in imposing losses in resolution, uninsured depositors would incur the same loss as would senior unsecured bondholders. Alternatively, protecting uninsured depositors but not senior unsecured bondholders would potentially give rise to the valid NCWO claims on the part of bondholders, who may be left worse off in resolution than they would have been had the bank been put into normal insolvency proceedings. NCWO claims must be paid by the SRF and the SRF access criteria give rise to further challenges that must be taken into consideration.¹⁰³ The MREL subordination requirements cited above are intended to help reduce some of the challenges associated with NCWO risk.

58. The use of a bridge institution can serve as an effective fallback solution where a suitable arrangement with a private-sector acquirer under a sale-of-business transaction cannot be achieved. For example, where the BRD is unable to conclude a private sale within the required timeframe or on acceptable terms, critical functions and related critical shared services could be transferred to a bridge bank or a bridge holding company¹⁰⁴ and subsequently sold to the private sector. The SRB adopted a policy on the use of bridge institutions and prepared an operational manual. Following this, the BRD has been developing a national handbook that sets out the concrete steps to be taken when implementing the bridge institution tool in Austria. The BRD has been working with the MOF to agree on an approach to establishing in advance a shell bridge institution, which must address issues such as which entity would own the institution, how its governance would be put in place, and how it would be capitalized and funded. These discussions should be pursued, including with the objective that the government or some other government entity and not the FMA be the owner of a bridge institution.

59. Preparations are also being made to operationalize an AMV to enable use of the asset transfer tool. The BRD initiated preparation of a national handbook and is in discussions with the MOF. As with bridge institutions, the BRD needs to define which entity will own a possible AMV and how its governance structures can be rapidly established in time of need. Here, too, one objective should be that the government, or government entity, and not the FMA be the owner of an AMV.

60. The BRD engages adequately in cross-border cooperation. It does so by means of participation in SRB IRTs as described above, establishment of resolution colleges where it serves as

¹⁰² For instance, to maximize value for all creditors, to maintain financial stability, or for reasons of operational practicality. For example, bailing-in a large number of corporate deposits may be operationally challenging.

¹⁰³ See Section E (Resolution Funding) in Part 2 of this note.

¹⁰⁴ As well as other business activities that have close legal, financial and operational interlinkages with the transferred critical functions and the related critical shared services.

the group-level resolution authority, support to the SRB in colleges for which it is the group-level resolution authority, and support to crisis management groups established for G-SIBs. As the group-level resolution authority, the BRD has established resolution colleges for two banks headquartered in Austria with operations in EU member states outside the banking union. It participates in four colleges for banks for which the SRB is the group-level resolution authority. Via its participation in SRB IRTs, it supports the work of three G-SIB crisis management groups.

61. The BRD is developing a minimum standard for data to support resolution. Working with the BSD and the OeNB, it is developing a data template to readily provide information to support valuations and the implementation of the resolution tools. This should help reduce the potentially lengthy period of time required to implement a resolution decision, such as was experienced in the HETA case with the use of the bail-in tool. This is an important initiative that should be implemented. The intention is to have the minimum standard in place by mid-2020.

62. The FMA needs to have the capacity to evaluate a bank's financial condition for the purpose of making an FOLTF determination. Responsibility for making this determination falls in the first instance to the BSD (and, ultimately, to the Executive Board as NCA). While the BaSAG envisions that a third-party valuation can be used to support this determination,¹⁰⁵ as a practical matter it is essential that the supervisory function is prepared to apply expert supervisory judgement in making this determination and does so well prior to balance sheet insolvency.¹⁰⁶ The recommendations of the Technical Note on Banking Supervision, being prepared as part of this FSAP, are relevant in this respect.

63. The FMA and the OeNB have established a Working Group to address the inter-relationship between recovery plans and resolution plans. One key goal is to try to identify the consequences of recovery measures that likely would have been taken by a bank prior to an FOLTF determination, and to envision the financial situation of a bank at the time it might have to be resolved. Early work is focused on identifying those recovery measure that, if taken, would most impact resolvability. This important work should continue to be pursued.

64. Summary of recommendations:

- The BRD should continue its efforts to fully articulate MREL and subordination requirements, and strive to ensure all banks meet their MREL requirements as soon as possible;
- The BRD should pursue discussions with the OeNB regarding the provision of ELA;
- The BRD should continue to engage with the SRB regarding policies and procedures relating to potential use of the SRF as a source of liquidity funding in resolution;

¹⁰⁵ The so-called Valuation 1.

