



Alternative Financing Act

Full title

Federal Act on Alternative Forms of Financing (*AltFG; Alternativfinanzierungsgesetz*)

Original Version: Federal Law Gazette I no. 114/2015

Amended by

Federal Law Gazette I No. 107/2017; 17/2018; 48/2018; 62/2019; 225/2021.

Other parts of the Text

The National Council has decided by resolution:

Text

General provisions

Article 1 (1) This Federal Act determines the permissibility of the financing by means of a public offering in the form of securities or investments within the scope of the exemption from the obligation to produce a prospectus pursuant to Article 3 para. 1 no. 2 of the Capital Market Act 2019 (KMG 2019; Kapitalmarktgesetz 2019) published in Federal Law Gazette I No. 62/2019.

(2) In the case of issuance within the scope of this Federal Act breaches shall in particular not be allowed against Article 1 para. 1 no. 1 of the Banking Act (BWG; Bankwesengesetz) published in Federal Law Gazette No. 532/1993, or against Article 3 para. 5 no. 4 of the Securities Supervision Act 2018 (WAG 2018; Wertpapieraufsichtsgesetz 2018), published in Federal Law Gazette I No. 107/2017.

Definition of Terms

Article 2 For the purposes of the present Federal Act, the following definitions shall apply:

1. public offering: a public offering pursuant to Article 1 para. 1 no. 1 KMG of securities pursuant to Article 1 para. 1 no. 4 KMG 2019 or investments pursuant to Article 1 para. 1 no. 3 KMG 2019;
- 1a. issuer: a legal entity which issues or intends to issue securities or investments;
2. investments: property rights pursuant to Article 1 para. 1 no. 3 KMG 2019;
3. securities: transferable securities pursuant to Article 1 para. 1 no. 4 KMG 2019;
4. investors: natural or legal persons, who acquire or intend to acquire securities or investments;
5. Internet platform: a website upon which securities or investments may be intermediated between issuers and investors;
6. Operator of an Internet platform: natural or legal persons that operate an Internet platform pursuant to no. 5;
7. durable medium: any medium that permits investors to store information in such a way that they are able to access it subsequently for a duration that is appropriate for the purposes of the information and that permits the unchanged reproduction of the information stored.

Scope of application

Article 3 (1) Without prejudice to other rules set out in Federal Acts, issuers shall be authorised to issue securities or investments in accordance with the provisions of this Federal Act, provided that the planned issuance neither takes place as a crowdfunding offering in the scope of application of Regulation (EU) 2020/1503 on European crowdfunding service providers for



business, and amending Regulation (EU) 2017/1129 and Directive (EU) 2019/1937, OJ L 347, 20.10.2020 p. 1, nor leads to:

1. the total consideration reaching or exceeding EUR 2 million within twelve months as a result of issuing securities or investments in accordance with this Federal Act, with securities and investments to be separately aggregated,
2. the outstanding amount all funds received by issuing investments in accordance with this Federal Act exceeding the amount of EUR 5 million across an observation period of seven years, or
3. the issued total consideration reaching or exceeding EUR 5 million within twelve months by issuing securities or investments in the European Union. To be included in as such:
 - a) Offerings in accordance with this Federal Act;
 - b) Offerings using simplified prospectuses in accordance with Article 5 para. 3 KMG 2019 as well as offerings with a simplified prospectus in accordance with Article 12 para. 3 KMG 2019;
 - c) Offerings of securities that are to be issued without a prospectus in other countries of the European Union pursuant to Article 3 (2) (b) of Regulation (EU) 2017/1129 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC, OJ L 168, 30.06.2017, p. 12;
 - d) crowdfunding offers in the scope of application of Regulation (EU) 2020/1503.

This shall apply without prejudice to the application of no. 1 for securities.

