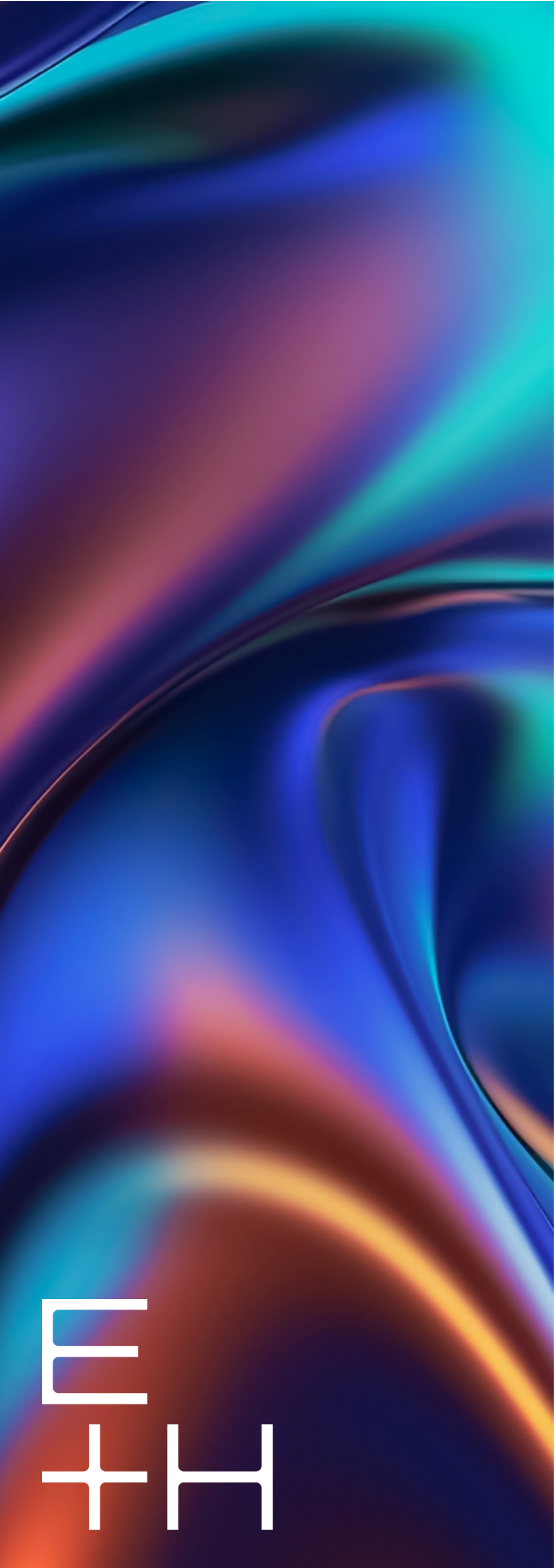

Insight

AIFMD II in Austria – A New Framework for the Funds Industry and Beyond

July 2026

A. Introduction

What it is: A new framework for alternative investment fund managers as turning point for private credit

On 7 July 2026, the Austrian National Council passed the bill[1] transposing Directive (EU) 2024/927 – commonly known as AIFMD II – into Austrian law, amending the Act on Alternative Investment Fund Managers (*Alternative Investmentfonds Manager-Gesetz*, "**AIFMG**").

This is a **landmark moment for private credit in Austria**, as the reform redraws the boundary between what AIF-managers can do, how they can structure their funds, and what regulators can expect to see.

For AIF-managers who approach these changes proactively, the reform offers a range of concrete commercial and structural opportunities that deserve careful attention.

Why it matters: The market moved – the rules finally catch up

Private credit did not wait for regulators. Over the decade following the original AIFMD of 2011, non-bank lenders operating through AIF structures expanded the pool of available financing for mid-market companies across Europe, reaching borrowers and transactions that traditional bank lending did or could not always serve: As the Austrian National Bank (OeNB) recorded in its 2024 private credit report, the market expanded at an average annual rate of 17% in the five years to 2023, reaching USD 505 billion in assets under management in Europe.[2] For borrowers that could not access – or chose not to access – conventional bank lending, AIF-based credit became the default alternative.

The legal framework, however, had not kept pace. The original AIFMD was not designed with loan origination in mind, and it did not address it in any harmonised way. Member states filled the gap with divergent national rules, leaving AIF-managers operating across borders to navigate a patchwork of regulatory requirements with no consistent baseline.

AIFMD II corrects this.

