

PUBLICATION OF
NATIONAL PROVISIONS
CONCERNING MARKETING
REQUIREMENTS ACCORDING TO
ART. 5 PARA. 1
REGULATION (EU) 2019/1156
(CBDF REGULATION)

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SUMMARY OF VERSIONS

Date of version	Adaptions
2 nd August 2021	<ul style="list-style-type: none"><li data-bbox="555 387 751 416">• First version

INTRODUCTORY REMARKS

It is pointed out that this information does not claim to be complete. No legal claim can arise on the basis of this information. The specific legal framework can be found in the Austrian federal legal provisions and the European directives and regulations.

I. AIF

An English translation of the Alternative Investment Fund Managers Act - AIFMG is available at: [Alternative Investment Fund Managers Act](#)

A. ART. 49 AIFMG AUTHORISATION PROCEDURE (Art. 43 Directive 2011/61/EU)

Information regarding the marketing of AIF to retail investors in Austria according to Art. 49 AIFMG (Art. 43 Directive 2011/61/EU) can be found in the following guidance note:

→ [Information for retail investors pursuant to Article 49 AIFMG](#)

This guidance note applies to the marketing of EU AIFs from other Member States and of non-EU AIFs by Austrian AIFMs, or of AIFs by EU AIFMs established in another Member State or by non-EU AIFMs to retail investors and qualified retail investors.

Furthermore, the following notification forms can be found under

→ [Art. 49 AIFMG authorisation procedure](#)

- Notification form regarding Article 49 AIFMG for Managed Futures Funds
- Notification form regarding Article 49 AIFMG for AIF in real estate
- Notification form regarding Article 49 AIFMG for AIF in private equity
- Notification form regarding Article 49 AIFMG or Private equity fund of funds

B. ART. 47 AIFMG AUTHORISATION PROCEDURE (Art. 42 Directive 2011/61/EU)

Information for non-EU AIFMs regarding the marketing of AIF in Austria according to Art. 47 AIFMG (Art. 42 Directive 2011/61/EU) can be found in the following guidance note:

→ [Art. 47 AIFMG authorisation procedure](#)

This guidance note applies to non-EU AIFMs that wish to market units or shares in the AIFs that they manage in Austria without a passport. Marketing in Austria as defined in the Alternative Investor Fund Managers Act means the direct or indirect offering or placement at the initiative of the AIFM or on behalf of the AIFM of units or shares of an AIF it manages to or

with investors domiciled or with a registered office in Austria. With regard to non-EU AIFMs such marketing of AIFs in Austria may only occur on the basis of Art. 47 AIFMG.

C. NOTIFICATION ACCORDING TO ART. 31 AIFMG (Art. 32 Directive 2011/61/EU)

Information regarding the marketing of EU-AIF in Austria according to Art. 31 AIFMG (Art. 42 Directive 2011/61/EU) can be found in the following guidance note:

→ [marketing of EU-AIF Article 31](#)

This guidance note applies to the marketing of EU AIF units or shares from other Member States in Austria by an AIFM approved in a Member State.

II. UCITS

An English translation of the Investment Fund Act 2011 - InvFG 2011 is available at: [Investment Fund Act 2011](#)

A. NOTIFICATION ACCORDING TO ART. 140 InvFG 2011 (Art. 91 Directive 2009/65/EC)

Information concerning the public offering of UCITS in Austria pursuant to Art. 140 InvFG 2011 (Art. 91 Directive 2009/65/EC) can be found in the following guidance note:

→ [Notification Article 140](#)

This guidance note applies to the marketing in Austria of units approved in another Member State.

B. INFORMATION ACCORDING TO ART. 155 InvFG 2011 (Art. 91 para. 3 Directive 2009/65/EG and Art. 30 para. 1 and 2 Directive 2010/44/EU)

Information on relevant administrative practice and legal requirements pertaining to the notification and distribution of UCITS according to Art. 155 InvFG 2011 can be found in the following guidance note:

→ [Information Article 155](#)

This guidance note gives information on relevant administrative practice and legal requirements pertaining to the notification and distribution of UCITS on the topics of "public offering" and "advertising and protection of names".

III. SECURITIES SUPERVISION ACT 2018 (WAG 2018)

It should be noted that the WAG 2018, as the national implementation of Directive 2014/65/EU (MiFID II), may also be applicable to the distribution of open-ended investment funds.

An English translation of the Securities Supervision Act 2018 is available at: [Securities Supervision Act 2018](#)

IV. OTHER FURTHER SOURCES OF LAW

Possible further applicable provisions **outside the FMA's jurisdiction** can be found, **for example**, in the following laws (**non-exhaustive list**):

- General Civil Code (Allgemeines bürgerliches Gesetzbuch)
<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10001622>
- Consumer Protection Act (Konsumentenschutzgesetz)
<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10002462>
- Federal Act against Unfair Competition (Bundesgesetz gegen den unlauteren Wettbewerb 1984)
<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10002665>
- Corporate Code (Unternehmensgesetzbuch)
<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10001702>
- Commercial Code 1994 (Gewerbeordnung 1994)
<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10007517>
- Online and Distance Selling Act (Fern- und Auswärtsgeschäfte-Gesetz)
<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20008847>
- Consumer Credit Act (Verbraucherkreditgesetz)
<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20006780>
- Telecommunications Act (Telekommunikationsgesetz 2003)
https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=ErV&Dokumentnummer=ERV_2003_1_70
- E-Commerce Act (E-Commerce-Gesetz)

https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Erv&Dokumentnummer=ERV_200

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