Regulation of the Financial Market Authority (FMA) on measures for the limitation of systemic risk in real estate financing at credit institutions *(Kreditinstitute-Immobilienfinanzierungsmaßnahmen-Verordnung)*

KIM-V

Federal Law Gazette II No. 157/2024

Based on Article 23h para. 2 of the Banking Act (BWG; Bankwesengesetz), published in Federal Law Gazette No. 532/1993, last amended by Federal Act in Federal Law Gazette I No. 106/2023, the following shall be determined by Regulation with the consent of the Federal Minister of Finance:

Translator's note: Prior to the amendment published in Federal Law Gazette II 157/2024, the agreed translation for the German term *Beleihungsquote* was "loan-to-value ratio" (abbreviation: LTV). It was decided that *Beleihungsquote* should be translated as "loan-to-collateral ratio" (abbreviation: LTC) as a more precise term. The provisions in Article 4 para. 1, Article 7 para. 1 and para. 4 are otherwise unchanged from the previous version.

TEXT

SECTION 1

GENERAL PROVISIONS

PURPOSE

Article 1. This Regulation determines measures for the reduction of identified changes in the intensity of systemic risk in debt financing arrangements of real estate based on recommendations issued by the Financial Market Stability Board (FMSG; *Finanzmarktstabilitätsgremium*) and the expert opinion of the *Oesterreichische Nationalbank* pursuant to Article 23h BWG.

SCOPE OF APPLICATION

Article 2. (1) CRR credit institutions pursuant to Article 1a para. 1 no. 1 BWG established in Austria, CRR credit institutions that are licensed pursuant to Article 4 para. 4 BWG, as well as CRR credit institutions from other Member States that are active in Austria via a branch pursuant to Article 9 para. 1 BWG shall be required to observe the measures determined in this Regulation.
(2) The measures defined in this Regulation shall apply to private residential real estate financings that are not bridging loans (Article 3 no. 4).

DEFINITION OF TERMS

Article 3. For the purposes of this Regulation, the following definitions shall apply:

1. private residential real estate financing: real estate financing arrangements pursuant to Article 2 no. 46 BWG,
   a. that are intended for the construction or acquisition of residential real estate pursuant to point 75 of Article 4 (1) of Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, OJ L 176, 27.06.2013, p. 1, in the version amended by Regulation (EU) 2021/558, OJ L 116, 06.04.2021, p. 25,
   b. with one or more borrowers, but a maximum of four natural persons, who are consumers pursuant to Article 1 para. 1 no. 2 or para. 3 of the Consumer Protection Act (KSchG; *Konsumentenschutzgesetz*) published in Federal Law Gazette No. 140/1979,
   c. which
      aa) are secured against a property in Austria, or
      bb) are not secured against a property in Austria, where at least one borrower pursuant to lit. b) has their principal residence in Austria, and
   d. does not fall within the scope of any of the exceptions pursuant to Article 23h para. 3 BWG;

2. newly agreed private residential real estate financing: private residential real estate financing that was newly agreed by the credit institution with the borrower, with the time of the financial contract being concluded taken as the time of the new agreement. If the volume of financing of an existing financing arrangement is increased, then the new financing arrangement exists only for the difference between the renegotiated financing volume compared to the previously remaining outstanding amount. In the case of a master loan agreement, the agreement for a new financing shall only be for the amount of the difference between the previous and newly arranged arrangement. Other changes or the rolling over of the financing agreement, including changes in the purpose of the financing, the interest rate, the term, the repayment schedule, currency conversions, consolidations or unbundling of financing arrangements as well as deferrals and other measures for non-performing loans, shall not be considered as new arrangement for a private residential real estate financing. Private residential real estate financings, that were newly arranged from 01 April 2023 as a bridging loan (no. 4) and the term of which was extended by means of a corresponding agreement to a period exceeding two years, shall at the time of the extension be considered as a newly arranged private residential real estate financing pursuant to Article 2 para. 2;
3. reference period: the respective periods from 1 January until 30 June and from 1 July to 31 December;
4. bridging loan: private residential real estate financings with an agreed term of a maximum of two years, for which the credit institution has arranged with the borrower:
    a. that the loan is to be repaid out the proceeds of the sale of an immovable property, which at the point in time at which the bridging loan was concluded:
        aa) is owned by the borrower, is lived in by the borrower or their family members as defined in Article 72 of the Austrian Criminal Code (StGB; *Strafgetzbuch*) and for which the credit institution obtains a registerable pledge deed, or
        bb) pursuant to Article 7 para. 3 no. 1 serves as collateral for the bridging loan, where the loan amount does not exceed 90% of the amount of the mortgage,

