

# Corporate Governance Report 2016

FMA Executive Board and Supervisory Board Report pursuant to  
the Federal Public Corporate Governance Code (B-PCGK)

The Federal Corporate Governance Code (B-PCGK; Bundes Public Corporate Governance Kodex) was adopted by the Austrian Federal Government on 30 October 2012. Its aim is to make the management and supervision of state-owned enterprises more transparent and verifiable, while also providing a clearer definition of the role played by the state and state enterprises in the capacity of owner.

In accordance with point 3.4.3, the definition of “state-owned enterprises” also includes “public-law institutions (...) as defined in Article 126b of B-VG that are subject to supervision by the federal government”. Additionally, pursuant to point 4.1, the B-PCGK applies to state-owned enterprises with more than ten employees or annual income of EUR 300 000 unless such application is prevented by statutory regulations that are binding on the enterprise concerned. Unlike the Austrian Corporate Governance Code (ÖCGK), which is primarily aimed at (listed) joint stock companies, the B-PCGK is aimed at a heterogeneous mix of entities, also including enterprises with a range of different regimes under company law. Consequently, the mandatory “L” rules contained in the B-PCGK are not a direct rendering of the statutory rules that are otherwise directly applicable to the enterprise. It must therefore be concluded that the intention when drawing up the B-PCGK was that mandatory statutory provisions governing the organisational set-up of an enterprise should take precedence over the corresponding rules contained in the Code.

The Austrian Financial Market Authority (FMA) falls within the intended scope of the Code as envisaged by the federal government. The FMA’s statutory bodies avail themselves of this opportunity to commit to the terms of the B-PCGK in their area of responsibility insofar as the Code’s application is not limited by specific statutory rules, notably the Financial Market Authority Act (FMABG; *Finanzmarktaufsichtsbehördengesetz*).

## 1 DECLARATION BY THE EXECUTIVE BOARD AND SUPERVISORY BOARD OF THE FMA

### 1.1 DECLARATION

The Executive Board and Supervisory Board of the FMA, in their capacity as the FMA’s statutory bodies (management and supervisory body), commit to the principles enshrined in the B-PCGK and declare that, as of the 2016 financial year-end, the applicable rules of the B-PCGK that are not superseded by provisions of the FMABG have been met in their respective areas of responsibility. The terms of the B-PCGK shall also be deemed to be observed provided that the reasons for any deviation are explained.

In keeping with this (L-12.1), the following deviation from an applicable C rule is explained and justified.

## 1.2 DEVIATION

Pursuant to C rule 8.3.3.2, the terms of any D&O liability insurance policy should include a deductible of at least 10% of the claim up to a maximum of one and a half times the annual remuneration of the manager concerned. An appropriate deductible should be agreed with members of the supervisory body when taking out such an insurance policy.

In accordance with the legal mandate, the FMA has therefore taken out an insurance policy for its bodies and employees. The policy terms do not include a deductible of “at least 10% of the claim up to a maximum of one and a half times the annual remuneration of the manager concerned”.

## 2 DESCRIPTION OF THE EXECUTIVE BOARD OF THE FMA

The FMA is headed by Helmut Ettl, born on 23 August 1965, and Klaus Kumpfmüller, born on 29 November 1969.

Helmut Ettl was appointed for the first time on 14 February 2008 and reappointed on 14 February 2013. His current term of office ends on 13 February 2018. Klaus Kumpfmüller was appointed for the first time on 14 February 2013. His current term of office ends on 13 February 2018.

In accordance with Article 5 para. 1 FMABG, the FMA Executive Board is a collegial body comprising two persons. Pursuant to Article 5 para. 2 of the FMA’s Rules of Procedure, the Executive Board takes decisions by unanimous vote. There is no provision for an allocation of responsibilities among the managers (L-12.2.3). In accordance with Article 3 of the FMA’s Rules of Procedure and regardless of the deputising arrangements set out in these Rules, the Executive Board bears collective responsibility.

## 3 REMUNERATION OF THE EXECUTIVE BOARD AND SUPERVISORY BOARD MEMBERS

The remuneration of the two Executive Directors of the FMA consists solely of fixed components (no variable components are budgeted) and amounted to EUR 260,207.22 before taxes per director and year in 2016.