¹⁰⁶ As required under the Key Attributes. The BRRD and BaSAG allow for a provisional valuation by the supervisory (or resolution) authorities to be the basis for the FOLTF determination. This would be normal practice in most jurisdictions, where the courts defer to the expertise of the supervisors when asserting that a bank is no longer viable.

- The MOF and the FMA should consider establishing a shell bridge institution and a shell AMV, including with the objective that the government, or some other government entity and not the FMA, be the owner of bridge institutions and AMVs;
- The BRD should continue to develop the minimum standard for data to support resolution;
- The FMA should strengthen supervisory capacity to ensure the ability to make FOLTF determinations well prior to balance sheet insolvency; and
- The BSD and the BRD should continue to pursue their efforts to identify and address the interactions between recovery measures and resolution planning.

E. Resolution Funding

65. There are several sources of funding to support the implementation of resolution measures. Subsequent to the write-down and/or conversion of capital instruments and other bailed-in liabilities, financing may be required for recapitalization of a resolved bank.¹⁰⁷ Financing may be required for maintaining adequate liquidity prior to, during, and subsequent to executing resolution measures. The sources are the SRF, ELA, and public financing. In addition, in certain limited circumstance, the DGS funds may be drawn upon.¹⁰⁸ With respect to all potential funding sources, the authorities must guard against creating an expectation of support in order to reduce the potential for moral hazard.

Single Resolution Fund

66. The SRMR establishes the SRF. It is owned and administered by the SRB. Subject to certain conditions, the SRF may fund loss absorption, recapitalization, liquidity, and other costs and expenses associated with resolution measures.¹⁰⁹ Under exceptional circumstances and subject to certain conditions, the SRF can make contributions to the institution under resolution in lieu of the write-down or conversion of certain liabilities and/or creditors. As noted, the SRF also is the source of any compensation to shareholders or creditors under any successful NCWO claims.

67. The amount of SRF funding potentially available for resolution measures with respect to Austrian banks was roughly €17.3 billion as of end-2018. This is comprised of the funded amount of the Austrian compartment of €786 million, a bridge-financing arrangement in the form of a Loan Facility Agreement (LFA) from the state¹¹⁰ for the unfunded portion of the Austrian compartment (which is €1.6 billion in total), and the remainder from the mutualized

¹⁰⁷ In extraordinary circumstances, financing may be required for loss absorption (i.e., to restore capital to zero).

¹⁰⁸ See Section F (Deposit Protection) in Part 2 of this note.

¹⁰⁹ This includes the ability to make capital contributions, issue guarantees, make loans and purchase assets.

¹¹⁰ The LFA is the standard bridge financing agreement entered into by EU participating states. It allows the SRB to draw the funds without any further authorization or agreement of the Austrian government or legislature.

compartments.¹¹¹ Given the size of the large Austrian banks, the SRF funding available for Austria might reasonably be seen as an important potential source of recapitalization funds but might well be insufficient to support potential liquidity needs.

68. Conditions on certain uses of the SRF may constrain its utility. A prerequisite for access to the SRF for loss absorption and recapitalization support (but not liquidity support) is that shareholders and creditors have collectively first absorbed losses of at least 8 percent of total liabilities and own funds of the bank.¹¹² As noted in the Euro Area FSAP Technical Note,¹¹³ this may impede the implementation of any resolution tool necessitating the use of SRF, where there are insufficient bail-inable liabilities to meet the 8-percent rule. The MREL requirements being set by the SRB and the FMA Board, as NRA, and the subordination requirements that are under discussion between the SRB and the BRD—both discussed above—should serve to mitigate the potential that there are insufficient bail-inable liabilities to meet the 8-percent rule. In any case, and despite the fact that the SRB precludes consideration of the use of the SRF in resolution plans, the BRD needs to continue to consider how restrictions on use of the SRF may impede resolution, and to work with the SRB on how to remedy or mitigate those impediments. As noted above, the BRD is also in discussions with the SRB on terms and conditions under which it might access the SRF for liquidity funding in resolution.

