Regulation of the Financial Market Authority (FMA) on Risk Measurement and Reporting of Derivates (*4. Derivate-Risikoberechnungs- und Meldeverordnung* [4th Derivatives Risk Measurement and Reporting Regulation])

On the basis of article 14 para 5, article 73 para 1 nos 1 and 2 as well as article 87 para 3 *Investmentfondsgesetz 2011* (Investment Fund Act 2011), Federal Law Gazette I No. 77, the following shall be determined by regulation:

Chapter 1

Derivate Reporting

Reporting Obligations

Article 1. By virtue of the provisions under the present regulation, management companies shall provide the Financial Market Authority (FMA) with quarterly reports in a standard electronically readable format with the reporting dates of 31 March, 30 June, 30 September and 31 December; these reports shall be transmitted to the FMA within one month. The data storage media or other modes of transmission shall meet the requirements established in the *Derivate-Meldesystemverordnung 2011* (Derivatives Reporting System Regulation of 2011) – Federal Law Gazette II No. XX as amended from time to time. The reporting institution shall identify itself by its bank identification number.

Content of the Reports

Article 2. For each Undertaking for Collective Investment in Transferable Securities (UCITS, article 2 para 1 *Investmentfondsgesetz 2011* [Investment Fund Act 2011]) managed by the management company, the reports shall contain disclosures concerning the global exposure as a percentage of the relevant net assets, with an indication of the fund name and of the International Securities Identification Number (ISIN) in the form of a comprehensive statement of the management company. In particular, the highest percentage of the period under review shall be reported.

Chapter 2

Global Exposure

Article 3. (1) A UCITS shall calculate its global exposure at least daily. The limits on global exposures must be complied with on an ongoing basis. Depending on the investment strategy being pursued, a UCITS shall, where necessary, also carry out intra-day calculations of the global exposure.

(2) A UCITS shall consider appropriate for the calculation of global exposure only those calculation methods set forth in this regulation.

(3) It is the responsibility of the UCITS to select a appropriate methodology to calculate global exposure based on self-assessment appropriate for its risk profile and the investment strategy. Special consideration shall be given to the risk from financial derivative instruments.

(4) A UCITS must use the Value-at-Risk (VaR) approach to calculate global exposure where:

1. it engages in complex investment strategies which represent more than a negligible part of the UCITS' investment policy; or
2. it has more than a negligible exposure to exotic derivatives; or
3. the commitment approach does not adequately capture the market risk of the portfolio.

(5) The use of a commitment approach or VaR approach does not exempt UCITS from the requirement to establish a system of internal risk management and limits.

(6) Regular monitoring to ensure that derivative transactions are sufficiently covered is part of the risk management process.

Chapter 3
The Commitment Approach

Section 1
Conversion Methodologies

General Provisions

Article 4. (1) The commitment conversion methodology for standard derivatives consists in determining the market value of the equivalent position in the underlying asset. This market value may be replaced by the notional value or the price of the futures contract where this is more conservative. For non-standard derivatives, where it is not possible to convert the derivative into the market value or notional value of the equivalent underlying asset, an alternative approach may be used, provided the total amount of the derivatives represents only a negligible portion of the UCITS portfolio.

(2) The following steps shall be taken by a UCITS when calculating global exposure using the commitment approach:

1. Calculate the commitment of each individual derivative into the respective equivalent position (commitment) as well as any embedded derivatives and leverage linked to Efficient Portfolio Management techniques.
2. For each netting or hedging arrangement, a net commitment shall be calculated as follows:
   a) Gross commitment is equal to the sum of the commitments of the individual financial derivative instruments (including embedded derivatives), after applying the netting rules for derivatives, where appropriate, in accordance with articles 7 through 10.
   b) If the netting or hedging arrangement involves security positions, the market value of the security positions can be used to offset gross commitment.
   c) The absolute value of the resulting calculation is equal to net commitment.
3. Global exposure is then equal to the sum of:
   a) The absolute value of the commitment of each individual derivative not involved in netting or hedging arrangements, and
   b) The absolute value of each net commitment after the netting or hedging arrangements as described in point 2; and
   c) The sum of all the absolute values of the commitment linked to Efficient Portfolio Management techniques.

(3) The commitment calculation of each financial derivative shall be converted to the base currency of the UCITS using the spot rate.

(4) If a currency derivative has two legs that are not in the base currency of the UCITS, both legs must be taken into account in the commitment calculation.

(5) The conversion methodologies described in **Annex 1** shall be used.

Exceptions for Certain Swaps

Article 5. A financial derivative shall not be taken into account when calculating the commitment if it fulfils all of the following characteristics:

1. It swaps the performance of financial assets held in the UCITS portfolios for the performance of other reference financial assets;
2. It totally offsets the market risk of the swapped assets held in the UCITS portfolio so that the UCITS performance does not depend on the performance of the swapped assets; and
3. The derivative includes neither additional optional features nor leverage clauses nor other additional risks as compared to a direct holding.

Exceptions for Certain Combined Holdings of Derivatives

Article 6. A financial derivative instrument shall not be taken into account when calculating the commitment if it meets both of the following conditions:

1. The combined holding of a financial derivative instrument relating to a financial asset and cash or risk-free cash-equivalent financial instruments shall be equivalent to holding a cash position in the given financial instrument.
2. The derivative does not generate any incremental global exposure, leverage or market risk.

Section 2

Netting and Hedging

General Provisions

Article 7. (1) When calculating global exposure using the commitment approach, netting and hedging arrangements may be taken into account to reduce global exposure.

(2) Netting arrangements are defined as combinations of trades on financial derivative instruments of the same underlying asset or of trades on a financial derivative instrument and the security position constituting its underlying asset, irrespective of the contracts' due date; and where the trades are concluded with the sole aim of eliminating the risks linked to the financial instruments originally acquired.

(3) hedging arrangements are defined as combinations of trades on financial derivative instruments or security positions which do not necessary refer to the same underlying asset and are concluded with the sole aim of eliminating the risks linked to the financial derivative instruments or security positions originally acquired.

(4) If the UCITS uses a conservative rather than an exact calculation of the commitment for each financial derivative instrument, hedging and netting arrangements shall not be taken into account to reduce commitment on the derivatives involved if it results in an underestimation of the global exposure.

