INVESTMENT MANAGEMENT CLIENT ALERT DECEMBER 2025

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EU Asset Management and Investment Funds Alert

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EUROPEAN COMMISSION PUBLISHES PACKAGE FOR FURTHER CAPITAL MARKET INTEGRATION

On 4 December 2025, the European Commission published proposals for the further development of capital market integration and supervision within the European Union. The proposals include, among other things, a so-called master amending directive concerning the Alternative Investment Fund Managers (AIFM) Directive, Undertakings for Collective Investment in Transferable Securities (UCITS) Directive, and Markets in Financial Instruments Directive (MiFID) II, as well as a master amending regulation concerning a variety of EU regulations (including the Markets in Financial Instruments Regulation (MiFIR). An overarching goal is stronger EU harmonization, which will be achieved, for example, by shifting rules from directives to regulations, new delegated acts, and more powers for the European Securities and Markets Authority (ESMA).

One of the main focuses of capital market integration concerns the cross-border distribution of funds. The EU distribution passport will be abolished in its current form. Cross-border distribution is to be more closely linked to product approval and will take place via an EU data platform of ESMA. This is intended to avoid potential obstacles from the authorities of the member states. The premarketing and de-notification rules will also be simplified. In particular, the 18- and 36-month blocking periods for possible future fund distribution will be eliminated. The notification process for the manager's passport will be accelerated (shortening deadlines). Further facilitations concern the transfer of management functions to regulated group companies. In the future, this will no longer be subject to outsourcing requirements.

The authorization procedures for funds are to be further harmonized. In addition, the granting of permission to provide ancillary services will be facilitated. Finally, an EU passport for depositaries will also be introduced such that, in the future, depositaries from other member states can also be appointed for alternative investment funds (AIFs). At the UCITS product level, the investment limits for investments in simple, transparent, and standardized securitizations and the issuer limits for index-tracking UCITS will be increased.

The European Commission's proposals will now enter the legislative process and be further negotiated with the European Parliament and the European Council.

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PENSION REFORM ACT 2025: ELTIFS AS A KEY INVESTMENT INSTRUMENT

The draft of the Pension Reform Act 2025 for the first time systematically brings European Long-Term Investment Funds (ELTIFs) into focus for private retirement provision. They shall be expressly recognized as permissible investment vehicles for the new return-driven pension scheme. At the same time, the draft takes up the expanded scope of the ELTIF Regulation 2023/606: This includes broader asset allocation, easier access for retail investors, and more flexible redemption rules, making ELTIFs regulatorily attractive for the mass market.

The draft is currently in the early parliamentary process as a ministerial draft. Final adoption is planned for the coming months. The new pension system deliberately lacks a capital guarantee, positioning ELTIFs as long-term return components with accepted illiquidity. For fund providers and asset managers, this opens up new sales channels via pension custody accounts, greater attractiveness of semi-liquid structures, economies of scale with standardized products, and increased importance of cost control, transparency, and reporting.

OUTSOURCING TO CLOUD PROVIDERS: BAFIN APPLIES ESMA GUIDELINES ON OUTSOURCING TO CLOUD PROVIDERS

On 1 December 2025, the Federal Financial Supervisory Authority (BaFin) announced that it will apply the guidelines of ESMA on outsourcing to cloud providers, dated 30 September 2025. These provide guidance, in particular, on identifying, managing, and monitoring risks associated with outsourcing to cloud providers.

As early as 2021, ESMA had published guidelines addressed to institutions active in the financial market. However, these are now regulated by the Digital Operational Resilience Act (DORA).

The guidelines published in September 2025 now only apply to depositaries of AIFs that are not financial institutions and are not subject to DORA.

INFLUENCE OF INVESTORS ON THE MANAGEMENT OF INVESTMENT FUNDS

In March 2025, BaFin submitted a “Guidance Note on the Influence of Investors on Investments and Divestments of Investment Funds” for consultation. The draft provided for significant restrictions regarding the extent of regulatory permissible influence of individual investors or investor groups (in particular regarding the issuance of instructions, veto rights, and consent requirements), as well as extensive documentation obligations for the involved management companies. After profound legal concerns were raised against the draft, it is now reported that BaFin will no longer pursue the issuance of the guidance note.

Already in July 2025, the Federal Fiscal Court (Bundesfinanzhof, BFH) in a decision (VIII R 18/22) determined for the purposes of the Investment Tax Act (Investmentsteuergesetz, InvStG) of 2004 that the definition of “investment funds” in section§ 1, sentence 2, of the Investment Act (Investmentgesetz, InvG), which applied until 21 July 2013, does not require external management in a way that the asset management by the fund manager must be shielded from any influence by the investors. In the context of the Capital Investment Code (Kapitalanlagegesetzbuch, KAGB), however, it should also be noted that according to the “Guidelines on Key Concepts of the AIFMD” of ESMA, dated 13 August 2013 (ESMA/2013/611), a collective investment undertaking is, in case of doubt, not given if the investors—as a group—have extensive ongoing discretionary or control powers over operational matters relating to the day-to-day management of the undertaking's assets.

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SIMPLIFICATIONS REGARDING THE HOLDER CONTROL PROCEDURE

Due to an amendment to the Regulation on Notifications under section 2c of the German Banking Act and section 17 of the Insurance Supervision Act (Inhaberkontrollverordnung) (InhKontrollV), certain simplifications for the holder control procedures that must be followed—in particular when acquiring, changing, or giving up a significant holding in credit institutions, financial services institutions, and insurance companies—are in effect as of 25 November 2025. In May 2025, BaFin had submitted a draft "Regulation on the Simplification of Holder Control Procedures and Certain Personal Notifications" for consultation.

The simplifications particularly concern documents and declarations that have previously been submitted by the notifier; even if these are more than two years old, they do not have to be resubmitted if they are still valid and are still available to BaFin (or the competent state supervisory authority to which they were previously submitted for another reason) (§ 16 para. 1 InhKontrollV, new version). Further simplifications concern the obligation to submit declarations and documents on reliability (§ 9 InhKontrollV) and CVs (§ 10 InhKontrollV) in multilevel ownership structures. Companies in the middle layers of a group only have to submit the relevant declarations and documents if BaFin expressly requests them (§ 18 para. 7 InhKontrollV, new version); for companies at the top of the group, BaFin may waive the submission requirement (§ 18 para. 8 InhKontrollV, new version). Of particular importance for foreign parties is the simplified recognition of foreign certificates of good conduct or equivalent documents (§ 9 para. 8 InhKontrollV, new version).

RESOLUTION OF THE EUROPEAN PARLIAMENT ON ARTIFICIAL INTELLIGENCE IN THE FINANCIAL SECTOR

On 25 November 2025, the European Parliament adopted a resolution on the impact of artificial intelligence (AI) on the financial sector. The resolution also provides an overview of how AI is changing the EU financial sector. It is noted that AI is widespread, especially in back-office tasks, but its use in high-risk areas such as credit assessment and risk assessment in insurance is increasing. The European Parliament highlights both the opportunities—such as improved fraud detection and customer service—and the risks, including issues with data quality, discrimination, and data protection concerns. The European Parliament emphasizes the need for human oversight of AI systems and calls for robust data governance and clear regulatory guidelines.

The European Parliament calls on the European Commission to provide clear and practical guidelines to avoid regulatory overlaps and to support responsible AI innovation while maintaining strong consumer protection.

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