Draft Act

of the Federal Government

Draft Act on financing future-proof investments

(Future Financing Act – ZuFinG)

A. Problem and objective

Our country needs investment on an almost unprecedented scale. Only in this way can our prosperity be secured under changing conditions while at the same time adjusting society and the economy quickly to digitalisation and climate protection. It is necessary to strengthen the performance of the German capital market and to increase the attractiveness of the German financial location as an important part of Europe as a strong financial centre. In particular, start-ups, growth companies and small and medium-sized enterprises (SMEs) as drivers of innovation will facilitate access to the capital market and raising equity.

Regulations in financial market law, company law and tax law should be further developed in view of this objective.

Through digitalisation, debureaucratisation and internationalisation, the German financial market and the location of Germany are to become more attractive for both national and international companies and investors. Shares and listed securities should become more attractive as an investment, in order to strengthen the demand side (incentives for shares as an investment) and the supply side (increase in the number of listed companies in Germany).

B. Solution

The draft follows a comprehensive approach to this: in addition to adjustments to financial market law and the further development of company law, the tax framework is also improved.

In particular, the acquisition of capital should be made easier by regulatory facilitation of IPOs, the facilitation of capital increases under company law and the possibility of the introduction of multi-voting shares.

Open property funds should also be able to acquire land on which there are only installations for the production, transport and storage of electricity, gas or heat from renewable energy sources, and to operate these facilities themselves. Legal certainty is provided for the operation of such installations on existing buildings.

Digitalisation in the capital market is being promoted. The amendment to the Stock Corporation Act opens German law for electronic equities, on the one hand to electronic registered shares entered in a central register or in a crypto-assets register, and on the other hand to electronic bearer shares entered in a central register. Written form requirements in supervisory law are replaced by digital communication options.

The Act also implements foreseeable European requirements to protect the client assets held by crypto depositors and clarifies the handling of crypto-assets in their insolvency.

Insofar as competition disadvantages for Germany as a financial location result from unequal implementation of European law requirements (VAT exemption for the management to venture capital funds and for the administrative services of consortium leaders), the legal framework is aligned with other European Member States. Exceptions to the control under GTC legislation for contracts between companies in the financial market sector are intended to increase legal certainty, in particular when aligning with international standards. The website to be set up by the Bundesanstalt für Finanzdienstleistungsaufsicht (Federal Financial Supervisory Authority, Bundesanstalt) to compare the fees for payment accounts will also ensure greater transparency and therefore more competition. In addition, the German financial market will become even more attractive to international participants due to the explicit possibility of communicating with the Bundesanstalt in English.

By improving the tax framework for employee capital participation, it is intended to make it easier for young companies to attract employees and to assert themselves in the international competition for talent.

C. Alternatives

Maintaining the status quo would be possible, but detrimental to the competitiveness and innovation of Germany as a financial location. With the current approach in Germany, no permanent EU-compliant operation of a website could be established to compare the fees for payment accounts, so changes to the Payment Account Act are necessary. Moreover, the proposed changes generally lead to a reduction of bureaucracy and the facilitation of investment, without at the same time causing significant disadvantages, so the changes are consequently necessary.

D. Budgetary expenditure exclusive of compliance costs

(Increased/reduced tax revenues (–) in million euros)

Administrative unit	Full annual effect [1)]	Financial year				
		2024	2025	2026	2027	2028
Total	- 960	- 595	- 850	- 960	- 960	- 960
Federal Government	- 387	- 264	- 352	- 387	- 387	- 387
Federal states	- 358	- 249	- 329	- 358	- 358	- 358
Municipalities	- 215	- 82	- 169	- 215	- 215	- 215

1) Effect for a full (investment) period of 12 months

E. Compliance costs

E.1 Compliance costs for citizens

As a result of the amended regulations on employee capital participation, citizens will at most be subject to minor compliance costs.

In other respects, there is no compliance cost for citizens.

E.2 Compliance costs for businesses

In total, recurring compliance costs (including information obligations) for businesses are reduced by EUR 202 417, while there are one-off compliance costs totalling EUR 2 958 755,37.

The recurring compliance costs include recurring information obligations of EUR 74 470, while recurring compliance costs of EUR 276 887.07 are eliminated.

The amendments to the Payment Account Act account for approximately EUR 2.2 million of the one-off compliance costs excluding information obligations of EUR 2 788 182,87. Due to the amended regulations on employee shareholdings, there are at most marginal annual compliance costs, which are entirely attributable to bureaucracy costs arising from information obligations. In addition, these regulations create a one-off compliance cost of around EUR 330 000, which comes entirely under the heading of introduction or adaptation of digital processes. One-off information obligations amount to EUR 170 572,50.

Administrative costs under this heading arising from information obligations

There are total compliance costs from recurring information obligations of EUR 74 470 and from one-off information obligations of EUR 170 572,50.

The amendments to the Payment Services Supervision Act result in recurring compliance costs due to information obligations of approximately EUR 72 390. The majority of this, EUR 71 442, is due to the making available and maintenance of the information sheet in accordance with § 62a of the ZAG (Payments Supervision Act). The obligation under the Payment Accounts Act to provide updated data on comparison criteria each year generates EUR 30 900 in costs.

E.3 Compliance costs for the authorities

The authorities will incur net recurring compliance expenses of around EUR 1.1 million as a result of the draft, of which EUR 20 654,57 is attributable to the federal states and the remaining expenses to the federal government at EUR 1 062 896,36.

The Bundesanstalt incurs recurring compliance costs, in particular for the operation of the website for comparison of the fees for payment accounts, of around EUR 1 million per year.

The one-off compliance cost can be estimated at EUR 1 136 493,47 and results essentially from EUR 1.1 million for the amendments to the Payment Accounts Act in connection with the establishment of the website to compare the fees for payment accounts by the Bundesanstalt.

F. Further costs

No further costs are incurred as a result of the changes.

Draft Act of the Federal Government[1)]

Draft Act on financing future-proof investments

(Future Financing Act – ZuFinG)

Dated …

The Bundestag, with the assent of the Bundesrat, has passed the following Act:

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Article 20 Amendment to the Banking Act

[1)] Notified in accordance with Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (OJ L 241, 17.9.2015, p. 1).

Article 21 Amendment to the Owner Control Regulation

Article 22 Amendment to the Financial Services Supervision Act

Article 23 Amendment to the Ordinance on the delegation of powers to issue statutory ordinances to the Bundesanstalt für Finanzdienstleistungsaufsicht (Federal Financial Supervisory Authority)

Article 24 Amendment to the Financial Services Supervision Fees Ordinance

Article 25 Amendment to the Payment Institution Audit Report Ordinance

Article 26 Amendment to the Payment Account Act

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Article 28 Amendment to the Securities Institute Act

Article 29 Amendment to the Capital Investment Code

Article 30 Amendment to the Money Laundering Act

Article 31 Amendment to the Insurance Supervision Act

Article 32 Entry into force

Article 1

Amendment to the Act on Appraisal Proceedings

The Act on Appraisal Proceedings of 12 June 2003 (BGBl. (Federal Law Gazette) I, p. 838), as last amended by Article 3 of the Act of 22 February 2023 (BGBl. 2023 I No 51), is amended as follows:

1. § 1 is amended as follows:

   a) Subparagraph 1 is preceded by the following subparagraph 1:

      1. ‘ the compensation payment or the additional shares to be granted to shareholders in the event of capital increases (§§ 255(4) to 7 and 255a of the Stock Corporation Act);’

   b) The previous subparagraphs 1 to 6 become subparagraphs 2 to 7.

2. § 3 is amended as follows:

   a) Sentence 1 is amended as follows:

      a%6) Subparagraph 1 is preceded by the following subparagraph 1:

         1. ‘ subparagraph 1 of any shareholder whose subscription right has been wholly or partially excluded;’;

      b%6) The previous subparagraph 1 becomes subparagraph 2 and ‘1’ is replaced by: ‘2’.

c%6) The previous subparagraph 2 becomes subparagraph 3 and ‘2 and 3’ is replaced by: ‘3 and 4’.

d%6) The previous subparagraph 3 becomes subparagraph 4 and ‘4’ is replaced by: ‘5’.

e%6) The previous subparagraph 4 becomes subparagraph 5 and ‘5’ is replaced by: ‘6’.

f%6) The previous subparagraph 5 becomes subparagraph 6 and ‘6’ is replaced by: ‘7’.

b) IN sentence 2, ‘1, 3, 4 and 5’ is replaced by: ‘1, 2, 4, 5 and 6’.

3. § 4 sentence 1 is amended as follows:

a) Subparagraph 1 is preceded by the following subparagraph 1:

1. ‘ subparagraph 1, the registration of the implementation of the capital increase;’;

b) The previous subparagraph 1 becomes subparagraph 2 and ‘Subparagraph 1' is replaced by: ‘Subparagraph 2’.

c) The previous subparagraph 2 becomes subparagraph 3 and ‘2’is replaced by: ‘3’.

d) The previous subparagraph 3 becomes subparagraph 4 and ‘3’ is replaced by: ‘4’.

e) The previous subparagraphs 4 and 5 become subparagraphs 5 and 6 and ‘Subparagraph 4’ is replaced in each case by ‘Subparagraph 5’.

f) The previous subparagraph 6 becomes subparagraph 7 and ‘5’ is replaced by: ‘6’.

g) The previous subparagraph 7 becomes subparagraph 8 and ‘6’ is replaced by: ‘7’.

4. § 5 is amended as follows:

a) Subparagraph 1 is preceded by the following subparagraph 1:

1. ‘ subparagraph 1 against the company whose capital has been increased;’

b) The previous subparagraph 1 becomes subparagraph 2 and ‘1’ is replaced by: ‘2’.

c) The previous subparagraph 2 becomes subparagraph 3 and ‘2’ is replaced by: ‘3’.

d) The previous subparagraph 3 becomes subparagraph 4 and ‘3’ is replaced by: ‘4’.

e) The previous subparagraph 4 becomes subparagraph 5 and ‘4’ is replaced by: ‘5’.

f) The previous subparagraph 5 becomes subparagraph 6 and ‘5’ is replaced by: ‘6’.

g) The previous subparagraph 6 becomes subparagraph 7 and ‘6’ is replaced by: ‘7’.

h) The following sentence is added:

‘In the cases referred to in § 1(1), at the request of the company, the new shareholder shall be consulted as the interested party.’