Offsetting of Certain Positions Arising out of Netting Arrangements

Article 8. A UCITS may net positions only:

1. between financial derivative instruments, provided they refer to the same underlying asset, even if the maturity date of the financial derivative instrument is different;
2. between a financial derivative instrument (whose underlying asset is a transferable security, money market instrument or UCITS) and that same corresponding underlying asset; or
3. a UCITS that primarily invests in interest rate derivatives may make use of the duration-netting rules referred to in article 9 in order to take into account the correlation between the maturity segments of the respective interest rate curve.

Duration-Netting Rules

Article 9. (1) For interest-rate derivatives, duration netting is permissible only in accordance with **Annex 2**.

(2) Duration netting shall not be used if it would lead to an incorrect assessment of the risk profile of the UCITS. UCITS that use duration netting shall not include any other sources of risk in their interest rate strategy.

(3) The apply of their duration netting must not generate any unjustified level of leverage through holding of short-term interest derivatives.

(4) A UCITS that uses duration netting may continue to use hedging arrangements. Duration netting shall be used only for interest rate derivatives that are not covered by hedging arrangements.

Global Exposure and Hedging Arrangements

Article 10. (1) Hedging arrangements may only be taken into account when calculating global exposure if they reduce or eliminate the risk linked to the assets and comply with all the following criteria:

1. they must relate to the same asset class;
2. they should be effective and efficient in stressed market conditions;
3. investment strategies that aim to generate a return should not be considered hedging arrangements;
4. there should be a verifiable reduction of risk at the UCITS level;
5. any general and specific risks linked to financial derivative instruments must be offset.

(2) Notwithstanding the criteria referred to in para 1 above, financial derivative instruments used only for currency hedging purposes may be netted when calculating the UCITS global exposure. This currency hedging may not add any incremental market risk or leverage.

Section 3

Efficient Portfolio Management Techniques

Article 11. (1) If a UCITS is authorised to undertake repurchase transactions or securities lending transactions in accordance with articles 83 and 84 Investmentfondsgesetz 2011 (Investment Fund Act 2011) in order to generate additional leverage through the reinvestment of collateral, these transactions must be taken into consideration for the determination of the global exposure.

(2) UCITS that reinvest collateral in financial assets that provide a return in excess of the risk-free return must include in their global exposure calculations:

1. the amount received if cash collateral is held, and
2. The market value of the financial instrument concerned if non-cash collateral is held.

(3) The risk generated through Efficient Portfolio Management and the risk generated through the financial derivative instruments and the total of these must not be greater than 100% of the net asset value.

(4) Any further use of collateral as part of another repurchase transaction or securities lending transactions must be included in the in the global exposure calculation in accordance with para 1.

Section 4
Structured UCITS

Definition and Calculation of Global Exposure

Article 12. (1) A UCITS is a structured UCITS within the meaning of this regulation if it meets all the following criteria:

1. the UCITS is passively managed and structured to achieve at maturity the pre-defined payoff;
2. the UCITS is formula-based and the pre-defined payoff can be divided into a number of separate scenarios which are dependent on the value of the underlying assets and which offer investors different payoffs;
3. the investor can only be exposed to one payoff at any time during the life of the UCITS;
4. the use of the commitment approach to calculate global exposure for the various scenarios is appropriate taking into account the requirements of Chapter 2 of this regulation;
5. the UCITS has a final maturity not exceeding nine years;
6. the UCITS does not accept new subscriptions from the public after the initial marketing period;
7. the maximum loss the UCITS can suffer when the portfolio switches from one payoff profile to another must be limited to 100% of the initial offer price;
8. the impact of the performance of a single underlying asset on the payoff profile when the UCITS changes from one scenario to another complies with the diversification requirements under article 66 para 1 *Investmentfondsgesetz 2011* (Investment Fund Act 2011);

(2) A structured UCITS may calculate the global exposure using the commitment approach as follows:

1. The formula-based investment strategy for each predefined payoff profile is broken down into individual scenarios.
2. The financial derivative instrument implied in each scenario is assessed to establish whether the derivative may be excluded from the global exposure calculation under the provisions of article 5 or article 6.
3. The UCITS calculates the global exposure of the various scenarios to assess compliance with the global exposure limit of 100% of the net asset value.

Prospectus Requirements

Article 13. The prospectus of a structured UCITS that makes use of the method of calculating the global exposure outlined in article 12 must present the investment strategy, risk and payoff formulas in clear language that can be easily understood by the average investor and includes a prominent risk warning that investors who redeem their investment prior to maturity do not benefit from the predefined payoff and may suffer significant losses.

Chapter 4
Value-at-Risk (VaR) Approach

Section 1
Calculation of the VaR

General Provisions

Article 14. (1) A global exposure calculation using the VaR approach should consider all the positions of the UCITS.

(2) A UCITS should always set the maximum VaR limit according to its defined risk profile.

Selecting the VaR Approach

Article 15. (1) For the purpose of calculating the global exposure, the UCITS may use the relative or absolute VaR approach. When assessing the global exposure according to the relative or absolute VaR approach, the UCITS shall comply with the quantitative and qualitative minimum requirements of this regulation.

(2) The UCITS is responsible for choosing the proper VaR approach for its risk profile and investment strategy.

(3) The UCITS must be able to demonstrate at all times that its chosen VaR approach is appropriate to its risk profile and investment strategy and this must be fully documented.

(4) There must be consistency in the choice of the type of VaR used for the calculation of the global exposure.

Relative VaR Approach

Article 16. (1) Under the relative VaR approach, the global exposure of the UCITS shall be calculated as follows:

1. calculate the VaR of the UCITS's current portfolio (including financial derivative instruments);
2. calculate the VaR of a reference portfolio;
3. Check that the VaR of the UCITS portfolio is not greater than twice the VaR of the reference portfolio in order to ensure a limitation of the global leverage ratio of the UCITS to 2. This limit can be presented as follows:

$$\frac{(\text{VaR UCITS} - \text{VaR reference portfolio})}{\text{VaR reference portfolio}} \times 100 \leq 100\%$$

(2) The reference portfolio shall comply with the following requirements:

1. The reference portfolio should be unleveraged and should not contain any financial derivative instruments including embedded derivatives, except that:
   a) a UCITS engaging in a long/short strategy may select a reference portfolio which uses financial derivative instruments to gain the short exposure; or
   b) a UCITS which intends to have a currency-hedged portfolio may select a currency-hedged index as a reference portfolio.
2. The risk profile of the reference portfolio shall be consistent with the investment objectives, policies and limits of the UCITS portfolio.

