

On 27 August 2024, the Federal Ministry of Finance published the Ministerial Draft for a Second Act on the Financing of Future-Securing Investments (ZuFinG II) (Referentenentwurf des Bundesministeriums der Finanzen Entwurf eines Zweiten Gesetzes zur Finanzierung von zukunftssichernden Investitionen (Zweites Zukunftsfinanzierungsgesetz– ZuFinG II)).

The draft Future Growth Act II provides for a wide range of individual measures to amend numerous German laws. It essentially serves to implement the federal government's growth initiative, and to implement several EU legal acts into German law, including through changes to the Securities Trading Act (WpHG), the Banking Act (KWG) and other legal norms to implement the MiFID II/MiFIR reviews (regarding e.g. systematic internalization; issuer-financed research, and best execution).

The draft ZuFinG II covers *inter alia* the following:

## Possibility to Use Prospectuses Including Summaries Only in English to Facilitate the EU-Wide Distribution of Securities

The draft ZuFinG II includes significant changes to facilitate the EU-wide distribution of securities by allowing prospectuses, including summaries, to be used in the English language. With immediate effect, issuers of securities are no longer obliged to prepare an additional German summary for English-language prospectuses. This measure is intended particularly to facilitate the distribution of securities in Germany if they are offered in several EU member states. The regulations on the language regime for prospectuses are based on the EU Prospectus Regulation. According to Article 27 of the EU Prospectus Regulation, prospectuses may be drawn up in a language recognised by the competent authority of the home state, or in an internationally customary language, such as English. For the Annex IX document pursuant to Article 1 (4) subparagraph 2 and (5), subparagraph 3 of the EU Prospectus Regulation, preparation in the official language of the home state or in a language recognised by the home state is still required. With the new provision in Section 21 (1) of the German law, English is accepted as a recognised language for the Annex IX document. This means that both prospectuses and Annex IX documents can be prepared in German or English in the future.

The provision in Section 21 (2) confirms that both German and English are recognised languages within the meaning of Article 27 of the EU Prospectus Regulation. These amendments are part of the Growth Initiative, which aims to strengthen Germany as a financial location and promote the mobilisation of private financial resources by facilitating the EU-wide distribution of securities.

## Fostering the Equity Culture, Among Others, by Providing for the Possibility to Issue Shares with a Nominal Value Lower Than €1, and by Changing the Taxation of Employee Equity Participation in Their Own Company

Moreover, the draft ZuFinG II includes several measures to promote the equity culture and strengthen the IPO market as an exit channel for venture capital. A key innovation is the possibility of issuing shares with a nominal value of less than €1 to facilitate access to the capital market for growth companies. This regulation is intended to make it easier for companies to issue shares and contribute to a more attractive capital market offering. In addition, the tax incentives for employee share ownership will be improved. Specifically, the tax-free allowance for employee share ownership in accordance with Section 3 No. 39 of the German Income Tax Act (EStG) will be increased from the current €2,000 to €5,000 as of 1 January 2026. This measure aims to increase the participation of employees in the success of their company and thus, strengthen the share culture. The increased exemption limit should also help companies to attract and retain employees in the long-term, which will further increase the attractiveness of share ownership as an investment opportunity.

## Creation of a More Secure Legal Framework for Investments in Renewable Energies and Infrastructure Through Amendments of the Investment Tax Act and the Investment Act

In the future, more capital shall be made available for investments in infrastructure and renewable energies. To achieve this purpose, extensive changes are being made to investment tax law and the Investment Act (KAGB). The Investment Tax Act (InvStG) and the KAGB will be amended to make investments in infrastructure and renewable energies more legally secure and remove existing obstacles. The KAGB will also be expanded to the effect that real estate special funds may now also invest in infrastructure project companies whose activities are geared towards renewable energies, even if they have no direct real estate connections. Additionally, the KAGB introduces a uniform definition for the management of renewable energies.

This definition integrates the requirements of the Renewable Energy Sources Act (EEG), the Heat Planning Act (GEG) and the Energy Efficiency Act (EnEfG), as well as considers various energy sources such as biogas and green hydrogen. For real estate funds, the regulations will be adjusted to allow investments in infrastructure project companies that focus on renewable energies, with a maximum investment limit of 15% of fund assets. In the future, these funds will also be allowed to acquire rooftop systems and charging stations for electric vehicles, which will meet the requirements of modern buildings and the energy transition. These measures are intended to ensure that investments in sustainable projects can be mobilised more effectively to accelerate the transformation to a more sustainable future.