5. In § 6(1), fifth sentence, ‘3’ is replaced by: ‘4’ and t’4’ is replaced by: ‘5’.

6. § 10a reads as follows:

‘ § 10a

Granting of additional shares

(1) In so far as additional shares are to be granted pursuant to § 72a of the Conversion Act or pursuant to § 255a of the Stock Corporation Act, the court shall determine:

1. in the cases referred to in § 72a(1) and (2) sentence 1 of the Conversion Act on the basis of the appropriate exchange relationship or in the cases referred to in § 255a(1) and (2) sentence 1 of the Stock Corporation Act on the basis of the appropriate deposit

a) the additional nominal amount to be granted or, in the case of no-par value shares, the number of additional shares to be granted; and

b) the compensation amount to be based on the interest claim pursuant to § 72a(6)(1) of the Conversion Act or § 255(6) sentence 1 in conjunction with § 255a(6) of the Stock Corporation Act;

2. in the case of § 72a(2) sentence 2 of the Conversion Act or the second sentence of § 255a(2) of the Stock Corporation Act, the amount of the subscription right to be granted retrospectively,

3. in the cases referred to in § 72a(3) of the Conversion Act or § 255a(3) of the Stock Corporation Act, the amount of the cash co-payment and

4. in the cases referred to in § 72a(4) and (5) of the Conversion Act or § 255a(4) and (5) of the Stock Corporation Act, the amount of compensation in cash.

(2) In the cases referred to in § 72a(1) sentence 2 of the Conversion Act or § 255a(1) sentence 2 of the Stock Corporation Act, the court shall determine the additional nominal amount to be granted or, in the case of no-par value shares, the number of additional shares to be granted on the basis of the exchange ratio of the subsequent conversion transaction. The defendant is the company to which the obligation to grant additional shares has been transferred.

(3) Paragraphs 1 and 2 shall apply mutatis mutandis to the granting of additional shares pursuant to § 248a of the Conversion Act.’

7. § 14 is amended as follows:

a) Subparagraph 1 is preceded by the following subparagraph 1:

1. ‘ subparagraph 1 by the Board of Directors of the company whose capital has been increased;’

b) The previous subparagraph 1 becomes subparagraph 2 and ‘1’ is replaced by: ‘2’.

c) The previous subparagraph 2 becomes subparagraph 3 and ‘2’ is replaced by: ‘3’.

d) The previous subparagraph 3 becomes subparagraph 4 and ‘3’ is replaced by: ‘4’.

e) The previous subparagraph 4 becomes subparagraph 5 and ‘4’ is replaced by: ‘5’.

f) The previous subparagraph 5 becomes subparagraph 6 and ‘5’ is replaced by: ‘6’.

g) The previous subparagraph 6 becomes subparagraph 7 and ‘6’ is replaced by: ‘7’.

Article 2

Amendment to the Civil Code

Pursuant to § 310(1) of the Civil Code, as amended by the notice of 2 January 2002 (BGBl. I, p. 42, 2909; 2003 I p. 738), as last amended by Article 6 of the Act of 14 March 2023 (BGBl. 2023 I No 72), the following paragraph 1a is inserted:

‘(1a) §§ 307 and 308 subparagraphs 1a and 1b shall not apply to contracts relating to transactions referred to in sentence 2 where an entrepreneur lawfully carries out the business which is the subject of the contract and has concluded the contract with

1. an entrepreneur who also lawfully carries out such transactions at the place of his registered office or subsidiary as the supplier of the service typical for the contract;

2. a large entrepreneur within the meaning of sentence 3, who also lawfully carries out such transactions under sentence 2 at the place of his registered office or a subsidiary lawfully as the supplier of the service typical of the contract.

Transactions referred to in sentence 1 are:

1. Banking transactions within the meaning of § 1(1) sentence 2 of the Banking Act,

2. Financial services within the meaning of § 1(1a) second sentence of the Banking Act,

3. Investment services within the meaning of § 2(2) of the Securities Institute Act and investment ancillary services within the meaning of § 2(3) of the Securities Institute Act,

4. Payment services within the meaning of § 1(1) sentence 2 of the Payment Services Supervision Act,

5. Transactions of capital management companies pursuant to § 20(2) and (3) of the Capital Investment Code; and

6. Transactions of stock exchanges and their institutions pursuant to § 2(1) of the Stock Exchange Act.

An entrepreneur shall be regarded as a large entrepreneur pursuant to subparagraph 2 of the first sentence if he has fulfilled two of the following three characteristics in each of the two calendar years prior to the conclusion of the contract:

1. he has employed at least 250 employees each year in accordance with § 267(5) of the Commercial Code;

2. he has generated revenue of more than EUR 50 million in each year, or

3. his balance sheet amounted to more than EUR 43 million in accordance with § 267(4a) of the Commercial Code.

Sentence 1 shall also apply if the following bodies are one of the two Contracting Parties:

1. the Deutsche Bundesbank (German Central Bank),

2. the Bank for Reconstruction,

3. a public debt management body pursuant to § 2(1)(3a) of the Banking Act,

4. a resolution institution established on the basis of §§ 8a and 8b of the Stabilisation Fund Act,

5. the World Bank, the International Monetary Fund, the European Central Bank, the European Investment Bank or a comparable international financial organisation.'

Article 3

Amendment to the Introductory Act to the Civil Code

After Article 229 of the Introductory Law to the Civil Code, as amended by the notice of 21 September 1994 (BGBl. I, p. 2494; 1997 I p. 1061), last amended by Article 3 of the Act of 31 October 2022 (BGBl. I, p. 1966), the following §... [Insert next free counting designation when promulgated] is added:

'§... [Insert next free counting designation when promulgated]

Transitional provision in the Act on the financing of future-proof investments

For a debt which precedes the... [insert date of entry into force in accordance with Article 32(1)] § 310 of the Civil Code in the version applying up to and including... [insert: Date of the day before entry into force in accordance with Article 32(1)] shall continue to apply.';

Article 4

Amendment to the Stock Exchange Admission Ordinance

The first sentence of § 2(1) of the Stock Exchange Admission Ordinance, as amended by the announcement to 9 September 1998 (BGBl. I p. 2832), last amended by Article 2 of the Act of 3 June 2021 (BGBl. I p. 1423), ‘EUR 1 250 000 is replaced by ‘EUR 1 000 000’.

Article 5

Amendment to the Securities Trading Act

The Securities Trading Act, in the version published on 9 September 1998 (BGBl. I p. 2708), last amended by Article 10 of the Act of 19 December 2022 (BGBl. I p. 2606), is amended as follows:

1. The following information is inserted in the Table of Contents after the reference to § 24:

   ' § 24a Power to issue statutory instruments'.

2. The following sentences are inserted after § 6(3), second sentence:

   ‘At the request of the Bundesanstalt, the information referred to in sentences 1 and 2 shall be transmitted electronically. In the event that access to Bundesanstalt’s reporting and publication system already exists or is mandatory, the information pursuant to sentence 1 shall be transmitted by this means at the request of the Bundesanstalt. The Bundesanstalt may also request transmission in a format that it determines.’

3. In § 21(2), first sentence, the words ‘as well as a related’ are replaced by the words ‘or a’ replaced and after the word ‘need’ a comma and the words ‘unless the disclosure of the information is contrary to other provisions’ are inserted.

4. After § 24, the following § 24a is inserted:

‘§ 24a

Power to issue statutory instruments

(1) The Federal Ministry of Finance is authorised to determine by ordinance which announcements, notifications, notices, reports, applications and other information with the necessary documents to be submitted to Bundesanstalt

1. In accordance with this Act and the ordinances enacted pursuant to this Act, and

2. under the Regulations of the European Union referred to in § 1(1)(8) and the European legal acts adopted for the implementation of those Regulations

must be transmitted electronically. The legal ordinance may lay down more detailed provisions on the nature, scope, timing, form and data format of the submissions pursuant to sentence 1 and it may determine which electronic communication procedure is to be used for the respective submission obligation to the Bundesanstalt and which provisions apply to its use, as well as that there is an obligation to establish access to a reporting and publication system of the Bundesanstalt.

(2) The Federal Ministry of Finance may transfer the authorisation referred to in paragraph 1 to the Bundesanstalt by ordinance. Ordinances referred to in paragraph 1 shall not require the consent of the Bundesrat.'

5. In § 26(1), after the words: 'published, these shall before publication' the words 'the Bundesanstalt and' are deleted and after the words 'as well as without delay after publication' the words 'Bundesanstalt and the' are inserted.

6. §§32c and 32d are worded as follows:

'§ 32c

Liability for information contained in the key investment information sheet referred to in Article 23 of Regulation (EU) 2020/1503

(1) The promoter responsible for the basic investment information document referred to in Article 23 of Regulation (EU) 2020/1503, as defined in subparagraph h of Article 2(1) of Regulation (EU) 2020/1503, shall be liable to the investor within the meaning of Article 2(1)(i) of Regulation (EU) 2020/1503 on the reversal of credit within the meaning of subparagraph (b) of Article 2(1) of Regulation (EU) 2020/1503 and to reimburse the usual costs associated with the loan or to take over the securities or instruments used for crowd funding purposes against the reimbursement to the purchase price, provided that it does not exceed the first purchase price, and to reimburse the usual costs associated with the acquisition, if the basic investment information document referred to in Article 23 of Regulation (EU) 2020/1503 or any translations into official languages of a Member State of the European Union due to

1. contained misleading or inaccurate information stated by intent or negligence,

2. important information is not provided that is necessary to assist investors in their decision whether to invest in a crowd funding project; or

3. a risk warning to be issued in accordance with Article 23(6)(c) of Regulation (EU) 2020/1503 is not included.

(2) The obligation referred to in paragraph 1 shall also apply where the promoter

1. has not drawn up the basic investment information document as a result of intent or negligence. contrary to Article 23(2) of Regulation (EU) 2020/1503; or

2. in breach of the first sentence of Article 23(8) of Regulation (EU) 2020/1503, the crowd funding service provider within the meaning of Article 2(1)(e) of Regulation (EU) 2020/1503 has not immediately notified an amendment to the information contained in the key investment information sheet.