    whereby the loan amount plus prior liens on the property does not exceed 80% of the market value of the property pursuant to Article 4 (1) no. 76 of Regulation (EU) No. 575/2013. The market value shall be determined and documented while observing the requirements pursuant to paras. 209 to 214 of EBA Guidelines on loan origination and monitoring published by the European Banking Authority on 29 May 2020 (EBA/GL/2020/06). Prior liens shall not be considered, if the credit institution ensures and documents at the point in time of bridging loan agreement that the prior lien shall be repaid by means of the bridging loan and shall therefore be expunged from the land register (*Grundbuch*); or
    b. the loan amount is to be repaid by a subsidy for the construction or purchase of residential property,
        aa) that is granted as a cash benefit and is not repayable by the borrower (subsidy),

bb) that is granted by a legal entity pursuant to Article 111 points (a) to (c) of Regulation (EU) No. 575/2013, and

cc) for which the borrower at the time of the bridging loan being paid out has a subsidy commitment of a binding character for the grant of and paying out of the subsidy;

5. Prefinancing from building savings loans and promotional loans: loans with an agreed term of a maximum of two years, for which the credit institution has arranged with the borrower, to

a. repay the loan amount from a loan from a building society pursuant to Article 2 para. 1 no. 1 and no. 2 lits. a and b of the Building Society Act (BSpG; *Bausparkassengesetz*), published in Federal Law Gazette No. 532/1993, for which the borrower has approval of a binding character for the granting and pay-out of the loan at the point in time of the prefinancing being paid out, which has been granted by the building society following a check to see that the requirements set out in the BSpG have been fully met, or

b. repay the loan amount from a private residential real estate financing, for which the borrower, at the time of the prefinancing being paid out, has a commitment of a binding character pursuant to Article 112 lits. a to c of Regulation (EU) No 575/2013 for granting, supporting or securing of this private residential real estate financing (promotional loan);

6. assessment period: the current or preceding reference period, depending on in which reference period the total of the loan amounts of newly arranged financings by the credit institution pursuant to Article 2 para. 2 is greater.

Otherwise the definitions pursuant to Article 2 BWG shall apply.

SECTION 2

MEASURES

UPPER LIMITS

Article 4. The following upper limits apply for newly arranged private residential real estate financing:

1. 90% for the loan-to-collateral ratio (LTC),
2. 40% for the debt service-to-income ratio (DSTI),
3. 35 years for the maximum maturity of loans.

DE MINIMIS THRESHOLD

Article 5. (1) Newly agreed financings pursuant to Article 2 para. 2 shall be excluded from the application of the measures pursuant to Article 4 in accordance with para. 2, if when taking into consideration the calculation rules pursuant to Article 9 the amount of all the borrower's

outstanding credit liabilities from private residential real estate financing including the newly agreed financing does not exceed € 50 000 (borrower-based de minimis threshold).
(2) The upper limit for the proportion of financings excluded pursuant to para. 1 out of all financings newly arranged by the credit institution pursuant to Article 2 para. 2, taking into consideration the calculation rules pursuant to Article 9 shall be 2% (institution-related de minimis quota).