(2) With regard to an issue for which the issuer voluntarily draws up a prospectus pursuant to the KMG 2019 or pursuant to Regulation (EU) 2017/1129, then this Federal Act shall not apply, instead the KMG 2019 shall apply, and in the case of a prospectus in accordance with Regulation (EU) 2017/1129, Regulation (EU) 2017/1129 shall apply.

(3) The exemption from the obligation to publish a prospectus listed in Article 2 para. 3, Article 3, para. 1 nos. 1, 2, 4 and 5 KMG 2019 as well as the exemptions listed in Article 1 (2) and (4) of Regulation (EU) 2017/1129 shall also apply for the scope of application of this Federal Act..

Investor Protection

Article 3a (1) The issuer shall be allowed to accept a maximum of EUR 5 000 from an individual investor per issuance within a period of twelve months, unless the investor is a professional investor pursuant to Article 2 para. 1 no. 33 of the Alternative Investment Fund Managers Act (AIFMG; Alternative Investmentfonds Manager-Gesetz), published by Federal Act in Federal Law Gazette I No. 135/2013, or a legal person, provided that it is not a consumer as defined in Article 1 para. 1 no. 2 of the Consumer Protection Act (KSchG; Konsumentenschutzgesetz) published by Federal Act in Federal Law Gazette No. 140/1979.

(2) By way of derogation from para. 1 an amount of more than EUR 5 000 shall be allowed to be accepted in the case that the investor provides the issuer or the operator of an Internet platform by means of a separate declaration at latest when concluding the contract the information:

1. that the investor will invest a maximum of twice their average monthly net income, calculated across a twelve month period, or
2. that the investor is investing a maximum of ten percent of their investment assets.

(3) The agreement about the acquisition of securities or investments shall not be allowed to contain any obligation of the investor to acquire further securities or investments at a later point in time, where by doing so the threshold stated in para. 1 will be exceeded. Furthermore it shall not be allowed for payments in instalments to be arranged that exceed a period of twelve months.

(4) The legal provisions relating to the ineffectiveness of contractual clauses shall remain unaffected.

Power to issue regulations

Article 3b. The Federal Minister for Digital and Economic Affairs shall issue a Regulation in consultation with the Federal Ministry of Labour, Social Affairs, Health and Consumer Protection about the information to be made available by issuers. This information must contain an information document that defines the type and order of the information that issuers must make available and in particular contain details about the issuer, the securities or investments offered as well as other details that in particular serve the purposes of protecting investors.



Particular requirements for issuers

Article 4 (1) For a public offering that may lead to the issued total consideration exceeding EUR 250 000 within twelve months by issuing securities or investments in accordance with this Federal Act, issuers shall publish the information listed in nos. 1 to 4 at the same time as the offer on their website on a durable medium, unless the offering is exclusively being provided via an Internet platform:

1. the information that have been checked in accordance with para. 9 or Article 5 para. 4 pursuant to the information document in accordance with the Regulation issued in accordance with Article 3b. The information must be unambiguous, relevant and honest, and in particular shall not be allowed to highlight any potential benefits of the securities or the investment, without clearly making reference in clear and simple to understand language about the risk of a partial or complete loss of the invested money. The information must be adequate and presented in such a way and manner that they are comprehensible for an average investor. Important statements or warnings shall not be allowed to be disguised, diluted, or presented in a misleading way.
2. during the first year of its business activities the opening balance sheet, thereafter the current annual financial statement; or in the case that there is no legal obligation to draw up an annual financial statement or an opening balance sheet a remark to this effect;
3. the business plan;
4. general terms and conditions drawn in relation to the securities or investments being offered or other contractual conditions that apply for the investor.

The issuer shall not be allowed to require a registration, the acceptance of a clause limiting legal liability or the imposing of the payment of a fee for providing access to the information in accordance with nos. 1 and 4.

(2) Furthermore, issuers shall be required for a public offering that may lead to the issued total consideration exceeding EUR 250 000 within twelve months by issuing securities or investments in accordance in this Federal Act to submit the information listed in para. 1 nos. 1 to 4 on the day of the public offering to the Verein für Konsumenteninformation (VKI) and prior to the investor submitting a binding contractual declaration to the investor on a durable medium.

