

**MEMORANDUM OF UNDERSTANDING BETWEEN**

**THE *BANCO CENTRAL DO BRASIL***

**AND**

**THE FINANCIAL MARKET AUTHORITY (FMA),**

**THE**

**THE OESTERREICHISCHE NATIONALBANK**

**AND THE**

**AUSTRIAN FEDERAL MINISTRY OF FINANCE**

**CONCERNING THEIR COOPERATION IN**

**THE FIELD OF SUPERVISION OF BANKS AND**

**BANKING GROUPS**

1. The Banco Central do Brasil (BCB) on one side and the Financial Market Authority (FMA) and the Oesterreichische Nationalbank (OeNB) on the other side, hereinafter referred to jointly as "the Authorities" express their willingness to co-operate on the basis of mutual trust and understanding and agree to base their co-operation in the field of supervision of Authorised Institutions on the principles and procedures outlined in this Memorandum.
2. This Memorandum of Understanding is not considered to be an international agreement within the meaning of Brazilian or Austrian law and therefore neither establishes any legally binding obligations nor supersedes any provisions of national law, international or supranational legislation in force either in Brazil or in Austria. In addition to the Authorities this Memorandum is signed by the Austrian Federal Ministry of Finance according to Art 77a of the Austrian Banking Act.
3. Since 4 November 2014 Austria is part of the Single Supervisory Mechanism (SSM) according to the SSM Regulation (Regulation (EU) Nr. 1024/2013) and therefore the FMA is a national competent authority (NCA) in the scope of the SSM Regulation. The FMA's powers regarding the prudential supervision of credit institutions are therefore subject to the SSM legal framework. The authorities acknowledge that the provisions in this Memorandum shall be without prejudice to the exercise of any powers or rights conferred on the ECB by the SSM Regulation.
4. The activities of the FMA, in its capacity as NCA in Austria within the SSM, comprise the supervision of credit institutions as set out in the Austrian Financial Market Authority Act (FMABG), the Austrian Banking Act (BWG) and the SSM legal framework, as far as competencies are not conferred on the ECB by the SSM Regulation. The OeNB is legally mandated to perform On-Site Inspections, providing expert opinions in the context of approval procedures for risk management models and of analysis of credit institutions, whereby the FMA has – due to the FMABG and the BWG - to rely to the largest extent possible on the latter.
5. The Banco Central do Brasil is entrusted with the regulation and supervision of financial entities in Brazil pursuant to Articles 9 and 10, IX, of Law 4,595 of 1964 (the Banking Law). The BCB is a federal agency with its own separate legal identity, acting as an

executive arm of the National Monetary Council, which is the body responsible for the definition of the main policies and rules for the Brazilian financial system.

6. For the purposes of this Memorandum of Understanding , the following definitions apply:

“Authorised Institution(s)”: In Brazil an institution authorised under Article 10, X of the Banking Law and for whose supervision the BCB is responsible, and in Austria an entity licensed as “credit institution” under the BWG.

“Branch” is a legally dependent unit of an Authorised Institution which has its seat in the territory of Austria or Brasil and is established in the territory of the respective other country.

“Cross-Border Establishment(s)”: A branch or a subsidiary or a representative office of an Authorised Institution incorporated within the jurisdiction of one of the authorities and operating in the jurisdiction of the other authority.

“ECB” is the European Central Bank.

“Home Supervisor”: the authority in Austria or in Brazil, respectively, responsible for the supervision on a consolidated basis of the parent Authorised Institution.

“Host Supervisor”: the authority in Brazil or in Austria, respectively, which is responsible for the supervision of a Cross-Border Establishment other than the parent Authorised Institution incorporated within the jurisdiction of the other Authority.

“On-Site Inspection(s)”: is a local examination at a Cross-Border Establishment except Representative Offices. At the request of the Home Supervisor and with the consent of the Host Supervisor, the On-Site-Inspection may also be performed directly by the Home Supervisor or by auditors of the Home Supervisor, in which case the auditors of the Host Supervisor may actively take part in the investigations.

“Representative Office” is an organizational unit other than a Branch of an Authorised Institution, which has its seat in the territory of one of the authorities and is established

in the territory of the other authority and which is not entitled to perform banking business.

