THE CONSUMER FINANCE LAW REVIEW

Fifth Edition

Editors
Rick Fischer and Jeremy Mandell

THE LAWREVIEWS

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PREFACE

Consumer choice for financial products and services is continuing to proliferate across global markets. The ability to reach consumers at any time on their mobile phones, tablets or other devices has helped attract substantial capital investment in consumer financial services. Consumers in many diverse markets, with varying degrees of size, sophistication and modernisation, can now access myriad financial products and services with just a swipe, tap, wave or click. Traditionally cash-based economies now also have a wide range of options for electronic payments, alternative lending and other banking and financial services.

The substantial capital investments have, in turn, attracted non-traditional providers to the consumer financial services marketplace. From garage-based start-ups to billion-dollar valuation technology firms, companies that previously focused on delivering smartphones, social media platforms or internet-browsing capabilities are now developing innovative approaches to meet consumers' rapidly evolving demands. Traditional market participants, including banks and other non-bank financial services providers, have responded by innovating to improve their product and service offerings in order to retain and strengthen their customer relationships.

At the same time, the political landscape in various global markets continues to evolve, and this evolution may affect cross-border investments and payments, broader investments in financial technology, and the nature of regulatory and enforcement oversight.

The increasing rate of innovation in consumer financial services, the changing profile of market participants, and the evolving political landscape have given rise to new legal questions or a different spin on long-standing legal theories. This country-by-country survey of recent developments in consumer financial services considers how these new and different legal theories are being addressed in 11 jurisdictions across the globe, with particular attention to payments, deposits, and revolving credit and instalment credit arrangements.

One fundamental question confronting policymakers around the world is what entity in the financial value chain should be viewed as the provider of the financial product or service. In the alternative lending context, for example, non-bank platform operators are partnering with banks to originate loans either funded on the bank's balance sheet, on the balance sheet of the platform provider, or through raising capital from investors of varying degrees of sophistication. These 'marketplace lenders' in many cases are not lenders at all, but merely technology companies providing a platform that enables lenders to more efficiently source capital. In other cases, regulators and courts have taken the view that the marketplace lender is using a bank partnership to take advantage of the special powers of the regulated bank, without itself being subject to similar regulation. Courts and regulators are taking varying approaches to determine the rights and obligations of each entity participating in an increasingly disintermediated market.

In the payments context, policymakers have taken varying approaches to regulating electronic money schemes, as well as payment interfaces that rely on established payment networks, such as the payment card networks or batch processing networks. These approaches require careful consideration of the precise flow of funds to determine whether the payment provider accepts liability to one or more participating consumers.

Another defining characteristic of global consumer financial products and services is an increasing reliance on third-party service providers. This characteristic has led many banking regulators to focus on banks' vendor risk management programmes. Many regulators have created an expectation that banks have a hands-on, risk-based approach to managing service provider relationships, including thorough due diligence, review of policies and procedures, ongoing oversight and monitoring, and contractual provisions related to regulatory compliance. Notwithstanding the risk-based approach, these regulatory expectations are imposing significant costs on banks and their downstream service providers.

Other legal issues are affecting payment providers, consumers and regulators, as payment system stakeholders pursue faster payments and digital currencies. Jurisdictions around the world are at varying stages of developing or implementing a ubiquitous, secure and efficient electronic payment system. Stakeholders are pursuing faster payments and digital currencies as a means to make more convenient, timely and cost-effective payments, including cross-border payments. Well-settled legal issues, including settlement finality and consistent consumer protections, must be considered anew in these contexts.

Established payment system stakeholders, including payment card networks, are also refining fraud protections and data security measures to address an evolving risk landscape. For example, tokenisation in the payment card space is one fraud prevention measure that continues to achieve greater penetration by card issuers, card networks and mobile wallet providers.

The evolution of consumer demands also raises new and interesting legal questions. For example, consumers and service providers are seeking to access and aggregate account or transaction data from multiple financial institutions. There is an ever-growing number of apps and other tools by which consumers can aggregate account information and receive financial advice and personal wealth management services. These services present significant legal issues for market participants and regulators, including issues related to privacy, data security, data ownership, liability, and consumer choice and control.

High-profile cyberattacks and data security incidents underscore a continuing focus on cybersecurity and data security issues, as they relate to consumer financial services, however delivered. Regulators in many jurisdictions are trending towards more prescriptive requirements, including specific security controls, as well as aggressive enforcement.

