

DEPOSIT GUARANTEE SCHEMES AND INVESTOR COMPENSATION

Last updated: January 2019

In Austria, deposit guarantee schemes and investor compensation are regulated by the Federal Act on Deposit Guarantee Schemes and Investor Compensation [Bundesgesetz über die Einlagensicherung und Anlegerentschädigung bei Kreditinstituten (Einlagensicherungs- und Anlegerentschädigungsgesetz - ESAEG)]. The provisions of this Federal Act implement the corresponding EU directives in national law.

Each of the five professional associations within the Federal Banking and Insurance Section of the Austrian Economic Chamber maintains a guarantee scheme as envisaged in ESAEG, as follows:

• Fachverband der Banken und Bankiers	Einlagensicherung AUSTRIA GesmbH
• Fachverband der Landes-Hypothekenbanken	Wipplingerstrasse 34/DG 4
• Fachverband der Volksbanken	1010 Vienna
• Fachverband der Raiffeisenbanken	Österreichische Raiffeisen Einlagensicherung eGen
	Am Stadtpark 9, 1030 Vienna
• Fachverband der Sparkassen	Sparkassen-HafungsAG
	Grimmelhausengasse 1, 1030 Vienna

Every credit institution with registered office in Austria that wishes to accept customer deposits or provide investment services subject to guarantee obligations has to belong to one of these 3 protection schemes, otherwise its licence to accept customer deposits or provide investment services subject to a guarantee obligations will lapse. The FMA website (<http://www.fma.gv.at/de/unternehmen/banken.html>) shows whether a credit institution in Austria has a licence and what kind of licence this is. The ownership structure of a credit institution is irrelevant as far as the deposit guarantee scheme and investor compensation are concerned; the essential point is whether or not an Austrian licence is held.

Legally independent subsidiaries of foreign credit institutions which accept deposits or provide investment services subject to guarantee obligations, within the framework of the freedom to set up branches and provide services in Austria, and which therefore do not have an Austrian banking licence, are subject to the deposit guarantee scheme or investor compensation in the state in which the credit institution has its registered office. Any claims are therefore in principle to be asserted in accordance with the legal regulations of the state in which the credit institution has its registered office. These foreign credit institutions can also, in regard to the services subject to guarantee obligations which are provided in their subsidiaries in Austria, become members of an Austrian guarantee scheme (on a voluntary basis), but are only guaranteed within such schemes to the extent that the state in which the credit institution has its registered office is guaranteed to a lesser level in that state in terms of the nature and scope of its guarantee obligations.

The main differences are as follows:

	Guarantee scheme	Investor Compensation
Maximum amount paid out	EUR 100,000 in certain cases EUR 500,000 (§ 12 ESAEG)	EUR 20,000
Excess	No	For non natural persons, 10%
Payment periods	From 01.01.2019 to 31.12.2020: 15 working days From 01.01.2021 to 31.12.2023: 10 working days From 01.01.2024: 7 working days	3 months
Customer application necessary	No Exception: Deposits covered for a limited period (§ 12 ESAEG)	Yes

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Deposit Guarantee

What is guaranteed?

- **What deposits are covered by the deposit guarantee scheme?**

In principle, compensation is payable on all credit balances on all interest bearing and non interest bearing accounts and savings accounts, such as salary and pension accounts, other giro accounts, fixed deposits, capital savings accounts and "on demand" savings accounts.

- **Is my credit balance on my building savings agreement guaranteed?**

Building associations [Bausparkassen] are also credit institutions (of a special kind), and are thus members of statutory guarantee schemes. You conclude a building savings agreement directly with your building association, so that this credit balance held with the building association is to be regarded as separate from your credit balances at a different credit institution through which (for example) the valid account payment is made into the building savings agreement.

- **Is my credit balance on a savings account which has not yet been authenticated guaranteed?**

Only credit balances on authenticated accounts or savings accounts are covered by the deposit guarantee scheme. To ensure that the credit balance on a savings account which has not yet been authenticated is reimbursable, therefore, you must complete the authentication process within 12 months of the occurrence of the pay out event. Before any amount is paid out the savings book must be presented to the protection scheme.

- **Is my credit balance on a foreign currency account guaranteed?**

Yes, credit balances in foreign currencies are also reimbursable. However, if a pay out event occurs, the payment will be made in Euros. The conversion rate on the date on which the pay out event occurs applies.

- **Up to what amount is my credit balance guaranteed?**

Your credit balance (with interest) is guaranteed up to a maximum payment amount of EUR 100,000 per credit institution and per person. This cover applies irrespective of the number of accounts or savings accounts held with the credit institution in question.

