



Regulation of the Financial Market Authority (FMA)
determining the appropriate information and criteria to assess
the equivalence of supervisory provisions and of the level of
investor protection in investment regulations (IG-FestV;
Informationen- und Gleichwertigkeitsfestlegungsverordnung)

Regulation establishing Information and Equivalency

Federal Law Gazette II No. 268/2011

On the basis of Article 70 para. 5 nos. 1 and 2 as well as Article 71 para. 3 of the Investment Fund Act 2011 (InvFG 2011; *Investmentfondsgesetz 2011*), published in Federal Law Gazette I No. 77/2011, the following shall be determined by Regulation:

TEXT

APPROPRIATE INFORMATION

Article 1. (1) In the case of money-market instruments pursuant to Article 70 para. 4 nos. 2 and 4 InvFG 2011 as well as in the case of money-market instruments issued by a regional or local authority of a Member State or by a public international body, but that is not guaranteed either by a Member State, nor, in the event of this Member State having a federal structure, by any member state of the federation, the “appropriate information” listed in Article 70 para. 4 InvFG 2011 shall cover:

1. information both about the issuance and the issuance programme as well as the issuer’s legal and financial situation prior to the issuance of the money-market instrument;
2. regular updates of the information listed in no. 1 on at least an annual basis and whenever significant events occur;
3. checking of the information listed in no. 1 by appropriately qualified third parties that are not subject to instructions by the issuer, specialised in the checking of legal or economic documentation and who demonstrate professional integrity;
4. available and reliable statistics about the issuance and the issuance programme.

(2) In the case of money-market instruments pursuant to Article 70 para. 4 no. 3 InvFG 2011 the “appropriate information” listed in Article 70 para. 4 InvFG 2011 shall cover

1. information about the issuance and the issuance programme or about the issuer’s legal and financial situation prior to the issuance of the money-market instrument;
2. regular updates of the information listed in no. 1 on at least an annual basis and whenever significant events occur;
3. available and reliable statistics about the issuance and the issuance programme or other data that permit an appropriate evaluation of the credit risks associated with investing in such kinds of instruments.

(3) In the case of all money-market instruments as defined in Article 70 para. 4 no. 1 InvFG 2011 with the exception of the instruments listed in para. 1 and instruments issued by the European Central Bank or by the central bank of a Member State, the appropriate information as defined in Article 70 para. 4 InvFG 2011 shall cover information about the issuance and the issuance programme or about the issuer’s legal and financial situation prior to the issuance of the money-market instrument.

EQUIVALENCE OF SUPERVISORY PROVISIONS

Article 2. Institutions that are subject to and comply with supervisory provisions and that meet one of the following criteria shall be considered as institutions that are subject to and comply with supervisory provisions, which as defined in Article 70 para. 4 no. 3 InvFG 2011 are at least as strict as those stipulated under European Community law:

1. the issuer’s place of incorporation is in the European Economic Area (EEA);
2. its place of incorporation is in an OECD country that is a member of the Group of Ten;

3. the issuer has a rating that is at least of investment grade;
4. where it can be proven based on a detailed analysis by the issuer that the supervisory provisions that apply for the issuer are at least as strict as those under European Community law.

EQUIVALENCE OF THE LEVEL OF INVESTOR PROTECTION

Article 3. Equivalence of the level of investor protection pursuant to Article 71 para. 2 no. 2 InvFG 2011 shall be assessed based on the following criteria:

1. rules that ensure the independence of the management company and management being conducted exclusively in the investor's interests,
2. the existence of an independent custodian with similar duties and similar responsibilities with regard to custody and monitoring; where local law does not require the independent custody of the assets of the fund, then a stable governance structure may provide an alternative,
3. availability of pricing information and reporting requirements,
4. modalities and frequency of redemption,
5. restrictions regarding trading with affiliated undertakings,
6. the scope of the segregation of assets, and
7. local requirements in relation to the borrowing, lending and short selling of securities and money-market instruments of the fund.

ENTRY INTO FORCE

Article 4. (1) This Federal Act enters into force at the end of the day on which it was announced.

(2) Article 1 paras. 1 to 3, Article 2 and 3 in the version of the Regulation amended in Federal Law Gazette II No. 268/2011 shall enter into force on 1 September 2011.