(3) The obligation referred to in paragraph 1 shall apply to: crowd funding service providers if due to intent or negligence

1. they have not made the key investment information sheet available to the investor contrary to Article 23(2) of Regulation (EU) 2020/1503; or

2. in breach of the second sentence of Article 23(8) of Regulation (EU) 2020/1503, did not immediately inform the investor of a material change to the information contained in the key investment information sheet.

(4) If the investor is no longer the holder of the securities or the instruments used, he may demand compensation for any financial disadvantage and the payment to the costs associated with the initial acquisition and sale, provided that the sale price does not exceed the first purchase price.

§ 32d

Liability for information in the key investment information sheet at platform level in accordance with Article 24 of Regulation (EU) 2020/1503

(1) The crowd funding service providers responsible for the key investment information sheet at platform level in accordance with Article 24 of Regulation (EU) 2020/1503 for the purposes of subparagraph (e) of Article 2(1) of Regulation (EU) 2020/1503, shall be obliged to repay the investor referred to in subparagraph (i) of Article 2(1) of Regulation (EU) 2020/1503 the amount allocated for the individual management to the credit portfolio and the fees and other costs associated with the individual management to the credit portfolio, less amounts already paid, where the basic investment information sheet at platform level referred to in Article 24 of Regulation (EU) 2020/1503 or any translations into the official languages of a Member State of the European Union

1. contained misleading or inaccurate information stated by intent or negligence,

2. important information is not provided that is necessary to assist investors in their decision whether to make their investment through the individual management to the loan portfolio; or

3. the declaration to be made in accordance with Article 24(1)(c) of Regulation (EU) 2020/1503 is not included.

(2) The obligation referred to in paragraph 1 shall also apply where the crowd funding service provider due to intent or negligence

1. has not made the key investment information sheet available to the investor at platform level contrary to Article 24(1) of Regulation (EU) 2020/1503;

2. has not kept the key investment information sheet up to date at platform level contrary to the first sentence of Article 24(2) of Regulation (EU) 2020/1503; or

3. in breach of the second sentence of Article 24(2) of Regulation (EU) 2020/1503, has not immediately informed the investor of a material change to the information contained in the key investment information sheet at platform level.‘’;

7. § 32e paragraph 1 is worded as follows:

(1) ‘ An investor’s entitlement under § 32c or § 32d shall not exist if, prior to its decision, the investor was aware of the inaccuracy or incompleteness of the informa-

tion in the key investment information sheet referred to in Article 23 or in the investment information sheet at platform level pursuant to Article 24 of Regulation (EU) 2020/1503 or any translations into the official languages of a Member State of the European Union.'

8. In § 49(1), first sentence, subparagraph 1, after the words: 'Voting rights' the words 'with separate indication of the multi-voting shares and the voting rights conferred on them' inserted.

9. In § 102(1), first sentence, after the words: 'or its operators of the' the word 'written' is deleted.

10. § 107 paragraph 5 is amended as follows:

    a) The following sentences are inserted after sentence 1:

    'At the request of the Bundesanstalt, the information referred to in sentence 1 shall be transmitted electronically. The Bundesanstalt may also request the transmission in a communication procedure and format that it determines.'

    a) In the new sentence 5, the words 'sentences 1 and 2' are replaced by the words 'sentences 1 to 4'.

    b) In the new sentence 6, the words 'sentences 1 and 2' are replaced by the words 'sentences 1 and 4'.

    c) In the new sentence 7, the words 'also in conjunction with sentences 3 or 4, or in the context of examinations pursuant to sentence 2, whether or not in conjunction with sentences 3 or 4' are replaced by the words 'also in conjunction with sentence 5 or sentence 6, or in the context of interrogations pursuant to sentence 4, whether or not in conjunction with sentence 5 or sentence 6'.

Article 6

Amendment to the Market Access Information Ordinance

§ 10 of the Market Access Information Ordinance of 30 September 2004 (BGBl. I p. 2576), last amended by Article 24(9) of the Act of 23 June 2017 (BGBl. I p. 1693), is worded as follows:

§ 1'

Form of the application

Information and documents to be provided in accordance with this section shall be drawn up in German or English. The documents must be sent to the Bundesanstalt in duplicate. If information or documents are drawn up in English, the Bundesanstalt may request at any time, if necessary, to provide a German translation. § 4j(1), second to fourth sentences of the Financial Services Supervision Act shall apply mutatis mutandis.'

Article 7

Amendment to the Securities Trading Notification Ordinance

§ 9 Paragraph 2 of the Securities Trading Notification Ordinance of 13 December 2004 (BGBl. I, p. 3376), amended by Article 1 of the Ordinance of 19 October 2018 (BGBl. I, p. 1758), shall be worded as follows:

(1) ‘ At the request of the Bundesanstalt, notifications pursuant to § 8 must be submitted electronically via the reporting and publication system of the Bundesanstalt. The same applies to the sending of communications pursuant to § 7.’

Article 8

Amendment to the Securities Acquisition and Takeover Act

The Securities Acquisition and Takeover Act, as amended by the announcement of 20 December 2001 (BGBl. I, p. 3822), as last amended by Article 1 of the Act of 20 July 2022 (BGBl. I, p. 1166), is amended as follows:

1. § 1 Paragraph 5 sentence 2 shall read as follows:

   ‘It shall publish its decision and transmit the publication to the Bundesanstalt.’

2. The following paragraph 9 is added to § 2:

   (1) ‘ Working days are all calendar days with the exception of Saturdays, Sundays and public holidays.’

3. In § 9(2), first sentence, the words 'as well as one related to it' are replaced by 'or one' and after the word 'need' a comma and the words 'unless the disclosure of the information is contrary to other provisions' are inserted.

4. § 10 is amended as follows:

   a) Sentence 1 of Paragraph 2 is amended as follows:

      a%6) In subparagraph 1, the word 'and' is inserted after the comma at the end.

      b%6) In subparagraph 2, the word 'and' is deleted.

      c%6) Subparagraph 3 is repealed.

   b) The second sentence of paragraph 4 shall read as follows:

      'This shall not apply with regard to the management of the stock exchanges covered by paragraph 2, first sentence, subparagraphs 1 and 2, insofar as the Bundesanstalt has authorised pursuant to sentence 3 of paragraph 2 the communication pursuant to sentence 1 of paragraph 2 to be made at the same time as the publication.'

5. § 11 Paragraph 1, sentence 5 is repealed.

6. § 14 is amended as follows:

a) Paragraph 2 is worded as follows:

(1) ‘ The tender document shall be published without delay in accordance with the provisions of paragraph 3 sentence 1 if:

1. the Bundesanstalt has authorised the publication, or

2. ten working days have elapsed since receipt of the tender document without the Bundesanstalt prohibiting the tender.’

a) After paragraph 2, the following paragraph 2a is inserted:

‘(2a) It may not be disclosed prior to the publication of the offer document. The Bundesanstalt may extend the period referred to in paragraph 2 subparagraph 2 by up to five working days before prohibiting the tender if the tender document is not complete or otherwise does not comply with the provisions of this Act or a statutory ordinance issued pursuant to this Act. The period referred to in paragraph 2(2) shall be extended by five calendar days, even after an extension pursuant to sentence 2, after the Bundesanstalt has made a prohibition pursuant to § 4f of the Financial Services Supervision Act electronically or pursuant to § 4 g of the Financial Services Supervision Act (Financial Supervisory Act) as an electronic document for retrieval via the reporting and publication system of the Bundesanstalt publicly known or has dispatched it by post.’

b) Paragraph 3 is amended as follows:

a%6) In sentence 2, the word 'no.' is replaced by the word 'number' replaced and the words 'to be notified immediately' are replaced by the words 'to be notified immediately by sending the published tender document'.

b%6) The following sentence is added:

‘The tenderer’s obligation shall also apply in the case of publication or notice within the meaning of § 12(3)(3).’

7. In § 20(1), after the words 'The Bundesanstalt issues' the word 'written' is deleted.

8. § 21 is amended as follows:

a) In the first sentence of paragraph 1, after the words 'The tenderer may have up to one' the word 'weekday' is replaced by the words 'working day'.

b) Paragraph 2 is worded as follows:

(1) ‘ The tenderer shall publish the amendment to the tender without delay in accordance with the first sentence of § 14(3), with reference to the right of withdrawal pursuant to paragraph 4. The tenderer shall inform the Bundesanstalt without delay of the publication pursuant to § 14(3), first sentence, subparagraph 2, by transmitting the published amendment to the tender. § 14 Paragraph (4) shall apply, mutatis mutandis’.

9. § 23 Paragraph 2 sentence 2 shall read as follows:

‘§ 14 Paragraph 3 sentence 2 and § 31(6) shall apply mutatis mutandis.’

10. In § 25, after the words 'at the latest by the fifth' the word 'weekday' is replaced by the words 'working day'.

11. In § 26(5), after the words ‘the respective tenderer may in' the word 'written' is deleted.

12. § 27 Paragraph 3 sentence 3 shall read as follows:

    'The Management Board and the Supervisory Board of the target company shall immediately notify the Bundesanstalt of the publication pursuant to § 14(3), first sentence, subparagraph 2, by forwarding the published opinion.'

13. In § 33c(3), the following sentence is added:

    ‘§ 14 Paragraph 3 sentence 2 applies accordingly.'

14. § 35 is amended as follows:

    a) In the first sentence of paragraph 1, after the words: 'at the latest within seven' the words 'calendar days' are replaced by the words 'working days'.

    b) In the second sentence of paragraph 2, the words ' § 14(2), second sentence' are replaced by the words ' § 14(2), second to fourth sentences'

15. In § 36, first sentence, after the words ‘‘the Bundesanstalt’ issues, the word 'written' is deleted.

16. In § 37(1), first sentence, after the words 'the Bundesanstalt may by' the word 'written' is deleted.

17. The following sentence is inserted after § 40(1)(2):

    ‘The Bundesanstalt may request that the information, documents and copies referred to in sentences 1 and 2 be communicated to it in a form that it determines.’