The deposit guarantee scheme therefore applies on a "per depositor per credit institution" basis.

Since the deposit guarantee scheme is based on each credit institution that has its own banking licence, it is irrelevant whether credit institutions belong to the same group (i.e. whether a superordinate credit institution with registered office in Austria has a majority interest in another credit institution): credit balances held at each of these banks are guaranteed, independently of each other, up to a maximum payment amount of EUR 100,000 per depositor.

- **What are "deposits covered for a limited period"?**

In certain cases, you can apply to the protection scheme, within 12 months of the occurrence of the pay out event, for your credit balance to be reimbursed over and beyond the general maximum amount (EUR 100,000) up to a total amount of EUR 500,000. To do this, you must prove to the protection scheme that one of the following situations applies:

- your deposit originates from real estate transactions in connection with privately used residential property
- your deposit fulfils social purposes as envisaged by law and is linked to certain life events for you, such as marriage, divorce, commencement of pension, termination of employment, dismissal, incapacity to work or death
- your deposit is based on the payment of insurance benefits or compensation payments in respect of physical injury due to criminal acts or in respect of wrongful conviction under criminal law.

In all cases the pay out event must occur within twelve months after the amount has been credited or after the date from which this deposit can be transferred in a legally permissible manner.

- **Is there any excess?**

No. The deposit guarantee scheme does not envisage any excess either for natural or non natural persons.

Regarding the excess applicable in the context of investor compensation, see FAQ.

- **Are my interest entitlements also guaranteed?**

Yes. The interest payable by the credit institution on your credit balance up to the occurrence of the pay out event is also covered by the scheme, and is included in the calculation of the maximum payment amount

- **Can my credit balance be compensated both as a covered deposit in the context of the deposit guarantee scheme and also as a claim arising from securities transactions subject to guarantee obligations in the context of investor compensation?**

No. There is no claim to double compensation.

Claims arising from credit balances on accounts which can be compensated either as a covered deposit or as a claim arising from securities transactions subject to guarantee obligations are to be compensated in the context of the deposit guarantee scheme.

If the respective preconditions for the assertion of a claim are fulfilled, claims can be asserted on the basis of the deposit guarantee scheme and investor compensation independently; the amounts will not be added together.

Further details concerning claims arising from investment services subject to guarantee obligations are provided in the FAQ for investor compensation.

What is not guaranteed?

I have purchased bonds from my credit institution and placed these in a custody account. Are these bonds covered by the deposit guarantee scheme?

Bonds of all kinds (e.g. "Wohnbau-Anleihe" bonds, certificates, medium term bonds) are not deposits within the meaning of the deposit guarantee scheme and are therefore not reimbursable.

In the event of the insolvency of the credit institution that issued the bond, your claim will therefore be serviced on the basis of the issue conditions (e.g. preferentially out of a separate cover pool, or on the basis of the liquidation dividend, or on a subordinate basis after the other creditors' claims have been serviced).

In the event of the insolvency of the credit institution at which your custody account is held, any bonds from other issuers are to be delivered to you or transferred to a custody account named by you at another credit institution. If the securities cannot be delivered or transferred, this would constitute a case for investor compensation.

Who is covered?

- **Are only credit balances of Austrian citizens guaranteed?**

No, the nationality of the customer is irrelevant, which means that credit balances of customers who are not Austrian citizens are also guaranteed.

- **Which depositors are secured?**

In principle, the credit balances of any natural person and any non natural person (i.e. for example legal entities, partnerships) are guaranteed, unless the person in question is explicitly excluded by law from the guarantee scheme (for details see § 10 ESAEG).

The following are examples of deposits that are not guaranteed:

- deposits of credit institutions, financial institutions and investment service providers
- deposits of pension and retirement funds
- deposits of states and central administrations
- deposits of regional and local administrative bodies (e.g. Länder and municipal authorities).

- **Are credit balances on fiduciary accounts guaranteed?**

A fiduciary account is held in the name of a trustee who has disposal of assets in the account on behalf of another person. The beneficial owner of the assets in the fiduciary account is therefore the trustor, who is also secured in regard to these assets within the limits of the maximum payment amount. Following authentication and proof of the claim, the guaranteed amount is paid out to the trustor.

The same applies in regard to escrow accounts, i.e. fiduciary accounts which can only be opened by certain professional groups (lawyers, notaries, certified public accountants, property brokers and managers, and freelance civil engineers).