(3) If the risk/return profile of a UCITS changes frequently or if the definition of a reference portfolio is not possible, then the relative VaR approach must not be used.

(4) The process relating to the determination and ongoing maintenance of the reference portfolio shall be integrated in the risk management process and supported by adequate procedures. Guidelines governing the composition of the reference portfolio shall be developed. In addition, the actual composition of the reference portfolio and any changes shall be clearly documented.

Absolute VaR Approach

Article 17. The absolute VaR approach limits the maximum VaR that a UCITS can have relative to its net asset value. The absolute VaR of a UCITS shall not exceed 20% of its net asset value.

Parameters

Article 18. (1) The calculation of the absolute or relative VaR shall be carried out in accordance with the following parameters:

1. one tailed confidence interval of 99%;
2. holding period equivalent to one month (20 business days);
3. effective observation period of risk factors of at least 1 year (250 business days) unless a shorter observation period is justified by a significant increase in price volatility through extreme market conditions;
4. quarterly data set updates, or more frequent when market prices are subject to material changes;
5. at least daily calculation.

(2) A confidence interval differing from para 1 no 1 and a holding period differing from para 1 no 2 may be used by the UCITS if the confidence interval is not below 95% and the holding period does not exceed one month (20 business days).

(3) UCITS using the absolute VaR approach shall, when using other calculation parameters in accordance with para 2, rescale the 20% limit to the particular holding period and confidence interval. The rescaling shall only be an

option if it is based on the assumption of a normal distribution with an identical and independent distribution of the risk factors by preparing to the quantiles of the normal distribution and the square root of time rule.

Section 2

Risk Coverage

Minimum Requirements

Article 19. The VaR approach used for global exposure calculation shall take into account, as a minimum requirement, general market risk and, if applicable, idiosyncratic risk. The event and default risks shall be taken into account, as a minimum requirement, in the stress tests under Section 4. If the risks are not adequately identified through a calculation based on these minimum requirements, a stricter approach to risk shall be taken for such UCITS.

Completeness and Accuracy

Article 20. (1) The choice of the appropriate VaR approach remains the responsibility of the UCITS. When selecting the approach, the UCITS shall ensure that the approach is appropriate with regard to the investment strategy being pursued and the types and complexity of the financial instruments used.

(2) The VaR approach shall ensure completeness and assess the risks with a high level of accuracy. In particular:

1. All the positions of the UCITS portfolio must be included in the VaR calculation.
2. The approach shall adequately capture all the material market risks associated with the security positions contained in the portfolio and, in particular, the specific risks of the financial derivative instruments. All risk factors which have more than a negligible influence on the fluctuations of the portfolio's value shall be considered material.
3. The quantitative models used within the VaR approach shall provide for a high level of accuracy, particularly with respect to the pricing tools, estimation of volatilities and correlations.
4. The management company shall ensure that all data used within the VaR approach provides for consistency, timeliness and reliability.

Section 3

Back Testing

Article 21. (1) The UCITS shall monitor the accuracy and efficiency (quality of predictions) of its VaR approach by conducting a back-testing programme.

(2) The back-testing programme shall provide for each business day a comparison of the one-day VaR measure for the portfolio's end-of-day positions to the one-day change of the portfolio value by the end of the subsequent business day.

(3) The UCITS shall carry out the back-testing programme at least on a monthly basis, subject to always performing retroactively the comparison for each business day referred to in para 2.

(4) The UCITS shall evaluate and monitor the "overshootings" on the basis of this back-testing programme. An "overshooting" shall be a one-day change in the portfolio's value that exceeds the related one-day VaR measure.

(5) If the back-testing results reveal a percentage of "overshootings" that appears to be too high, the UCITS shall review its VaR approach and make appropriate adjustments.

(6) The senior management of the management company shall be informed at least on a quarterly basis and the FMA on a semi-annual basis if the number of "overshootings" for the most recent 250 business days exceeds 4 in the case of a 99% confidence interval. This information shall contain an analysis and explanation of the reasons responsible for the "overshootings" and a statement of what measures, if any, were taken to improve the quality of the predictions of the VaR approach. If the number of "overshootings" is too high and the measures taken by the management company are not sufficient to improve the quality of predictions of the VaR approach, then the management company shall take further measures and, in particular, apply stricter criteria to the use of the VaR approach.

Section 4

Stress Tests

Stress Testing – General Provisions

Article 22. (1) Each UCITS using the VaR approach shall conduct a rigorous, comprehensive and risk-adequate stress testing programme in accordance with the qualitative and quantitative requirements set out in this article.

(2) The stress test shall be designed to measure any potential depreciation of the UCITS value as a result of unexpected changes in the relevant market parameters and correlation factors.

(3) The stress tests shall be adequately integrated into the risk management process and the results shall be considered when making investment decisions.

Quantitative Requirements

Article 23. (1) The stress tests shall cover all risks which affect the value or fluctuations in value of a UCITS to any significant degree. In particular, those risks which are not fully captured by the VaR approach shall be taken into account.

(2) The stress tests shall be appropriate for analysing market situations in which the use of significant leverage could potentially lead to the default of the UCITS.

(3) The stress tests shall focus on those risks which, though not significant under normal circumstances, might become significant in stress situations, such as the risk of unusual correlation changes, the illiquidity of markets in extreme situations or complex structured products with liquidity problems.

Qualitative Requirements

Article 24. (1) Stress tests shall be carried out on a regular basis, at least once a month. Additionally, they shall be carried out whenever a change in the value or the composition of a UCITS or a change in market conditions makes it likely that the test results will differ significantly.

(2) The design of the stress tests shall be adapted in line with the composition of the UCITS and the market conditions that are relevant to the UCITS.

(3) Management companies shall implement clear guidelines relating to the design of and the ongoing adaptation of the stress tests. A program for carrying out stress tests shall be developed on the basis of such guidelines for each UCITS. It shall be explained why the program is suitable for the UCITS. Completed stress tests together with their results shall be clearly documented in writing. Reasons shall be given for any change or deviation from the program.

