

short title

Banking Act

announcement body

Federal Law Gazette No. 532/1993 last amended by Federal Law Gazette I No. 108/2007

§/Article/Annex

Section 79

Effective Date

01/01/2008

expiry date

12/31/2009

notice

Paragraph 5: Constitutional provision

text**XVI National Bank of Austria**

Section 79.(1) In the field of banking, the Oesterreichische Nationalbank shall notify the Federal Minister of Finance and the FMA of observations and findings of a fundamental nature or of particular importance and, upon request, provide any factual clarifications that appear necessary and provide documents and reports.

(2) All notifications pursuant to Section 20 and Section 73, documents pursuant to Section 44 (1) and (5) and reports pursuant to Section 74 must also be submitted to the Oesterreichische Nationalbank within the deadlines stated there.

(3) The Oesterreichische Nationalbank shall maintain a common database for prudential analyzes and enable the FMA to have automated access to the following data at any time:

1. data according to paragraph 2;
2. data relevant to banking supervision based on reports pursuant to sections 44 and 44a of the National Bank Act 1984 – NBG, Federal Law Gazette No. 50/1984;
3. Data relevant to banking supervision in an anonymized form based on reports under the Foreign Exchange Act;
4. Analysis data and results according to paragraph 4a.

The Oesterreichische Nationalbank and the FMA are clients according to § 4 Z 4 DSG 2000 with regard to this database, which represents an information system according to § 4 Z 13 DSG 2000, the Oesterreichische Nationalbank also has the position of the operator of this information system according to § 50 DSG 2000.

(4) The Oesterreichische Nationalbank is responsible for carrying out audits assigned to it pursuant to Article 70 Paragraph 1 Item 3 and Article 70a Paragraph 2, reports within the framework of banking supervision and analyzes pursuant to Paragraph 4a in its own name. The FMA shall rely as far as possible on the Oesterreichische Nationalbank's reviews, reports and analyzes and the data entered in the database pursuant to para. 3 and may rely on their correctness and completeness unless it has justified doubts as to their correctness or Completeness. The Oesterreichische Nationalbank must notify the FMA of the results of the audits without delay; furthermore, it must immediately transmit statements from the credit institution concerned to the FMA.

The audit findings of the Oesterreichische Nationalbank apply in the process as expert opinions; however, the commissioning of the Oesterreichische Nationalbank pursuant to Article 70 Para. 1 No. 3 and Article 70a Para. The Oesterreichische Nationalbank is authorized to provide the bank auditor of the bank concerned with the necessary information about the result of the audits it has carried out.

(4a) The FMA must enter all relevant information from its banking supervisory activities in the common database. Relevant information in this sense is data pursuant to Section 77 (4), supervisory data pursuant to Section 14 FKG, reports by state commissioners, investigation results and other institution-related perceptions insofar as they relate to the area of responsibility of the FMA. Information held by both institutions is to be entered into the joint database by the Oesterreichische Nationalbank. The Oesterreichische Nationalbank must subject the data pursuant to para. 3 and the other supervisory information provided by it or the FMA to an ongoing overall evaluation for the purposes of banking supervision and to prepare for investigations by the supervisory authorities (individual bank analysis). All analysis results and relevant information must be made available to the FMA by the Oesterreichische Nationalbank and must contain clear statements as to whether there has been a significant change in the risk situation or whether there is a suspicion of a violation of banking supervisory provisions. The FMA must be informed immediately if there is a significant change in the risk situation or if there is a suspicion that regulatory provisions have been breached. At the request of the FMA, the Oesterreichische Nationalbank must also prepare and transmit certain individual bank analyzes and provide further explanations on the analysis results. The Oesterreichische Nationalbank is authorized to evaluate the individual bank analysis data from a micro and macroeconomic point of view, in particular with regard to its tasks in the context of financial market stability. In any case, all individual bank analyzes it carries out must be made available to the FMA. A statistical evaluation of the data, which does not aim to provide any personal results, by the Oesterreichische Nationalbank is permitted.

(4b) The Oesterreichische Nationalbank has

1. to draw up a list of the direct costs incurred in the respective financial year from on-site inspections and from the individual bank analysis and to have them checked by the auditor in accordance with Article 37 NBG;
2. submit the audited statement to the FMA by April 30 of the following financial year;
3. notify the FMA of the estimated direct costs from on-site inspections and from the individual bank analysis for the following financial year by 30 September of each year;
4. to inform the Federal Minister of Finance and the FMA once a year about the annual average number of employees involved in on-site inspections and individual bank analyzes; this information can also be provided by way of publication.

(5) (Constitutional provision) The Oesterreichische Nationalbank is not bound by any instructions when conducting audits in accordance with Article 70 Paragraph 1c and the payment system supervision in accordance with Article 44a NBG.