### **Liberalisation of German Employment Protection for High Earners in the Financial Industry and Extension of the Currently Existing Rules for Risk-Takers in Systemically Important Banks**

Additionally, protection against dismissal for high earners in the financial sector and a particular influence on the risk profile of financial institutions is made more flexible. The existing regulations on protection against dismissal for risk-takers of major credit institutions, which were introduced in the EStG and other Accompanying Provisions for the Withdrawal of the UK (Brexit Tax Accompanying Act), are to be extended to all relevant financial companies. Specifically, corresponding regulations will be introduced in the KWG, (Section 25a (5a)), the KAGB (Section 44), the German Securities Institutions Act (WpIG, Section 42) and the German Insurance Supervision Act (VAG, Section 48). These regulations exempt risk-takers whose annual fixed remuneration exceeds three times the contribution assessment threshold in the general pension insurance scheme from the comprehensive protection against dismissal provisions of the Dismissal Protection Act (KSchG) (Section 9 (1) sentence 2). This means that no justification is required from the employer if these employees are dismissed, as long as the application for dissolution remains subject to judicial review. The regulation is adapted to the definition of risk-takers in the Remuneration Ordinance for Institutions (InstVergV) and the corresponding European regulations. This measure aims to increase the competitiveness of the German financial sector and enable rapid adaptation to changing market conditions.

### **Abolition of the BaFin Register for Employees and Complaints Under Section 87 Securities Trading Act (WpHG)**

Further, the draft ZuFinG II aims to improve financing conditions for companies and reduce bureaucracy. A key component of this is the abolition of the employee and complaints register in accordance with Section 87 of the WpHG. This regulation, which was introduced in the Investor Protection and Function Improvement Act (AnsFuG), obliges institutions to report investment advisors, sales representatives and compliance officers, as well as complaints from private clients to the so-called Employee and Complaints Register (MBR).

This is intended to reduce the high administrative burden for around 40,000 annual reports, as the benefits of the register are not commensurate with the costs. The obligation to employ solely competent and reliable staff remains in place and the abolition of the MBR will reduce the annual burden on companies by around €2.1 million. In addition, the requirement to submit a certificate of compliance with regulatory requirements for unlisted derivatives (OTC derivatives) will be limited to risk-relevant companies. In the WpHG, the obligations to notify investment advisors and compliance officers and the associated complaints in the MBR are repealed. This affects Sections 87 and 11 WpHG. The abolition of the MBR also leads to adjustments to the provisions on fines in Section 8 No. 135 WpHG. In addition, violations of the Market Abuse Regulation may in the future serve as the basis for warnings or activity bans. The regulations on expertise and reliability, which were previously contained in the WpHG- Employee Disclosure Regulation (WpHGMaAnzV), will be transferred to the Securities Services Conduct and Disclosure Regulation (WpDVerOV). The transitional provision pursuant to Section 12 WpHGMaAnzV will not be adopted, as the matters regulated therein are no longer relevant. These changes are intended to reduce bureaucracy and improve the efficiency of supervision to make it easier for companies to handle regulations and reporting obligations.

### **Increase of the Threshold for the Reporting of Million-Euro Loans From €1 Million to €2 Million**

There are several measures that improve financing conditions for companies and reduce bureaucratic requirements, which were developed in cooperation with the German Federal Financial Supervisory Authority (BaFin) and the business community. One major change concerns the increase in the reporting threshold for million-euro loans in the KWG. The previous threshold of €1 million will be increased to €2 million. This adjustment is being made in accordance with Section 14 KWG, and the Large Exposures and Million Loans Ordinance (GroMiKV). The increase in the threshold will lead to a reduction in the number of borrowers to be reported, which will reduce the burden on both, the banking industry and the Deutsche Bundesbank. As a result, this reduces the bureaucratic burden and lowers the costs for the institutions concerned. Furthermore, the obligation to submit master data and amount data reports for certain borrowers who do not exceed the new reporting threshold of €2 million will be lifted. The reporting of data on reference debtors that is no longer required will also be abolished.

## Changes of the WpHG, KWG and Other Provisions to Implement the MiFID II-/MiFIR-Review (Affecting PFOF-ban, Systematic Internalisation, Issuer-Sponsored Research, Best Execution and Many More Topics) and to Implement the EU Listing Act and the EU ESAP Regulation

The draft ZuFinG II includes the following relevant changes to the WpHG, the KWG and other provisions for the implementation of the MiFID II/MiFIR review, as well as the EU Listing Act and the ESAP Regulation:

### • WpHG and MiFID II/MiFIR Review

- **Prohibition of Payment for Order Flow (PFOF)** – The WpHG will be amended in accordance with MiFID II changes to ensure that securities firms are not allowed to receive payments for order flow.
- **Systematic internalisation** – The regulations regarding systematic internalisation will shift from a complex quantitative calculation to a qualitative assessment. Companies can now voluntarily subject themselves to the requirements for systematic internalisers.
- **Best execution** – The obligations for best execution will be adjusted to align with the updated requirements of MiFID II, ensuring that investors receive the best possible execution of their orders under all market conditions.

