INVESTMENT MANAGEMENT CLIENT ALERT JULY 2026

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EU Asset Management and Investment Funds Alert

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ADMINISTRATIVE COURT OF FRANKFURT AM MAIN RULES ON THE PUBLICATION OF MEASURES AND SANCTIONS AGAINST COMPANIES PURSUANT TO § 124 WPHG

§ 33 of the German Securities Trading Act (Wertpapierhandelsgesetz, WpHG) establishes certain reporting obligations where the voting rights in issuers (for which the Federal Republic of Germany is the home Member State) reach, exceed, or fall below a specified percentage and is generally intended to implement Art. 9 of Directive 2004/109/EC (Transparency Directive)–while, in deviation from that Directive, the lowest voting rights threshold is already set at 3%. Supervisory decisions regarding measures and sanctions for violations of these reporting obligations are published without delay on the website of the Federal Financial Services Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht, BaFin) in accordance with § 124 WpHG. In exceptional cases, the decision may be published without disclosing personal data or even postponed, particularly if the disclosure of personal data would be disproportionate (§ 124(3) no. 1 WpHG) or if the disclosure would cause disproportionate harm to the parties involved (§ 124(3) no. 4 WpHG).

In a decision of 22 June 2026 (7 L 2088/26.F), the Administrative Court of Frankfurt am Main ruled, with regard to the exception provision of § 124(3) no. 1 WpHG, that an anonymized disclosure is generally not foreseen in the case of legal entities. Although the court held that the exception provision of § 124(3) no. 4 WpHG is, in principle, also applicable to legal entities, the court imposed relatively high requirements regarding the “threat of disproportionate harm” within the meaning of this provision (which were not met in the present case) and determined that the “naming and shaming” associated with the publication complies with the requirements and objectives of the Transparency Directive and that non-anonymized disclosure is to be regarded as the rule. The court, however, left the question unanswered whether the severity of the violation underlying the measure must also be taken into account for the purposes of § 124 WpHG.

DRAFT BMF AMENDMENT LETTER ON THE APPLICATION OF THE INVSTG

On 6 July 2026, the Federal Ministry of Finance (Bundesfinanzministerium, BMF) sent a further draft concerning amendments to the BMF guidance letter on application issues related to the German Investment Tax Act (Investmentsteuergesetz, InvStG) to various professional associations. The draft contains adjustments to the guidance letter due to the German Fund Risk Limitation Act (Fondsrisikobegrenzungsgesetz, FRiG), as well as

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further amendments and additions to provisions of the InvStG. The BMF had already circulated a draft on 23 March 2026.

With regard to the FRiG, the letter states that the selection and activation of liquidity management tools (LMTs) (e.g., redemption restrictions and extensions of redemption periods) do not conflict with the required annual redemption right. With regard to the German Location Promotion Act (Standortfördergesetz, StoFöG), it clarifies that the required look-through treatment for non-trading and for trading partnerships no longer applies if these partnerships also qualify as alternative investment funds (AIFs).

Furthermore, despite submissions from industry associations, the BMF maintains its position of not applying the rulings of the Federal Fiscal Court (Bundesfinanzhof) regarding the inclusion or non-inclusion of existing shares in the deemed acquisition costs as of 1 January 2018 (which concerns the partial exemption rule) to business investors and corporate entities that do not meet the requirements under § 20(1), sentence 4 or 5 InvStG. Similarly, the jurisdiction is to remain inapplicable to special investment funds that hold shares in equity, mixed, or real estate funds.

The draft is now being coordinated at the federal-state level.

BAFIN PUBLISHES 9TH MARISK AMENDMENT

On 30 June 2026, the Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht, BaFin) published a revised circular, titled “Minimum Requirements for Risk Management (MaRisk)” (9th MaRisk Amendment). One of the goals of the 9th MaRisk Amendment is to further clarify the principle of proportionality and facilitate its application in practice. With regard to proportionality, BaFin has therefore established three clearly defined size categories for banks: very small, small, and other less-significant institutions.

Compared to the consultation draft of 1 April 2026, the final version provides even more specific guidance on which requirements are dispensable for which size category. For example, it further specifies the cases in which relief measures apply in the context of strategic planning, risk-bearing capacity concepts, and internal control systems.