“Significant Institutions (SI) and Less Significant Institutions (LSI)”: The SSM Regulation distinguishes for the supervision in the SSM according to Art 6 (4) between significant institutions and less significant institutions. To which group a Credit Institution belongs is determined by "The list of significant institutions and the list of less significant institutions" published on the ECB's Website, at <https://www.bankingsupervision.europa.eu/banking/list/who/html/index.en.html>.

“Single Supervisory Mechanism (SSM)” is a System of financial supervision composed of the ECB and NCAs of participating Member States as described in Article 6 of the SSM Regulation.

“SSM Regulation”: Regulation (EU) Nr. 1024/2013 of 15 October 2013 Conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions.

“SSM Framework Regulation”: Regulation (EU) Nr. 468/2014 of 16 April 2014 establishing the framework for Cooperation within the Single Supervisory Mechanism between the European Central Bank and National Competent Authorities and with National Designated Authorities.

“Subsidiary”: is an Authorised Institution incorporated in Austria or in Brazil, which is controlled by a (parent) Authorised Institution in the respective other country.

## Scope

7. The Authorities within their scope of competence as set out in paragraphs 3, 4 and 5 above intend to co-operate in the supervision of Cross-Border Establishments of Authorised Institutions incorporated in the respective other country and within their respective jurisdiction.
8. The scope of co-operation encompasses licensing (both granting and withdrawal), as well as the ongoing supervision of the Cross-Border Establishments and the exchange of information on the Authorised Institution as far as relevant for the ongoing supervision

of the Cross-Border Establishment. The Authorities advise each other on Cross-Border Establishments in or from the respective other country upon specific request to the extent allowed under the laws applicable and on any other relevant information that might be required to assist with the supervisory process.

9. Upon receipt of a written request by the Authority for information regarding the Cross-Border Establishment of an Authorised Institution incorporated in the requesting Authority's country or regarding an Authorised Institution which holds a Cross-Border Establishment in the jurisdiction of the Host Supervisor, the requested Authority shall endeavour to provide to the requesting Authority the information requested, including, in cases where the information is contained in an examination or other reports, making available relevant excerpts of the report itself where appropriate. Such information shall not include individual customer information on the liability side of the credit institution's balance sheet, unless this is of particular relevance to the concern prompting the request, subject to the provisions of paragraph 24. Where the Authorities perceive a need for expedited action, requests may be initiated in any form, but should be confirmed subsequently in writing.

## **Licensing**

10. With respect to any licensing process (the granting and withdrawal of authorizations), it is acknowledged that according to Art 14 of the SSM Regulation and Art 73 et seq. of the SSM Framework Regulation licensing is a common procedure where the final decision lies with the ECB, regardless of whether the licensing refers to a significant or less significant institution.
11. The Host Supervisor shall notify the Home Supervisor of applications for approval to establish a Branch, a Subsidiary or a Representative Office, according to the national legislation, or make acquisitions of an Authorised Institution in the host jurisdiction, as well as of changes in an Authorised Institution ownership control.
12. In the process of establishing a Subsidiary or a Branch of an Authorised Institution within the territory of the other authority, and upon request, the Home Supervisor shall inform the Host Supervisor of the programme of operations and type of business

envisaged by the Subsidiary or the Branch, the amount of own funds, the solvency ratio and the historic track-records of the parent bank. In addition, the Home Supervisor shall inform the Host Supervisor whether the applicant Authorised Institution is in substantial compliance with the domestic banking regulations and whether it is expected, on the basis of its administrative structure and internal controls, to run the Cross-Border Establishment in an orderly and proper manner. Upon request, the Home Supervisor shall also assist the Host Supervisor by verifying or supplementing any information submitted by the applying credit institution.

13. The Home Supervisor shall inform the Host Supervisor about the nature of its regulatory system and the framework of consolidated supervision applicable to the applicant Authorised Institution. Similarly, the Host Supervisor shall indicate the scope of its supervision and indicate any specific features that might give rise to the need for special arrangements.
14. The Home Supervisor upon request of the Host Supervisor shall provide any available information that may be useful in assessing the fitness and properness of prospective managers of a Cross-Border Establishment.

### **Co-operation concerning ownership control**

15. The Authorities shall consult each other before granting authorisation to a Subsidiary or Branch of an institution authorised in the other country or when assessing any acquisition of a significant participating interest, as defined by their respective national laws, in a supervised institution by an Authorised Institution within the jurisdiction of the other Authority. Any amendments in ownership structures should be brought to the attention of the Authorities at their earliest convenience. In the case of the FMA, this procedure has regard to Art 85 et seq of the SSM Framework Regulation, according to which decisions on ownership is a common procedure. In the case of the BCB, this procedure has regard to Art 10 of the Banking Law.