The entry of new market participants also raises questions related to fair access to financial services for consumers. For example, marketplace lenders are using new and alternative credit models and sources of data to evaluate potential borrowers who might not otherwise meet the underwriting criteria of traditional lenders. These models and data may not be as thoroughly tested or as demonstrably statistically sound as the credit models or data used by traditional lenders. As a result, in addition to evaluating whether use of such data affects the lender's credit risk, lenders also must carefully consider whether use of alternative credit models and data sources has any unintended adverse impact on classes of potential borrowers. In addition to considering the potential adverse impact of the use of alternative credit models or data on potential borrowers, regulators and courts in some

jurisdictions are revisiting the classes of consumers that are protected by fair lending or equal credit opportunity laws.

Consumer protection authorities continue to focus on combating unfair trade practice, particularly with respect to new market entrants that may not have the same culture of compliance as traditionally regulated financial institutions. Prohibitions on unfair trade practice have been enforced against a broad range of market participants in consumer financial products and services, including payments, credit cards and other credit products, as well as deposit products.

Notwithstanding the many legal issues, this is a time of expanding choice for consumers and an exciting opportunity for consumer financial services providers. Accelerating advancements in technology have given consumers in developing markets, as well as unbanked or under-banked consumers in more well-developed markets, access to financial products and services previously unavailable to them. Thus, regulators and consumer protection agencies are challenged to ensure financial stability and a level playing field, while also promoting consumer choice.

This survey of consumer finance law describes the legal and regulatory approaches taken in the jurisdictions covered. Each chapter addresses the key characteristics of, and current climate within, a particular jurisdiction. Although payments, lending and deposits are the focus of this survey, other financial products and services are discussed where relevant.

Rick Fischer and Jeremy Mandell
Morrison & Foerster LLP
Washington, DC
January 2021

Chapter 2

AUSTRIA

Mimo Hussein[1]

I OVERVIEW

Consumers – in particular borrowers – are, in general, very well protected in Austria. The rules protecting consumers directly and indirectly are enforced by Austrian courts and – as far as they derive from financial regulatory acts – the Austrian Financial Market Authority (FMA). The consumer protection activities in 2020 focused on various different aspects, inter alia, in context with the following:

a the opening of insolvency proceedings of an Austrian bank and legal consequences for consumers;
b the debit master card replacing the classic cashpoint card and legal consequences for consumers;
c the market entry of a German online deposit channel in Austria;
d the pre-repayment by consumers as lessees under vehicle leasing agreements;
e the liability of consumers for damages on leased assets caused by slight negligence of consumers as lessees; and
f the timeliness of wire transfers of consumers in financial agreements.

II LEGISLATIVE AND REGULATORY FRAMEWORK

i Legislation

In Austria, consumers benefit from a very high level of statutory protection. Consumer finance issues are mainly provided for in the following laws and – where applicable – their European law equivalents:

a Federal Act concerning the Distance Marketing of Consumer Financial Services implementing Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services.
b Federal Act Establishing Provisions for the Protection of Consumers (KSchG) implementing Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights.
c Federal Act on Off-Premises and Distance Contracts (FAGG) implementing Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights.

1 Mimo Hussein is a senior associate at Wolf Theiss.

d Federal Act concerning Consumer Credits (VKrG) implementing Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers (CAFCD).

e Federal Act concerning Consumer Credits with respect to Mortgages (HiKrG) implementing Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property.

In addition, various consumer protection rules and provisions derive from MiFID2[2], PSD2[3], CRD[4] (respectively, its respective national implementation act) and other financial regulatory regulations/directives. Additional provisions in other laws such as data protection laws, general civil laws or certain other administrative laws strengthen the very high statutory safety level for consumers.

ii Regulation

Generally, laws are implemented by the Austrian parliament, ordinances are established by the competent authorities, and both are enforced by the relevant administrative authorities. With respect to financial market issues (including consumer finance regulations), the supervising authority for banks is the FMA, as well as partially the Austrian National Bank and the European Central Bank (the latter being the single supervisory mechanism). In general, banks that infringe the administrative provisions of consumer protection laws face administrative fines (in a worst case scenario the loss of their banking licence is theoretically also possible) and also may be sued by consumers who incurred damage as a result of the breach.