Emergency liquidity assistance (ELA)

69. The provision of ELA to Austrian banks is at the discretion of the OeNB. In the BU, ELA may be granted by the national central banks (NCBs) subject to potential objection by the ECB.¹¹⁴ The ECB and the NCBs, including the OeNB, have entered into the nonbinding Agreement on Emergency Liquidity Assistance. The May 2017 Agreement sets out, among other matters, policy guidance on solvency eligibility criterion, collateral, interest rates, duration, and communications to the public, as well as requirements for notifications by NCBs to the ECB Governing Council. When granting ELA, the OeNB bears the risk of any loss. No ELA has been provided to an Austrian bank since the prior FSAP.

70. The Agreement on Emergency Liquidity Assistance provides for granting ELA to a bank in resolution. Under the policy, ELA can be granted to a bank that does not meet its capital requirement, but for which there is a credible plan for its recapitalization within 24 weeks. The OeNB has adopted this policy, but has not formulated further policy guidance (e.g., what criteria are to be evaluated to assess whether a plan is credible, what information is required from the FMA to make

¹¹¹ The individual national compartments of the SRF are being mutualized over time. The mutualized portion of the SRF is available for use in any BU jurisdiction.

¹¹² A second constraint is that the amount provided by the SRF is limited to five percent of a bank in resolution's total liabilities and own funds.

¹¹³ IMF Country Report No. 18/232. *Euro Area Policies: Technical Note—Bank Resolution and Crisis Management*, July 2018

¹¹⁴ The ECB's Governing Council may object to OeNB ELA if it finds the ELA conflicts with the objectives and tasks of the ESCB or constitutes monetary financing of bank support. The established procedures for *ex post* and *ex ante* notification of ELA to the Governing Council by national central banks are specified in the ELA Agreement. Any ELA outstanding would be reviewed by the Governing Council regularly.

the assessment, etc.). The OeNB should consider adopting such a policy, as it may facilitate more rapid decision making in time of need. At present, the OeNB envisions that ELA must be collateralized by assets that are eligible for Eurosystem monetary operations. Contrary to some other Euro Area NCBs, the OeNB has not adopted a policy that it would consider additional collateral to support ELA and, thus, has not specified the terms and conditions under which such additional collateral could be accepted. The OeNB should consider accepting additional collateral (e.g., a portfolio of residential mortgages) and developing related policies and procedures.

71. The OeNB has procedures in place for decision making on possible ELA. In the event of an ELA request, it is clear which departments are to be involved in assessing the request. In the case of a bank in resolution, the OeNB would evaluate the plan to restore solvency, assess the collateral being offered, and make a recommendation to the OeNB Board, which would take the decision after consultation with the MOF and the FMA Board acting as both NCA and NRA.

72. The OeNB has the capacity to provide ELA in foreign exchange. Beyond market sources, in the event of need, the OeNB would most likely seek foreign exchange from the ECB, which has swap lines in place with key central banks.¹¹⁵ The OeNB should consider whether to formally discuss with the ECB potential access to the lines as a contingency, in advance of case-specific discussions at the time of actual need.

73. There is no government backstop arrangement for ELA. The Agreement on Emergency Liquidity Assistance envisions that ELA could be collateralized by guarantees. During the global financial crisis, the MOF created bonds that were used by banks as ELA collateral. Doing so again would require new legislation. The OeNB and the MOF should explore mechanisms under which to facilitate a timely MOF guarantee or other arrangements to support ELA to a bank in resolution as a contingency.¹¹⁶

Government Support

74. Government support arrangements include the BaSAG's government stabilization measures and, potentially, the FinStaG.¹¹⁷ The stabilization measures, which provide for a government equity injection into a bank in resolution and for nationalization of a failing bank (temporary public ownership), would require legislation to be passed in time of need. The MOF should consider formulating and tabling legislation providing for standing authority, subject perhaps to limitations, to implement these measures as a contingency without need for further legislative action. In addition, the FinStaG, enacted in 2008 and subsequently amended, provides for government capital and liquidity support up to €23.5 billion to systemic banks and insurers, as approved under the various EC State Aid decisions that were rendered in the aftermath of the global

¹¹⁵ The usage of such swap lines is, however, subject to approval of the central bank providing foreign liquidity, and therefore foreign currency liquidity provision through the swap lines cannot be assumed.

¹¹⁶ Any such support would need to be consistent with State Aid rules.