Section 5

Qualitative Requirements for the VaR Approach

Risk management function

Article 25. (1) In accordance with article 17 para 3 *Investmentfondsgesetz 2011* (Investment Fund Act 2011), the risk management function shall be responsible for:

1. sourcing, testing and using the VaR approach on a day-to-day basis;
2. supervising the process relating to the determination of the value and composition of the reference portfolio, if the UCITS uses a relative VaR approach;
3. ensuring on a continuous basis that the VaR approach is adapted to the UCITS' portfolio;
4. performing continuous validation of the VaR approach;
5. introducing and implementing documentation processes for the VaR limits and the corresponding risk profiles for each UCITS; these processes shall be subject to approval by Senior Management and the Board of Directors;
6. monitoring and controlling the VaR limits;
7. monitoring on a regular basis the level of leverage;
8. producing on a regular basis reports relating to the current level of the VaR measure (including the results of stress testing and back testing) for Senior Management.

(2) The VaR approach and the related outputs shall be an integral part of the daily risk management work. In addition, these outputs must be integrated into the investment process of the fund management to keep the UCITS risk profile under control and consistent with its investment strategy.

(3) Once the VaR approach has been developed, its structure and functionality shall be reviewed by an independent third party in order to ensure that all material risks are captured. Such a review shall also be performed following any significant change to the VaR approach. A significant change could relate to investing in a new financial instrument, the need to improve the VaR approach following the back-testing results or a decision to change certain aspects of the VaR approach in a significant way.

(4) The risk management function shall perform ongoing review of the VaR approach in order to ensure the accuracy of the calibration of the VaR approach. Such a review shall be documented and, where necessary, the model shall be adjusted.

(5) Adequate documentation for the purposes of article 87 para 2 *Investmentfondsgesetz 2011* (Investment Fund Act 2011) for the VaR approach shall cover at least:

1. the risks covered by the approach;
2. the methodology of the approach;
3. the mathematical assumptions and foundations;
4. the data used;
5. the completeness and accuracy of the risk assessment;
6. the methods used to validate the approach;
7. the back-testing processes;
8. the stress testing processes;
9. the validity range of the approach; and
10. the operational implementation.

Additional Safeguards

Article 26. (1) UCITS which calculate global exposure using a VaR approach shall regularly monitor their leverage.

(2) A UCITS shall supplement the VaR/stress-testing system, where appropriate, by taking into account the risk profiles and investment strategy being pursued, with other risk measurement methods.

Chapter 5
Counterparty in OTC Derivative Transactions

Counterparty

Article 27. Only the following institutions subject to supervision may be a counterparty in transactions with derivatives that are not traded on a stock exchange or regulated market within the meaning of article 73 para 1 *Investmentfondsgesetz 2011* (Investment Fund Act of 2011) (OTC financial derivative instruments):

1. Austrian credit institutions;
2. credit institutions authorised in a Member State in accordance with Art. 4 (1) of Directive 2006/48/EC;
3. foreign credit institutions referred to in article 2 no 13 of the *Bankwesengesetz* (Federal Banking Act), Federal Law Gazette No. 532/1993, Art. I, in the version published in Federal Law Gazette I No. 118/2010, with their registered office in a country whose central government, according to article 22a *Bankwesengesetz* (Federal Banking Act) should be given a risk weighting of no more than 20%;
4. investment firms within the meaning of article 2 no 30 *Bankwesengesetz* (Federal Banking Act) with their registered office in a country whose central government, according to article 22a *Bankwesengesetz* (Federal Banking Act) should be given a risk weighting of no more than 20%.

Collateralisation of the Counterparty

Article 28. (1) Collateral may be used to reduce counterparty risk exposure provided it meets the following criteria at all times:

1. sufficient liquidity;
2. capable of being valued on a daily basis;
3. high issuer credit quality;
4. no correlation between the counterparty and the collateral;
5. sufficient collateral diversification;
6. adequate systems and processes for management of the collateral;

7. collateral must be held by an third-party custodian in accordance with article 39 para 1 *Investmentfondsgesetz 2011* (Investment Fund Act of 2011) which is either unrelated to the provider or is legally secured from the consequences of a failure of a related party;
8. collateral must be fully enforced by the UCITS at any time without reference to an approval from the counterparty.the UCITS can draw on the collateral at any time without any obligation to obtain the counterparty's consent;
9. collateral, with the exception of deposits that are repayable on demand, shall not be sold, reinvested or pledged;
10. deposits repayable on demand shall be invested only in risk-free assets.

(2) The UCITS shall consider the counterparty risk to be properly covered only if the value of the collateral valued at market price after the application of appropriate haircuts is higher at all times than the assets exposed to the risk.

(3) For the valuation of collateral presenting a significant risk of value fluctuation, a UCITS shall apply prudent haircuts.

Preventing Issuer Concentration

Article 29. (1) According to article 74 para 2 *Investmentfondsgesetz 2011* (Investment Fund Act 2011), the paid-in initial margin and, with respect to listed derivatives or OTC derivatives, any variation margin that is not covered by deposit protection schemes must be taken into account as an additional risk in the calculation.

(2) In accordance with article 74 para 3 *Investmentfondsgesetz 2011* (Investment Fund Act 2011), any net exposure to a counterparty generated through a stock-lending or repurchase agreements must be taken into account. Net exposure shall be understood as the notional amount receivable (loaned) less the collateral provided by the counterparty. Exposures created through the reinvestment of collateral must also be taken into account in the issuer-concentration calculations.

(3) When calculating the risk of default within the meaning of article 74 *Investmentfondsgesetz 2011* (Investment Fund Act 2011), the UCITS shall document whether its exposure is to an OTC counterparty, a broker or a clearing house.

(4) Position exposure to the underlying assets of a financial derivative instrument (including embedded financial derivative instruments) resulting from position of the direct investment must not exceed the limits established in articles 74 and 77 *Investmentfondsgesetz 2011* (Investment Fund Act 2011).

(5) When calculating issuer risk, the financial derivative instrument (including embedded financial derivative instruments) must be looked through in determining the resultant position exposure. It must be calculated using the commitment approach when appropriate or the maximum potential loss as a result of default by the issuer if more conservative. It must be calculated using the commitment approach, when appropriate, or else the maximum loss approach. The commitment approach shall be used to calculate the issuer risk even if the VaR approach to global exposure calculation is used.

(6) The capital charge for counterparty risk shall be taken into account when calculating the degree of utilisation of the investment limits under article 74 paras 1 and 3 *Investmentfondsgesetz 2011* (Investment Fund Act of 2011) both with respect to the individual enterprise and on the level of the group of companies in accordance with article 74 para 7 *Investmentfondsgesetz 2011* (Investment Fund Act 2011).

