

Summaries of national provisions on marketing requirements for AIFs

This summary contains information on the national laws, regulations and administrative provisions relating to marketing requirements for AIFs, as referred to in Section 5(1) of Regulation (EU) 2019/1156 of the European Parliament and of the Council of 20 June 2019 on facilitating the cross-border distribution of collective investment undertakings.

This information was last modified on February 20, 2024.

Summary of marketing requirements for AIFs

A manager of an AIF established in another Member State, who wishes to offer that AIF to investors in the Netherlands, must comply with the requirements of Sections 32 and 33 of the AIFM Directive. EU managers who want to offer an AIF with a EuVECA or EuSEF label in the Netherlands can do so after the supervisory authority of the home Member State has notified it to the AFM. Non-EU-managers of AIFs who wish to offer an AIF in the Netherlands must notify it and may only offer this AIF to qualified investors.

An EU-manager which only offers units to professional investors and manages (one or more) AIFs whose total assets under management (i) are less than or equal to €500 million, in the case of a manager managing funds that are closed-end for the first five years and do not use leverage; or (ii) are less than or equal to €100 million, may offer such units in the Netherlands in accordance with the relevant provisions of Section 2:66a Wft.

Prior notification to the AFM of the marketing communications that an AIFM intends to use in the context of dealing with investors is not required. Marketing communications provided to investors in relation to the AIF should be accurate, clear and not misleading under Regulation (EU) 2019/1156. The information referred to in Section 23 of the AIFM Directive that must be provided to investors is provided in the Dutch language. The information that must be provided to investors under the Prospectus Regulation must comply with the language requirements as set out in Section 27 Prospectus Regulation.

Additional rules apply if a manager offers units in the Netherlands to retail investors, insofar as these units (i) can be acquired for a consideration of less than €100,000 per participant, or (ii) have a nominal value per right of less than €100,000. Those additional rules relate to the manager's business operations, the provision of information, including the making available to investors of an up-to-date version of the key investor information document. When offered to non-professional investors, additional rules apply on the basis of the Financial Supervision Act (*Wet financieel toezicht (Wft)*) and the Decree on the Supervision of the Conduct of Financial Undertakings (*Besluit Gedragstoezicht financiële ondernemingen*) ('retail top-up'). In order to make use of the 'retail top-up' as an EU manager, the AFM must, in addition to the notification, also receive a statement signed by the manager that the manager meets the retail top-up requirements.

An AIF whose units are offered in the Netherlands to non-professional investors must comply with the provisions referred to in Section 43a, first paragraph under (a) to (f) AIFM Directive. These facilities in the Netherlands must be made available in Dutch language.

Where units are offered that are not negotiable, the manager shall provide a prospectus on that AIF before investors acquire those rights. The prospectus shall contain at least the information referred to in Section 23, first and second paragraphs of the AIFM Directive.

A manager of an AIF with its registered office in another Member State informs the AFM if there is a suspension of the repurchase or redemption of units in an AIF managed by it. A number of ongoing requirements also apply to non-EU managers who offer AIFs on the basis of Section 1:13b of the Wft. For example, there is a periodic reporting obligation.

An EU manager of an AIF managed by him and having its registered office in another Member State, who intends to offer this AIF to investors in the Netherlands, must comply with the requirements of Section 32 and 33 of the AIFM Directive. The withdrawal of a European Passport for the offering of units must comply with the requirements of Section 32a, first paragraph of the AIFM Directive. An EU manager wishing to offer an AIF managed by it and having its registered office in another Member State in the Netherlands to retail investors must also comply with the requirements of Section 32 and 33 of the AIFM Directive. In addition, the manager must report this intention to the AFM.

An EU licensed manager who wants to offer a non-EU AIF in the Netherlands must report this to the AFM.

Foreign managers of AIFs or AIFs originating from a designated state that wish to offer units in the Netherlands can, under certain circumstances, make use of the designated state regime as set out in the Wft. An AIFM that uses this regime is exempt from the licence requirement but will have to comply with a number of ongoing obligations. When the top-up retail requirements are met, AIFS can also be offered to non-professional investors in the Netherlands.

A manager of an AIF, a EuVECA fund or an EuSEF fund who wishes to proceed with pre-marketing must report this to the AFM no later than two weeks after he has proceeded to pre-marketing. The obligation does not apply to a manager who uses the registration regime and does not manage or wish to manage a EuVECA fund or EuSEF fund. Third parties may only pre-market on behalf of a manager under the CBDF Directive if they are authorised as an investment firm, as a credit institution, as a UCITS management company, as a manager of an AIF, or as a tied agent of an investment firm. If, within 18 months of pre-marketing, subscriptions are made to AIFs for which information has been provided in the context of pre-marketing, this shall be considered as a result of the marketing. In addition, for a period of 36 months after de-notification, no pre-marketing may be done with regard to the denotified AIF, EuVECA or EuSEF.