¹¹⁷ In addition, as noted, the government transposed the precautionary recapitalization provisions that provide flexibility in providing government capital to support to a bank deemed to have a capital shortfall in a European stress test.

financial crisis. The MOF should explore the extent to which the FinStaG can be used in future for other purposes.

75. Summary of Recommendations:

- The BRD should continue considering how restrictions on use of the SRF may impede resolution, and working with the SRB on how to remedy or mitigate those impediments;
- The OeNB should consider adopting internal policy guidance and procedures for granting ELA in specific situations to a bank in resolution, including defining what criteria are to be evaluated to assess whether a recapitalization plan is credible, what information is required from FMA to make the assessment, and what additional collateral (beyond that eligible for Eurosystem monetary operations) could be accepted and under what terms and conditions;
- The OeNB should consider whether to formally discuss with the ECB potential access to foreign exchange in advance of case-specific discussions at the time of actual need;
- The OeNB and the MOF should explore mechanisms under which to facilitate a timely MOF guarantee or other arrangements to support ELA as a contingency;
- The MOF should consider legislation providing for standing authority to implement the government stabilization measures without need for further legislative action; and
- The MOF should explore the extent to which the FinStaG can be used in future.

F. Deposit Protection

76. The Deposit Guarantee Scheme Directive (DGSD) created a common EU framework. It introduced harmonized coverage of deposits at €100,000, a requirement for faster payout (seven days), and ex ante and ex post funding arrangements. The DGSD requires that banks' contributions be risk-based and that each national scheme shall reach a target level of at least 0.8 percent of covered deposits by 2024.

77. There are two deposit guarantee schemes (DGS) in Austria. Under the ESAEG, Einlagensicherung Austria GmbH (ESA) is the so-called "uniform DGS" for Austrian banks that are not members of the second DGS, the Sparkassen-Haftungs GmbH (S-Haftungs). ESA has a statutory mandate to perform the functions set out in the ESAEG. Both DGSs are organized as companies under private law. ESA is the result of the integration on January 1, 2019 of four pre-existing schemes associated with different Austrian banking sectors.¹¹⁸ It is owned by its 500 members.¹¹⁹

¹¹⁸ Specifically: (i) private joint stock banks; (ii) the Raiffeisen (cooperative and joint stock) banks; (iii) the mortgage (Hypo) banks (banks originally owned by the provinces with the right to issue covered bonds); and (iv) the Volksbanks (cooperative and joint stock banks).

¹¹⁹ Minor shareholdings are held by the Austrian Federal Economic Chamber, part of the Austrian Chamber of Commerce, and the four trade associations which represent the different banking sectors of the ESA member banks.

S-Haftungs is the DGS of the savings bank sector and is owned by HVG, the steering company in the Sparkassen IPS arrangement.¹²⁰ It has 49 members. All Austrian banks are covered by one or the other of the two DGSs. The ESA has four executive directors¹²¹ and an additional 10 staff members. S-Haftung has two directors and four further staff members. Both DGSs are subject to the FMA's supervision.

78. The two DGSs offer uniform coverage of deposits at €100,000.¹²² They cover resident and nonresident depositors in banks licensed in Austria and their branches in the European Union and elsewhere. They do not cover deposits by other banks or investment firms, deposits by collective investment schemes or other investment funds, most deposits by pension and retirement funds,¹²³ deposits of governments, and deposits held in non-EU countries. Covered deposits as of December 31, 2018, were €217 billion. Of these, €173 billion are covered by the ESA and €44 billion are covered by S-Haftungs.

79. The DGSs are authorized to pay out covered deposits upon certain triggering events.¹²⁴ Deposit payouts would generally be triggered when a court opens bankruptcy proceedings upon a petition filed by the FMA, or when the FMA directs a bank to cease making payments pending the FMA's filing of a bankruptcy petition.¹²⁵

80. The DGSs are financed through ex ante contributions and potential extraordinary contributions. Under the ESAEG, ex ante contributions for both DGSs are set at a level so as to achieve the target fund balance of 0.8 percent of covered deposits by July 2024.¹²⁶ Members of both funds are liable for contingent contributions in any year that amount up to 0.5 percent of their covered deposits.¹²⁷ The method for determining ex ante contributions and extraordinary contributions were defined by the DGSs based upon guidelines issued by the EBA and were approved by the FMA after having obtained an OeNB opinion. The risk-based and extraordinary contributions are determined on the basis of covered deposits. S-Haftungs has a risk-based contribution framework in place, and the recently established ESA would have one, already approved by the FMA, operational before end-2019. While the government exercised the discretion available in the DGSD that up to 30 percent of ex ante contributions could be made in the form of

¹²⁰ See Financial Sector Landscape in the Background section of this note.