### **Ongoing supervision; corrective actions**

16. With regard to Article 6 (4) SSM Regulation and in conjunction with Article 8 and 9 of the SSM Framework Regulation, according to which the ECB is responsible for

supervisory decisions regarding SIs while the FMA remains responsible for supervisory decisions regarding LSIs, the Authorities shall inform each other, without delay and to the extent permitted under national laws, about any event which has the potential to endanger the stability of Authorised Institutions or Cross-Border Establishments in the respective other country. They shall also notify each other on administrative penalties which they have imposed or any other action which they have taken on such a Cross-Border Establishment as Host Supervisor or on the authorised parent institution as Home Supervisor.

17. The Authorities shall discuss any significant information on Authorised Institutions having Cross-Border Establishments in the other country which might be relevant to the other Authority. Relevant matters are in particular: concerns about the financial soundness of an institution (failure to meet capital adequacy or other financial requirements, significant losses, rapid decline in profits or a deterioration in profitability), concerns relating to compliance or control procedures, concerns arising from supervisory visits and On-Site Inspections, prudential interviews or reports from and communications with an institution or other regulatory body, concerns arising from late or inaccurate prudential returns and concerns relating to supervisory arrangements in third countries.
18. The Authorities may require from each other clarifications at any time, as well as the carrying out of meetings deemed necessary.
19. For any Authorised Institution located in Brazil and in Austria respectively, which are licensed in a third country and which apply for a license with the other Authority, the Authorities will, as far as possible, discuss any significant information available to them which might be relevant to the other Authority.

### **Crisis situations**

20. The Authorities will inform each other without delay if they learn of an incipient crisis relating to any supervised institution that has Cross-Border Establishments in the other country.

## **On-Site Inspections**

21. The Authorities agree that co-operation is particularly useful and necessary in assisting each other in carrying out On-Site Inspections of Cross-Border Establishments.
22. Notwithstanding Art 12 and 13 SSM Regulation and Art 138 and 143 SSM Framework Regulation according to which On-Site Inspections of SIs lies in the competence of the ECB, the BCB is allowed to carry out inspections of subsidiaries and branches in Austria of institutions authorised in Brazil, and Austria is allowed to carry out inspections of subsidiaries and branches in Brazil of institutions authorised in Austria, according to paragraph 4 of the Article 2 of the Complementary Law n° 105, of 2001. Such On-Site Inspections may be carried out upon prior written notification by the relevant Home Supervisor and upon written acceptance by the Host Supervisor in accordance to Sections 23 and 24 below.
23. The Authorities shall notify each other at least two (2) months in advance of any inspection, giving details of the names of the examiners, the purpose of the audit and its expected duration. The purposes and the extent of these inspections, as well as the way in which they will be carried out, shall be commonly defined and agreed by all the authorities involved. The Authorities will allow each other to accompany any such On-Site Inspection carried out by the Authorities themselves. The Authorities will keep each other informed on the results of the inspections, if of interest to the host-country supervisor and, to the extent possible within a timely manner. If the Cross-Border Establishment has been audited in one country, the Authority shall provide the other authority with a summary report on the findings.
24. Where in the course of an inspection individual customer account information on the liability side of the Authorised Institution's balance sheet should result in particular relevance for the home-country Authority's supervisory concerns, the Home Supervisor may request the assistance of the Host Supervisor, which will endeavour to collect the information to the extent permitted under national laws and transmit it to the Home Supervisor.



### **Co-operation in the field of anti-money laundering and counter terrorist financing**

25. The Authorities agree to co-operate in the area of anti-money laundering and counter terrorist financing. Since the main competencies in this field rest with other authorities and penal courts, cooperation in these matters is limited to their respective competencies and responsibilities. To that end, the Authorities will exchange, at their own initiative or upon request, information that may be relevant for their supervisory activities.
26. Without prejudice to their domestic provisions on privacy and data protection, all information exchanged by the Authorities in the area of prevention of money laundering and counter terrorist financing shall be treated confidentially and used exclusively for supervisory purposes, to the extent permitted by the relevant law of the Authorities.
27. In cases where the exchanged information has to be disclosed to third parties, confidentiality of information must be preserved in accordance with paragraphs 29, 30 and 31.