(7) Paras 1 through 6 above shall not apply to the index-based financial derivative instruments referred to in article 75 *Investmentfondsgesetz 2011* (Investment Fund Act 2011).

Chapter 6

Indices

Financial Indices

Article 30. (1) Financial indices within the meaning of article 73 para 1 no 1 *Investmentfondsgesetz 2011* (Investment Fund Act of 2011) must:

1. be sufficiently diversified;
2. represent an adequate benchmark for the market to which they refer; and
3. be published in an appropriate manner.

(2) Financial indices are sufficiently diversified for the purposes of para 1 no 1 where:

1. the index is composed in such a way that price movements or trading activities regarding one component do not unduly influenced the performance of the whole index;

2. the index is composed of assets referred to in article 66 para 1 *Investmentfondsgesetz 2011* (Investment Fund Act of 2011), its composition is at least diversified in accordance with article 75 *Investmentfondsgesetz 2011* (Investment Fund Act of 2011);
3. the index is composed of assets other than those referred to in article 66 para 1 *Investmentfondsgesetz 2011* (Investment Fund Act of 2011), it is diversified in a way which is equivalent to that provided for in article 75 *Investmentfondsgesetz 2011* (Investment Fund Act of 2011).

(3) Financial indices represent an adequate benchmark for the market to which they refer in accordance with para 1 no 2 where:

1. the index measures the performance of a representative group of underlyings in a relevant and appropriate way;
2. the index is revised or rebalanced periodically to ensure that it continues to reflect the markets to which it refers, always following criteria that are publicly available;
3. the underlyings are sufficiently liquid, which allows users to replicate the index, if necessary.

(4) Financial indices are published in an appropriate manner for the purposes of 1 no 3 where:

1. their publication process relies on sound procedures to collect prices and to calculate and to subsequently publish the index value, including pricing procedures for components where a market price is not available;
2. material information on matters such as index calculation and rebalancing methodologies, index changes or information relating to any operational difficulties in providing timely or accurate information is provided on a wide and timely basis.

(5) Where the criteria in paragraphs 1 through 4 above are not met, those financial derivative instruments shall, where they comply with the criteria set out in article 73 para 1 nos 1 through 3 *Investmentfondsgesetz 2011* (Investment Fund Act of 2011), be regarded as financial derivatives on a combination of the assets referred to in article 66 para 1 *Investmentfondsgesetz 2011* (Investment Fund Act of 2011) including financial instruments having one or more characteristics of those assets, foreign exchange rates, foreign currencies and interest rates.

Hedge Fund Indices

Article 31. (1) A hedge fund index falls under the classification of a "financial index" for the purposes of article 73 para 1 no 1 *Investmentfondsgesetz 2011* (Investment Fund Act of 2011) if it complies with the criteria under article 30 paras 1 through 4 and if the methodology chosen by the index provides for the selection and rebalancing of the components on the basis of predetermined rules and objective criteria The index does not fall under the classification of a "financial index" for the purposes of article 73 para 1 no 1 *Investmentfondsgesetz 2011* (Investment Fund Act of 2011) if the index provider of a hedge fund index accepts payments from potential index components for the purpose of being included in the index or if the methodology of the index allows for retrospective changes to previously published index values ("backfilling").

(2) Where an underlying asset is a hedge fund index, appropriate due diligence must be performed, also taking into consideration the quality of the index. Written records of that assessment must be kept. The assessment of the index quality shall include at least the comprehensiveness of the index methodology, the availability of information about the index and the treatment of the index components.

(3) In assessing the comprehensiveness of the index methodology in accordance with para 2 above, the following criteria shall be taken into account:

1. whether the index method contains an adequate explanation of subjects such as the weighting and classification of components and the treatment of defunct components; and
2. whether the index represents an adequate benchmark for the type of hedge funds to which it refers.

(4) In assessing the availability of information for the purposes of para 2, the following criteria shall be taken into account:

1. whether there is a clear description of what the index is trying to represent;
2. whether the index is subject to an independent audit and the scope of the audit;
3. how frequently the index is published and whether this will affect the ability to accurately calculate the fund's net asset value.

(5) In assessing the index provider's treatment of the index components for the purposes of para 2, at least the following criteria shall be taken into account:

1. the procedures by which the index provider carries out any due diligence on procedures for calculating the net asset value of the index components;
2. what level of detail about the index components and their net asset values are made available, including whether the index components are investable or non-investable;

3. whether the number of components in the index achieves sufficient diversification.

Chapter 7
Financial Instruments Embedding Derivatives

Definition

Article 32. (1) Transferable securities or money market instruments which fulfil the criteria set out in article 73 para 6 *Investmentfondsgesetz 2011* (Investment Fund Act of 2011) shall be regarded as embedding a derivative if these transferable securities or money market instruments contain a component which fulfils the following criteria:

1. by virtue of that component, some or all of the cash flows that otherwise would be required by the transferable security which functions as host contract can be modified according to a specified interest rate, financial instrument price, foreign exchange rate, index of prices or rates, credit rating or credit index, or other variable, and therefore vary in a way similar to a stand-alone derivative;
2. its economic characteristics and risks are not closely related to the economic characteristics and risks of the host contract;
3. it has a significant impact on the risk profile and pricing of the transferable security.

(2) Money market instruments which fulfil one of the criteria set out in article 70 para 1 *Investmentfondsgesetz 2011* (Investment Fund Act of 2011) and all criteria set out in article 70 para 2 of the same Act and contain a component which fulfils the criteria set out in para 1 above shall be regarded as money market instruments embedding a derivative.

(3) A transferable security or money market instrument shall not be regarded as embedding a derivative where it contains a component which is contractually transferable independently of the transferable security or money market instrument. Such a component shall be deemed to be a separate financial instrument.

Consideration in Risk Management

Article 33. The frequency and comprehensiveness of the audits of an embedded derivative shall be adjusted to its characteristics and impact on the UCITS, taking into account the UCITS' investment strategy and risk profile. In the case of embedded derivatives that have no significant impact on the UCITS, predetermined investment limits may be used for the audits.

Chapter 8
Short Selling

Article 34. (1) In the case of a derivative contract that provides for the physical delivery of the underlying financial instrument, either automatically or at the counterparty's choice, on the due date or the exercise date, and insofar as physical delivery is a normal practice in the case of the instrument in question, then the corresponding underlying financial instrument must be held in the portfolio as cover.