¹²¹ One director from each of the four banking sectors.

¹²² For those banks that are members of an IPS, depositors potentially enjoy 100 percent deposit protection, as the IPS will seek to resolve a potential failure of one of its members without any loss to depositors.

¹²³ Deposits held by personal pension schemes and occupational pension schemes of small or medium-sized enterprises are covered.

¹²⁴ As noted, P&A transactions whereby covered deposits are transferred to an acquiring bank, along with certain assets of the failing bank, are not provided for.

¹²⁵ In addition, if a bank ceases making payments, the FMA has five days in which to make a determination that in turn triggers a payout.

¹²⁶ The government did not adopt a higher target for the DGSs or require them to achieve the target level at an earlier date, though both are national options under the DGSD.

¹²⁷ Similarly, the government did not adopt a higher contingent contribution coefficient, which is a national option.

payment commitments rather than cash, no members of either DGS have made use of this option. The assets of the DGS funds are held in cash in accounts at the OeNB and are thus readily available to fund a payout.

81. Additional resources beyond ex ante and ex post contributions of members are available to both DGSs in the form of the resources of the other fund, and of the proceeds from borrowing. Under the ESAEG, the DGSs have the right to access the funds of the other DGS (including contingent contributions) should the available resources of the fund and the contingent contributions from its members prove insufficient in amount. The two DGSs maintain a joint Working Committee, which meets regularly to discuss issues and procedures, including the potential call by one DGS on the resources of the other.¹²⁸ Both DGSs have, in addition, the authority to borrow, including from their own members or from third-parties, and both have begun discussions on potential access to borrowings from their members.¹²⁹ The ESAEG provides that borrowings by the DGSs can be guaranteed by the MOF.¹³⁰ No ex ante guarantee is in place and the MOF would need to table legislation to provide for it. The MOF believes such legislation could be approved within a matter of days in time of need. Nonetheless, it should consider securing ex ante standing authority to provide a guarantee to either DGS as a contingency.

82. As of January 1, 2019, both DGSs had available resources of nearly 40 percent of their target fund balance. The ESA had a fund balance of €526 million and a target balance of €1.38 billion, while S-Haftungs had a fund balance of €138 million and a target balance of €366.64 million. Both funds could achieve their target balance by drawing on one year's extraordinary contributions from their members.

83. The DGSs are required to be able to make payouts within seven days. Both DGSs operate web-based platforms that allow covered depositors to specify the bank account into which they want their paid-out deposits to be transferred. Instructions for accessing the platform is sent by registered mail. The DGSs have arrangements with printing offices and the postal service to ensure timely communication to depositors. Those without internet access can take the letter to the local outlet of the failed bank and complete the procedure manually. The DGSs routinely test elements of these processes. Through these means, timely payouts could be achieved.

84. Under the ESAEG, DGSs funds can be used to provide resources to the associated IPS arrangements, but in practice this is unlikely.¹³¹ The IPSs resources, including contingent resources from members' extraordinary contributions, must be depleted before DGS funds can be used in this manner. However, the law sets out numerous conditions and requires numerous

¹²⁸ The Working Committee chair rotates between both DGSs annually.

¹²⁹ Fee-paid lines of credit from third-party banks are also being discussed but are viewed as a second-best option, given their likely high cost.

¹³⁰ The guarantee would be particularly relevant in case of borrowing from third parties.

¹³¹ The IPSs seek to resolve liquidity, capital, and other problems in their member institutions, without the need for additional intervention by the BSD, or action by the BRD of the DGSs. Their actions in this respect are supervised by the BSD.

consultations, including with the FMA, the OeNB, and the EC, before DGS funds can be used in this manner. Thus, use of the DGSs funds for this purpose is deemed unlikely.

