

Memorandum of Understanding
between
the Croatian National Bank
and
the Austrian Federal Ministry of Finance
and
the Austrian Financial Market Authority
concerning their
Co-operation in the Field of Banking Supervision

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Memorandum of Understanding

The Croatian National Bank
and
the Austrian Federal Ministry of Finance
and
the Austrian Financial Market Authority
agree as follows:

(1) The Austrian Financial Market Authority (FMA) and the Croatian National Bank (CNB) express their willingness to co-operate on the basis of mutual trust and understanding and agree to base their co-operation in the field of banking supervision on the principles and procedures outlined in this Memorandum of Understanding. It is not considered to be an international agreement in the meaning of the Austrian and the Croatian law.

(2) The general framework for this Memorandum of Understanding is provided by the Core Principles for Effective Banking Supervision issued by the Basle Committee on Banking Supervision in September 1997.

(3) The purpose of this Memorandum of Understanding is:

- to establish bilateral co-operation in banking supervision,
- to achieve mutual understanding on issues relating to banking regulations and supervisory practices,
- to promote the exchange of information on banking supervision matters including, but not limited to, licensing, cross-border mergers and acquisitions and ongoing supervision of cross-border establishments incorporated in the respective other country and jurisdiction.

Competent Authorities

(4) The activities of the FMA, with respect to its function as the competent banking supervisory authority in Austria, comprise the supervision of Credit Institutions and the granting of licences and authorisations as set out in the Austrian Financial Market Authority Act (Finanzmarktaufsichtsbehördengesetz - FMABG) and the Austrian Banking Act (Bankwesengesetz - BWG).

The responsibilities regarding the execution of on-site inspections and some other areas covered by the Austrian Banking Act are shared between the FMA and the Oesterreichische Nationalbank (OeNB). In this task, the OeNB supports the FMA in data processing, administrating the reporting system, executing on-site inspections for and on behalf of the FMA and in some other areas mentioned in the Austrian Banking Act. The signing of the Memorandum of Understanding is the competence of the Austrian Federal Ministry of Finance (BMF).

(5) The CNB is the central bank of the Republic of Croatia (RoC). Pursuant to the 2001 CNB Act (Zakon o Hrvatskoj narodnoj banci) and the 2002 Banking Act (Zakon o bankama), the CNB is responsible for the conduct of supervision over the safe functioning of the

banks, building societies and foreign bank branches on an individual basis and banking groups on the basis of consolidated financial statements and prudential reports.

The CNB is not responsible for the supervision of other financial institutions forming parts of banking groups on an individual basis.

The CNB is not responsible for the supervision of insurance companies, credit unions and pension and investment funds, whether on an individual basis or on the basis of consolidated financial statements and prudential reports.

The CNB regulates banking transactions and sets the standards for the stability and safety of the banking system in the RoC.

Definitions

(6) For the purposes of this Memorandum of Understanding, the following expressions shall have the following meaning:

"the Authorities" - the Austrian Financial Market Authority supported by the Oesterreichische Nationalbank,
- the Croatian National Bank;

"Credit Institution" - an undertaking established in Austria in accordance with Austrian legal provisions, which is subject to the supervision exercised by the FMA;

"Bank"- a legal entity founded as a joint-stock company with its registered head office in the RoC licensed and supervised pursuant to the Croatian Banking Act;

"Building Society" - a legal entity founded as a joint-stock company with its registered head office in the RoC, licensed and supervised pursuant to the Croatian Banking Act and the Building Societies Act.

The provisions of the Croatian Banking Act shall apply appropriately to building societies established in accordance with the Building Societies Act, unless otherwise regulated by other laws.

For the purpose of this Memorandum, the term "Bank" shall also be taken to include Building Societies.