(3) In the case of the offering of units in a cooperative society with its registered office in Austria or in another Member State of the European Union, which belongs to a statutory audit association (Revisionsverband), instead of the amount of EUR 250 000 listed in paras. 1 and 2, the amount of EUR 750 000 shall apply.

(4) Until the end of the period of the offer, the issuer shall have to regularly check the information contained in the information document mentioned in para. 1 no. 1 on a regular basis, and to make any amendments available without delay. The issuer shall also make amendments to the documents listed in para. 1 nos. 2 to 4 without delay.

(5) Issuers shall observe, except in the case of only an Internet platform being used, the provisions about the measures for the prevention of money laundering and terrorist financing pursuant to Articles 365m to 365z of the Commercial Code 1994 (GewO 1994; Gewerbeordnung 1994), published in Federal Law Gazette No. 194/1994, with regard to investors, provided that the financing is not taking place by the issuance of securities that are securitised in the form of a global certificate.

(6) Except in the case of only an Internet platform being used, issuers shall determine the identities of the investors when concluding a contract for a security or an investment.

(7) If an investor, who is a consumer as defined in Article 1 para. 1 no. 2 KSchG, does not receive the information pursuant to para. 1 nos. 1 to 4 prior to submitting their contractual declaration, then the investor may withdraw their offer or from their contract. The withdrawal right shall lapse upon expiry of a two week period after the day upon which the investor has received the missing information and the investor has been briefed about their withdrawal right. Otherwise the provisions of Article 21 paras. 3, 5 and 6 KMG 2019 shall apply accordingly with regard to the consumer's withdrawal right. The observance of the obligations set forth in this Federal Act shall not absolve the issuer from observing of other regulations set out in Federal Law for the purpose of consumer protection.

(8) Advertisements regarding securities or investments must be clearly recognisable as such. The information contained therein shall not be allowed to be incorrect or misleading, and furthermore shall not contradict the information pursuant to para. 1 nos. 1 to 4 and para. 4.



(9) Where no check has been performed pursuant to Article 5 para. 4 second sentence, then the information provided by the issuer pursuant to para. 1 no. 1 are to be checked by a tax advisor, an attorney entered into a list held by a Bar Association, a notary, an economic chamber, a consultant, a professional financial adviser or in the case of units in a cooperative society by the competent statutory audit association with regard to their completeness, comprehensibility and consistency with the information in accordance with para. 1 nos. 2 to 4. Provided that these criteria are observed, a confirmation shall be issued about the check having been conducted. The checker shall not be allowed to be exposed to a conflict of interest, in particular with regard with their contractual relationship to the issuer.

Specific requirements for operators of an Internet platform

Article 5 (1) Operators of an Internet platform, in relation to offerings that fall within the scope of application of this Federal Act, shall be authorised to intermediate securities or investments between investors and issuers, provided in the case of investment advice or the receiving and transmitting of orders that have securities or investments as their subject that are covered by Article 1 no. 7 WAG 2018, that they have an authorisation for the provision of investment services pursuant to Article 3 para. 2 no. 1 or no. 3 WAG 2018 or in the case of investment intermediation have an authorisation in accordance with Article 94 no. 75 GewO 1994. Operators of an Internet platform shall not simultaneously be allowed to hold a licence in accordance with the AIFMG, the Payment Services Act 2018 (ZaDiG 2018; Zahlungsdienstegesetz 2018) published in Federal Law Gazette I No. 17/2018, the Insurance Supervision Act 2016 (VAG 2016; Versicherungsaufsichtsgesetz 2016), published in Federal Law Gazette I No. 34/2015 or the Electronic Money Act 2010 (E-Geldgesetz 2010) published in Federal Law Gazette I No. 107/2010. The observance of the obligations set forth in paras. 2 to 8 shall not replace observation of the regulations set forth in the GewO 1994, BWG or WAG 2018.