18. § 45 is worded as follows:

§ 1‘

Notifications to the Bundesanstalt

Applications as well as communications, declarations, notifications or transmissions required by this Act or pursuant to a statutory ordinance issued on the basis of this Act shall be made exclusively by electronic means through the reporting and publication system of the Bundesanstalt.’

19. In § 60(1)(5) after the words 'also in connection with' the words 'Paragraph 14(3), third sentence,' are inserted and the words ' § 23(1), second sentence' are replaced by the words ' § 23(1), second sentence, or paragraph 2, second sentence, § 33c(3), fifth sentence'.

Article 9

Amendment to the WpÜG Takeover Act

In § 8 sentence 2 of the WpÜG Takeover Act of 27. December 2001 (BGBl. I, p. 4263), last amended by Article 2 of the Ordinance of 30 September 2022 (BGBl. I p. 1603), the words 'calendar days' are replaced by the words 'working days'.

Article 10

Amendment to the Securities Prospectus Act

The Securities Prospectus Act of 22 June 2005 (BGBl. I p. 1698), as last amended by Article 3 of the Act of 9 July 2021 (BGBl. I p. 2570), is amended as follows:

1. § 8 Sentence 3 is worded as follows:

   ‘Where securities are to be admitted to trade on a regulated market on the basis of the prospectus, in addition to the issuer, the credit institution, the financial services institution, the securities institution or the undertakings active in accordance with the first sentence of § 53(1) or the first sentence of § 53b(1) of the Banking Act shall also have to take responsibility for the prospectus, provided that the latter, together with the issuer, requests the admission of the securities.’

2. The following sentences are added to § 18(2):

   ‘These shall be transmitted electronically at their request. If the obliged entity has access to the Bundesanstalt’s reporting and publication system, it may request the transmission by this means. The Bundesanstalt may also request transmission in a format that it determines.’

3. In § 19(2), first sentence, the words 'as well as one related to it' are replaced by the words 'or one' and after the word 'need' a comma and the words 'unless the disclosure of the information is contrary to other provisions' are inserted.

Article 11

Amendment to the Stock Exchange Act

The Stock Exchange Act of 16 July 2007 (BGBl. I p. 1330, No 1351), last amended by Article 6 of the Act of 3 June 2021 (BGBl. I p. 1568), is amended as follows:

1. The following information is inserted in the Table of Contents after the reference to § 43:

‘Section 4a

Stock exchange company for the purpose of admission to the stock market

§ 44 Definitions

§ 45 Deposit; Agreement for use

§ 46 Responsibility of the Annual General Meeting, information requirements

§ 47 Shareholders' right to tender; Admissibility of deposit repayment

§ 47a Stock options

§ 47b Termination of the stock exchange company; Dissolution: Settlement.

2. The following sentence is added to § 3(4):

‘The stock market supervisory authority may, within its statutory powers, require the provision of information and the submission of documents without the need for the addressee to be first given the opportunity to comment on the facts relevant to the decision.’

1. § 4 paragraph 2 is amended as follows:

a) Sentence 1 is worded as follows:

‘The application for authorisation shall be submitted electronically to the Securities and Exchange Commission.’

a) The following sentence is inserted after sentence 1:

‘The electronic transmission shall be carried out in a data format determined by the Securities and Exchange Commission and by a means of transmission determined by the Securities and Exchange Commission.’

b) In the new sentence 3, the part of the sentence before subparagraph 1 is worded as follows:

'The application must contain:'

2. § 10 is amended as follows:

a) Paragraph 1 is amended as follows:

a%6) In sentence 1, the word 'raise' is replaced by the word 'disclose'.

b%6) In sentence 3, the word 'raise' is replaced by the word 'disclose'.

b) In paragraph 3, first sentence, the words 'as well as a related one' are replaced by the words 'or one’ and after the word 'need', a comma and the words 'unless the disclosure of the information is contrary to other provisions' are inserted.

3. In § 21(3), the word 'written' is replaced by the word 'electronic' and the following sentence is added:

‘Electronic information shall be carried out in a data format determined by the Securities and Exchange Commission and by means of an information channel determined by the Securities and Exchange Commission.’

4. § 32 is amended as follows:

a) In paragraph 1, before the word 'Included', the word 'the' is deleted.

b) The following paragraph 2a is inserted after paragraph 2:

‘(2a) By way of derogation from paragraph 2, the Stock Exchange Regulations may provide that the admission referred to in paragraph 1 shall only be applied for by the issuer of securities outside parts of the regulated market within the meaning of § 42(1).’

5. In § 42(1), the word 'certificates' is replaced in each case by the 'certificates'.

6. The following is inserted after § 4a of § 43:

‘Section 4a

Special purpose acquisition company for the purpose of listing on the stock exchange

§ 1

Definition of terms, applicable rules

(1) The special purpose acquisition company is a company for the purpose of achieving stock exchange listing. The subject of the company is the management of its own assets, the preparation and execution of its own IPO, as well as the preparation and conclusion of the acquisition transaction, which meets the criteria set out in the listing prospectus and refers to a company that is not listed on a stock exchange (target transaction).

(2) The target transaction includes all acquisitions, including conversions under the Conversion Act, in which the special purpose acquisition company acquires at least three-quarters of the shares of the target company or transfers the assets of the target company to the company in its entirety.

(3) The existence of the special purpose acquisition company depends on the execution of the target transaction within the period specified in the company’s articles of association. The company’s articles of association must contain a period for this of between 24 and 36 months. The starting date is the day the shares are admitted for trade on the regulated market. If no target transaction has been carried out within the time limit, the deadline may be extended by a decision amending the statute for up to 12 months, provided that the total time limit does not exceed 48 months.

(4) The special requirements of §§ 44 to 47b apply to public limited liability companies if

1. their articles of association contain the business purpose of the business referred to in paragraph 1 and the time limit referred to in paragraph 3;

2. their securities have been admitted for trade on a regulated market in accordance with § 32; and

3. the articles of association provide for the possibility of holding a virtual general meeting in accordance with § 118a of the Stock Corporation Act.

(5) The special purpose acquisition company must be a public limited company within the meaning of § 1 of the Stock Corporation Act. The name of the special purpose acquisition company must contain the name 'Börsenmantelaktiengesellschaft' or a generally understandable abbreviation of this designation.

(6) An initiator is any shareholder of the special purpose acquisition company, who is to be regarded as a founder within the meaning of § 28 of the Stock Corporation Act, or who is a member of the Board of the special purpose acquisition company and holds shares or other subscription rights of the special purpose acquisition company. Shares and other subscription rights held by persons other than the initiators shall be attributed to the initiators in accordance with § 34 of the Securities Trading Act.

(7) The rules applicable to public limited liability companies shall apply to a special purpose acquisition company, unless otherwise specified in the provisions of this Section. This also applies in particular to the laws on employee participation.

(8) If the special purpose acquisition company is a European company (SE) and employs at least ten employees alone or jointly with its subsidiaries, in particular after the completion of the target transaction, a negotiated procedure shall be carried out in accordance with the SE Participation Act. If no agreement is reached in these negotiations, §§ 22 to 33 of the SE Participation Act on the SE Works Council by virtue of law and §§ 34 to 38 of the SE Participation Act on co-determination by law shall apply.

§ 2

Deposit: Agreement for use

(1) The payments made by shareholders from the deposit obligation and for the obligation to pay a premium of the special purpose acquisition company shall be held until the target transaction is carried out, in order to ensure the appropriate use of the payments by a suitable trustee (paragraph 2).

(2) A suitable trustee is a notary, a credit institution within the meaning of § 1(1) sentence 1 of the Banking Act or an undertaking operating pursuant to § 53(1) sentence 1 or § 53b(1) sentence 1 or paragraph 7 of the Banking Act. For the payments made pursuant to paragraph 1, a separate, reasonably interest-bearing account shall be kept, which is not accessible by the Board of Directors or other bodies or representatives of the special purpose acquisition company and to which only the trustee has direct access. This does not apply to funds required for ongoing administrative costs, compliance with legal requirements and preparation of the target transaction, up to a total of five percent of the deposit obligations, including a surcharge. The deposit of payments made in accordance with paragraph 1 by a notary shall be carried out in accordance with the provisions of § 6 of the Notarisation Act.

(3) By way of derogation from § 188(2) sentence 1 in conjunction with § 36(2) and § 37(1) sentences 1 and 2 of the Stock Corporation Act, a transfer of the deposits made by the shareholders to the trustee referred to in paragraph 1 or a direct payment to the escrow account held by him is permitted.

§ 3

Responsibility of the Annual General Meeting, information requirements

(1) The decision on the target transaction requires the approval of the General Meeting. In the case of target transactions that are not carried out by means of a conversion under the Conversion Act, the Management Board must submit the target transaction to the General Meeting for approval. § 179a(2) of the Stock Corporation Act shall apply mutatis mutandis. The Board of Directors of the special purpose acquisition company shall provide a detailed written report explaining and justifying the target transaction, the contract underlying the target transaction and the adequacy of the

consideration promised to the target company in relation to the value of the target company (target transaction report). The compatibility with the criteria for the target transaction set out in the listing prospectus must also be explained and justified. There is no need to include in the target transaction report facts which, if they become known, are likely to cause a significant disadvantage to one of the participating entities or to an affiliated undertaking. In this case, the report shall set out the reasons why the facts have not been included. The obligation to publish pursuant to § 124(3) sentence 1 of the Stock Corporation Act also extends to the target transaction report.

(2) In the convening of the General Meeting, the Management Board shall, at the Company's expense, appoint an authorised representative, whom the shareholders may authorise in text form to exercise their voting rights and to lodge an objection to the minutes of the General Meeting.

(3) The resolution on the decision referred to in paragraph 1 shall be subject to a majority of three-quarters of the share capital represented in the decision-making process. The voting rights of the initiators within the meaning of § 44(6) are excluded from this.

§ 4

Shareholders' right to disposal; Admissibility of deposit repayment

(1) Shareholders who have declared an objection to the minutes against the resolution on the target transaction may request the transfer of their shares to the company against payment to an amount equal to the amount of the cash contribution paid plus the premium paid, within a period of two months from the date of the resolution of the general meeting pursuant to § 46(1).

