INVESTMENT MANAGEMENT CLIENT ALERT FEBRUARY 2026

Date: 26 February 2026

EU Asset Management and Investment Funds Alert

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LOCATION PROMOTION ACT ENTERS INTO FORCE

On 9 February 2026, the Location Promotion Act (*Standortfördergesetz*, StoFöG) was published in the Federal Law Gazette (*Bundesgesetzblatt*). The Act is meant to strengthen Germany as a business location by, among other things, providing incentives for private investment (particularly in the areas of infrastructure, renewable energy and venture and growth capital) and reducing unnecessary bureaucratic costs.

The Location Promotion Act also provides for amendments to the German Capital Investment Code (*Kapitalanlagegesetzbuch*, KAGB), which are intended to expand the investment options for real estate funds into facilities for the production of renewable energy and to enable open-ended domestic special Alternative Investment Funds (AIFs) with fixed investment terms to invest in closed-ended funds. Amendments to the German Investment Tax Act (*Investmentsteuergesetz*, InvStG) are designed to provide tax support for investments in renewable energy, infrastructure and venture capital. Furthermore, the "issue" of active entrepreneurial management—in the context of qualification as an investment fund or special investment fund and for the purposes of trade tax exemption—will be mitigated for a range of activities.

The aforementioned amendments to the KAGB and the InvStG entered into force on 10 February 2026.

BMF PUBLISHES MINISTERIAL DRAFT ON THE IMPLEMENTATION OF SOLVENCY II AMENDMENTS

On 10 February 2026, the Federal Ministry of Finance (*Bundesfinanzministerium*, BMF) published the ministerial draft for an Act Amending Insurance Recovery, Resolution, and Supervision (*Versicherungssanierungs-*, *-abwicklungs- und -aufsichtsänderungsgesetz*, VSAAG). Among other things, the Act serves to transpose the Solvency II Amending Directive (*Solvency II–Änderungsrichtlinie*) (Directive (EU) 2025/2) into German law.

The Ministerial Draft redefines, inter alia, the basic solvency capital requirement for long-term equity investments. Against the background of EU requirements, the draft also allows for the classification of shares in European Long-Term Investment Funds (ELTIFs) and other Alternative Investment Funds (AIFs) with a low risk profile as long-term equity investments at the fund level, rather than at the level of the underlying assets. Consequently, a look-through approach involving extensive reporting obligations would not be required. Subject to compliance with all requirements, this could result in the application of a basic stress factor of 22% (instead of 39%) to such fund investments.

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The Solvency II Amending Directive is to be applied by Member States from 30 January 2027.

BMF CIRCULAR ON THE TREATMENT OF FUND ESTABLISHMENT COSTS

On 19 January 2026, the Federal Ministry of Finance (*Bundesfinanzministerium*, BMF) issued a circular addressing various points of doubt regarding the income tax treatment of fund establishment costs as acquisition costs pursuant to § 6e of the German Income Tax Act (*Einkommensteuergesetz*, EStG).

Expenses in connection with the launch of closed-ended funds are not immediately deductible as operating expenses or professional expenses; instead, they are deemed acquisition costs of the fund assets if the funds were established in the form of partnerships using pre-formulated contractual frameworks without significant investor influence (§ 6e EStG). The BMF Circular further elaborates on the conditions under which investors are (or are not) deemed to have significant influence over the pre-formulated contracts. Significant influence is assumed if investors are legally and factually able to change essential parts of the concept (e.g., the selection of investments).

The BMF Circular is to be published in the Federal Tax Gazette Part I (*Bundessteuerblatt Teil I*) and shall be applied by the tax authorities to all open cases.

BANKING DIRECTIVE IMPLEMENTATION AND BUREAUCRACY REDUCTION ACT PASSED

On 28 January 2026, the Financial Committee (*Finanzausschuss*) approved the Banking Directive Implementation and Bureaucracy Reduction Act (*Bankenrichtlinienumsetzungs-* und *Bürokratieentlastungsgesetz*, BRUBEG) with a series of amendments compared to the government draft of 3 December 2025. Among other things, the BRUBEG transposes the Amending Directive to the EU Banking Directive (Directive (EU) 2024/1619 – CRD VI) into German law (e.g., the German Banking Act, KWG). CRD VI is part of the EU Banking Package, which also implements Basel III. Specifically, CRD VI introduces new minimum regulatory requirements for third-country branches.

One amendment compared to the BRUBEG government draft concerns equity exposures of development banks (*Förderbanken*) entered into as part of their development mandate. The Capital Requirements Regulation (CRR) does not apply to such equity exposures and subordinated debt instruments; therefore, they can be assigned risk weights of 100% under the standardized approach for credit risk (instead of at least 250%). No changes were made regarding third-country branches.

A large part of the CRD VI provisions should have been applied by Member States since 11 January 2026. Despite the delayed implementation in Germany, the Financial Committee has now spoken out against a retroactive entry into force of the BRUBEG. The first day of the next quarter was chosen as the new effective date.

BAFIN GUIDANCE ON ICT RISKS IN THE USE OF AI

On 30 January 2026, the Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht*, BaFin) has issued its “Guidance on ICT risks in the use of AI by financial

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companies". The guidance serves as non-mandatory advice and is intended to assist financial firms in implementing the relevant regulatory requirements under the Digital Operational Resilience Act (DORA) when using AI.

By reference to the EU AI Act, an AI system is defined as a machine-based system designed to operate with varying levels of autonomy. The guidance addresses information and communication technology (ICT) risks throughout the entire lifecycle of AI use, including development, testing, operation, and retirement. It emphasizes the need for a robust governance and organizational structure, as well as clear strategies and continuous training. The guidance also covers specific aspects of cloud service usage and issues regarding cyber and data security.

The guidance is primarily aimed at entities supervised by BaFin that must meet ICT risk management requirements (CRR institutions and insurance undertakings regulated under Solvency II). However, the guidance does not define any supervisory expectations of BaFin.

ESMA PUBLISHES TRANSLATIONS OF GUIDELINES FOR STAFF REQUIREMENTS UNDER MICA

On 28 January 2026, the European Securities and Markets Authority (ESMA) published the translations of its guidelines on criteria for the assessment of knowledge and competence pursuant to the Markets in Crypto-Assets Regulation (MiCA).

These guidelines set out minimum requirements for the qualification, experience, and continuing professional development (CPD) thresholds for staff providing information or advice on crypto-assets and crypto-asset services to clients. ESMA expects compliance with these guidelines to strengthen investor protection.

Competent authorities are expected to incorporate the guidelines into their national legal and supervisory frameworks and to ensure, through their supervision, that crypto-asset service providers (CASPs) comply with them. Within two months of publication, authorities must notify ESMA whether they comply or intend to comply with the guidelines.

The guidelines will apply from 28 July 2026 (i.e., six months after the publication of the translations on the ESMA website).

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