(2) Operators of an Internet platform shall have to

1. observe the provisions on measures for the prevention of money laundering and terrorist financing pursuant to Articles 365m to 365z GewO 1994 with regard to issuers and investors, provided that the provisions of the Financial Markets Anti-Money Laundering Act (FM-GwG; Finanzmarkt-Geldwäschegesetz) published in Federal Law Gazette I No. 118/2016 are applicable, and
2. determine the identities of the issuers that use their Internet platform as well as when concluding a contract to acquire securities or investments via the operator's Internet platform the identity of the investor.

(3) Operators of an Internet platform shall make at least the following information available on its Internet platform on a durable medium:

1. Details about the operator of the Internet platform: legal form, company name, registered office, details of the official representatives, details about the owners as well as disclosure of all beneficial owners holding at least a 25% participation, in the case of legal entities an excerpt from the Commercial Register and details about the subject of their business, during the first year of business activities the opening balance sheet, thereafter the current annual financial statement; in the case that there is no legal obligation to draw up an annual financial statement or an opening balance sheet a remark to this effect;
2. Details about the selection criteria for the authorisation of issuers on the Internet platform;
3. Details about the type, frequency and amount of charges collected from investors and issuers;
4. Information pursuant to Article 4 para. 1 nos. 1 to 4 and pursuant to Article 4 para. 4 until the end of the offer period, with the information having to be clear assigned to the respective issuance.

(4) The respective issuers shall be responsible for the correctness of the information pursuant to Article 4 para. 1 nos. 1 to 4 and pursuant to Article 4 para. 4. Provided that no check in accordance with Article 4 para. 9 is performed, then the operator of an Internet platform shall have to check the information provided by the issuer pursuant to Article 4 para. 1 no. 1 with regard to their completeness, comprehensibility and consistency against the information in accordance with Article 4 para. 1 nos. 2 to 4, and provided that these criteria are fulfilled, to issue a confirmation about the check having taken place. With regard to the information to be published in accordance with para. 3 no. 4, operators of an Internet platform are processors as defined in Article 4 (8) of Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General



Data Protection Regulation), OJ L 119, 04.05.2016, p. 1, in the version of the corrigendum, OJ L 314, 22.11.2016, p. 72.

(5) Operators of an Internet platform for accessing the information in accordance with para. 3 no. 1 to 3, the information in accordance with Article 4 para. 1 nos. 1 and 4 and the updating of this information in accordance with Article 4 para. 4, shall not be allowed to demand a registration, nor the acceptance of a clause limiting legal liability nor the charging of a fee.

(6) Other information requirements for operators of an Internet platform existing in accordance with other Federal Acts remain unaffected.

(7) It is forbidden for the operators of an Internet platform to act as issuers on their own Internet platform. Acting as investors on the Internet platform that one operates shall only be permissible, where it is a *de minimis* participation, which solely serves the purpose of simplifying the flow of information between issuers and investors, and where explicit reference is made that this is the case.

(8) The operator of the platform must advise the investors in an appropriate manner that the buying of securities or investments is associated with the risk of a partial or total loss of the invested money, and that investors should therefore take notice of the information about risks contained on the information document pursuant to Article 4 para. 1 no. 1. Prior to purchasing an investment product that is offered the operator of the platform shall ensure that the investor confirms that they have read the following warning: "I am aware of the fact that the investment products being offered are not savings products and that I bear the risk that I might partially or fully lose the invested money. I am also equally aware that the investment is not protected by any form of security."

Penal provision

Article 6 Anyone who breaches Articles 3a, 4 or 5 or the Regulation issued on the basis of Article 3b, provided that the act is not threatened with a stricter penalty in accordance with other administrative penal provisions, commits an administrative offence and shall be fined up to EUR 30 000 by the local administrative authority.