"Cross-Border Establishment"- a Branch or a Subsidiary or a Representative Office licensed/authorized in the RoC of a parent Credit Institution which is licensed in Austria; or a Branch or a Subsidiary or a Representative Office licensed/duly established in Austria of a parent Bank which is licensed in the RoC;

"Branch"- the organisational unit of a Bank incorporated in the RoC or of a Credit Institution incorporated in Austria, which has been granted a licence in the respective other country;

"Subsidiary"- a Bank/Credit Institution incorporated in the RoC or in Austria, which is controlled by a parent Credit Institution/Bank in the respective other country;

"Representative Office"- a legally dependent part of a Credit Institution/Bank, not entitled to perform banking business, established in the RoC or duly established in Austria;

"Home Country Authority" - the Authority supervising in the case of a Branch or a Representative Office the head Bank/Credit Institution or in the case of a Subsidiary the parent Bank/Credit Institution or the Authority in whose territory the Credit Institution/Bank, applying for an approval to establish a Cross-Border Establishment or to acquire a share in the supervised institution in the territory of the other signatory to the Memorandum, has its head office;

"Host Country Authority" - the Authority supervising a Branch or a Representative Office or a Subsidiary or the Authority from the country in whose territory a Cross-Border Establishment is to be established or in whose territory the head office of the financial institution in which the share is to be acquired is located;

"Confidential Information" - any direct knowledge of, or received or exchanged information on, the operation of Credit Institutions/Banks and their clients, made available to or shared between the signatories to the Memorandum while conducting the supervision or participating therein pursuant to this Memorandum.

Professional Secrecy

(7) Compliance with the obligation of professional secrecy by all officials who receive information from the respective other Authority in the course of their activities is a necessary precondition for the successful co-operation between the Croatian and the Austrian Authorities. The Authorities shall ensure compliance with the letter and the spirit of Article 30 of Directive 2000/12/EC.

(8) Except for the exchange of information between the FMA and the OeNB, according to the Austrian and Croatian Banking Act, the Authorities shall not disclose any Confidential Information to third parties without prior written consent of the party that has provided this Confidential Information.

(9) Where the competent court to which the disclosure of Confidential Information is required by law requests Confidential Information for the purpose of conducting a court procedure, the required Authority shall provide the requested Confidential Information and immediately notify the other Authority to the Memorandum thereof.

Exchange of Information

(10) The Authorities endorse a broad principle of the exchange of information between the Home and the Host Country Authority to support and facilitate their respective supervisory tasks. The Authorities express their willingness to share information on events concerning Cross-Border Establishments and their parent Credit Institutions/Banks regulated by the Austrian and Croatian Authorities. The Authorities agree that this exchange of information shall also include as far as possible information which might be of importance for their supervisory activities in the future framework of the Basel II Accord and its transposition into European, Croatian and Austrian law.

(11) In broad terms this implies contacts, both in writing and orally, whenever the Home or the Host Country Authority considers this useful or necessary on the basis of relevant facts or developments for its own or their mutual supervisory purposes.

The Authorities shall inform each other without delay if they learn of an incipient crisis relating to any Credit Institution/Bank, which has a Cross-Border Establishment in the other country.

In particular, the Host Country Authority shall alert the Home Country Authority in good time of any event concerning the Cross-Border Establishments which might threaten the stability of the Credit Institution/Bank as a whole.

The Authorities acknowledge the need for international co-operation in the field of financial crime, in particular concerning money-laundering and terror financing. Although the main competences for the prosecution of financial crime rest with other authorities, the Authorities shall co-operate in matters of financial crime within their respective competences and responsibilities.

Furthermore, they undertake to inform each other of any administrative penalties imposed on or other actions taken against a Cross-Border Establishment or a Credit Institution/Bank as a whole, in so far as they are aware of any such actions, and of penalties or other actions that can be deemed to be of material importance.

In addition, there shall be communication between the Authorities regarding any substantial changes in the respective domestic supervisory regulations and policies.

Customer Complaints

(12) Complaints made about Cross-Border Establishments should be handled by the relevant Authority. If as a result any piece of information comes to the attention of either the FMA or the CNB which is relevant to the other Authority, the FMA and the CNB shall ensure that such information is communicated properly.