Additionally, consumers may contact the ombudsman of the Joint Alternative Dispute Resolution Institution of the Austrian Credit Institution Sector, or – but only with respect to foreign currency loans – the Alternative Dispute Resolution Institution for Consumer Deals. Both bodies are responsible for out-of-court settlement of consumer disputes and are competent bodies under Article 3 of the Alternative Dispute Resolution Act, which implements Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes. Generally, alternative dispute resolution procedures require the consent of the defendant and are not mandatory, meaning that a bank may refuse to participate, which leaves the consumer with the option to file a claim.

Furthermore, consumers may approach the Consumer Association for Consumer Information (VKI), the most well-known, organised and powerful consumer association in Austria. The VKI is very active with respect to the supervision of general terms and conditions of banks and other financial institutions; it has fought and won many actions for consumers leading to a very detailed and consumer-friendly Austrian Supreme Court practice in recent years. In general, case law protects consumers very well in Austria and therefore, conducting business with consumers is not straightforward.

2 Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments.

3 Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market.

4 Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms.

III PAYMENTS

i Overview

The Federal Act on the Provision of Payment Services 2018 (ZaDiG)[5] sets forth the rules under which payment service providers may operate and service users are protected. Payment service providers are not able to opt out of various transparency, information and other obligations when providing their services to consumers. Direct cash transactions between payer and payee, under Section 3(3)(1) of the ZaDiG, are, however, exempted. The general civil law rules apply to direct cash transactions.

Consumer protection measures are mainly set forth as part of the duties of payment service providers to inform consumers (Article 26 et seq. of the ZaDiG) as well as the rules applicable to transaction content (HiKrG with respect to a mortgage credit, etc.).

ii Recent developments

The market for online payment services including mobile payment services is increasing rapidly, in part because of the continuously developing fintech culture. Innovative ideas with respect to the identification of new clients and the usability of mobile and online payment methods are becoming more and more important, and banks are looking to cover the gap between client demand for easy and quick payment methods and the legal framework requiring the financial institutions to provide high safety standards and comply with anti-money laundering and anti-terrorism financing regulations, and know-your-client duties.

Financial technology start-ups (fintechs) and financial innovation think tanks are driving the market's development and continuously bringing new challenges with them. The FMA has set up on its homepage a FinTech Navigator, which is continuously updated and includes the option of contacting the regulator directly if the company does not already have a licence.

The 'new' PSD2-service PIS (payment initiation service) becomes more and more popular and is increasing rapidly. Providers of PIS are third-party providers that initiate payments on behalf of customers. However, customers are not the only ones who reap the benefits of this convenient alternative to conventional online payments by credit card. Such 'new' payment services are also making a positive contribution to the diversity of services in the payment market. Online merchants also appreciate PIS because it is both technically very easy to implement and often cheaper than other payment services.

The 'new' PSD2-service AIS (account information service), which differs from PIS, also is gaining increasing popularity. AIS providers access information stored with account-keeping financial institutions on behalf of a customer. They analyse and consolidate customer and account data so that in turn they can be used for services from other banks and third-party providers. Popular services include multi-banking apps that use AIS to aggregate various online banking accounts under one user interface, or online credit platforms that conduct a real-time credit check based on an aggregated expenditure account and liquidity assessment.

5 The Federal Act on the Provision of Payment Services 2018 came into force on 13 January 2018 – implementing PSD2.

IV DEPOSIT ACCOUNTS AND OVERDRAFTS

i Overview

Banks must hold a banking licence under the Austrian Banking Act (BWG)[6] to administer funds or accept deposits (deposit business) and for the provision of non-cash payment transactions, clearing services and current-account services for other parties (current-account business). Most of the regulations are seen as protective laws allowing the consumer – if a bank breaches its obligations – to claim damages from the bank.

ii Recent developments

In 2020, in Austria one of the leading providers of open banking deposit platforms connecting banks and depositors across the world officially onboarded the first Austrian bank to one of its digital deposit platforms. The mission is clear and is basically to establish open banking as the new industry standard for the deposit business. These open banking deposit platforms allow banks to offer attractive third-party deposit products to their own customers through their existing accounts. Customers of such banks who want a choice of deposit products are no longer forced to laboriously open additional accounts elsewhere. Conversely, the product bank – as far as requiring additional funding for strategic or regulatory aims – is now able to access this deposit market without operating their own expensive retail infrastructure in each foreign country.