References

Article 7 Where references to provisions in other Federal Acts are made in this Federal Act, those acts are to be applied in their respective current versions.

Gender-neutral use of language

Article 8 Where expressions in this Federal Act relating to persons are given only in the masculine form, they shall refer equally to men and women. The respective gender-specific form shall be used when applied to specific persons.

Enforcement

Article 9 (1) With regard to Article 3b the Federal Minister for Digital and Economic Affairs shall be entrusted with the enforcement of this Federal Act in consultation with the Federal Minister of Labour, Social Affairs, Health and Consumer Protection.

(2) With regard to the remaining provisions the Federal Minister for Digital and Economic Affairs shall be entrusted with the enforcement of this Federal Act.

Entry into force

Article 10 (1) This Federal Act shall enter into force on the first day of the month following its announcement.

(2) Regulations issued on the basis of this Federal Act and its amendments may be issued from the day of announcement of this Federal Act or the respective amendment. The Regulations shall enter into force on the day upon which the respective power to issue regulations enters into force.

(3) Article 1 para. 2, Article 5 para. 1 and Article 5 para. 2 no. 1 in the version of the Federal Act amended in Federal Law Gazette I No. 107/2017 shall enter into force on 3 January 2018.

(4) Article 1 para. 2 and Article 5 para. 1 in the version of the Federal Act amended in Federal Law Gazette I No. 17/2018 shall enter into force on 1 June 2018.

(5) Article 1, Article 2 nos. 1 to 5, Articles 3 to 6, Article 8a and Article 9 in the version of the Federal Act amended in Federal Law Gazette I No. 48/2018, shall enter into force upon expiry of the day of the announcement of this amendment.



(6) Article 1 para. 1, Article 2 nos. 1 to 3, Article 3 para. 1 no. 3 lit. b, paras. 2 and 3 and Article 4 para. 7 in the version amended by Federal Act in Federal Law Gazette I No. 62/2019 shall enter into force on 21 July 2019.

(7) Article 3 para. 1, Article 4 para. 1 no. 1, Article 5 para. 1 and Article 5 para. 8 in the version of the Federal Act amended in Federal Law Gazette I No. 225/2021 shall enter into force on the following day after announcement. Article 8a including its heading shall be repealed on the day after announcement of the amendment by Federal Act in Federal Law Gazette I No. 225/2021.

Transposition Notes

Article 1

Transposition Note

(Note: from Federal Law Gazette I No. 107/2017, and Articles 1 and 5, Federal Law Gazette I No. 114/2015)

This federal act transposes the following legal acts of the European Union:

1. Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, OJ L 173, 12.06.2014, p. 349, last amended by Directive (EU) 2016/1034, OJ L 175, 23.06.2016, p. 8, as amended by the corrigendum, OJ L 64, 10.03.2017, p. 116, and
2. Commission Delegated Directive (EU) 2017/593 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to safeguarding of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits, OJ L 87 p. 500.

Furthermore this Federal Act serves for the effective enforcement of the following legal acts of the European Union:

1. Regulation (EU) No 600/2014 on markets in financial instruments and amending Regulation (EU) No 648/2012, OJ L 173, 12.06.2014, p. 84, most recently amended by Regulation (EU) 2016/1033, OJ L 175, 23.06.2016, p. 1;
2. Commission Delegated Regulation (EU) 2017/565 supplementing Directive 2014/65/EU as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive, OJ L 87 p. 1; and
3. Commission Delegated Regulation (EU) 2017/567 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to definitions, transparency, portfolio compression and supervisory measures on product intervention and positions, OJ L 87, p. 90.

Article 1

Transposition Note

(Note: from Federal Law Gazette I No. 17/2018, and Articles 1 and 5, Federal Law Gazette I No. 114/2015)

This Federal Act transposes Directive (EU) 2015/2366 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010 and repealing Directive 2007/64/EC, OJ L 337, 23.12.2015 p. 35.