### **Co-operation in the field of prevention and combat of unauthorised banking business**

28. The Authorities agree to cooperate with regard to the prevention and combat of unauthorised banking business (e.g. providing banking business without a valid banking license).

### **Confidentiality of information**

29. Any confidential information received from the other Authority or obtained in the course of an On-Site Inspection will be used only for lawful supervisory purposes. This includes all SSM-supervisory purposes within the SSM-Framework. To the extent permitted by law, each Authority will hold confidential all information (other than publicly available information) received from the other Authority pursuant to this agreement or obtained in the course of an On-Site Inspection and will not disclose such information other than as necessary to carry out its lawful supervisory responsibilities.
30. Except as provided in paragraph 31, before an Authority discloses any confidential information received from the other Authority to a third party (including, for the

Austrian Authorities, information received by the ECB), the Authority will request and obtain prior consent from the originating Authority, which may attach conditions to the release of information, including whether the intended additional recipient is or can be bound to hold the information confidential.

31. In the event that an Authority is legally compelled to disclose to a third party, including a third party supervisory authority, information provided by the counterparty under this Memorandum, it should promptly notify the Authority that originated the information, indicating what information it is compelled to release and the circumstances surrounding its release. If so required by the originating Authority, it will use its best endeavours to preserve the confidentiality of the information to the extent permitted by law. The Authorities should also keep each other informed of the circumstances in which they are legally bound to disclose the information received.

### **Ongoing coordination**

32. In order to enhance the quality of co-operation, representatives of the Authorities may convene to discuss issues concerning Authorised Institutions which maintain Cross-Border Establishments within their respective jurisdiction. In these meetings they will also review the effectiveness of these arrangements. Banking supervisors in the Authorities intend to promote their co-operation by visits for informational purposes.
33. The Authorities shall deploy their best efforts in the performance of this Memorandum. However, neither party shall bear any liability regarding their eventual failure to comply. Any disagreement arising from interpretation of this Memorandum shall be amicably settled by means of consultations between the Authorities. The Authorities shall endeavour to create proper opportunities for such consultations.
34. This Memorandum shall remain effective until a party notifies the others in writing of its wish to revise, amend or withdraw from it. One month's notice of any such action will be given.
35. Co-operation and assistance in accordance with this Memorandum will continue until the expiration of 30 days after one Authority gives written notice to the other Authority of its intention to discontinue co-operation and assistance. If one Authority gives such a

notice, co-operation and assistance in accordance with this Memorandum will continue with respect to all requests for assistance that were made before the effective date of notification until the requesting Authority withdraws the matter for which assistance was requested. In the event of termination of this Memorandum, information obtained under this Memorandum will continue to be treated confidentially.

36. The Authorities may revise the present Memorandum in the light of future developments in Brazilian, Austrian and European legislation or in international guidelines and of experience gained in the supervision of respective institutions.
37. This Memorandum and the joinder declarations shall be effective upon the signature of a joinder declaration by all parties. The Memorandum thus shall be effective with the date of the last party to sign the joinder declaration.
38. This Memorandum shall be done in English in four copies. One copy each shall be retained by the Banco Central do Brasil, by the Financial Market Authority, by the Oesterreichische Nationalbank and by the Austrian Federal Ministry of Finance.
39. The parties to this MoU inform each other by e-mail of the persons to be contacted with regard to this MoU and of any change of such persons.

MoU Reference Number BRAT\_KI2017

## JOINDER DECLARATION

regarding the MEMORANDUM OF UNDERSTANDING between

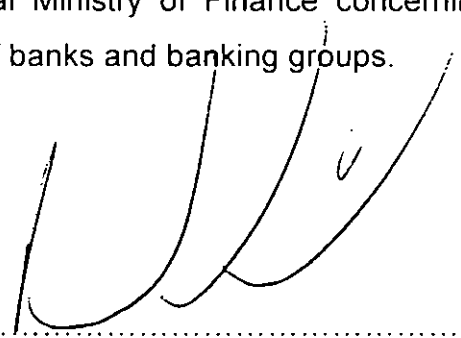
THE BANCO CENTRAL DO BRASIL, THE AUSTRIAN FINANCIAL MARKET  
AUTHORITY, THE OESTERREICHISCHE NATIONALBANK AND THE  
AUSTRIAN FEDERAL MINISTRY OF FINANCE

CONCERNING THEIR COOPERATION IN THE FIELD OF SUPERVISION OF  
BANKS AND BANKING GROUPS (MoU Reference Number BRAT\_KI2017)

**The Banco Central do Brasil**

hereby declares to join the Memorandum of Understanding between the Banco  
Central do Brasil, the Austrian Financial Market Authority, the Oesterreichische  
Nationalbank and the Austrian Federal Ministry of Finance concerning their  
cooperation in the field of supervision of banks and banking groups.