V CREDIT

i Overview

Issuing credit cards and providing loans to consumers each requires the bank to have the relevant banking licence (either payment instrument business or lending business) under the BWG.

The decision to give credit to a consumer is at the sole discretion of the credit institution, which must comply with all its obligations under the VKrG (and HiKrG), and the general obligations under the KSchG, the FAGG and the general civil law rules.

The most relevant law, the VKrG, applies to (non-property) loan agreements involving a total loan amount of minimum €200 (no max limit) entered into by an entrepreneur as lender on the one hand and a consumer as borrower on the other hand. The VKrG contains, inter alia, certain pre-contractual information and audit obligations for the lender. In particular, Articles 3–10 of the CAFCD have been implemented by VKrG almost identically into national law and must be complied with by the lender. Furthermore, the VKrG contains the obligation for the lender to use a Standard European Consumer Credit Information Form (ESIS-Merkblatt; see also Annex II CAFCD). Before the conclusion of the loan agreement, the lender must assess the consumer's creditworthiness based on sufficient information, where appropriate obtained from the consumer and, where necessary, based on a consultation of the relevant database. Even if not specifically stipulated in the VKrG: if the lender grants the consumer a loan, where it is clear that the borrower will not be able to repay (because he is financially too 'weak'), there may be a risk that enforcement over a certain amount will not be permissible; that rule has nowadays becomes even more relevant due to covid-19 and

6 Implementing CRD.

the connected uncertainty. The VKrG contains also a right of withdrawal for the consumer according to which the consumer shall have a period of 14 calendar days in which to withdraw from the loan agreement without giving any reason. That period of withdrawal shall begin either from the day of the conclusion of the loan agreement, or from the day on which the consumer receives the contractual terms and conditions and information in accordance with Article 10 of the CAFCD, if that day is later than the day of the conclusion of the loan agreement. The consumer is entitled at any time to terminate unlimited loan agreements free of charge whereby a period of notice is only permissible where it has been explicitly agreed and, if so, only up to a maximum of one month. Consumers are entitled at any time to discharge fully or partially their obligations under a loan agreement whereby they shall be entitled to a reduction in the total cost of the loan (such reduction consisting of the interest and the costs for the remaining duration of the contract). In the event of early repayment of the loan, the lender shall be entitled to fair and objectively justified compensation for possible costs directly linked to early repayment of the loan provided that the early repayment falls within a period for which the borrowing rate is fixed. Such compensation may not exceed the total amount of the agreed interest (when the consumer would not have made any pre-repayment) and may further not exceed 1 per cent of the amount of loan repaid early, if the period of time between the early repayment and the agreed termination of the loan agreement exceeds one year. If the period does not exceed one year, the compensation may not exceed 0,5 per cent of the amount of loan repaid early. Such compensation for early repayment shall not be claimed:

a if the repayment has been made under an insurance contract intended to provide a loan repayment guarantee;

b in the case of overdraft facilities: and

c the amount of the early repayment does not exceed the threshold of €10,000 within a time period of 12 months. Finally, in the event of assignment to a third party of the lender's rights under a loan agreement or the loan agreement itself, the consumer must be informed of the assignment and the assignee.

ii Recent developments

During the first half of 2020, the covid-19 outbreak led to a sudden slowdown in consumer lending in Austria, with the pandemic significantly reducing consumers' wish to take on debt. Declining incomes and rising uncertainty over economic prospects also negatively impacted demand for loans.

During the second half of 2020, consumer lending, however, saw healthy growth in Austria in line with rising disposable incomes. With low interest rates helping to boost demand, leading banks increasingly focused on consumer lending to boost revenues, thus fuelling overall growth.

Furthermore, in recent years the topic of negative interest rates and the banks' obligation to let borrowers benefit from them dominated the discussion of market participants. However, the Austrian Supreme Court has in the meantime developed a standard practice that with respect to 'old' loans, which have no limitations, wording or clauses on negative interest rates, negative interest rates must be passed on to the consumer (but capped at zero).[7] Nowadays, every variable rate arrangement contains such a zero-cap.

7 9 Ob 35/17p.