INSTITUTION-BASED EXEMPTION BUCKETS

Article 6. Newly arranged financings pursuant to Article 2 para. 2 shall be allowed to exceed the upper limits pursuant to Article 4, provided that the credit institution ensures, taking into account the calculation rules pursuant to Article 10, that a maximum of 20% of newly arranged financings pursuant to Article 2 para. 2 that are not exempted pursuant to Article 5 or financings with a total volume of € 1 000 000 for each reference period, depending on which value is higher, shall be permitted to exceed the upper limits pursuant to Article 4.

SECTION 3

CALCULATION RULES

CALCULATION OF THE LOAN-TO-COLLATERAL RATIO (LTC RATIO)

Article 7 (1) Credit institutions shall calculate the loan-to-collateral ratio pursuant to Article 23h para. 2 no. 1 BWG using the following formula:

$$LTC\ ratio = \frac{\sum financing\ arrangements\ pursuant\ to\ Art.\,2\ para.\,2}{\sum \min(property\ market\ value - prior\ liens; mortgage) + other\ collateral_{CRR}}$$

(2) ∑ *financing arrangements pursuant to Art. 2 para. 2* is the total amount of the newly agreed financing pursuant to Article 2 para. 2 plus the outstanding residual amount of existing financings pursuant to Article 2 para. 2. Existing financings pursuant to Article 2 para. 2 shall be taken into account, where they have been granted by the same credit institution to the same borrower or borrowers as the newly arranged financing pursuant to Article 2 para. 2. Existing private residential real estate financings shall be recognised as the outstanding residual amount at the time of the new financing being agreed plus unused credit facilities.
(3) ∑ *min (property market value - prior liens; mortgage)* is the total amount of the immovable property serving as collateral pursuant to no. 1, with their values being calculated pursuant to no. 2:

1. “Immovable property serving as collateral” means property for which at the time of the new financing being agreed there is a mortgage entered in the land register for financing that is taken into account in the denominator pursuant to para. 2. Immovable properties do not constitute suitable collateral for the newly agreed financing where their proceeds of sale pursuant to Article 3 no. 4 lit. a are intended to repay a bridging loan. Furthermore, an

immovable property shall also be taken into account if the credit institution enters a mortgage in the land register without undue delay,

a. that is undertaken or ensured at latest six months following the financing arrangement being agreed, that the pay-out of the amount of the loan shall only take place once the entry has been made in the land register (*Grundbuch*), or

b. where the amount of the loan shall be paid out to a fiduciary who shall ensure that the mortgage is entered in the land register (*Grundbuch*).

2. Immovable properties pursuant to no. 1 shall be considered at their market value pursuant to Article 4 (1) no. 76 of Regulation (EU) No 575/2013 less the amount of any prior liens, up to a maximum of the amount entered in the land register or the mortgage to be entered pursuant to no. 1 third sentence. Where a financing arrangement to be considered in the denominator pursuant to para. 2 was granted for the construction of a residential property, then the market value of this immovable property shall be the expected value after construction has been completed, although in this case the amount entered in the land register or the mortgage to be entered pursuant to no. 1 third sentence shall be the upper limit. Prior liens shall not be considered in the case that the credit institution ensures and documents at the time of the new financing pursuant to Article 2 para. 2 being arranged that the prior lien is to be repaid by the newly arranged financing and to be expunged from the land register. Multiple immovable properties, for which a collective blanket mortgage (Article 15 of the General Land Registry Act 1955 (GBG 1955; *Allgemeines Grundbuchsgesetz 1955*), published in Federal Law Gazette No. 39/1955) has been extended are to be taken into consideration collective up to a maximum of the amount of the blanket mortgage.

(4) In the denominator of the loan-to-collateral ratio pursuant to para. 1, funded credit protection pursuant to Articles 197, 198 and 200 of Regulation (EU) No 575/2013 shall be recognised as "*Other collateral*$_{CRR}$" irrespective of the approach and method used to take into account collateral pursuant to Part 3, Title II, Chapter 4 of Regulation (EU) No 575/2013, which:

1. meet the requirements of Articles 207 and 212 of Regulation (EU) No 575/2013,
2. serve as collateral for financing taken into account in the numerator pursuant to para. 2, and
3. are not already taken into account in accordance with para. 3.

