

Draft

Federal Act amending the Financial Market Authority Act

The National Council has decided:

The Financial Market Authority Act – FMABG, Federal Law Gazette I No. 97/2001, last amended by federal act in Federal Law Gazette I No. XX/2019, is amended as follows:

1. After Article 23, the following Article 23a together with its heading shall be inserted:

"Regulatory Sandbox

Article 23a. (1) The FMA shall set up a regulatory sandbox. In the sandbox, a participant can test, under the instruction of the FMA, how an innovative business model under development (sandbox business model) of the participant can be implemented in compliance with the applicable federal acts, as amended, listed in Article 2 paras. 1 to 4.

(2) Applications for admission to the sandbox shall be submitted to the FMA. For admission in the sandbox, all of the following prerequisites apply:

1. for the sandbox business model of the applicant, which is based on information and communication technology,
 - a) an assessment as an activity requiring a license, approval, authorization or registration under one of the federal acts listed in Article 2 paras. 1 to 4 or under Regulation (EU) No. 1024/2013 is at least conceivable, or
 - b) the applicant has already been granted a license, approval, authorization or registration under one of the federal acts listed in Article 2 paras. 1 to 4, whereby the applicant may also submit an application together with companies not subject to license, approval, authorization or registration requirements;
2. the execution of the sandbox business model
 - a) requires a supervisory assessment by the FMA in accordance with the federal acts listed in Article 2 paras. 1 to 4, and
 - b) is not reserved for the exclusive evaluation of the European Central Bank, the Single Resolution Board or a European supervisory authority pursuant to Article 21a para. 1 nos. 1 to 4 of this Act, and
 - c) is in the economic interest of an innovative financial center, particularly because of its increased innovative value;
3. there are no fundamental technical or legal obstacles (test readiness) to the implementation of the sandbox business model, with the exception of the legal prerequisites to be clarified in the sandbox under the applicable federal acts, as amended, listed in Article 2 paras. 1 to 4;
4. it is expected that the market readiness of the sandbox business model will be accelerated due to its admission to the sandbox;
5. it is expected that any open supervisory issues can be clarified within the framework of the sandbox.

The applicants shall submit to the FMA all documents, particularly business plans, required for the assessment of the criteria stated in nos. 1 and 2, as well as information and evidence. The fulfillment of the prerequisites pursuant to no. 2 lit. c must be justified separately by the applicant. In addition, the applicant

must provide a reasoned explanation that, in its view, the test readiness pursuant to no. 3 has been achieved. The applicant shall substantiate the prerequisite pursuant to no. 4; the applicant shall specify the issues pursuant to no. 5 in as concrete a manner as possible.

(3) The FMA shall notify the Federal Minister of Finance of complete applications that are ready for assessment pursuant to para. 2. In order to assess the effects of the sandbox business model, an advisory board (regulatory sandbox advisory board) shall be set up at the Federal Ministry of Finance whose rules of procedure shall be laid down by the Federal Minister of Finance. The regulatory sandbox advisory board shall submit an opinion to the FMA on the existence of economic interest pursuant to para. 2 no. 2 lit. c from a macroeconomic and strategic perspective as well as on the assessment of test readiness (para. 2 no. 3) and market readiness (para. 2 no. 4). The members of the advisory board are:

1. a representative of the Federal Ministry of Finance as chairman;
2. a representative of the Federal Chancellery;
3. a representative of the FMA;
4. a representative of the OeNB;
5. as well as up to seven other members to be appointed by the Federal Minister of Finance who, on the basis of professional experience or other relevant specialist knowledge, are suitable to contribute their expertise to the examination;

The members of the advisory board perform their functions on a voluntary basis. The business of the advisory board is conducted by the Federal Ministry of Finance. All persons involved in the preparation of an opinion are obligated to maintain confidentiality about all official, business and company secrets of which they become aware in the course of their duties.

(4) A sandbox participant shall be a company that the FMA has assigned to the sandbox by notice. Participants shall actively participate in the sandbox proceedings. In particular, participants shall, upon request, provide the FMA with information, submit documents and provide access to the information and communication technology underlying the business model. This obligation to cooperate exists insofar as it is necessary for the supervisory assessment of the participant's activities and without prejudice to any obligations of the participant under the federal acts listed in Article 2 paras. 1 to 4. Advertising by sandbox participants must not give the impression that participation in the sandbox is an advantage for consumers. Participation shall be limited to a maximum of two years in accordance with the requirements of the sandbox business model. The FMA shall order the termination of participation at the participant's request or ex officio if the prerequisites for participation no longer apply or if it can be assumed that the intended purpose of participation in the sandbox cannot be achieved.

(5) The FMA may grant a sandbox participant, upon separate application and by official decision, a limited license, approval, authorization or registration in accordance with the applicable federal acts, as amended, listed in Article 2 paras. 1 to 4 for activities which are not reserved to the competence of the European Central Bank, the Single Resolution Board or a European supervisory authority pursuant to Article 21a para. 1 nos. 1 to 4. The FMA may, without prejudice to other statutory provisions, prescribe appropriate requirements, conditions and time limits therein.

(6) Concurrent with granting the limited license, approval, authorization or registration pursuant to para. 5 or, if any such is not required, without unnecessary delay after admission to the sandbox, the FMA shall, after consultation and participation of the participant, develop the conditions for a testing phase including suitable test parameters and measurable objectives for evaluating the implementation of the sandbox business model.

(7) The FMA shall report quarterly in writing to the Federal Minister of Finance on developments in the sandbox. The Minister shall also make these reports available to the advisory board established pursuant to para. 3. Furthermore, upon request, the FMA shall provide the Federal Minister of Finance with information on the sandbox and its participants in order to enable the assessment of macroeconomic or strategic effects of sandbox business models pursuant to para. 3.

(8) To finance the sandbox, the federal government shall make an earmarked contribution of EUR 500 000 per financial year, to be used by the FMA for the costs of the sandbox. Personnel and material expenses incurred by the FMA in connection with the assessment of the qualification for the sandbox pursuant to para. 2, the development of objectives and test parameters pursuant to para. 7 and the reports to the Federal Minister of Finance pursuant to para. 8 shall be covered exclusively by this contribution of the federal government. The costs of the sandbox shall not be allocated to the accounting groups pursuant to Article 19 para. 1. Excluded from this is any marginal deficit of no more than 5 % of the earmarked

contribution pursuant to the first sentence per financial year of the FMA. Such a marginal deficit shall be apportioned among the individual accounting groups by means of a ratio pursuant to Article 19 para. 2. Any surplus shall be allocated to a reserve. The fees pursuant to Article 19 para. 10 for the granting of a license, approval, authorization and registration pursuant to para. 6 shall be borne by the companies themselves. Any revocation and amendment of requirements, conditions and time limits of the limited license, approval, authorization or registration shall not result in additional fees. The obligation to pay costs pursuant to Article 19 para. 5 shall remain unaffected."

2. *The following paras. 40 and 41 shall be added to Article 28:*

"(40) Article 23a in the version of Federal Law Gazette I No. XX/2019 shall enter into force on 31 July 2019.

(41) Article 23 expires on 31 December 2022."