(2) In respect of a derivative contract that provides for cash settlement, either automatically or at the management company's discretion, the UCITS shall not be required to hold the corresponding underlying financial instrument as cover.

(3) Where an underlying financial instrument referred to in para 2 is not held as coverage, cash and liquid assets that may be used at any time to acquire the underlying financial instrument that is to be delivered shall be held as cover. Permissible cover may include cash and liquid financial instruments with appropriate safeguards. Instruments shall be considered liquid for the present purposes if convertible to cash within less than seven banking days at a price as close as possible to the current value of the financial instrument on its own market. The corresponding amount of cash must be available to the UCITS on the due date or date of exercise of the derivative.

(4) The management company shall ensure that it is fully capable of meeting all of its contracted, conditional or unconditional obligations of payment and delivery from derivatives.

Chapter 9
Reporting Obligations

Article 35. The reports referred to in article 14 para 4 no 2 *Investmentfondsgesetz 2011* (Investment Fund Act of 2011) shall be provided to the supervisory board in writing at least quarterly, in a comprehensive and demonstrable manner. The directors shall be provided with the reports referred to in article 14 para 4 *Investmentfondsgesetz 2011* (Investment Fund Act of 2011) to the same extent and in the same form at least once a month, or immediately whenever the occasion so requires.

10. Chapter

Entry into Force and Repeal

Article 36. (1) This regulation shall enter into force on 1 September 2011. The reports referred to in this regulation shall be become obligatory for the first time from the reporting date of 31 December 2011.

(2) The *3. Derivate-Risikoberechnungs- und Meldeverordnung* (3rd Derivative Risk Measurement and Reporting Regulation), Federal Law Gazette II No. 169/2008, shall expire at the end of 31 August 2011.

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Annex 1

Futures

A.1. Futures

A.1.1. Bond future:
Number of contracts * notional contract size * market value of the cheapest-to-deliver (CTD) reference bond

A.1.2. Interest rate future:
Number of contracts * notional contract size

A.1.3. Currency future:
Number of contracts * notional contract size

A.1.4. Equity future:
Number of contracts * notional contract size * market value of the underlying equity share

A.1.5. Index future:
Number of contracts * notional contract size * index level

A.2. Plain vanilla options (puts and calls)

A.2.1. Plain vanilla bond option::
Notional contract value *market value of the underlying reference bond * delta

A.2.2. Plain vanilla equity option:
Number of contracts * notional contract size *market value of the underlying equity share * delta

A.2.3. Plain vanilla interest rate option:
Notional contract value * delta

A.2.4. Plain vanilla currency option:
Notional contract value of the currency pairs * delta

A.2.5. Plain vanilla index option:
Number of contracts * notional contract size * index level * delta

A.2.6. Plain vanilla options on futures:
Number of contracts * notional contract size *market value of the underlying instruments * delta

A.2.7. Plain vanilla swaption:
Reference swap commitment conversion amount (as described in A.3.) * delta

A.2.8. Warrants and similar rights:
Number of shares/bonds *market value of the underlying instruments * delta

A.3. Swaps

A.3.1. Plain vanilla fixed/floating interest rate and inflation swaps:
Market value as underlying instrument

A.3.2. Currency swap:
Notional value of currency leg(s)

A.3.3. Interest rate/currency swaps:
Notional value of currency leg(s) or currency pairs

A.3.4. Total return swap:
Market value of the underlying instrument

A.3.5. Non-basic total return swap (TRS):
Market value of both underlying legs of the TRS

A.3.6. Single-name credit default swap:
Protection seller: the higher of the market value of the underlying instrument or the notional value of the credit default swap.
Protection buyer: market value of the underlying instrument

A.3.7. Contract for differences:
Number of shares/bonds * market value of the underlying instrument

A.4. Forwards

A.4.1. FX forwards:

Notional value of currency leg(s)

A.4.2. Forward rate agreement:

Notional value

A.5. Leveraged exposure to indices or indices with embedded leverage:

A derivative providing leveraged exposure to an index and an index with embedded leverage must apply the standard applicable commitment conversion formula for the underlying assets in question.

Embedded Derivatives

B.1. Convertible bond:

Number of referenced shares * market value of the underlying reference shares * delta

B.2. Credit linked notes:

Market value of the underlying instruments

B.3. Partly paid securities

Number of shares/bonds *market value of underlying assets

Exotic Derivates

C.1. Variance swaps:

Variance notional $*$ (current) variance_t

Variance notional $*$ min [(current) variance_t; volatility cap^2]

where

$$\text{Variance Notional} = \frac{\text{Vega Notional}}{2xStrike}$$

C.2. Volatility swaps:

Vega notional $*$ volatility_t

Vega notional $*$ min [(current) volatility_t or volatility cap]

C.3. Barrier option:

Number of contracts * notional contract size *market value of the underlying equity share * max delta

Annex 2

Duration Netting

Allocate each interest rate derivative financial derivative instrument to the appropriate range ("bucket") of the following maturity-based ladder:

Bucket	Maturities range
1	0-2 years
2	2-7 years
3	7-15 years
4	>15 years

Calculate the equivalent underlying asset position of each interest derivative instrument as its duration divided by the target duration of the UCITS (under normal market conditions) and multiplication by the market value of the underlying asset:

$$\text{Equivalent underlying} = \frac{\text{duration of interest derivate}}{\text{Target duration of UCITS}} * \text{market value}$$

Net the equivalent long and short underlying asset positions within each bucket. The amount of the former which is netted with the latter is the netted position for that bucket.

Net the amount of the remaining unnetted long (or short) position in the bucket (i) with the amount of the remaining short (or long) position remaining in the bucket (i+1).

Net the amount of the remaining unnetted long (or short) positions in the bucket (i) mit the amount of the remaining short (or long) positions in bucket (i+2).

Calculate the netted amount between the unnetted long and short positions of the two most remote buckets.

The UCITS calculates its total global exposure as the sum of:

1. 0% of the netted positions for each bucket;
2. 40% of the netted positions between two adjoining buckets (i) and (i+1);
3. 75% of the netted positions between buckets (i) and (i+2);
4. 100% of the netted positions between the two most remote buckets;
5. 100% of the remaining unnetted positions.