(2) § 71(1)(3) and (2) sentence 1 of the Stock Corporation Act shall apply to the permitted acquisition of treasury shares, provided that the upper limit is 30 percent of the share capital if the shares are used to meet shareholders' claims under the right to disposal pursuant to paragraph 1.

(3) § 71(2) and § 57(1) and (2) of the Stock Corporation Act do not preclude the fulfilment to the right to disposal. It is not to be regarded as a service which, within the meaning of § 27(4) of the Stock Corporation Act, corresponds to the repayment of a deposit.

§ 1a

Share options

(1) The special purpose acquisition company may issue independent warrants aimed at a purchase of shares of the company, which are served from a conditional capital increase pursuant to § 192 of the Stock Corporation Act.

(2) If a decision on a conditional capital increase pursuant to § 193(2)(4) of the Stock Corporation Act is taken for the granting of the rights under the warrants, the period laid down in § 193(2)(4) of the Stock Corporation Act shall not apply for the first exercise of the subscription right.

§ 1b

Termination of the special purpose acquisition company; Dissolution: Settlement

(1) The expiry of the period determined in accordance with § 44(3) is a reason for dissolution within the meaning of § 262(1)(1) of the Stock Corporation Act and the reason for revocation of admission pursuant to § 39(1). This shall not apply if a target transaction, including the servicing of the disposal right, has been successfully carried out, provided that the value of the assets acquired in the course of the target transaction by the stock exchange company is not more than 20 percent lower than the value of the deposits, including premium. In this case, upon expiry of the period referred to in § 44(3), the special requirements laid down in this section shall cease to apply and the company will continue as a public limited company within the meaning of § 1 of the Stock Corporation Act exclusively in accordance with the provisions of the Stock Corporation Act. The designation special purpose acquisition company (§ 44(5) sentence 2) may no longer be used.

(2) Before the expiry of the period referred to in § 44(3), the general meeting may decide in accordance with § 179(1) of the Stock Corporation Act that the provisions of the articles of association pursuant to § 44(4) of the Stock Corporation Act should be repealed and that the company in the legal form of a public limited liability company should be continued exclusively in accordance with the provisions of the Stock Corporation Act. The application for registration of the amendment to the articles of association shall be accompanied by a confirmation of payment pursuant to § 37(1) sentence 3 of the Stock Corporation Act concerning the transfer of funds from the trust account to the company in accordance with § 45(2) at the free disposal of the Management Board. If no target transaction was carried out by the time of the decision, including the operation of the right to tender pursuant to § 47(1), an application for the withdrawal of the admission of the shares to trading on the regulated market (§ 39(2) sentence 1) must be submitted after the resolution. § 39 Paragraphs 2 and 3 shall apply mutatis mutandis with the proviso that the consideration offered shall not be less than the issue amount of the shares, including any additional premium.

(3) By way of derogation from § 272(1) of the Stock Corporation Act, in the event of dissolution on the basis of paragraph 1, the assets may be distributed if two months have elapsed since the date on which the notification to the creditors has been made public.’

Article 12

Amendment to the Asset Investments Act

The Asset Investments Act of 6 December 2011 (BGBl. I p. 2481), last amended by Article 4 of the Act of 10 August 2021 (BGBl. I p. 3483), is amended as follows:

1. In § 4(2), first sentence, the words 'as well as one related to it' are replaced by 'or one' and after the word 'need' a comma and the words 'unless the disclosure of the information is contrary to other provisions' are inserted.

2. In § 9(2), third sentence, the word 'written' is replaced by the words 'electronically via their reporting and publication system'.

3. In § 10(1), first sentence the words 'written or' are deleted and after the word 'electronically' the words 'through their reporting and publication system' are inserted.

4. The following sentences are inserted after the first sentence of § 19(1):

‘The information shall be transmitted electronically to the Bundesanstalt at its request. If the obliged entity has access to the Bundesanstalt’s reporting and publication system, it may request the transmission by this means. The Bundesanstalt may also request transmission in a format that it determines.’

1. § 24 Paragraph 7 is amended as follows:

a) Sentence 1 is worded as follows:

‘The entities and persons which the Bundesanstalt uses in carrying out the examination shall report to it immediately after completion of the examination in an electronic format determined by the Bundesanstalt on the outcome; at the request of the Bundesanstalt, this shall be done through its reporting and publication system.’

a) In sentence 3, the words 'to be signed' are replaced by the words ‘must designate the responsible auditor’.

Article 13

Amendment to the Stock Corporation Act

The Stock Corporation Act of 6 September 1965 (BGBl. I p. 1089), as last amended by Article 6 of the Act of 19 June 2023 (BGBl. 2023 I No 154), is amended as follows:

1. § 10 is amended as follows:

a) Sentence 2 of Paragraph 1 is amended as follows:

a%6) In subparagraph 2(c), the full stop at the end is replaced by a comma and the word 'or'.

b%6) The following subparagraph 3 is added:

1. ‘ securitisation is excluded and the share is entered in a central securities register pursuant to § 12 of the Electronic Securities Act.’

b) The following paragraph 6 is added:

(1) ‘ The articles of association shall exclude securitisation for shares which are registered as electronic shares in an electronic securities register. Registration in a crypto-assets register pursuant to § 16 of the Electronic Securities Act shall be permitted only if this is expressly permitted in the articles of association.’

2. § 12 is amended as follows:

a) The heading is worded as follows:

§ 1‘

Voting rights’.

b) Paragraph 1 is amended as follows:

a%6) The paragraph designation '(1)' is deleted.

b%6) Sentence 2 is worded as follows:

'In accordance with the provisions of this Act, preferential shares may be issued as shares without voting rights and multi-voting shares.'

c) Paragraph 2 is repealed.

3. The following sentence is added to § 13:

'In the case of electronic shares, no signature shall take place.'

4. The following sentence is added to § 67(1):

'In order to transmit the information referred to in sentence 1, the company shall establish a reporting system for the issue of electronic shares in cooperation with the registering body of the central register pursuant to § 12(2) of the Electronic Securities Act or the Crypto-Assets Register pursuant to § 16(2) of the Electronic Securities Act.'

5. In § 96(1), the space after the words '(BGBl. I p. 3332), as amended, applies to members of the Supervisory Board of shareholders and employees,' is replaced by a line break.

6. In § 123(4), second sentence, the words 'Beginning of the 21st' are replaced by the words 'Close of business of the 22nd' replaced.

7. In § 129(1), second sentence, after the words 'as well as', the words ‘in the case of multi-voting shares, the number of voting rights attributed to them;’ are inserted.

8. After § 130(2), second sentence, subparagraph 1, the words ‘multi-voting shares must be indicated separately, specifying the number of votes assigned to them;’ are added.

9. After § 135, the following § 135a is inserted:

‘ § 135a

Multi-voting shares

(1) The articles of association may provide for registered shares with multiple voting rights. The multi-voting rights may not exceed ten times the voting rights pursuant to § 134(1) sentence 1. A resolution of the General Meeting on the provision or issue of shares with multiple voting rights requires the approval of all affected shareholders.

(2) In the case of listed companies and companies whose shares are included in over-the-counter trading pursuant to § 48 of the Stock Exchange Act, the multi-voting rights in the event of the transfer of the share expire. They shall expire no later than ten years after the company’s listing on the stock exchange or the inclusion of the shares in over-the-counter trading if the articles of association do not provide for a

shorter period. The period referred to in sentence 2 may be extended by a specific period of up to ten years in the articles of association. The decision on the extension may be taken at the earliest one year before the expiry of the period referred to in the second sentence and requires a majority comprising at least three quarters of the share capital represented in the decision-making process. The statutes may determine a larger majority of capital. If there are several classes of voting shares, the decision to be effective requires the approval of the shareholders of each class. The shareholders of each class must adopt a special decision on the approval. The fourth and fifth sentences shall apply to this.

(3) The statutes may establish further requirements.

(4) In the case of decisions pursuant to § 119(1)(5) and § 142(1), multi-voting shares are entitled to only one vote.'

10. In § 186(3), fourth sentence, the word 'ten' is replaced by the word 'twenty'.

11. § 192 Paragraph 3 sentence 1 shall read as follows:

'The nominal amount of the conditional capital may not exceed sixty per cent of the share capital available at the time of the decision on the conditional capital increase and the nominal amount of

1. capital determined pursuant to paragraph 2, subparagraph 1 may be half of this, while

2. capital determined pursuant to paragraph 2, subparagraph 3, may be twenty per cent

.'

12. The following sentence is added to § 202(1):

The issue of multi-voting shares cannot be provided for.'

13. § 255 is amended as follows:

a) In paragraph 1, after the word 'will', the words 'unless otherwise provided for in paragraphs 4 to 7' are inserted.

b) In paragraph 2, after the word 'part', the words 'pursuant to the fourth sentence of § 186(3)' are inserted.

c) The following paragraphs (4) to (7) are added:

(1) ' If the subscription right is excluded in whole or in part in a manner other than the fourth sentence of § 186(3), the challenge cannot be based on § 243(2) or on the fact that the value of the contribution attributable to a share is unreasonably low. If the value of the contribution attributable to a share is unreasonably low, any shareholder whose right to bring an action against the effectiveness of the capital increase decision is excluded under sentence 1 may, without prejudice to § 255a and § 255b, demand compensation from the company by means of cash compensation. When granting the shares, the company may demand exemption from the right to compensation under sentence 1 or, if the company has reserved the right to do so when the shares are granted, reimbursement to the compensation under sentence 1. The company is obliged to provide or create the funds required for the subsequent payment by way of a profit

brought forward or through reserves which may be used for payments to shareholders.

(2) In the case of listed companies, the value of the shares granted corresponds to their stock market price. If the issue amount does not materially fall below the stock market price, the right to compensation pursuant to paragraph 4 sentence 1 shall cease to apply. The stock market price is not solely decisive if

1. the public limited company, contrary to Article 17(1) of Regulation (EU) No 596/2014 or any equivalent provision of applicable foreign law, does not publish an insider information directly concerning it as soon as possible or publishes, in a communication pursuant to Article 17(1) of Regulation (EU) No 596/2014 or any equivalent provision of applicable foreign law, false insider information which directly affects it; or

2. there has been a breach of the prohibition on market manipulation provided for in Article 15 of Regulation (EU) No 596/2014 which influenced or was capable of influencing the market price; or

3. for the shares of the public limited company during the last three months before the end of the day preceding the decision to issue the new shares, stock prices have been established on less than one third of the stock market days and several stock market prices determined successively differ by more than 5 percent.