Remuneration paid to the six voting members of the Supervisory Board (unchanged since the FMA was established in 2001) comes to a total of EUR 15,300.00 per annum. The amount can be broken down as follows:

- Chairperson: EUR 3,600.00
- Vice-Chairperson: EUR 2,900.00
- Member: EUR 2,200.00

The remuneration of the members appointed by the Oesterreichische Nationalbank is not paid to the members themselves but to the Oesterreichische Nationalbank, in accordance with the terms of their employment contracts. The members co-opted by the Austrian Federal Economic Chamber do not receive any remuneration.

## 4 CONSIDERATION OF GENDER ISSUES

The FMA actively pursues an equality policy and is committed to equal opportunities regardless of an individual's gender, skin colour, nationality, political persuasion or sexual orientation. It works actively and on a sustained basis to ensure that its working environment is free from discrimination and conducive to equal opportunities, promoting a culture of recognition and mutual respect. Since 1 January 2014, the FMA has been subject to the rules of the Federal Law on the Equal Treatment of Men and Women (B-GIBG; *Bundesgleichbehandlungsgesetz*).

### 4.1 NON-DISCRIMINATION

In the application of the B-GIBG, during 2016 the plan regarding the promotion of women was drawn up, as prescribed under law, with the objective of finalising it and for it to be passed by resolution during the first quarter of 2017. The plan addresses measures for further increasing the proportion of women in managerial functions. The measures that are decided upon will then be implemented involving colleagues from the specialist departments.

### 4.2 GENERAL GENDER ASPECTS

In terms of gender-neutral language all job advertisements, announcements and publications published by the FMA are either gender-neutrally formulated or contain a gender-neutrality disclaimer as applicable. All advertised positions explicitly welcome female applicants to apply.

## 4.3 PROPORTION OF WOMEN IN THE FMA EXECUTIVE BOARD AND SUPERVISORY BOARD AND IN EXECUTIVE POSITIONS

In accordance with Article 6 FMABG, the members of the FMA's Executive Board are appointed by the Federal President on the basis of proposals from the Federal Government. There are currently no women on the Executive Board.

The FMA's Supervisory Board is appointed by the Federal Minister of Finance pursuant to Article 8 FMABG, with the exception of the co-opted members. The Oesterreichische Nationalbank shall name persons for the function of deputy chairperson as well as two additional members of the Supervisory Board. In addition, the Supervisory Board shall co-opt two members named by the Austrian Federal Economic Chamber; however, they shall have no voting right. As at 31 December 2016, the proportion of women on the Supervisory Board was 25 % (two women out of eight members).

As at 31 December 2016, 39% of all executive positions (including Executive Board members, Managing Directors of Departments, Heads of Divisions and Team Leaders) at the FMA are held by women. Across the FMA as a whole, women account for 53.77% of the staff.

In addition to, and irrespective of, the drawing up of the plan regarding the promotion of women pursuant to Article 11a B-GIBG, during the appointment process for senior positions, attention is already paid to ensure that preference is given to female applicants holding the same level of qualifications as their male counterparts, since there is currently still a considerable gender imbalance at this level.

In this regard, the ratio of female to male applicants is disclosed to all employees of the FMA following each successful appointment of senior executives.

## 5 COMPATIBILITY OF CAREER AND FAMILY

As part of the project "Compatibility of Career and Family", the FMA, by developing and implementing family-friendly measures, was awarded the basic certificate of the "Audit *berufundfamilie*" on 15 October 2013 by the Federal Ministry for Economy, Family and Youth, and an audit for the re-certification is being conducted.

The family-friendly measures that have been implemented within this project include, since November 2013, the FMA's company kindergarten. Furthermore, since January 2014 it has been possible for FMA employees to take paternity leave ("*Papamonat*").

A teleworking guideline has been in place since August 2014. Consequently conditions now exist to allow teleworking to be deployed, on the one hand for the FMA to ensure optimum service performance, while on the other hand to also provide a new opportunity for improved compatibility of career and family. In addition to teleworking, flexible part-time employment models also exist to satisfy the requirements placed on employees' time in relation to their family situation.

For employees who are on parental leave, a programme has been introduced for keeping in contact with them, allowing them to still be kept informed while they are on parental leave, and which also helps to make their return to work easier.