### • KWG

- The amendments to the KWG are aligned with the new provisions of MiFID II/MiFIR, particularly regarding systematic internalisation, and the expanded requirements for capital instruments. Extensive quantitative calculations are no longer required, and voluntary adherence to the rules for systematic internalisers is permitted.

### • EU Listing Act

- The draft includes adjustments to align the national legal framework with the EU Listing Act. This primarily affects the WpHG, the Stock Exchange Act (BörsG) and the Stock Exchange Admission Regulation (BörsZulV), facilitating the public offering of securities by companies.

### • ESAP Regulation

- The Act implements parts of the European Single Access Point (ESAP) Regulation, particularly through amendments to the WpHG and KWG. This allows for the centralised reporting of company and financial market data through BaFin.

These changes aim to enhance the transparency and efficiency of financial markets, strengthen oversight, and improve access to financial information.

## Amendments Relating to Collective Escrow Accounts Within the Meaning of Section 17 Payment Services Act (ZAG)

Article 10 (1)(a) of the Directive (EU) 2015/2366 requires that received funds be deposited in a separate account at a credit institution and protected under national law against claims by other creditors of the payment institution, especially in the event of insolvency. Previously, the rights of payment service users and e-money holders as trustees were based on general, non-codified rules for trust accounts. The new regulation now legally ensures that these funds are protected when held in a separate account. It also clarifies that these amounts remain protected from the claims of the institution's general creditors in the event of insolvency: payment service users and e-money holders can invoke the third-party opposition claim according to Section 771 of the German Civil Procedure Code (ZPO), and the right to segregation under Section 47 of the German Insolvency Code (InsO). The regulation reflects the liability consequences of the trust-like nature of payment services and e-money business. Although, for practical reasons, funds may temporarily be present in an account used for payment services or e-money transactions, this does not affect the protection of the funds, as long as repayment to payment service users and e-money holders takes precedence. In the event of a shortfall, the funds must be distributed *pro rata* among the users. The new regulation ensures a more precise implementation of the Second Payment Services Directive and acknowledges that the segregation prohibition in paragraph (a) already encompasses the separation requirement in paragraph (c).

Section 17 (1) of the ZAG is amended to provide that if the institution secures received funds in an open trust account at a credit institution, payment service users or e-money holders are entitled to a right of segregation and restriction on disposal according to Section 47 of the InsO and Section 771 of the ZPO. Funds still in the possession of the institution form a special mass until deposited, which is used to satisfy payment service users and providers with priority. Additionally, Section 32 (3) of the WpHG is applied accordingly.

## Amendments for the Implementation of Regulation (EU) 2024/886 Relating to Instant Payments in the Euro Currency

On 8 April 2024, Regulation (EU) 2024/886 of the European Parliament and Council, dated 13 March 2024, came into force. This regulation aims to further develop and modernise the Single Euro Payments Area (SEPA). SEPA is a central element for an integrated internal market for payments. The modernisation of the SEPA area is primarily intended to be achieved through the widespread availability of real-time euro payments within the EU, and under a unified regulatory framework. Regulation (EU) 2024/886 contains various provisions that need to be specified and implemented through national regulations.

The draft ZuFinG II includes supplementary provisions for the implementation of Regulation (EU) 2024/886, which deals with real-time euro payments. This draft expands the provisions of Regulation (EU) 2024/886 in several areas, including the KWG, the Payment Services Supervision Act (ZAG), the Audit Report Regulation (PrüfbV), the Payment Institutions Audit Report Regulation (ZahlPrüfbV), and necessary consequential amendments. Specifically, the draft provides for an extension of the penalty provisions in the KWG resulting from the amendments to Regulation (EU) 260/2012 by Regulation (EU) 2024/886. For example, Section 56 KWG is adjusted to stipulate that it is an administrative offense to intentionally or negligently charge a higher fee than specified in Article 3 (1) of Regulation (EU) 2021/1230, which is also amended by Regulation (EU) 2024/886. Additionally, Section 56 (4d) introduces new offenses through items 7 to 18, such as the failure to offer real-time payments, other restrictions or limitations and the lack of fee waivers. Furthermore, the draft extends the supervisory powers of BaFin under the KWG and ZAG to include the new obligations arising from Articles 5a to 5c of the amended Regulation (EU) 260/2012, as well as the requirements of Regulation (EU) 2021/1230. This also involves adjusting the requirements for annual financial audits accordingly. Moreover, national regulations under the ZAG and KWG will be aligned with the revised EU directives 2015/2366 and 98/26/EC as amended by Regulation (EU) 2024/886.

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