VI OTHER AREAS

The Austrian Supreme Court's practice with respect to statutory limitation periods and consequential damages in foreign currency loans should be noted. In summary, the Supreme Court holds that the moment when the borrower recognises (or was in the position to recognise or should have recognised) that the loan is detrimental to the borrower's purpose, the statutory limitation period of three years for a damage claim commences. If the borrower is not in the position to claim an exact amount, the borrower must file a claim for a declaratory judgment. If the borrower waits until the damage has actually occurred but the court finds out that the borrower has known (or should have known) that the loan was detrimental for more than three years without filing a claim, the borrower's claim becomes time-barred, and – which is in many cases very important – the same applies to consequential damages resulting from foreign currency loans.[8]

VII UNFAIR PRACTICES

The Austrian Supreme Court and inferior courts throughout the past few years dealt with many claims challenging general terms and conditions clauses with respect to unfair and non-transparent practice. As the Supreme Court has implemented a very strict standard with respect to transparency, many of the clauses used by banks have been found invalid, especially under the KSchG. Although few cases have captured the public interest or been taken up by media or consumer associations, the following are noteworthy:

a a case in which the court held that the consumer must be able to calculate or to understand the calculation of adjustments of the applicable interest rate to the loan; the court of appeal confirmed the court's decision that clauses that do not meet these criteria are not transparent and consequently invalid;[9] and

b a case in which the court held that the consumer must have precise information on potential cost with respect to a loan and its securitisation; the Supreme Court confirmed the court's view that unclear provisions are invalid[10] and that unspecified debt collection costs that – in the worst case – might lead to unjustified cost transfers to consumers are also invalid.[11]

In general, many cases dealt with the following aspects:

a interest calculation including in many cases the lack of transparency of calculation methods, leading in most cases to the invalidity of clauses, which the courts hold should be transparent and understandable; and

b shifting of cost to consumers and extending the term 'cost' to fees and expenses that might be generated in connection with a business relationship, whether or not the consumer has caused such cost, leading in most cases to the invalidity of such clauses as the courts would like costs to be proportionate.

8 10 Ob 51/16x.

9 57 Cg 14/16h.

10 6 Ob 17/16t.

11 43 Cg 8/16y.

The Austrian courts have also decided cases where banks had new clauses implemented in their general terms and conditions that resulted in detrimental provisions for the consumer as to fees or other provisions, leading in most cases to the invalidity of such clauses, as the Austrian courts only recognise balanced new clauses for agreements with respect to consumers.

VIII RECENT CASES

i Enforcement actions

The FMA is not obliged to publish its sanctions, but it will do so in certain situations where publishing is justified for reasons of investor protection. The following descriptions are based on the latest sanctions made public on the FMA's homepage but should not be seen as representative of the FMA's focus:

a non-authorised entities providing licensable banking, payment or investment services or activities to Austrian investors, especially consumers; and

b an authorised credit institution not fulfilling the credit institution's obligations to its creditors, in particular for the safeguarding of assets that have been entrusted to it.

Relating to infringements by authorised entities (such as licensed credit institutions), the FMA in certain cases does not impose administrative fines, but instead orders the entity to stop operation or to change its management board, or both, holding that certain directors are no longer fit and proper. Those actions are not made public according to current law but are one of the regulator's most powerful tools and have been applied in 2020.

ii Disputes settled before the regulator

A dispute between a consumer and a bank might lead to an administrative fine for the bank or the bank's management, but the regulator will not settle the dispute between the consumer and the bank. Individual consumer protection cannot be derived from Austrian regulatory provisions and disputes cannot be settled before the FMA, but consumers can protect their rights before the competent Austrian courts.

As there is no standing practice in Austria with respect to the public disclosure of alternative dispute resolutions, neither the Joint Alternative Dispute Resolution Institution of the Austrian Credit Institution Sector nor the Alternative Dispute Resolution Institution for Consumer Deals has published any relevant cases with respect to consumer finance issues. In most cases publication would not be expected, as from a bank's point of view the confidentiality of out-of-court settlement prevails, while from a consumer's perspective there seems to be no interest in publication because the consumer will have already benefited from the alternative dispute resolution (as the consumer's claim is likely to have been fulfilled).