B. Key Changes Introduced in Austria

B.1 AIF loan origination

A new legal home for private credit strategies with a firm line on consumer lending

The centrepiece of the reform is the creation of a **harmonised framework for AIF loan origination** – and in Austria, this marks a genuine, if overdue, codification. Until now, AIF-managers running private credit strategies through AIF structures had to navigate a grey zone: there were no dedicated AIFMG provisions on loan origination, and the FMA assessed permissibility case by case. The legal basis rested on a narrow statutory hook – the exemption in section 3(3)(7) of the Austrian Banking Act (*Bankwesengesetz*, "**BWG**"), which disapplied the banking licence requirement for AIFM in respect of activities covered by their AIFMD authorisation. That exemption was available only to fully licensed (*konzessioniert*) AIF-managers; registered (*registriert*) AIF-managers below the licensing thresholds could not rely on it and, in Austria – unlike in Germany – could therefore not manage loan-originating funds without a separate banking licence. That uncertainty is now substantially resolved, at least for licensed AIF-managers.

What is less satisfactory, however, is that the AIFMG reform does not use this opportunity to address the position of registered (*registriert*) AIF-managers expressly. The interaction between section 3(3)(7) BWG and the AIFMG has never been resolved at the level of the AIFMG itself, and the new framework does not change that. The AIFMG now contains detailed rules on loan-originating AIFs – including structural, leverage, and concentration requirements – but it does not state, in terms, whether those rules apply to AIFs managed by registered managers, or whether such managers may originate loans at all without a banking licence. The explanatory notes to the bill do acknowledge both categories implicitly, by extending the consumer lending prohibition to AIFs managed by registered managers as well as to those managed by licensed managers. But that formulation addresses only the outer boundary of what is prohibited; it does not establish a positive entitlement to lend for registered managers, nor does it amend

[1] 502 der Beilagen XXVIII. GP.

[2] Cf. *Breyer/Girsch/Hübler/Nanista/Wittig*, OeNB Report, Private credit – the de-banking of lending, https://www.oenb.at/en/Publications/Economics/reports/2024/report-2024-20-private-credit.html.

section 3(3)(7) BWG to bring them within its scope. The legislature had an obvious opportunity to resolve this question once and for all in the AIFMG, and it did not take it. The result is a framework that is clear for licensed managers, but continues to leave registered managers in regulatory uncertainty on one of the most commercially significant questions the reform was designed to answer.

How the framework is structured

The framework is straightforward: loan-originating AIFs are closed-ended by default, keeping fund structure aligned with the illiquid nature of loan portfolios. Open-ended structures are available, but only where the AIF-manager can demonstrate that the fund's liquidity management system matches its strategy and redemption terms.

The numbers that will shape structuring

- **Leverage:** capped at 175% NAV for open-ended funds, 300% for closed-ended funds
- **Concentration:** the nominal value of loans granted by the AIF to any single borrower must not exceed 20% of AIF capital, where that borrower is a financial undertaking, an AIF, or a UCITS
- **Retention:** 5% of the nominal value of any loan sold or transferred to a third party – held until maturity for loans with a maturity of up to eight years, and for at least eight years for all other loans

One hard boundary

Austria has exercised the member state option to prohibit consumer lending by AIFs outright, covering both direct origination and credit servicing activities for consumers on Austrian territory.

B.2 Liquidity management tools

Pick your tools and put them in writing

The amendment introduces a new obligation for AIF-managers managing open-ended AIFs to select at least two liquidity management instruments from the menu set out in a new annex to the AIFMG. With certain limits, the available instruments range from redemption gates and extended notice periods through to swing pricing, dual pricing, anti-dilution levies, and redemption in kind. The selection must be appropriate for the AIF's investment strategy, liquidity profile, and redemption policy. Further, it must be embedded in the AIF's constitutional documents. Exceptions may apply to money market funds authorized under Regulation (EU) 2017/1131.

B.3 Delegation rules

Delegate the work but not the responsibility

The delegation framework of the AIFMG has been tightened. The AIF-manager remains fully and unconditionally liable for the conduct of any delegate or sub-delegate, regardless of where that delegate is located or how it is regulated. The prohibition on letter-box structures has been restated with greater precision: delegation must not reach a scale at which the AIF-manager can no longer genuinely be regarded as the manager of the AIF or as the provider of the ancillary services for which it holds a licence.

B.4 Ancillary services

A broader toolkit with fewer barriers

Two new categories of ancillary services are added to the list of activities that a licensed AIF-manager may provide. First, benchmark administration under Regulation (EU) 2016/1011, commonly known as Benchmarks Regulation. Second, credit servicing under Directive (EU) 2021/2167, commonly known as Credit Servicers and Credit Purchasers Directive.

In addition, AIF-managers may now provide to third-party clients any function or activity that they already perform in connection with the AIFs they manage or the ancillary services they offer, provided that any resulting potential conflict of interest is adequately resolved. The pre-existing requirement to hold an individual portfolio management licence before applying for other ancillary service licences has been removed, simplifying the path to broadening a firm's service offering.