Rationale

General Part

The purpose of the Amendment to the *3. Derivate-Risikoberechnungs- und Meldeverordnung* (3rd Derivative Risk Measurement and Reporting Regulation) is to implement Directive 2009/65/EC of the European Parliament and of the Council of 13July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32) and Directive 2010/43/EU of the Commission of 1 July 2010 implementing Directive 2009/65/EC as regards organisational requirements, conflicts of interest, conduct of business, risk management and content of the agreement between depositary and management company (OJ L 176, 10.07.2010, p. 42).

Moreover, pursuant to the authorisation to issue regulations under article 87 para 3 *Investmentfondsgesetz 2011* (Investment Fund Act of 2011), European practice is taken into account in the form of the common interpretation practice of the supervisory authorities in the EU. Such common interpretation practice is found in Guidelines CESR/10-788 (CESR's Guidelines on Risk Measurement and the Calculation of Global Exposure and Counterparty Risk for UCITS) and ESMA/2011/112 (Guidelines to competent authorities and UCITS management companies on risk measurement and the calculation of global exposure for certain types of structured UCITS). In this connection, it should be taken into account that the European practice cover both UCITS that are self-managed and those that are managed by third parties (cf. Introduction, CESR/10-788), whereas Austrian law solely acknowledges UCITS that are managed by third-party management companies. This means, in concrete terms, that under Austrian law UCITS are neither capable of acting independently or making its own informed decisions. Thus, any references made to UCITS in this regulation or in CESR's Guidelines in connection with independent actions or informed decision-making shall be understood to refer to the management companies that set up the relevant UCITS.

Special Part

Regarding article 1:

Electronic reporting shall be prescribed. The provision corresponds to article 1 if the *3. Derivate-Risikoberechnungs- und Meldeverordnung* (3rd Derivative Risk Measurement and Reporting Regulation), Federal Law Gazette II No. 169/2008.

Regarding article 2:

The content of the reporting is established.

Regarding article 3:

Consistent with European practice as set out in Box 1 and 28 of CESR's Guidelines CESR/10-788.

It is hereby established that the risk measurement of the global exposure is only one part of a comprehensive and integrated risk management system. The risk management system should cover not only market risk but also all other material risks, such as liquidity risks, counterparty risks and operational risks. No European practices currently exist for other measurement methods.

Financial derivative instruments are to be considered exotic if they are not mentioned in Section A of Annex 1 of this regulation.

Regarding article 4:

Consistent with European practice as set out in Box 2 of CESR's Guidelines CESR/10-1319.

Regarding article 5:

Consistent with European practice as set out in Box 3 of CESR's Guidelines CESR/10-788.

Regarding article 6:

Consistent with European practice as set out in Box 4 of CESR's Guidelines CESR/10-788.

Regarding article 7:

Consistent with European practice as set out in Box 5 of CESR's Guidelines CESR/10-788.

Regarding article 8:

Consistent with European practice as set out in Box 6 of CESR's Guidelines CESR/10-788.

Regarding article 9:

Consistent with European practice as set out in Box 7 of CESR's Guidelines CESR/10-788.

Investment strategies that aim at arbitrage on the interest rate curve, among other things, must not use duration netting. "Other sources of risk" means volatility, among other things.

Regarding article 10:

Consistent with European practice as set out in Box 8 of CESR's Guidelines CESR/10-788.

Market-neutral or long-short investment strategies may not satisfy the criteria set out in para 1.

Regarding article 11:

Consistent with European practice as set out in Box 9 of CESR's Guidelines CESR/10-788.

Regarding article 12:

Consistent with European practice as set out in Guideline 1 of the ESMA Guidelines ESMA/2011/112.

Regarding article 13:

Consistent with European practice as set out in Guideline 2 of the ESMA Guidelines ESMA/2011/112.

Regarding article 14:

Consistent with European practice as set out in Box 10 of CESR's Guidelines CESR/10-788.

Regarding article 15:

Consistent with European practice as set out in Boxes 11 and 14 of CESR's Guidelines CESR/10-788.

A prerequisite for a consistent approach is that a change between the absolute VaR approach and the relative VaR approach should be made only when a change in the investment strategy or risk profile of the UCITS makes it no longer justifiable to use the current approach in accordance with para 2; under no circumstances should the approach be changed because the UCITS has exceeded or is at risk of exceeding the limits of the currently selected VaR approach.

Regarding article 16:

Consistent with European practice as set out in Box 12 of CESR's Guidelines CESR/10-788.

Regarding article 17:

Consistent with European practice as set out in Boxes 13 and 15 point 1 of CESR's Guidelines CESR/10-788.

Regarding article 18:

Consistent with European practice as set out in Box 15 points 2 through 4 of CESR's Guidelines CESR/10-788.

The reference to business days should be understood to mean only those days on which a price can be set.

Regarding article 19:

Consistent with European practice as set out in Box 16 of CESR's Guidelines CESR/10-788.

Regarding article 20:

Consistent with European practice as set out in Box 17 of CESR's Guidelines CESR/10-788.

Regarding article 21:

Consistent with European practice as set out in Box 18 of CESR's Guidelines CESR/10-788.

Regarding article 22:

Consistent with European practice as set out in Box 19 of CESR's Guidelines CESR/10-788.

Regarding article 23:

Consistent with European practice as set out in Box 20 of CESR's Guidelines CESR/10-788.

Regarding article 24:

Consistent with European practice as set out in Box 21 of CESR's Guidelines CESR/10-788.

Regarding article 25:

Consistent with European practice as set out in Box 22 of CESR's Guidelines CESR/10-788.

Regarding article 26:

Consistent with European practice as set out in Box 23 of CESR's Guidelines CESR/10-788.

Regarding article 27:

According to article 73 para 1 no 2 *Investmentfondsgesetz 2011* (Investment Fund Act of 2011), the FMA must issue a regulation establishing the categories of institutions subject to supervision that are eligible to be counterparties in transactions with OTC financial derivative instruments. A corresponding procedure was also selected for the *Immobilien-Investmentfondsgesetz* (Real Estate Investment Fund Act) *Immobilienfonds-OTC-Derivaten-Gegenpartei--Verordnung* (Real Estate Investment Fund OTC Derivatives Counterparty Regulation) Federal Law Gazette II No. 311/2007.