Other collateral$_{CRR}$ shall be recognised at its value as reported in accordance with the internal risk management, taking into account adequate volatility adjustments.

CALCULATION OF THE DEBT SERVICE-TO-INCOME RATIO (DSTI RATIO)

Article 8. (1) Credit institutions shall calculate the debt service-to-income ratio pursuant to Article 23h para. 2 no. 3 BWG using the following formula:

$$debt\ service\ to\ income\ ratio = \frac{total\ debt\ service}{income}$$

(2) In the numerator of the debt service-to-income ratio pursuant to para. 1, the total of interest and repayments from servicing all the borrower's credit liabilities, shall be applied as the total debt

service calculation over the period of one year. Interest payments and principal repayments by the borrower towards third party lenders shall also be taken into account. Irrespective of the actual repayment schedule, it is mathematically assumed that there will be ongoing repayments with constant annuities over the entire term of both the existing financing and the newly agreed financing. With regard to the newly agreed financing arrangement, it shall be assumed that it shall be fully repaid at the end of the term. This shall also apply for bullet financing arrangements. In the case of bridging loans (Article 3 no. 4) the residual repayment amount at the end of the term shall not be considered in the total debt service. Prefinancing arrangements using building savings loans and promotional loans (Article 3 no. 5) shall be treated together with the prefinanced building savings loan (Article 3 no. 5 lit. a) or promotional loan (Article 3 no. 5 lit. b) as a single financing arrangement for the purposes of the calculation of the debt service-to-income ratio. Existing financing arrangements shall not be considered, provided that the credit institution ensures and documents that the existing financing arrangement is repaid by means of the newly arranged private residential real estate financing. If the borrowers of the newly agreed financing consist of several persons (Article 3 no. 1 lit. b) or if persons guarantee the newly agreed financing as guarantors and payers (Article 1357 of the General Civil Code (ABGB; *Allgemeines bürgerliches Gesetzbuch*) then the total amount of interest payments and repayments of all borrowers and of the guarantors and payers shall be added together. Where a borrower or a guarantor and payer of the newly arranged financing is obliged to make interest payments or loan repayments for an additional loan obligation, for which they are the borrower together with one or several third parties, then the interest payments and loan repayments from this additional loan obligation shall be taken into account in the total debt service as their proportion pursuant to para. 3.

(3) The share of third-party liabilities to be taken into account in the total debt service within the meaning of the final sentence of para. 2 shall be calculated as follows:

$$DS_A = DS_G * \frac{INC_M}{INC_G}$$

DS_A is the share of the debt service to be taken into account in the total debt service for a third-party liability

DS_G is the total debt service for the third-party liability

INC_M is the income pursuant to para. 4 of the third-party liability's borrowers who are also borrowers or guarantors and payer of the newly agreed financing arrangement

INC_G is the income of all borrowers of the third-party liability

(4) Annual income pursuant to Article 2 para. 2 of the Income Tax Act 1988 (EStG 1988; *Einkommensteuergesetz 1988*), published in Federal Law Gazette No. 400/1988, after deduction of taxes and levies and plus transfer payments shall be used as income in the denominator of the debt service-to-income ratio pursuant to para. 1. Income components including transfer payments shall only be taken into account provided they are verified, regular and sustainable. They shall be considered verified where the credit institution is satisfied about their actual existence or their being realised in the future being assured and has documented this. Income components shall be

