BAI Newsletter VI/2025 – December 2025

Editorial article from Frank Dornseifer, Managing Director, BAI e.V.

Dear Ladies and Gentlemen,
Dear Members,

Autumn of reforms for the fund industry

Just in time for the start of winter and the Christmas holidays, the German government and the EU Commission are once again pushing ahead with a large number of legislative packages, and the "autumn of reforms" could even bring a few Christmas surprises for the fund industry.

At the national level, the Fund Risk Limitation Act (FRiG) and the Location Promotion Act are particularly noteworthy, although it should be noted that these are actually legislative initiatives from the previous coalition government that have now been revived under new names.

Although its name might not suggest it at first glance, the FRiG largely incorporates the content of the *Fund Market Strengthening Act*, which is intended to transpose various changes in the AIFM and UCITS directives into national law, while also making German fund vehicles more practical.

From a location perspective, the new – Europe-wide harmonized – regulatory framework for credit funds is the most notable aspect of the law. These are now playing an increasingly important role in Germany: on the one hand, in the financing of medium-sized companies and infrastructure projects, although credit funds have so far been based exclusively in other jurisdictions, particularly Luxembourg and France; on the other hand, the private debt asset class continues to enjoy great popularity among institutional investors in Germany, as the recently published BAI InvestorSurvey impressively shows. A competitive German market for credit funds is therefore more important than ever. With the new and thoroughly demanding regulatory framework, however, the – in some cases very undifferentiated – reservations of various supervisory bodies, which were addressed in the context of the NBFI (non-bank financial intermediation) discussion, should now be shelved, at least with regard to European credit funds.

At least as important as the new supervisory law is the tax law support for credit and infrastructure funds introduced by the Location Promotion Act – the successor to the Future Financing Act II of the former traffic light coalition government – which, for example, creates legal clarity with regard to trade tax treatment, while at the same time increasing investment opportunities in the infrastructure sector. Here, too, German funds can now catch up with their European counterparts and are subject to similar competitive conditions. However, it remains to be seen whether this will finally lead to more fund launches in Germany, as many managers have now established their platforms in Luxembourg, Ireland, etc., so that the willingness to set up new structures in Germany is likely to be limited. Bringing fund business that has migrated away back to Germany is a difficult undertaking, especially when the fundamental willingness to reform in Germany leaves much to be desired in other areas, such as pension reform, and misguided discussions are being held in this context, such as on the inclusion of capital income in social security contributions. In the VC/PE sector, too, hot topics such as the PE decree continue to be ignored, and the German industry remains in difficult territory here.

But back to the FRiG, which now expands the range of German fund vehicles and makes them more practical. On the one hand, the permissible legal forms for open-ended real estate and infrastructure funds are being expanded, and in future, open-ended investment companies will be possible in addition to special funds and open-ended investment partnerships. On the other hand, public special funds can now also be launched as closed-end funds; and the previously little-noticed investment stock corporation with fixed capital is no longer subject to the inappropriate formalistic provisions of stock corporation law for capital measures, as is already the case for the investment stock corporation with variable capital, which is now increasingly accepted in practice. It is equally welcome that the investment options for closed-end public funds will be expanded to include open-end target funds in future. Here, the legislator is responding to a genuine practical need.

Finally, it is also worth mentioning that the government draft withdraws a proposal from the draft bill, namely to use the market values of assets instead of book values when calculating the threshold for small capital management companies (KVGen). For the venture capital industry and its funds, which often fall below the relevant thresholds and for which the regime for small KVGen is expressly tailored, this change would have meant collateral damage. Once again, this sends an important signal to the German fund industry that constructive criticism is taken seriously. However, it should be noted once again that the tax differentiation issue between asset management and commercial activity has still not been resolved, even though the Location Promotion Act could have remedied this situation.

And while the FRiG and the Location Promotion Act are currently going through the parliamentary process, the next round of amendments is already looming on the European horizon as part of the Savings and Investments Union (SIU), which is also likely to be of great relevance to the entire European fund industry. This concerns the so-called Market Integration & Supervision Package, which is essentially a sweeping measure by the EU Commission aimed at strengthening the EU internal market in a number of regulatory areas and significantly reducing bureaucracy. At the beginning of December, a legislative package comprising several hundred pages was presented, which includes significant changes to the European supervisory structure on the one hand, and fundamental changes in key financial market areas such as trading (MiFID, MiFIR), post-trading (EMIR, CSDR, CCPR, SFR), DLT pilot regime, and asset management on the other.

For the fund/asset management industry, this particularly involves streamlining the licensing and supervisory processes, simplifying cross-border passporting and reporting procedures, facilitating outsourcing within group structures, and introducing an EU depositary passport. From a competition and efficiency perspective, it is particularly important to think big and, above all, progressively. For example, the bureaucratic and low-value-added pre-marketing regime should be abolished entirely and the notification procedure for the cross-border distribution of funds should be drastically simplified: fund approval in the home country must simultaneously and automatically open up distribution opportunities throughout the EU, without a costly notification procedure and the associated costs. There is no place in the European system of supervisory authorities for anachronistic petty statism with distribution barriers. Otherwise, the only option would be to centralize supervision at ESMA, which would only be the second-best solution.

The EU Commission has already initiated various changes and simplifications in sustainable finance regulation, in particular the SFDR review. We provided you with comprehensive information on this at last month's ESG workshop. This newsletter also includes a follow-up to the workshop and a dedicated article on the SFDR review.

In short: the fund industry is once again facing major regulatory changes. However, these are long overdue, as the Capital Markets Union project, launched over a decade ago, has borne little fruit and has not been particularly successful. As an intermediary between institutional and private pension capital and an immeasurable number of listed and unlisted financing projects, the fund and asset management industry is now also of great economic importance and has proven to be a stable cornerstone of the financial system in times of crisis. Properly implemented reforms strengthen the industry and thus its financing activities, which are more important today than ever before. And this is precisely what the BAI is strongly committed to. Many of our proposals and initiatives have been taken up in the aforementioned legislative packages, and we will of course continue to monitor these closely, always in close consultation with the relevant specialist committees. Take this opportunity to get involved.

To the articles in this newsletter

I would like to take this opportunity to express my sincere thanks to the many authors and sponsors who have contributed to this newsletter and once again provided very readable specialist articles on the subject of ESG and sustainable finance. I hope you find it informative and entertaining reading.

And last but not least, on behalf of the BAI Executive Board and the BAI office, I would like to wish you a wonderful rest of the Christmas season and a happy and peaceful New Year 2026! Once again this year, we are foregoing Christmas cards and gifts and supporting the "Bunter Kreis Rheinland e.V." with our donation to help seriously ill children and their families in our region.