Regarding article 28:

Consistent with European practice as set out in Box 26 of CESR's Guidelines CESR/10-788 and most of article 17 of the *3. Derivate-Risikoberechnungs- und Meldeverordnung* (3rd Derivative Risk Measurement and Reporting Regulation), Federal Law Gazette II No. 169/2008.

Para 7 takes into account CESR's Guidelines CESR/07-044 regarding Art. 10 of Directive 2007/16/EC.

The high credit rating of the issuer required by para 1 no 3 shall be deemed to exist, particular, in the case of securities of a country whose central government, in accordance with article 22a *Bankwesengesetz* (Federal Banking Act), should be assigned a risk weighting of no more than 20%, or in the case of securities of the European Union.

The collateral may also exist in bank balances at a credit institution in accordance with article 2 no 13 *Bankwesengesetz* (Federal Banking Act) with its registered office in a country whose central government, in accordance with article 22a *Bankwesengesetz* (Federal Banking Act), should be assigned a risk weighting of no more than 20%.

The haircut referred to in para 2 shall be based on the positive replacement value of the respective derivative position:

Time to maturity	Interest-rate-based transactions	Exchange-rate-based transactions	Share-price-based transactions
less than 1 year	0.00%	1.0%	6.0%
from 1 year to 5 years	0.5%	5.0%	8.0%
more than 5 years	1.5%	7.5%	10.0%

Regarding article 29:

Largely consistent with European practice as set out in Box 27 of CESR's Guidelines CESR/10-788 , according to which priority should be given to the commitment approach where appropriate. The commitment approach is unsuitable for certain complex financial derivative instruments, however, and therefore inappropriate, so that it is necessary to fall back on the "maximum-loss" approach as the only permissible alternative. That is approach is generally less accurate than the commitment approach but it is the only approach that can be used in the above-mentioned situation of complex financial derivative instruments. In that case, there is no more accurate or more conservative approach, so that it is not necessary to adopt that qualification regarding the use of the "maximum-loss" approach under Box 27 of CESR's Guidelines CESR/10-788.

The calculation of the capital charge for counterparty risks is determined in accordance with the recommendation of the European Commission regarding the use of derivatives in Undertakings for Collective Investment in Transferable Securities (UCITS) that was published in OJ L 144, 30.04.2004, p. 35, according to the market valuation method of Directive 2000/12/EC (OJ L 126, 26.05.2000, p. 1).

Regarding article 30:

This provision corresponds to Article 9 of *3. Derivate-Risikoberechnungs- und Meldeverordnung* (3rd Derivative Risk Measurement and Reporting Regulation), Federal Law Gazette II No. 169/2008 implementing Art. 9 of Directive 2007/16/EC (OJ L 79, 20.03.2007, p. 11). In addition, CESR's Guidelines CESR/07-434 for the treatment of hedge fund indices is taken into account.

Regarding article 31:

This provision corresponds to Article 10 of *3. Derivate-Risikoberechnungs- und Meldeverordnung* (3rd Derivative Risk Measurement and Reporting Regulation), Federal Law Gazette II No. 169/2008. According to the explanations on the *Regierungsvorlage zur Investmentfondsgesetz-Novelle 2008* (Government Bill on the Amendment of the Investment Fund Act of 2008) (452 d.B, XXIII GP) the supervision referred to in article 21 para 1 no 1 *Investmentfondsgesetz 1993* (article 73 para 1 no 1 *Investmentfondsgesetz 2011* [Investment Fund Act of 2011]) should be allowed a sufficient margin of flexibility in order to take into account new findings of the European supervisory authorities regarding hedge fund indices. Article 31 of this regulation takes into account those findings in compliance with CESR's Guidelines CESR/07-434.

Regarding article 32:

This provision corresponds to article 11 of *3. Derivate-Risikoberechnungs- und Meldeverordnung* (3rd Derivative Risk Measurement and Reporting Regulation), Federal Law Gazette II No. 169/2008. It takes into account Art. 10 of Directive 2007/16/EC. In keeping with the relevant European practices (CESR's Guidelines CESR/07-044), collateralized debt obligations (CDO) or asset-backed securities (ABS) with or without active management are generally not regarded as financial instruments embedding a derivative unless they are leveraged or insufficiently diversified. Where such a product is structured in such a way as to be an alternative to an OTC derivative, it should be treated as such for the sake of consistent application of the investment rules. That applies, for example, to single tranche CDOs, which are required to meet the specific requirements of a UCITS. In the

case of a single tranche CDO, a bond is issued by a bank or SPV (special purpose vehicle). The credit risk involves both the issuer credit risk and the portfolio risk. Investors can achieve a higher return then with a plain vanilla bond with the same maturity.

The following instruments may be assumed to embed a derivative: credit-linked notes; structured products whose performance is linked to a bond index or basket of equity securities, where it is irrelevant whether it is actively managed or not; guaranteed structured products whose performance is linked to a basket of equity securities, where it is irrelevant whether it is actively managed or not; convertible bonds; exchangeable bonds.

Regarding article 33:

This provision corresponds to article 12 of *3. Derivate-Risikoberechnungs- und Meldeverordnung* (3rd Derivative Risk Measurement and Reporting Regulation), Federal Law Gazette II No. 169/2008. It takes into account CESR's Guidelines CESR/07-044 regarding Art. 10 of Directive 2007/16/EC. The express statement in the Guidelines that embedded financial derivative instruments must not be used to circumvent the Directive is not included in the body of this regulation since it is generally prohibited to use derivatives for purposes of circumvention.

Regarding article 34:

This provision corresponds to article 13 of *3. Derivate-Risikoberechnungs- und Meldeverordnung* (3rd Derivative Risk Measurement and Reporting Regulation), Federal Law Gazette II No. 169/2008. It is covered by the authorisation to issue regulations under article 87 para 3 *Investmentfondsgesetz 2011* (Investment Fund Act of 2011).

In accordance with the recommendation of the European Commission regarding the use of derivatives in Undertakings for Collective Investment in Transferable Securities (UCITS) that was published in OJ L 144, 30.04.2004, p. 35, the requirements applicable to financial derivative instruments are therefore not specified in the context of short selling of investment instruments

Regarding article 35:

Pursuant to article 14 para 5 *Investmentfondsgesetz 2011* (Investment Fund Act of 2011), the FMA may issue a regulation establishing the required timeframe, format and scope of the reports to be communicated to the supervisory board or directors. That is laid down in article 35.