Austria is 'overbanked', meaning that many banks are competing for a limited number of wealthy clients, which could be interpreted as a very consumer-friendly environment where consumer expectations and claims are more often satisfied than denied.

iii Litigation

One of the most important cases for the protection of consumers (apart from the above-mentioned negative interest decisions by the Austrian Supreme Court) has been decided before the European Court of Justice.[12] In this case, a major bank operating in Austria was offering contracts for internet e-banking to its customers and providing payment services. As part of the general terms in its e-banking contracts, it included a term under which 'notices of changes' were communicated to the customer through the internal mailbox of the bank's internet e-banking system. The bank created a mailbox for every customer in its e-banking system. Customers could access their personal mailbox by logging in with their personal password through the e-banking website. Electronic messages were then transmitted by the bank to that mailbox. There was no supplementary communication, for example, through a message sent to the personal private email of the client informing him or her that a message had been sent to the corresponding e-banking mailbox. The VKI considered that the term and the described set-up did not comply with the duty of providing information in a 'durable medium' set out in Directive 2007/64.

Following the request for a preliminary ruling of the Austrian Supreme Court, the key question for the European Court of Justice was whether electronic information transmitted by the bank to its customer into the respective e-banking mailbox of the customer as described above was provided on a 'durable medium'.

In its ruling, the European Court of Justice established the following two conditions that must be fulfilled for such a system to provide information in a 'durable medium':

a 'that that website allows the user to store information addressed to him personally in such a way that he may access it and reproduce it unchanged for an adequate period, without any unilateral alteration of its content by that service provider or by another professional being possible'; and

b 'if the payment service user is obliged to consult that website in order to become aware of that information, the transmission of that information must be accompanied by active behaviour on the part of the provider aimed at drawing the user's attention to the existence and availability of that information on that website'.

In summary, this decision led to the result that the e-banking solutions have been (heavily) 'renovated' to include some sort of notification (such as email) for customers regarding messages in their e-banking mailbox.

Another local important case[13] dealt with a bank that calculated the cost for reminder fees in cases of late payment without reference to cause or other limitation as 5 per cent on top of the other interest plus additional reminder fees. The court held that unlimited fees – without linking them to the consumer's fault or other circumstances – breaches Austrian mandatory law, which provides that only the necessary cost for out-of-court expenses can be recovered, and the costs in this case were extremely detrimental and invalid as there was no balanced relation between the listed reminder fees and the actual delayed payment or enforced claim.

12 C-375/15.

13 4R 129/15t.

IX OUTLOOK

The covid-19 pandemic is expected to have a negative impact on the development of consumer lending. Although there is still a high level of uncertainty, it is likely that economic contraction in 2020 will lead to considerably higher unemployment in the near term and thus lower income prospects, with economic output only expected to return to pre-covid-19 levels in 2022.

Covid-19 will however undeniably enhance and speed up the development of ongoing (non-personal) digitalisation of all financial sectors and will bring high opportunities for market participants.

In general, it is very likely that digitalisation is unstoppable (in all areas) and will continue to drive the market and gain increasing popularity among all 'players'. Ultimately digitalisation will revolutionise the classic 'old-school' banking business in Austria and such development will also not, and cannot, be stopped by any regulator. However, regulators, in particular the FMA, will continue to focus on this area to ensure proper supervisory mechanisms also over new technologies at all times. This becomes, in particular, evident in relation to virtual currencies, where regulators do all in their power to ensure the application of various supervisory laws (even where the interpretation of various regulatory laws is clearly wrong under a purely formal view).[14] Undeniably, supervisory authorities want to regulate any and all development in the fintech sector, regardless of whether the financial market rules are fitting to the relevant fintech service or activity.

14 Affected market participants may no longer accept that situation and in the near future, case law will overturn clearly misguided regulator interpretation of various regulatory laws.

Appendix 1

ABOUT THE AUTHORS

MIMO HUSSEIN

Wolf Theiss

Mimo Hussein is a member of the Wolf Theiss banking and finance team. Mimo specialises in banking and finance transactions with a focus on advising national and international clients in various financial and regulatory matters (in particular, CRD, MiFID, PSD, AIFMD, UCITS, AML/KYC). Before joining Wolf Theiss, Mimo worked for many years with the Austrian Financial Market Authority (FMA) in the integrated supervision department, where he actively participated in the supervision practice of the FMA. He is the author of several publications on various regulatory matters.

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