§ 5(1) to (3) of the WpÜG Takeover Act shall apply mutatis mutandis for the calculation of the stock market price, with the proviso that instead of publication pursuant to § 10(1) sentence 1 or § 35(1) sentence 1 of the Securities Acquisition and Takeover Act, the expiry of the day preceding the decision on the issue of the new shares shall apply. If the stock market price is lower on that day, this stock market price is decisive. Sentence 3 subparagraphs 1 and 2 shall not apply if the infringement or manipulation had no or only insignificant effects on the price calculated in accordance with sentence 4.

(3) The compensation shall be paid at an annual rate of 5 percentage points above the respective basic interest rate in accordance with § 247 of the Civil Code after the expiry of the day on which the implementation of the capital increase took place. The assertion of further damage is not excluded.

(4) The compensation payment shall, upon application, be determined by the court in accordance with the provisions of the Act on Appraisal Proceedings.'

14. After § 255, the following §§ 255a and 255b are inserted:

' § 255a

Granting of additional shares

(1) The decision on the capital increase may stipulate that additional shares of the company will be granted instead of a cash compensation payment (§ 255(4)). § 72a(1) sentence 2 of the Conversion Act shall apply mutatis mutandis.

(2) New shares which were not granted following registration of the capital increase in the context of a further capital increase from company funds due to an unreasonable value of the contribution, and after the registration of the capital increase, capital reductions without repayment of parts of the share capital shall be taken into

account in the right to grant additional shares. Subscription rights which do not result in the eligible shareholders in the event of a further capital increase against deposits after registration of the capital increase due to an unreasonably low contribution shall be granted to them retrospectively. The eligible shareholders must exercise their subscription rights under sentence 2 vis-à-vis the company within one month of the date on which the decision of the court (§ 11(1) of the Act on Appraisal Proceedings) takes effect.

(3) Instead of additional shares, compensation shall be granted to eligible shareholders by means of a cash payment in accordance with § 255(4) to (7),

1. to the extent that the part of the new shares corresponding to the current share capital cannot be allocated despite the granting of additional shares; or

2. if the granting of additional shares has become impossible.

(4) Instead of additional shares, compensation in cash shall be paid to shareholders who have withdrawn from the company on the basis of a structural change after registration of the capital increase, taking into account the settlement to be granted by the company.

(5) In addition to the granting of additional shares, the eligible shareholders shall be compensated in cash for profits or adequate compensation in accordance with § 304 of the Stock Corporation Act, insofar as these have not been distributed or paid due to an unreasonable low contribution.

(6) § 255 Paragraphs 5 to 7 shall apply mutatis mutandis with the exception of paragraph 6, first sentence. Claims for compensation in cash pursuant to paragraphs 3 and 4 shall be subject to interest in accordance with § 255(6) sentence 1 from the date on which the settlement payment or the right to distribution of profits or the recurring performance would have become due. In the cases referred to in § 255b, the interest rate expires as soon as the trustee has received the shares, the cash payment or the compensation in cash in accordance with § 255b(3).

(7) The company bears the risk of acquiring the additional shares to be granted. Insofar as shares are granted instead of a cash compensation, § 255(4) sentence 2 shall not apply.

§ 255b

Capital increase to grant additional shares

(1) The additional shares to be granted pursuant to § 255a(1) sentences 1 and 2 and paragraph 2 sentence 1 may be created in accordance with paragraphs 1 to 4 by a further capital increase against contribution in kind. The subject of the contribution in kind is the right of the eligible shareholders to grant additional shares, which has been established by a court decision (§ 11(1) of the Act on Appraisal Proceedings) or by a court settlement (§ 11(2) to 4 of the Act on Appraisal Proceedings); the claim expires upon registration of the further capital increase (§ 189 of the Stock Corporation Act). If the claim is established by a court decision (§ 11(1) of the Act on Appraisal Proceedings), the contribution in kind cannot be made until the legal force of res judicata has taken effect.

(2) Instead of the determinations pursuant to first sentence of § 183(1),

1. the provision is sufficient that the claims of the eligible shareholders for the grant of additional shares established on the basis of the judicial decision to be designated or the settlement to be designated shall be brought; and

2. an indication is made of the nominal amount to be granted on the basis of the court decision or the settlement, or in the case of no-par value shares, the number of shares to be granted.

(3) The company must appoint a trustee. He is authorised in his own name.

1. to assign the rights to the grant of additional shares to the company,

2. to subscribe to the additional shares to be granted,

3. to receive the additional shares, cash co-payments and compensations to be granted in accordance with § 255a; and

4. To make all declarations to be made by the eligible shareholders, insofar as they are necessary for the acquisition of the shares.

§ 35 Paragraph 3 shall apply, mutatis mutandis.

(4) The declarations pursuant to Sections 184 and 188 shall be accompanied by the court decision or the judicial settlement from which the additional nominal amount to be granted or, in the case of no-par value shares, the number of resulting additional shares to be granted. § 188 Paragraph 3(2) shall not apply.

(5) § 182 Paragraph 4 and §§ 186, 187 and 203(3) shall not apply to capital increases carried out in order to grant additional shares on the basis of subscription rights exercised pursuant to § 255a(2) sentence 3.

(6) § 255(4), first sentence, shall apply mutatis mutandis to the resolution on the capital increase referred to in paragraph 1.'

Article 14

Amendment to the Introductory Act to the Stock Corporation Act

The Introductory Act to the Stock Corporation Act of 6 September 1965 (BGBl. I p. 1185), last amended by Article 7 of the Act of 19 June 2023 (BGBl. 2023 I No 154), is amended as follows:

1. § 5 is amended as follows:

a) Paragraphs 1 to 6 are replaced by the following paragraphs 1 and 2:

(1) ' If multiple voting rights pursuant to § 5(1) in the version in force up to and including... [insert: date of the day before the date of entry into force of this Act according to Article 32(1)] expire or, in the version in force according to § 5(2) up to and including... [insert: date of the day before the date of entry into force of this Act according to Article 32(1)] are eliminated, paragraphs 3 to 6 of § 5 the version in force up to and including... [insert: date of the day before the date of entry into force of this Act according to Article 32(1)] apply.

(2) For multi-voting shares whose validity is maintained in accordance with the first sentence of § 5(1) in the version in force up to and including... [insert: date of the day before the date of entry into force of this Act according to Article 32(1)] the provisions of § 135a(1) sentence 2 and paragraph 2 of the Stock Corporation Act shall apply only from the date on which, according to ... [insert: date of entry into force according to Article 32(1) of this Act] the company is listed on the stock exchange within the meaning of § 3(2) of the Stock Corporation Act or the shares of the company are included in over-the-counter trading pursuant to § 48 of the Stock Exchange Act; the limitation to registered shares provided for in § 135a(1) sentence 1 of the Stock Corporation Act shall not apply.'

b) Paragraph 7 becomes paragraph 3.

2. Before the second section, the following § 26... [insert: next available letter addition at the time of promulgation] is inserted:

'Paragraph 26... [insert: next available letter addition at the time of promulgation]

Transitional provision for the Future Financing Act

§ 255 of the Stock Corporation Act in the version in force on [insert: Date of entry into force according to Article 32(1) of this Act], as well as §§ 255a and 255b of the Stock Corporation Act, are to be applied only to General Meetings convened from... [insert: Date of entry into force according to Article 32(1) of this Act].'

Article 15

Amendment to the Securities Deposit Act

The Securities Deposit Act as amended by the promulgation of 11 January 1995 (BGBl. I p. 34), last amended by Article 4 of the Act of 3 June 2021 (BGBl. I p. 1423) is amended as follows:

1. § 1 Paragraph 1 sentence 3 shall read as follows:

'Securities within the meaning of this Act shall also include electronically issued, acceptable securities.'

2. § 9b is amended as follows:

a) In the heading, the words 'Bonds' are replaced by the word 'Securities'.

b) Paragraph 1 is amended as follows:

a%6) In sentence 1, the words 'Bearer bonds' are replaced by the word 'Securities'.

b%6) In sentence 2, the words 'on the electronic bond' are replaced by the words 'on the electronic security'.

3. The following § 9c in inserted after § 9b:

'§ 9c

Electronic securities under foreign law

(1) Electronically issued, acceptable securities issued under foreign law and admitted to collective deposit by a securities collecting bank pursuant to § 5(1) shall be regarded as collective holdings. The holders of these securities shall be deemed to be co-owners by fraction. The provisions of the Act on Collective Deposit and Collective Stock Shares shall apply mutatis mutandis, unless paragraph 2 otherwise provides.

(2) §§ 7, 8 and 9a shall not apply.'

1. In § 24(3), after the words 'Credit institutions' a comma and the words 'Investment institutions' are inserted.

Article 16

Amendment to the Electronic Securities Act

The Electronic Securities Act of 3 June 2021 (BGBl. I, p. 1423) is amended as follows:

1. § 1 is worded as follows:

§ 1‘

Scope of application

This law shall apply to:

1. Bearer bonds;

2. Shares denominated by name, and

3. Shares denominated by the holder when they are entered in a central register.'

2. The following paragraph 5 is added to § 5:

(1) ‘ In the case of electronic shares, the articles of association of the public limited liability company shall not be laid down.'

3. § 6 is amended as follows:

a) In the second sentence of paragraph 1, after the word 'Securities', the words 'or, in the case of electronic shares, the articles of association of the public limited company' are inserted.

b) In paragraph 2, first sentence, subparagraph 2 and paragraph 3, first sentence, subparagraph 3, after the words Terms of issue', the words 'or, in the case of electronic shares, the articles of association of the public limited company' shall in each case be inserted.

c) The following paragraph 5 is added:

(1) ‘ In the case of electronic shares, the application of paragraph 2 presupposes that the articles of association of the public limited liability company shall not exclude securitisation. The application of paragraphs 3 and 4 shall require that the articles of association of the public limited liability company shall exclude the securitisation of shares registered as electronic shares in an electronic securities register.’