As far as natural persons (who have entrusted money on a fiduciary basis to a building manager, for example) are concerned, therefore, the assets in the building manager's escrow accounts which are attributable to such natural persons are guaranteed within the limit of the maximum payment amount, i.e. up to EUR 100,000 per person.

- **Are assets of a community of owners guaranteed?**

If a community of owners (as envisaged in the Austrian Condominium Act [Wohnungseigentumsgesetz]) is an account holder or trustor, each individual owner is not secured up to a maximum payment amount of EUR 100,000, but only the community as a legal entity, in an amount up to EUR 100,000.

- **Are assets of minors guaranteed?**

The assets of persons of minority age are also subject to the deposit guarantee scheme.

- **Are assets in probate proceedings guaranteed?**

Accounts and savings accounts that form part of the estate of a deceased person are subject to the deposit guarantee scheme, the estate being regarded as a (non natural) person.

Following devolution the estate ceases to apply; the claims previously attributed to the estate are transferred to the heirs in the amount of the inheritance portions.

- **Are credit balances held in a joint account guaranteed?**

A joint account is held in the name of more than one customer. The principle that up to EUR 100,000 per credit institution and per person is guaranteed, irrespective of the number of accounts / savings accounts, also applies in this context. Provided all account holders are authenticated, therefore, the maximum payment amount of EUR 100,000 applies in regard to each account holder ("multiple payout"). The credit balance on the joint account is to be distributed among the account holders in equal shares.

For example, if there is a credit balance of EUR 200,000 in a joint account held by two account holders, if a pay out event occurs the two account holders can each claim an amount of EUR 100,000.

However, the account holders can send the credit institution a written regulation before the pay out event occurs, setting out the division of the deposit amounts in the joint account and thus deviating from the principle of division in equal parts. This division ratio is then also to be used if the pay out event occurs.

The same applies mutatis mutandis in regard to joint savings accounts. A further point to be noted is that passbooks must be presented before the guaranteed amount is paid out.

- **Are credit balances on an account of a partnership guaranteed?**

Credit balances on accounts held by general partnerships (OGs), limited partnerships (KGs) and companies constituted under civil law (GesbR), and also by foreign companies which correspond to these corporate forms, are only ever treated as credit balances of one person, even if several persons have powers of disposal as partners.

The maximum payment amount in the context of such an account is therefore EUR 100,000.

Procedure

- **When do I get my money if a pay out event occurs?**

- a) **My covered deposits are in the maximum amount of EUR 100,000**

In principle, the guarantee scheme will pay the covered deposit amounts within the statutory period of 15 working days; (from 1.1.2021: 10 working days; from 1.1.2024: 7 working days). You do not need to submit an application. However, the guarantee scheme has to be notified regarding the account into which the payment is to be made.

The statutory period can be exceeded in the following circumstances:

- if your reimbursement claim is disputed;
- if the deposit is the subject of a legal dispute;
- if the deposit is connected with a trusteeship. Details concerning these exceptions can be found in § 14 (2) ESAEG.

- b) **My covered deposits amount to more than EUR 100,000**

If your deposit is a deposit covered for a limited period of time as envisaged in § 12 ESAEG (see “What are deposits covered for a limited period of time?” above), you must:

- submit an application for reimbursement to the protection scheme within 12 months of the occurrence of the pay out event;
- prove to the protection scheme that all preconditions pursuant to § 12 ESAEG are fulfilled.

Payment will be made after the protection scheme has verified your claim. A corresponding form for submitting an application if a pay out event occurs can be downloaded from the scheme’s website.

- **In what form will I get my money?**

The protection scheme will pay the full amount of the covered deposits (up to a maximum of EUR 100,000) by transfer to a bank account as notified by the depositor.

- **In what currency will I get my money?**

The protection scheme will pay the amount of the covered deposits exclusively in Euros, irrespective of whether the guaranteed account(s) is/are held in another currency; the conversion rate on the date on which the pay out event occurs applies.

- **What happens with regard to my remaining assets over and above the covered portion for which payment has been made?**

The amount paid out by the protection scheme will be deducted from your total credit balance held with the credit institution. You can register the remaining amount as a claim in the insolvency proceedings. According to § 131 of the Federal Act on the Recovery and Resolution of Banks (Sanierungs- und Abwicklungsgesetz – BaSAG), such claims take priority over other creditors in insolvency proceedings.

- **What happens to my deposits and loans in the event of the insolvency of my credit institution?**

In the event of the insolvency of your credit institution, the protection scheme can deduct any due liabilities towards the credit institution (e.g. any loan repayment amounts which are due but have not yet been paid) from your credit balance and only pay out the differential amount.