Furthermore, the final version of the revised circular also includes a few additional provisions regarding risk management. For example, it requires contractual provisions governing security requirements in the event of a nonmaterial outsourcing arrangement.
The new version of MaRisk took effect upon its publication. To the extent that additional requirements arise from MaRisk in individual cases, a transition period applies until 1 January 2027.

ESMA PUBLISHES SUPERVISORY BRIEFING ON TRIANGULAR PASSPORTING

On 7 July 2026, the European Securities and Markets Authority (ESMA) published a supervisory briefing on triangular arrangements concerning the EU Markets in Financial Instruments Directive (MiFID) passport. Under the MiFID and the corresponding national implementation (in Germany, the German Banking Act (Kreditwesengesetz, KWG) and the German Investment Firms Act (Wertpapierinstitutsgesetz, WpIG)), investment firms authorized in one member state (home member state) may provide MiFID investment services in another member state (host member state) on a cross-border basis, via a dependent branch or via an independent tied agent.

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The ESMA supervisory briefing addresses the question of the extent to which investment firms authorized in one member state (Member State A) and having a branch or tied agent in the host member state (Member State B) may, through this presence in Member State B, provide investment services in a further member state (Member State C), provided that the passport for cross-border services to Member State C has been notified.

ESMA clarifies that investment services may also be provided from Member State B to Member State C, but this must already be specified in the notification submitted to the authority in the home Member State A. ESMA does not consider a branch or tied agent in the host Member State B, which is intended solely for the provision of services in Member State C, to be eligible for the passport. In addition, the investment firm must manage the risk arising from this triangular model, inform its clients accordingly, and notify the competent supervisory authority.

ESMA supervisory briefings are not binding but express ESMA's expectations regarding a specific topic.

BAFIN CONSULTS ON AMENDING REGULATION TO KAPRÜFBV

On 30 June 2026, BaFin published for consultation the draft of an amending regulation to the German Capital Investment Audit Reports Regulation (Kapitalanlage-Prüfungsberichte-Verordnung, KAPrüfbV). The consultation was prompted in particular by new statutory requirements for loan origination by funds, as well as the need to adjust the audit and reporting obligations of funds and management companies as a consequence of the revised Alternative Investment Fund Managers Directive (AIFMD II) and FRiG.

The changes have an impact on the content of audit reports that funds and asset management companies must prepare or have audited under the KAPrüfbV. With the draft regulation, BaFin further specifies audit obligations relating to several European regulatory frameworks, such as the Digital Operational Resilience Act (DORA), the Securities Financing Transactions Regulation (SFTR), the Benchmark Regulation (BMR), and the Sustainable Finance Disclosure Regulation (SFDR). In addition, the draft provides for requirements regarding the audit of registered asset management companies.

Another focus is the reporting on anti-money laundering obligations. For asset management companies, this reporting is to be aligned more closely with the requirements applicable to credit institutions. At the same time, BaFin has revised the wording of the regulation and made it clearer from a drafting perspective.

Comments on the draft may be submitted to BaFin by email until 31 July 2026.

EUROPEAN PARLIAMENT RESOLUTION ON DIGITAL ASSETS

On 7 July 2026, the European Parliament published a resolution on digital assets and the challenges they pose to the competitiveness and integrity of the European Union's financial system.

The resolution calls for the effective enforcement of the Regulation on Markets in Crypto-Assets (MiCAR) and requires member states not to introduce any requirements or obligations that go beyond those set out in MiCAR and the Regulation on Transfers of Funds. It identifies several key risk areas, including: the rapid growth of US dollar-denominated stablecoins; multi-issuer stablecoin structures involving companies from the European Union and third countries; risks related to anti-money laundering and countering the financing of terrorism and financial crime; regulatory gaps in the granting and taking of loans in crypto-assets, staking, non-fungible tokens, and decentralized finance; legal uncertainty regarding hybrid products; and the European Union's dependence on

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digital infrastructure located outside the European Union. At the same time, the European Parliament highlights the opportunities offered by digital assets and welcomes the tokenization of financial instruments, the development of euro-denominated stablecoins and the digital euro, and the importance of maintaining an innovation-friendly regulatory environment.

The next phase of the EU regulatory framework for crypto-assets will be shaped by proposals from the European Commission and guidelines from the European Banking Authority (EBA), the European Securities and Markets Authority (ESMA), and the EU Anti-Money Laundering Authority (AMLA).

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