4. § 8 is amended as follows:

a) In paragraph 1, after the word 'Issue', a comma and the words 'in the case of no-par value shares, up to the total number of units;' are inserted.

b) In paragraph 2, after the word 'will', a comma and the words 'unless this is excluded in the conditions of issue, in the case of shares in the articles of association of the public limited liability company' are inserted.

5. In § 9(1), third sentence, after the word 'Rights', a comma and the words 'in the case of no-par value shares according to their number' are inserted.

6. § 13 Paragraph 1 is amended as follows:

a) In subparagraph 3, after the words ‘Nominal amount’, a comma and the words 'in the case of no-par value shares, their number' are inserted.

b) In subparagraph 6, the word 'and' is replaced by a comma.

c) In subparagraph 7, the full stop at the end is replaced by a comma and the word 'as well as'.

d) The following subparagraph 8 is added:

1. ‘ in the case of shares, in addition:

a) whether they are named or issued to the bearer,

b) in the case of registered shares issued before the full performance of the issue amount, the amount of the partial performance;

c) whether they were established as par value shares or as no-par value shares,

d) the class of shares, if there are several classes,

e) in the case of multi-voting shares, the number of voting rights allocated to them;

f) whether they were issued as shares without voting rights; and

g) whether the articles of association of the public limited company bind transfer to the consent of the company.’

7. § 14 paragraph 2 is amended as follows:

a) The words 'and 7' are replaced by a comma and the words '7 and 8'.

b) The following sentence is added:

‘The issuer shall also be solely authorised for the registration of the removal of multi-voting rights registered pursuant to paragraph 13(1)(8)(d)’.

8. In § 16(2), third sentence, after the words 'Terms of issue', a comma and the words ‘in the case of shares in the articles of association of the public limited company,’ are inserted.

9. § 17 Paragraph 1 is amended as follows:

   a) In subparagraph 3, after the words ‘Nominal amount’, a comma and the words 'in the case of no-par value shares, their number' are inserted.

   b) In subparagraph 6, the word 'and' is replaced by a comma.

   c) In subparagraph 7, the full stop at the end is replaced by a comma and the words 'as well as'.

   d) The following subparagraph 8 is added:

      1. ‘ in the case of shares, in addition:

         a) that they should be in issued by name,

         b) in the case of shares issued before the full performance of the issue amount, the amount of the partial performance;

         c) whether they were established as par value shares or as no-par value shares,

         d) the class of shares, if there are several classes,

         e) in the case of multi-voting shares, the number of voting rights allocated to them;

         f) whether they were issued as shares without voting rights; and

         g) whether the articles of association of the public limited company bind the transfer of ownership to the consent of the company.’

10. § 18 paragraph 2 is amended as follows:

    a) The words 'and 7' are replaced by a comma and the '7 and 8'.

    b) The following sentence is added:

    ‘The issuer shall also be solely authorised for the registration of the removal of multi-voting rights registered pursuant to paragraph 17(1)(8)(d)’.

11. § 20 is amended as follows:

    a) In the heading, the words 'Publication in the Federal Gazette' are replaced by the words 'List of crypto-assets at the supervisory authority'.

    b) Paragraph 1 is amended as follows:

    a%6) Sentence 1 is amended as follows:

a%7%7) The words 'must arrange the following publications in the Federal Gazette without delay' are replaced by the words 'must notify the supervisory authority without delay'.

b%7%7) In subparagraph 1, the words 'Publication of' are deleted and the words 'as well as' are replaced by a comma.

c%7%7) In subparagraph 2, the words 'Publication of' are deleted and the full stop at the end is replaced by the words 'as well as'.

d%7%7) The following subparagraph 3 is inserted after subparagraph 2:

1. ‘ the deletion of a registered crypto-asset’.

b%6) Sentence 2 is repealed.

c) Paragraph 2 is repealed.

d) The previous paragraph 3 becomes paragraph 2 and is amended as follows:

a%6) In sentence 1, the words 'Sentence 2 in conjunction with sentence 1' are deleted.

b%6) Sentence 2 is amended as follows:

a%7%7) After subparagraph 2, the following subparagraphs 3 and 4 are inserted:

1. ‘ Information on the crypto-assets register;

2. the essential content of the right, including a unique identification number and the security identification,

a%7%7) The previous subparagraph 3 becomes subparagraph 5 and the words 'as well as' are replaced by a comma.

b%7%7) The previous subparagraph 4 becomes subparagraph 6 and the words 'Sentence 2 in conjunction with sentence 1' are deleted and the full stop at the end is replaced by a comma.

c%7%7) The following subparagraph 7 is added:

1. ‘ in the case of cancellations notified in accordance with paragraph 1(3), the date of cancellation.’

12. The following sentence is added to § 21(1):

‘The issuer shall be liable for damage caused by the registering authority only if he has not taken the necessary care in the selection of the registering authority, unless the damage would have been caused by the application of that care.’

13. § 23 Paragraph 1(1) is amended as follows:

a) In subparagraph 20, the words 'Publication and the' are deleted.

b) In subparagraph 21, the words 'Paragraph 3' are replaced by the words 'Paragraph 2'.

14. § 25 is amended as follows:

    a) The following sentence is added to Paragraph 2:

    ‘§ 67 Paragraph 2, first sentence, of the Stock Corporation Act shall remain unaffected.’

    b) The following paragraph 3 is added:

    (1) ‘ If in the case of electronic shares, the articles of association of the public limited company bind the transfer of ownership to the consent of the company, the registering body may only make the transfer after the consent of the company. The transfer of electronic registered shares by endorsement is not possible.’

15. The following Section 6 is inserted after § 30:

‘Section 6

Special provisions for electronic equities

§ 1a

Management of the share register

The issuer may also instruct the registering body to manage the share register in accordance with § 67(1) sentence 1 of the Stock Corporation Act. In the event of a change in the securities register, the issuer may exceptionally terminate the agreement with the previous registry-keeping authority on the management of the share register at the time of termination of the register.

§ 1b

Transfer in case of exclusion of defaulting shareholders

The issuer is entitled to have the shares entered in the electronic securities register for the benefit of a shareholder excluded pursuant to § 64(3) of the Stock Corporation Act transferred to the person who has paid the arrears amount in accordance with § 65(1) of the Stock Corporation Act. For this purpose, the issuer must prove to the registering authority that the shareholder has been excluded by publication in the company’s journals, pursuant to § 64(3) sentence 1 of the Stock Corporation Act. § 64 Paragraph 4, first sentence, of the Stock Corporation Act shall not apply.’

16. The previous Sections 6 and 7 become Sections 7 and 8.

17. § 31 Paragraph 1(1) is worded as follows:

    1. ‘ contrary to § 20(1), also in conjunction with a statutory ordinance pursuant to § 23(1) sentence 1 subparagraph 20, does not make a communication, or does not make it correctly, or not in full or not in due time; or’.

18. § 33 is amended as follows:

a) Sentence 1 is worded as follows:

‘§ 6 Paragraph 3 shall also apply to bonds issued before 10 June 2021, as well as to shares issued before... [insert: Date of entry into force of this Act according to Article 32(1)] and for which the articles of association of the public limited liability company exclude the securitisation.’

b) In, second sentence, after the words 'Terms of issue', the words 'or, in the case of electronic shares, the articles of association of the public limited company' are inserted.

Article 17

Amendment to the Income Tax Act

The Income Tax Act, as amended by the Notice of 8 October 2009 (BGBl. I, p. 3366), as last amended by Article 8(3) of the Act of 20 December 2022 (BGBl. I, p. 2730), is amended as follows:

1. § 3 is amended as follows:

a) Subparagraph 39 is amended as follows:

a%6) In part of the sentence before sentence 2, the phrase 'EUR 1 440' is replaced by the phrase 'EUR 5 000'.

b%6) In sentence 2, after the word ‘stand’, a semicolon and the words ‘insofar as the benefit exceeds EUR 2 000 in the calendar year, the shareholding must be issued in addition to salary already owed’ are inserted.

b) Subparagraph 71 is amended as follows:

a%6) Point (a) is amended as follows:

a%7%7) In part of the sentence before sentence 2, after the words ‘Share in a corporation’ the words 'or a registered cooperative' are inserted and the words'20 percent' are replaced by the words '25 percent'.

b%7%7) In sentence 2, double letter aa, after the words 'Share in the corporation', the words 'or the registered cooperative' are inserted.

c%7%7) In sentence 2, double letter bb, after the words 'the corporation', the words 'or the registered cooperative' are inserted, and after the words 'Registration of the company in the commercial register' the words 'or in the cooperative register' are inserted.

b%6) In the sentence before the second sentence, point (b) is amended as follows:

a%7%7) After the words 'Sale of a share in a corporation' will the words 'or in a registered cooperative' are inserted.

b%7%7) In double letter ee, the words '80 percent' are replaced by the words '25 percent'.

2. T 17, § he following sentence is added to paragraph 2a:

‘In the cases referred to in § 3(39), § 20(4)(b) shall apply mutatis mutandis.’

3. § 19a is amended as follows:

a) Paragraph 1 is amended as follows:

a%6) In part of the sentence before sentence 2, after the words 'from his employer', the words 'or a partner of his employer' inserted.

b%6) The following sentence is inserted after sentence 2:

‘An undertaking of the employer within the meaning of the first sentence shall also apply to an undertaking within the meaning of paragraph 18 of the Stock Corporation Act.’

b) Paragraph 3 is worded as follows:

(1) ‘ Paragraph 1 shall apply only if the employer’s undertaking, at the time of the transfer of the shareholding in respect of the annual turnover and the annual balance sheet total, does not exceed twice the thresholds referred to in Article 2(1) of the Annex to the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36), as amended, and in respect of the number of employed individuals four times the thresholds, or has not exceeded the thresholds in any of the six preceding calendar years, and its establishment was no more than 20 years ago; The third sentence of paragraph 1 shall not apply. The thresholds referred to in the first sentence shall be determined in accordance with Articles 4 and 5 of the Annex to the Recommendation.’

c) Paragraph 4 is amended as follows:

a%6) In sentence 1, subparagraph 2, the words 'twelve years' are replaced by the words '20 years'.

b%6) In the fourth sentence, after the word 'Taxation' a semicolon and the words ‘in the cases referred to in subparagraph 3 of the first sentence, where the shareholding is repurchased by the employer, a partner of the employer or an undertaking within the meaning of paragraph 18 of the Stock Corporation Act, the common value shall be replaced by the remuneration granted by the employer.’ are inserted.

d) The following paragraph 4a is inserted after paragraph 4:

‘(4a) Paragraph 4, first sentence, subparagraphs 2 and 3 shall not apply if the employer irrevocably declares, at the latest with the payroll tax application following the event in question, that, at the time of the occurrence of the event referred to in paragraph 4 sentence 1 subparagraph 1, the employer is liable for the wage tax in question (§ 42d), without being able to evade liability by means of a notification pursuant to § 38(4) sentence 2 in conjunction with § 42d(2). A claim of liability then requires no further discretionary examination.’