In addition you can offset covered assets (e.g. savings deposits) against your liabilities towards the credit institution (e.g. a loan).

For example: A credit balance in the amount of EUR 200,000 is set against a loan in the amount of EUR 200,000 which you have with the same credit institution. Credit balances can be offset against liabilities in the full amount. The offsetting is to be declared to the insolvency administrator.

- **What action can I take if I do not agree with the calculated compensation amount?**

In this case you must send documents proving your claim to the protection scheme, which will reconsider your claim on the basis of the documents and then contact you. If no agreement is reached, a complaint must be brought before the competent Austrian court, which will then decide by judgement concerning the level of any payment amount.

- **Who is able to claim the covered amount in the context of a “password savings account” [Losungswortsparbuch]?**

The person who is able to present the guaranteed savings book with a password to the protection scheme and who can name the correct password is deemed entitled to claim the covered amount. Before any amount is paid out, however, the person has to provide proof of identity, to avoid any exceeding of the maximum payment amount per person.

- **Who is able to claim the covered amount in the context of a personal savings account [Namenssparbuch]?**

In the case of personal savings accounts, only the person who provided proof of identity to the credit institution when the account was opened, and whose name appears on the savings book, is entitled to claim the covered amount. If a password has been agreed, this has to be stated.

Any other person presenting a claim must prove his right of ownership of the account.

- **Is there a limited period for submitting applications?**

No application is necessary for deposits up to EUR 100,000.

In regard to deposits of over EUR 100,000 (deposits covered for a limited period, § 12 ESAEG), an application must be submitted within 12 months following the occurrence of the pay out event.

If through no fault of your own (e.g. because you were sick or on a business trip) you were not able to submit your application in time, and if you can prove this to the protection scheme, you can submit your claim even after the above limited period has expired.

- **I have deposits in a foreign subsidiary of an Austrian credit institution. How do I get my money if a pay out event occurs?**

The Austrian protection scheme will judge what amount is to be paid out, on the basis of the Austrian legal situation. As is the case with payments in Austria, it is necessary for details to be provided of an account into which the covered deposits can be transferred.

In order to keep the costs as low as possible for you, your claim will be dealt with by the protection scheme in the country in which the foreign subsidiary of the Austrian credit institution is situated. To this end the Austrian protection scheme will conclude corresponding cooperation agreements.

You can also pass on queries and correspondence to the competent Austrian protection scheme through the foreign protection scheme.

Provision of funds

- **Where does the money for payment of covered deposits come from?**

Under §§ 18ff ESAEG, every protection scheme has to set up a deposit guarantee scheme fund and to manage this fund in the interest of the depositors. Regular contributions are made to the deposit guarantee scheme fund by the member institutions,

and the fund is used to compensate depositors if a pay out event occurs. If the fund resources are not sufficient in the context of a pay out event, the protection scheme must collect further amounts from the member institutions.

ESAEG envisages several instruments that are intended to enable the protection scheme to fulfil its payment obligations in a timely manner. If sufficient funds are still not available, even though the entire deposit guarantee scheme fund has been exhausted and additional amounts have been obtained from the member institutions, the protection scheme is authorised to undertake the following steps to procure means:

1. The other protection schemes provide the deficit amount on a proportional basis according to the ratio of their own covered deposits.
2. If the proportional payment obligation of the other protection schemes is exceeded (fund resources and special contributions), the protection scheme initially affected will borrow the remaining deficit amount on the money market or the capital market. In regard to these borrowing operations, in principle all protection schemes have to contribute on a proportional basis, and in addition the Federal Minister for Finance can provide a Federal Government guarantee, subject to special statutory authorisation.

Organisation

- **Can my credit institution leave the protection scheme or change to another protection scheme?**

A credit institution can only leave the sectoral protection scheme to which it is assigned if the credit institution in question simultaneously joins another Austrian protection scheme.

If a credit institution leaves its protection scheme without joining another Austrian protection scheme, its licence to accept new deposits will lapse.

- **Where can I get information about the deposit guarantee scheme?**

You can look up the law directly: in Austria, the deposit guarantee scheme is regulated in the Federal Act on Deposit Guarantee Schemes and Investor Compensation (Einlagensicherungs- und Anlegerentschädigungsgesetz - ESAEG) and in §§ 37a, 93 and 93a and the annex to § 37a of the Austrian Banking Act (BWG). You can find the current wording of the Act in the Federal Government's legal information system (RIS).