B.5 Reporting

Regulators want the full picture and now they mean it

The periodic reporting obligations have been expanded. In addition to existing reporting on markets, instruments, and risk profiles, AIF-managers must now report detailed information on delegation and sub-delegation arrangements, including resources deployed for oversight, outcomes of due diligence reviews, and the start and end dates of all delegation agreements. For loan-originating AIFs, the composition of the loan portfolio must be reported periodically to investors. Annual investor disclosures must include all fees, charges, and costs borne directly or indirectly by investors, and details of any parent companies, subsidiaries, or special purpose vehicles used in connection with fund investments.

C. Takeaways

Private credit just became considerably more straightforward

AIF loan origination has a dedicated statutory framework for the first time. For licensed AIF-managers, the uncertainty that complicated strategy decisions – and in some cases deferred them – has been substantially resolved: the AIFMG now expressly recognises loan origination as a legitimate AIF activity, on a clear set of structural, concentration, and leverage terms. For managers operating below the licensing thresholds, the position is more nuanced: while the new framework does not close the door, the BWG banking licence question was not addressed by the reform and remains an open regulatory issue in Austria. The legislature had a clear opportunity to resolve – in the AIFMG itself – whether and to what extent registered AIF-managers may originate loans without a separate banking licence, and whether the exemption in section 3(3)(7) BWG is available to them. It did not do so. That omission is regrettable: the interaction between the BWG exemption and the AIFMG framework should have been expressly addressed, and the question of whether registered managers may rely on the new loan origination provisions – or are excluded from them – should have been answered in the statute. Until it is, registered managers face a regulatory gap that the reform leaves unresolved.

For licensed managers, the question is no longer whether a framework exists. It is how to use it – and, for registered managers, whether they are in it at all.

Do more with your existing licence

The reform broadens the ancillary services an AIF-manager can provide – and removes the portfolio management licence requirement that previously constrained them. Credit servicing and benchmark administration are now recognised activities. For managers with developed operational platforms, the question is how much of that capacity can become a business line.

Review your liquidity management instruments and delegation structures

Open-ended AIF managers are now required to select at least two liquidity management instruments and document the conditions for their activation and deactivation. If fund documents do not already reflect these choices, they need to be updated.

With respect to delegation, the reform introduces more rigorous justification and oversight standards. Existing delegation arrangements should be reviewed against the new framework and documented accordingly.

Pre-2024 loan originating AIFs – transitional window

If a loan-originating AIF was launched before 15 April 2024, the AIFMG provides – among other implementation provisions – a transitional window until 16 April 2029 before the new concentration and leverage limits apply in full. However, the transitional period comes with strict constraints: if an AIF's loan exposures or leverage already exceeds the new caps, those positions may not be increased further; if they are currently below the new caps, they may not be raised above them. We therefore recommend reviewing existing portfolios and capital-raising plans now to identify if a transitional path applies and to plan for orderly adjustment before the window closes

Reporting – start preparing now

The expanded supervisory reporting obligations to the regulator should apply from 16 April 2027, but the volume and granularity of what will be required is substantial. Use the time now to identify data gaps, review data governance, and align with your service providers on delegation, cost, and distribution data. Investor disclosure upgrades – including annual cost figures and descriptions of liquidity management instruments in pre-investment documents – are even on a shorter timeline: enhanced pre-investment documents must reflect the new requirements from the date the AIFMG amendment enters into force.

D. Final steps

After its passing in the National Council on 7 July 2026, the bill has now been transmitted to the Federal Council, which is scheduled to consider it at its plenary session on 16 July 2026. The Federal Council has a suspensive right of objection, with a deadline of early September 2026. Once promulgated in the Federal Gazette, the provisions will enter into force in accordance with the dates set out therein, or, generally, the day after promulgation in the Federal Gazette.

We would be delighted to assist with strategy assessments in light of the new framework.

This article reflects the position under the AIFMG amendment as at the date of publication. It is intended as a general overview and does not constitute legal advice on any specific matter.

We are delighted to assist:

Marcus Benes
Partner
m.benes@eh.at
+43 676 8 3647 302

Christian Jöllinger
Partner
c.joellinger@eh.at
+43 676 8 3647 390

Jasmin Julia Denk
Attorney-at-law
j.denk@eh.at
+43 676 8 3647 286

Note: This brief statement is intended solely to provide general information and does not constitute legal advice from E+H Rechtsanwälte GmbH. This brief statement is not a substitute for individual legal advice. E+H Rechtsanwälte GmbH assumes no liability of any kind for the content or accuracy of this statement.