The FMA, in Austria and the CNB, in the RoC, are not entitled to intervene as fact-finders, mediators or arbitrators in civil law cases, since the sole jurisdiction in such matters lies with the national judiciary. Any complaints against Credit Institutions/Banks laid with the Authorities would only be examined in order to find out whether supervisory measures ought to be taken on the grounds that the queried activities of the institution showed deficiencies in the fitness and properness of the management or even amounted to harmful tendencies in the banking and financial services industry.

Granting of Licences and Prior Approval for the Acquisition of Share Capital in a Credit Institution/Bank

(13) If a Credit Institution/Bank licensed in Austria or in the RoC applies to the other respective Authority for an approval to establish a Cross-Border Establishment, the Host Country Authority shall inform the Home Country Authority without delay of such an application and shall consult the Home Country Authority before granting a license to such a Cross-Border Establishment of the Credit Institution/Bank.

(14) Where a Credit Institution/Bank licensed in Austria or in the RoC intends to acquire directly or indirectly, a qualified holding of the share capital of a Credit Institution/Bank in

the jurisdiction of the respective other Authority, the Host Country Authority shall consult with the Home Country Authority before consenting to the acquisition.

(15) The Home Country Authority shall provide the Host Country Authority upon a written request with the following information on the applying Credit Institution/Bank:

- (a) the amount of own funds and the solvency ratio (if applicable both on an individual and on a consolidated basis),
- (b) the Credit Institution's/Bank's shareholders' structure, including, but not limited to shareholders with a significant participation of 10% or more in the share capital or the voting rights, as well as significant changes thereof which indicate a change in control thereafter,
- (c) whether the Credit Institution/Bank is fully subject to and complies with the domestic banking regulation,
- (d) whether the Credit Institution's/Bank's management is deemed to be fit and proper, and
- (e) whether the legal or natural person domiciled in Austria or in the RoC, applying for a license to establish a Credit Institution/Bank or intending to acquire share capital in a Credit Institution/Bank in the respective other jurisdiction gives rise to doubts as to the fitness and properness of the prospective holders in this Credit Institution/Bank.

Ongoing Supervision

(16) The Croatian and the Austrian Banking Authorities shall inform each other, in good time and to the extent reasonable, about any event which has the potential to endanger the stability of Credit Institutions/Banks having Cross-Border Establishments in the respective other country.

(17) That includes, in particular: incipient crisis, any serious violation of the laws and regulations of prudential banking, a decline in the capital adequacy to levels below the minimum set by the authorities on an individual and a consolidated basis, the carrying out of business in a way that impairs the interest of depositors of the Credit Institution/Bank and threatens the security and the stability of the banking system or other material information.

(18) They shall also notify each other of any administrative penalties which they have imposed on or any other action which they have taken against such a Cross-Border Establishment, as a Host Country Authority or of any administrative penalties they have imposed on or any other action they have taken against a parent Credit Institution/Bank as a Home Country Authority, if, in their judgement, such information may be important to the Austrian and the Croatian Authorities, in particular:

- restricting and terminating some of the licensed activities,
- requesting changes in the management or supervisory boards of the Credit Institution/Bank,
- requesting adequate provisions and reserves,
- requesting extraordinary write-off items,
- increasing the initial capital of the Credit Institution/Bank,
- introducing forced administration,
- revoking licenses,
- etc.

(19) The Croatian and the Austrian Banking Authorities shall discuss together any significant information on Credit Institutions/Banks having Cross-Border Establishments in the RoC or in Austria. Representatives of the Croatian and of the Austrian Banking Authorities shall convene ad-hoc meetings to promote the resolution of supervisory problems concerning Cross-Border Establishments in the RoC or in Austria, whenever one of the parties deems that necessary.

On-site Inspection

(20) Recognizing the importance of consolidated supervision, the Authorities agree that co-operation is particularly useful in assisting each other in carrying out on-site inspections of Cross-Border Establishments, be they Credit Institutions/Banks or Branches or Representative Offices.