considered as being regular and sustainable if, at the time the financing is agreed, it is possible to assume that a corresponding total income will be generated regularly throughout the entire term. In the case of fluctuating income components, the development over at least the past three years shall be taken into account by the credit institution as part of an overall assessment for checking regularity and sustainability. Transfer payments shall only be taken into account if the borrower has a legal claim to their regular, sustainable payment. Where the borrowers of the newly agreed financing consist of several persons (Article 3 no. 1 lit. b) or if persons guarantee the newly agreed financing as guarantors and payers (Article 1357 of the General Civil Code (ABGB; *Allgemeines bürgerliches Gesetzbuch*), then the total income of all borrowers and of the guarantors and payers shall be added together. Interest payments or repayments that are considered in the numerator of the debt service-to-income ratio pursuant to para. 2 or 3 shall not reduce the income pursuant to para. 4, irrespective of their treatment under tax law.

(5) The debt service-to-income ratio shall be calculated based on the information available at the time the new financing being agreed. Credit institutions shall take and document appropriate actions to obtain and verify the information on the borrower's income and interest payments and repayment obligations that are relevant for the calculation of the debt service-to-income ratio.

CALCULATION RULES FOR THE DE MINIMIS THRESHOLD

Article 9. (1) Credit institutions must calculate whether a newly agreed financing arrangement falls under the de minimis threshold pursuant to Article 5 para. 1 using the following formula:

Total indebtedness from private residential real estate financing arrangements
≤ borrower based de minimis threshold

Total indebtedness from private residential real estate financing arrangements means the total amount of the newly agreed financing pursuant to Article 2 para. 2 plus the outstanding residual amount of existing private residential real estate financing arrangements. The borrower's private residential real estate financing arrangements towards third party creditors shall also be taken into account. Where the borrowers of the newly agreed financing arrangement are multiple persons (Article 3 no. 1 lit. b), then the total amount of private residential real estate financing arrangements for all borrowers are to be added together. Credit institutions shall take and document appropriate actions to obtain and verify the borrower's information that is relevant for calculating the borrower's total indebtedness. If a borrower of the newly arranged financing is the obligor of a further private residential real estate financing agreement, in which they are the borrower together with one or more third parties, then this additional loan liability shall be taken into account in the overall indebtedness using its share pursuant to para. 2.

The *borrower-based de minimis threshold* is the amount stated in Article 5 para. 1 (€ 50 000). In the case of newly arranged financing, the joint borrowers of which are a married couple, in a registered

partnership together or persons living together in a domestic relationship pursuant to Article 72 para. 2, then this amount shall increase to twice the amount (€ 100 000).

(2) Third-party liabilities pursuant to the second subparagraph of para. 1 shall be taken into account in the total debt on a pro rata basis as follows:

$$D_A = D_G * \frac{INC_M}{INC_G}$$

D_A is the share of the third-party liability to be taken into account in the total debt

D_G is the total outstanding residual amount of the third-party liability

INC_M is the income pursuant to Article 8 para. 4 of the third-party liability's borrowers who are also borrowers of the newly agreed financing

INC_G is the income of all borrowers of the third-party liability

(3) the volume of the institution-based de minimis quota (iGk) shall be calculated by credit institutions using the following formula:

$$iGk = 0.02 * new\ financing\ arrangements_{\ assessment\ period}$$

iGk is the total volume of the institution-based de minimis quota for a given reference period.

$new\ financing\ arrangements_{\ assessment\ period}$ is the total of the loan amounts for newly arranged financing pursuant to Article 2 para. 2 within the reference period.

CALCULATION RULES FOR THE EXEMPTION BUCKET

Article 10. (1) Credit institutions shall ensure compliance with the requirements for the institution-based exemption bucket pursuant to Article 6 based on the following formula in accordance with the calculation rules pursuant to paras. 2 to 6:

New financing arrangements with exceeded thresholds ≤ total volume of exemption bucket

(2) For the purposes of para. 1, the total volume of newly agreed financing arrangements pursuant to Article 2 para. 2 that is to be counted towards the exemption bucket due to the upper limits pursuant to Article 4 being exceeded shall be calculated respectively in accordance with the calculation rules pursuant to paras. 3 and 4 as follows:

New financing arrangements with exceeded thresholds = (new financing arrangements excluding loans below the de minimis threshold) with spillover + spillover for exceeded threshold for loans below the de minimis threshold

(3) For the purposes of para. 2, *(new financing arrangements excluding loans below the de minimis threshold) with spillover* means the total of loan amounts of financing arrangements pursuant to Article 2 para. 2 newly agreed upon by a credit institution within an assessment period that do not fall under the borrower-based de minimis threshold pursuant to Article 9 para. 1, and which exceed one or more of the upper limits stated in Article 4 nos. 1 to 3.