85. As noted in Section C of Part 2 of this note, the DGSs do not have the power to finance the transfer of assets and liabilities in the context of bankruptcy proceedings. In undertaking a P&A transaction, a DGS would transfer covered deposits as well as sound assets to an acquiring bank. It would use DGS resources to compensate for any shortfall in the value of assets relative to covered deposits. Having this power would conserve the cash resources of the fund relative to a payout and would reduce reliance on the bankruptcy estate to recoup outlays. In effect, the DGS would have greater financial capacity and would be less likely to need to call upon extraordinary contributions from members. The DGS would need the operational capacity to affect such transfers and would need to work with the FMA and potential acquiring banks to build internally or outsource this capacity. The ability to undertake P&A transactions would be particularly relevant to the ESA, many of whose members do not benefit from IPS arrangements.¹³² As recommended in this note, should the ESAEG be amended to provide the ability for DGSs to undertake P&A transactions, the DGSs and the BRD should work together and with potential acquiring banks to develop the operational capacity to execute such transactions. This effort would leverage on the work the BRD already is undertaking to prepare for potential resolution of the deposit-focused group of banks using the sale of business tool.

86. Under the BaSAG, the DGSs have the power and obligation to finance resolution actions in certain cases. In the context of bail-in, the DGSs are liable for the amount by which covered deposits would have been written down to absorb the losses in the bank, had covered deposits been included within the scope of a bail-in and been written down to the same extent as other creditors in the same creditor hierarchy class.¹³³ The DGSs' liability cannot exceed the net losses that would result under bankruptcy proceedings, and cannot exceed 50 percent of their available funds. Given the operational challenges in determining the actual liability of the DGSs in specific cases, and the cap of the amount of the liability, the BRD does not foresee DGS financing as a practical source funding. Nonetheless, as a contingency, the DGSs should work with the BRD to clarify in writing their interpretations of current law and to formulate relevant policies. An interpretation allowing the DGSs to finance resolution measures up to the amount they otherwise would have paid out to depositors under bankruptcy (rather than their net long-run cost), providing that it is reasonably expected to recover those funds to the same degree as in bankruptcy, would increase resolution funding options.¹³⁴

87. At present there are no Memoranda of Understanding (MOUs) entered into between the FMA and the DGSs. While the FMA and DGSs work together on matters of mutual interest and

¹³² The IPS arrangements can achieve an outcome similar to a P&A transaction, by for example supporting the acquisition of a failing member by another member of the IPS.

¹³³ In case resolution tools other than bail-in are employed, the DGSs are liable for the amount of losses that covered depositors would have suffered in proportion to the losses suffered by creditors in the same creditor hierarchy class.

¹³⁴ See: *Resolution Funding: Who Pays When Financial Institutions Fail?*; Oana Croitoru, Marc Dobler, and Johan Molin at: <https://www.imf.org/en/Publications/TNM/Issues/2018/08/16/Resolution-Funding-Who-Pays-When-Financial-Institutions-Fail-46124>

cooperation between the organizations is reported to be good, there would be value in eventually formalizing cooperation and information-sharing arrangements in the form of a written MOU. This will help ensure that all parties are aware of shared expectations. To fully integrate the DGSs into the financial safety net framework, transforming the DGSs into public sector entities would help enable improved exchange of confidential information and the inclusion of the DGSs in national arrangements for contingency planning and crisis management.

88. Summary of Recommendations:

- The MOF should consider securing ex ante standing authority to provide a guarantee for the borrowings of either DGS;
- Should the ESAEG be amended to provide the ability for DGSs to undertake P&A transactions, the DGSs and the BRD should work together and with potential acquiring banks to develop the operational capacity to execute such transactions;
- The DGSs and the BRD should consider working together to clarify their interpretations of current law regarding the amount of funding potentially available from the DGSs to support resolution funding and to formulate relevant policies;
- The FMA and the DGSs should formalize cooperation and information sharing arrangements in the form of an MOU, subject to strong confidentiality arrangements to prevent sensitive bank information being shared with the owners of the DGS; and
- Consider transforming the DGSs into public sector entities, to ensure their full integration in crisis management and preparedness arrangements.