(21) On-site inspections on an individual basis of a Cross-Border Establishment, be it a Credit Institution/a Bank or a Branch or a Representative Office, shall be carried out by the Host Country Authority while the Home Country Authority may participate in such on-site inspection.

(22) The Host Country Authority shall notify the Home Country Authority as soon as possible, but at least three months in advance, of any planned inspection of a Cross-Border Establishment, indicating the number of inspection staff and the purpose as well as the expected duration of the inspection. The Host Country Authority shall also notify the Home Country Authority as much in advance as possible of any ad hoc inspection of a Cross-Border Establishment, indicating the number of inspection staff and the purpose as well as the expected duration of the inspection.

(23) After receipt of such a notification the Home Country Authority shall notify the Host Country Authority within one month of its intention to participate in an on-site inspection of a Cross-Border Establishment, be it a Credit Institution/a Bank or a Branch or a Representative Office. The Home Country Authority shall also notify the Host Country Authority as soon as possible after having been notified by the Host Country Authority of an ad hoc on site inspection of a Cross-Border Establishment, be it a Credit Institution/a Bank or a Branch or a Representative Office of its intention to participate in such an ad hoc on-site inspection.

(24) Where the Home Country Authority wishes to have an on-site inspection of a Cross-Border Establishment, be it a Credit Institution/a Bank or a Branch or a Representative Office, conducted by the Host Country Authority, it shall notify the Host Country Authority at least two months in advance of the requested date of such an extraordinary on-site inspection.

(25) Should the Host Country Authority not be able, for any reason, to carry out the requested on-site inspection of a Cross-Border Establishment, be it a Credit Institution/a Bank or a Branch or a Representative Office, it shall notify the Home Country Authority thereof. In such an event, the Home Country Authority shall be allowed to carry out an independent on-site inspection.

(26) In both cases of on-site inspections, where the Home Country Authority participates in an on-site inspection conducted by the Host Country Authority or where the Home Country Authority conducts an independent on-site inspection of a Cross-Border Establishment, be it a Credit Institution/a Bank or a Branch or a Representative Office, a prior approval shall be obtained from the Host Country Authority. In the RoC, this approval shall be obtained from the CNB Governor, as provided by the Banking Act and the relevant subordinate legislation enacted on the basis of that Act.

(27) The Authorities shall keep each other informed of the results of the inspections.

If the parent institution has been subjected to an on-site inspection, the Home Country Authority shall provide the Host Country Authority with a summary report on the findings that bear relevance to the Cross-Border Establishment, be it a Credit Institution/a Bank or a Branch or a Representative Office.

If a Cross-Border Establishment, be it a Credit Institution/a Bank or a Branch or a Representative Office has been subjected to an on-site inspection, the Host Country Authority shall provide the Home Country Authority with a summary report on the findings that bear relevance to the parent institution.

(28) After provisions of the Directive 2000/12/EC on on-site inspection come into force in the RoC, paragraphs 21 to 26 shall cease to be applied and shall be replaced by the following provisions:

Branches and Representative Offices may and shall be inspected by the Home Country Authority as stipulated in Articles 28 and 29 of Directive 2000/12/EC.

Regarding Subsidiaries, the Host Country Authority shall allow on-site inspections by the Home Country Authority in order to enable the Home Country Authority to comprehensively and effectively perform supervision on a consolidated basis in the sense of Articles 52 to 56 of Directive 2000/12/EC. The supervision of a Subsidiary by the Host Country Authority shall remain unabridged thereby.

The inspection of a Branch, of a Representative Office or of a Subsidiary shall be announced by the Home Country Authority at least one week in advance or, in case of imminent danger, may be carried out without announcement. The inspectors shall have to present a written inspection order before they start with the inspection. The inspectors shall be entitled to request all information and business documents required for the examination.