Alternatively, you can also contact your credit institution: according to § 38 ESAEG, credit institutions which accept deposits subject to guarantee obligations in Austria must inform the investment-seeking public concerning the provisions that apply in regard to the securing of their deposits, by means of a notice displayed in the banking hall and on their website.

You can also contact the protection scheme which is responsible for your credit institution. You can find out which protection scheme is responsible for your credit institution on the joint website for deposit guarantee schemes at WKO.

Investor compensation

What is guaranteed?

- **What claims are covered by investor compensation?**

In principle, all claims arising against the credit institution on the basis of:

- the preservation and management of securities for others (depository business),
- the credit institution's trading in money market instruments, financial futures contracts, future rate agreements, forward rate agreements, interest and currency swaps and equity swaps, securities and instruments derived therefrom,
- participation by the credit institution in issues of third parties (loro investment business),

- acceptance and investment of severance pay contributions and self-employed pension contributions (company pension fund business)
- portfolio management through the management of portfolios on an individual customer basis, where scope for discretion is provided within the framework of a customer power of attorney, if the customer portfolio contains one or more financial instruments (investment services as envisaged in § 3 (2) no 2 WAG 2007).

- **When does investor compensation come into effect?**

Securities which are held in a customer's custody account on the basis of an agreement are merely held in safekeeping by the Bank. They are owned by the customer and are to be surrendered to the customer at any time on request, or transferred to another custody account named by the customer. In principle, therefore, they do not constitute a case for the deposit guarantee scheme or for investor compensation.

Securities which are held in a customer's custody account on the basis of an agreement, but which cannot be surrendered or transferred to another custody account by the Bank in accordance with instructions if a pay out event occurs, are guaranteed in the context of investor compensation up to a maximum amount of EUR 20,000.

If a claim arising from a credit balance on an account could be compensated either as a covered deposit or as a claim (subject to guarantee obligations) arising from securities transactions, the claim is to be compensated as a covered deposit in the context of the deposit guarantee scheme (§ 51 (1) ESAEG).

Amounts derived from returns on securities held by the customer (e.g. dividend earnings, coupon payments, redemption or proceeds from sale) are guaranteed, as assets held in an account of the customer, within the framework of the deposit guarantee scheme up to a maximum payment amount of EUR 100,000.

Earnings that accrue between the occurrence of the pay out event and the payment of the guaranteed amount will be taken into account in the context of investor compensation (§ 50 (2) ESAEG).

Please note that under § 47 (2) ESAEG certain claims arising from securities transactions are excluded from the guarantee provided in the context of investor compensation.

If the respective preconditions are fulfilled, claims can be asserted independently of each other on the basis of the deposit guarantee scheme and the investor compensation; the amounts will not be added together.

- **How is the amount of the claim calculated?**

The amount of the claim is to be determined according to the market value of the securities on the date on which the pay out event occurs.

- **Is there any excess?**

In the case of investors that are not natural persons, the payment obligation of the guarantee scheme is limited to 90% of the claim from securities transactions per investor (§ 47 (1) ESAEG). By contrast with the deposit guarantee, therefore, an excess of 10% applies.

Procedure

- **When do I get my money if a pay out event occurs?**

Claims based on investor compensation are payable within 3 months after the amount of the claims and the justification for the claims have been confirmed by the protection scheme. In certain cases (e.g. in cases where money laundering is suspected) payment can be deferred.

- **Do I have to submit an application for compensation?**

Yes. For the assertion of claims based on investor compensation an application must be made to the protection scheme. The investor must also provide proof of his identity. A corresponding form for submitting an application if a pay out event occurs can be downloaded from the protection scheme's website.

- **Is there a limited period for submitting an application?**

Yes. Claims based on investor compensation are to be registered with the protection scheme within one year after the occurrence of the pay out event.

- **What can I do if I have missed the deadline?**

If through no fault of your own (e.g. because you were sick or on a business trip) you were not able to submit your application in time, and if you can prove this to the protection scheme, you can submit your claim even after the above limited period has expired.

Provision of funds

- **Where does the money for the payment come from?**

The member institutions of the protection scheme must immediately pay proportional contributions based on a defined distribution code. If necessary the other protection schemes have to step in and also pay contributions. If the funds thus raised are not sufficient, the protection scheme initially affected will borrow the remaining deficit amount on the money market or the capital market. In regard to these borrowing operations, the Federal Minister for Finance can provide a Federal Government guarantee, subject to special statutory authorisation.