G. Contingency Planning and Crisis Management

89. The OeNB and the FMA have crisis management contingency plans in place. The OeNB maintains a written operational and financial crisis management handbook.¹³⁵ It addresses the composition of the teams relevant for different forms of crisis, workflows, and decision-making authorities of the various teams, escalation procedures, and internal and external communications, among other matters. The handbook is summarized in the form of a pocket guide that identifies key personnel at the current time. The Guide was last updated in December 2018. The FMA has a crisis management manual focusing on responses to problems in individual institutions and groups. The plan was last updated in 2015. The MOF does not have a comparable contingency plan. The FMA's plan should be updated¹³⁶ and the MOF should develop a plan. Contingency plans should contemplate not only crises in individual institutions or groups, but also systemwide crises involving

¹³⁵ Known as ORION.

¹³⁶ Taking into account the institutional evolution of the BRD, the crisis management guidance issued by the SRB, and other relevant developments and guidance.

simultaneous distress and potential failure of multiple banks, groups, and other financial institutions.¹³⁷ Plans should be routinely updated, generally on an annual basis.¹³⁸

90. There is limited testing of the authorities' contingency plans. The OeNB has a formal testing program that involves one crisis-management exercise and two business-continuity exercises per year. The last exercise was conducted in early 2019. The FMA and the MOF have no regular testing program.¹³⁹ All three authorities should undertake periodic testing of implementation of elements of their contingency plans, including for the purpose of enhancing the practicality and utility of the plans. The OeNB could consider expanding its annual testing program and the FMA and MOF should implement a similar program.

91. Institutional arrangements for interagency coordination have been updated since the prior FSAP. The Financial Market Stability Board (FMSB) was established to strengthen cooperation in macroprudential supervision and to promote financial market stability. It is chaired by the MOF, which, in effect, nominates four of its six members, while the OeNB and the FMA nominate one member each. During normal times, the FMSB addresses risks to financial stability and, in times of stress or crisis, it may facilitate cooperation among its members. The FMSB can issue recommendations for action to be taken by its member authorities. Since the prior FSAP, a Domestic Standing Group (DSG) also was created. It replaced the Financial Market Committee. It consists of one representative each from the FMA, the OeNB, and the MoF. The DSG reportedly has partly lost its function due to the implementation of the resolution colleges under the BRRD and BaSAG, and there is no fixed meeting schedule. The authorities should update the DSG's mandate and establish a regular meeting schedule to ensure, along with other objectives, regular engagement with the MOF with respect to issues arising in individual banks or groups.

92. At present, there is no senior-level interagency body with a mandate to ensure that there is a national financial crisis contingency plan in place. This may not have been seen as a priority due to the extensive collaboration that was required among the agencies in response to the global financial crisis and its aftermath and, subsequently, in adapting to the advent of the SSM and SRM. Nevertheless, higher priority should be given to interagency contingency planning. A senior-level interagency body involving the three authorities should be assigned a mandate to ensure: (i) that the three domestic financial authorities each have adequate contingency plans in place; (ii) that the individual plans are of comparable character and quality and dovetail into coherent national plan; (iii) that all three authorities have in place an adequate plan-testing program that feeds back into plan improvements; and (iv) that interagency tests are regularly conducted.

¹³⁷ The institutional architecture for the BU was largely designed with resolution of individual banks and banking groups in mind. For example, the required interactions between the FMA, the OeNB, the SRB, and the EC on the adoption of a resolution scheme contemplate the failure of an individual bank or group. In part for this reason, most of the existing coordination arrangements within and between the FMA and the OeNB are designed to deal with individual banks or groups. Contingency plans are the means by which to address also a systemwide crisis involving simultaneous distress and potential failure of multiple banks and other financial institutions. Such plans must include and involve the MOF.

¹³⁸ Not unlike banks' recovery plans.

¹³⁹ Other testing does take place. The FMA and the OeNB, along with certain banks, engaged in an exercise in April 2019, which simulated a cyberattack on several banks.

Eventually, the national plan should address how the authorities would interact with the European authorities in the case of a system-wide crisis involving other Euro Area jurisdictions, so as to ensure financial stability and protect the Austrian economy.

93. Summary of Recommendations:

- The FMA should update its crisis management manual and the MOF should develop such a manual or contingency plan;
- Contingency plans also should contemplate systemwide crises;
- Contingency plans should be routinely updated;
- The OeNB should expand the scope of its annual contingency plan testing program, and the FMA and the MOF should adopt such programs;
- The authorities should update the mandate of the DSG and establish a regular meeting schedule; and
- A senior-level interagency body should be established with a mandate to ensure adequate contingency planning and testing of plans at the individual agency and national levels.