Laws and Regulations

(29) The Croatian and the Austrian authorities shall notify each other of any major changes in their domestic rules and regulations within their jurisdictions, in particular about those changes which have a significant bearing on the activities of Cross-Border Establishments and on the application of laws and regulations that concern banking supervision. In general, the Authorities shall inform each other about banking sector developments in Austria and the RoC, respectively.

(30) The Croatian and the Austrian authorities shall also keep each other informed of any major changes in their domestic regulations which may have a material impact on the activities of Cross-Border Establishments, which, as members of banking groups are supervised on a consolidated basis.

Miscellaneous

(31) Any request for information under this Memorandum shall be made in writing, in the English language and shall be addressed to the contact person of the Authority requested to supply information as set out in Annex A.

In case of emergency, requests for information and replies to such requests may be transmitted orally provided that any such requests are confirmed in writing unless the requested Authority agrees to waive such a requirement.

The request should indicate the following:

- the subject matter of the request, specifying the information requested;
- the purpose for which the information is sought;
- the sensitivity of the information sought and
- the urgency of the request, indicating the desired time limit for the reply.

All information, including those of confidential nature, acquired in the course of the exchange of information pursuant to this Memorandum, shall be used exclusively for the purpose they were acquired for.

(32) This Memorandum comes into force and effect and becomes binding on its parties upon signing of all the parties.

(33) After the signing of this Memorandum, the CNB and the FMA shall regularly update Annex A containing the lists of authorised personnel with full contact details. Due to the OeNB duties in connection with the supervision of Credit Institutions, the FMA's list in Annex A shall contain employees of the OeNB as well.

(34) After the signing of this Memorandum, the FMA and the CNB shall exchange lists of licensed Credit Institutions/Banks in their jurisdictions. For the purpose of this Memorandum, the FMA and the CNB shall use the lists of the licensed Credit Institutions/Banks within their jurisdictions published on their respective Internet websites. The CNB Internet website address is <http://www.hnb.hr>. The FMA website address is <http://www.fma.gv.at>.

These lists of licensed Credit Institutions/Banks are updated on a regular basis.

(35) The Authorities agree to meet on a regular basis to discuss issues relating to prudential supervision of Credit Institutions/Banks in both countries such as the planned on-site inspections of Cross-Border Establishments, and developments in their regulatory and supervisory systems.

The FMA and the CNB banking supervisors intend to promote their co-operation through mutual visits for informational purposes and through short exchanges of staff for practical internships.

(36) This Memorandum of Understanding shall remain in existence until either party notifies the other party in writing of its wish to withdraw from the Memorandum of Understanding.

One month's notice of any such action shall be given. The provisions of this Memorandum of Understanding may be amended or revised by the mutual written agreement of signatories thereto.

(37) Co-operation and assistance in accordance with this Memorandum of Understanding shall continue until expiration of 30 days after either Authority gives written notice to the other Authority of its intention to discontinue their co-operation and assistance. If either Authority gives such notice, the co-operation and assistance in accordance with this Memorandum shall continue with respect to all requests for assistance that were made before the effective date of notification or until the requesting Authority withdraws its request for assistance. In the event of termination of this Memorandum, information obtained under this Memorandum of Understanding shall continue to be treated confidentially.

(38) The FMA, the BMF and the CNB undertake to revise the present Memorandum of Understanding in the light of future developments in national and EU legislation and experience gained in the supervision of respective institutions.

(39) This Memorandum of Understanding shall be done in English in four copies, all copies being original. One copy is obtained by the CNB, one copy is obtained by the BMF, one copy is obtained by the FMA and one copy is obtained by the OeNB.

Signatures

Signed on 8 June, 2005

On behalf of the
Croatian National Bank

Dr. Željko Rohatinski
Governor

On behalf of the Austrian Federal
Ministry of Finance

Alfred Lejsek
Deputy Director General

On behalf of the
Austrian Financial Market Authority

Kurt Pribil
Executive Director

Heinrich Traumüller
Executive Director