(4) The following shall apply for the purposes of para. 2:

$$\textit{Spillover for exceeded threshold for loans below the de minimis threshold} = \textit{max (loans below the de minimis threshold with an exceeded threshold-iGk;0)}$$

loans below the de minimis threshold with an exceeded threshold is the total of loan amounts of financing arrangements pursuant to Article 2 para. 2 newly agreed upon by a credit institution within an assessment period that do fall under the borrower-based de minimis threshold pursuant to Article 9 para. 1, and which exceed one or more of the upper limits stated in Article 4 nos. 1 to 3.
iGk is the institution-based de minimis quota pursuant to Article 9 para. 3 for the respective assessment period.
(5) For the purposes of para. 1, the total volume of the exemption bucket pursuant to Article 6 shall be calculated using the following formula in accordance with the calculation rule pursuant to para. 6:

$$\textit{Total volume of the exemption bucket} = \textit{max [lower threshold; p *(new financing arrangements excluding loans below the de minimis threshold}_{\textit{assessment period}} + \textit{spillover volume)]}$$

lower threshold is the lower limit amount specified in Article 6 nos. 1 to 4 for the respective exemption bucket.
p is the percentage specified in Article 6 for the exemption bucket.
$\textit{new financing arrangements excluding loans below the de minimis threshold}_{\textit{assessment period}}$ is the sum of the loan amounts of the newly arranged financings by a credit institution within the assessment period pursuant to Article 2 para, 2, which do not fall under the borrower-based de minimis threshold pursuant to Article 9 para. 1.
(6) The following shall apply for the purposes of para. 5:

$$\textit{Spillover volume} = \max(\textit{Loans below the de minimus threshold}_{\textit{assessment period}} - \mathrm{iGk}; 0)$$

$\textit{Loans below the de minimis threshold}_{\textit{assessment period}}$ is the sum of the loan amounts of the financial arrangements newly agreed by the credit institution within the assessment period which fall under the borrower-based de minimis threshold pursuant to Article 9 para. 1.
iGk is the institution-based de minimis quota pursuant to Article 9 para. 3 for the respective reference period.

SECTION 4

FINAL PROVISIONS

ENTRY INTO FORCE AND REPEAL

Article 11. (1) This Regulation shall enter into force on 01 August 2022 and repealed at the end of 30 June 2025. It shall apply to financing arrangements that are newly arranged between 01 August 2022 and 30 June 2025. By way of derogation from Article 3 no. 3 the initial reference period shall be from 01 August 2022 until 31 December 2022. The reference period preceding the initial reference period shall be the period from 01 March 2022 until 31 July 2022.

(2) Article 2 paras. 1 and 2, Article 3 nos. 2 to 6, Article 5, Article 6, Article 7 paras. 1 to 3, Article 8 para. 2, Article 9 paras. 1 and 3 as well as Article 10 paras. 2 to 6 in the version of the Regulation amended in Federal Law Gazette II No. 79/2023 shall enter into force on 01 April 2023. Bridging loans arranged prior to 01 April 2023 shall also be considered thereafter as financing arrangements within the scope of this Regulation pursuant to Article 2 para. 2.

(3) Article 6, Article 9 para. 2 and Article 10 paras. 1 and 3 to 5 in the version of the Regulation amended in Federal Law Gazette II No. 157/2024 shall enter into force on 01 July 2024.