Dec. 11<sup>th</sup>, 2017  
Date



Paulo Sérgio Neves de Souza  
Deputy Governor of Supervision

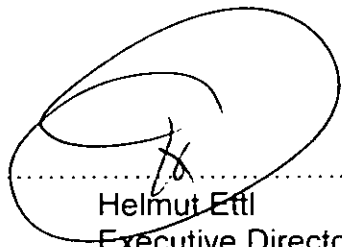
## JOINDER DECLARATION

regarding the MEMORANDUM OF UNDERSTANDING between  
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AUTHORITY, THE OESTERREICHISCHE NATIONALBANK AND THE  
AUSTRIAN FEDERAL MINISTRY OF FINANCE  
CONCERNING THEIR COOPERATION IN THE FIELD OF SUPERVISION OF  
BANKS AND BANKING GROUPS (MoU Reference Number BRAT\_KI2017)

### The Austrian Financial Market Authority

hereby declares to join the Memorandum of Understanding between the Banco Central do Brasil, the Austrian Financial Market Authority, the Oesterreichische Nationalbank and the Austrian Federal Ministry of Finance concerning their cooperation in the field of supervision of banks and banking groups.

*R. B. 2017*  
Date

  
Helmut Ettl  
Executive Director

*R. B. 2017*  
Date

  
Klaus Kumpfmüller  
Executive Director

## JOINDER DECLARATION

regarding the MEMORANDUM OF UNDERSTANDING between

THE BANCO CENTRAL DO BRASIL, THE AUSTRIAN FINANCIAL MARKET  
AUTHORITY, THE OESTERREICHISCHE NATIONALBANK AND THE  
AUSTRIAN FEDERAL MINISTRY OF FINANCE

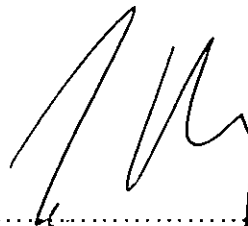
CONCERNING THEIR COOPERATION IN THE FIELD OF SUPERVISION OF  
BANKS AND BANKING GROUPS (MoU Reference Number BRAT\_KI2017)

### The **Oesterreichische Nationalbank**

hereby declares to join the Memorandum of Understanding between the Banco  
Central do Brasil, the Austrian Financial Market Authority, the Oesterreichische  
Nationalbank and the Austrian Federal Ministry of Finance concerning their  
cooperation in the field of supervision of banks and banking groups.

*19.12.2017*

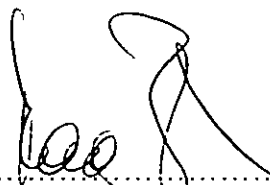
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Date



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Ewald Nowotny  
Governor

*19.12.2017*

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Date



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Andreas Ittner  
Vice Governor

## JOINDER DECLARATION

regarding the MEMORANDUM OF UNDERSTANDING between

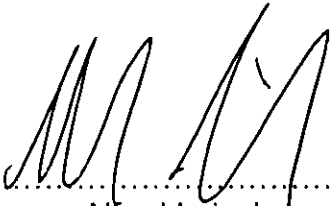
THE BANCO CENTRAL DO BRASIL, THE AUSTRIAN FINANCIAL MARKET  
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AUSTRIAN FEDERAL MINISTRY OF FINANCE

CONCERNING THEIR COOPERATION IN THE FIELD OF SUPERVISION OF  
BANKS AND BANKING GROUPS (MoU Reference Number BRAT\_KI2017)

### The **Austrian Federal Ministry of Finance**

hereby declares to join the Memorandum of Understanding between the Banco  
Central do Brasil, the Austrian Financial Market Authority, the Oesterreichische  
Nationalbank and the Austrian Federal Ministry of Finance concerning their  
cooperation in the field of supervision of banks and banking groups.

12/12/2017  
.....  
Date

  
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Alfred Lejsek  
Director