4. In § 20, the following paragraph 4b is inserted after paragraph 4a:

‘(4b) In the cases referred to in paragraph 3, subparagraph 39, the tax-free monetary benefits do not form part of the acquisition cost in determining the profit

referred to in the first sentence of paragraph 4 if the shareholding was sold or transferred free of charge to a third party within three years.'

5. § 43 Paragraph 1(1) is amended as follows:

a) Subparagraph 1a is worded as follows:

'1a. Capital gains within the meaning of § 20(1)(1) from shares and participation certificates,

a) which are authorised for collective deposit by a securities collection bank in accordance with § 5 of the Securities Deposit Act and have been entrusted to them for collective deposit in Germany;

b) where a special deposit is made in accordance with § 2 sentence 1 of the Deposit Act,

c) where the income is paid out or credited against the issuance of dividend notes or other receipts; or

d) which are registered in an electronic securities register within the meaning of § 4(1) of the Electronic Securities Act;';

b) Subparagraph 2 is amended as follows:

a%6) In letter b, the word 'or' at the end is replaced by a comma.

b%6) In letter c, the semicolon at the end is replaced by the word 'or'.

c%6) The following is added to point d:

a) ' partial debentures are registered in an electronic securities register within the meaning of § 4(1) of the Electronic Securities Act;'

6. § 43a paragraph 2 is amended as follows:

a) In sentence 2, subparagraph 2, the words '§ 20(4) and (4a)' are replaced by the words '§ 20(4), 4a and 4b'.

b) The following sentence is added:

'If, in the cases referred to in Paragraph 3, subparagraph 39, the assets are transferred within three years of the acquisition to another depository of the same taxpayer, the issuing domestic disbursing body shall notify the domestic disbursement received separately to the additional payment and the tax-free monetary benefits as components of the acquisition data.'

7. § 44 Paragraph 1(4) is amended as follows:

a) Subparagraph 3(c) is worded as follows:

a) ' the debtor of the capital gains;

a%6) to the extent that the securities collection bank to which the shares have been entrusted for collective deposit does not regulate dividends; the securities collection bank shall inform the debtor of the capital income of the amount of holdings without regulation of dividends;

b%6) in the case of electronic shares, to the extent that the registering body in accordance with § 12(2) or § 16(2) of the Electronic Securities Act, which maintains the register in which the shares are registered, does not regulate dividends; the registering body shall inform the debtor of the capital gains of the amount of holdings without regulation of dividends;'

b) Subparagraph 6 is worded as follows:

1. ' for capital gains from crypto-assets within the meaning of § 4(3) of the Electronic Securities Act, in the cases referred to in § 43(1), first sentence, subparagraphs 1a, 2, 5, 7(a), 8 and 9 to 12, the registering body pursuant to § 16(2) of the Electronic Securities Act, unless a paying body arises from subparagraphs 1, 3, 4 and 5'.

8. § 52 is amended as follows:

a) The following sentence is inserted after paragraph 4, sentence 26:

'§ 3 Subparagraph 71, as amended by: Article 17 of the Act of... BGBl. I... [insert: Publication date and reference of this Act] shall be applied for the first time for the assessment period 2023.'

b) Paragraph 27 is repealed.

Article 18

Amendment to the VAT Act

§ 4 Subparagraph 8 of the VAT Act as amended by the notice of 21 February 2005 (BGBl. I, p. 386), last amended by Article 17 of the Act of 16. Amended December 2022 (BGBl. I, p. 2294) is amended as follows:

1. In letter a, the words 'and the management of loans by the creditors' are inserted before the comma.

2. In letter g, the words 'as well as the brokerage of these transactions' are replaced by a comma and the words 'the brokerage of these transactions and the management of credit collateral by the creditors'.

3. In letter h, the words 'comparable with these' and the words 'management of venture capital funds' are deleted.

Article 19

Amendment to the Restructuring and Resolution Act

The Restructuring and Resolution Act of 10 December 2014 (BGBl. I, p. 2091), last amended by Article 16 of the Act of 3 June 2021 (BGBl. I p. 1568), is amended as follows:

1. In the Table of Contents, the following is inserted after the reference to § 42:

‘§ 42a Electronic communication; Power to issue statutory instruments’.

2. The following paragraph (1a) is inserted after § 42(1):

‘(1a) Information and analyses pursuant to paragraph 1, sentence 2, notifications and reports arising from obligations imposed on the institution by the resolution authority pursuant to paragraph 1 sentence 3 as well as all other documents to be submitted to the resolution authority in accordance with the provisions of this Act shall be submitted by the institution in German. They shall also be provided in English at the request of the resolution authority. The resolution authority may allow the documentation or parts thereof to be submitted in English only.’;

3. The following § 42a is inserted after § 42:

‘§ 42a

Electronic communication Power to issue statutory instruments

(1) Entities are obliged to provide the resolution authority with information and analyses pursuant to § 42(1) sentence 2, notifications and notifications on the basis of obligations imposed by the resolution authority pursuant to § 42(1) sentence 3 as well as other information, documents and reports to be submitted to the resolution authority in accordance with the provisions of this Act, via the electronic communications procedure provided by the resolution authority, unless the resolution authority determines a different means of transmission. Undertakings are obliged to open and use access for the electronic transmission of the information, analyses, notifications and documents referred to in the first sentence, as well as for the disclosure and delivery of administrative files in the electronic communication procedure provided.

(2) The Federal Ministry of Finance is authorised to make further provisions on access to electronic communications and the implementation and use of electronic communications by means of statutory instruments which do not require the consent of the Bundesrat. The Federal Ministry of Finance may transfer the authorisation to the Bundesanstalt by means of a statutory instrument.’

4. The following sentence is added to § 156(2):

'The resolution authority may communicate with the other members of a resolution college on the language in which the cooperation is to take place.'

Article 20

Amendment to the Banking Act

The Banking Act, as amended by the Notice of 9 September 1998 (BGBl. I p. 2776), last amended by Article 12 of the Act of 22 February 2023 (BGBl. 2023 I No 51), is amended as follows:

1. The Table of Contents is amended as follows:

a) The entry for § 5 is worded as follows:

‘§ 5 Electronic transmission of administrative files; Power to issue statutory instruments’.

b) The following text is inserted after the reference to § 26a:

‘5d. Special obligations in the case of crypto-deposit

§ 26b Separation of property’.

c) The following text is inserted after the reference to § 46h:

‘§ 46i Assignment to deposited crypto-assets; Costs of segregation.

d) The following text is inserted after the reference to § 53q:

‘6a. DLT pilot scheme under Regulation (EU) 2022/858

§ 53r Jurisdiction

§ 53s Exceptions to the authorisation requirement under § 32

§ 53t DLT settlement systems and DLT trading and settlement systems

§ 53u Documents and applications under Regulation (EU) 2022/858

§ 53v Operators of organised markets’.

e) The entry for § 57 is worded as follows:

‘§ 57 Fines’.

2. § 2c is amended as follows:

a) In paragraph 1, sentences 1, 5 and 6, and in the first sentence of paragraph 3, the word: 'written' is deleted.

b) In paragraph 1 sentence 9, paragraph 1a sentences 1, 3, 4 and 5 as well as subsection 1b sentences 5 and 8, after the word 'written', the words 'or electronic' are inserted in each case.

3. In § 3(3), second sentence, after the word 'written', the words 'or electronic' are inserted.

4. § 5 is worded as follows:

§ 1‘

Electronic communication Power to issue statutory instruments

(1) Administrative acts issued pursuant to this Act may be notified electronically in accordance with § 4f of the Financial Services Supervision Act or provided electronically in accordance with § 4 g of the Financial Services Supervision Act.

(2) The Federal Ministry of Finance is authorised to act by statutory instrument, which does not require the approval of the Bundesrat, in consultation with the Deutsche Bundesbank,

1. to envisage regulations which may place obligations on the addressees referred to in this Act,

a) to open electronic access to the procedures referred to in paragraph 1; and

b) to use the procedures referred to in paragraph 1; as well as to

2. make more detailed provisions

a) for access to the electronic communications procedures referred to in paragraph 1; and

b) for the implementation and use of the electronic communications referred to in paragraph 1.

The Federal Ministry of Finance may transfer the authorisation by statutory instrument to the Bundesanstalt on the condition that the statutory instrument is issued in agreement with the Deutsche Bundesbank.'

5. In § 24a(4), first sentence, the word 'written' is deleted.

6. The following § 5d is inserted after § 26a:

'5d.

Special obligations in the case of crypto-deposit

§ 1b

Segregation of assets

(1) An institution operating a crypto-deposit business shall ensure that clients' crypto-assets and private cryptographic keys are kept separately from the institution's crypto-assets and private cryptographic keys. Where crypto-assets are stored bundled by several clients (collective deposit), it must be ensured that the shares to which each client is entitled can be determined at all times in the collective holdings held in custody.

(2) The institution shall ensure that the client's stored crypto-assets and private cryptographic keys cannot be disposed of for the institution's own account or for the account of another person without the express consent of the client.';

7. § 29 Paragraph 1, second sentence, subparagraph 2 is amended as follows:

a) In letter j, the word 'and' is replaced by a comma.

b) In letter k, the full stop at the end is replaced by the word 'and'.

c) The following subparagraph l is added

a) ' in accordance with Articles 3 to 11 of Regulation (EU) 2022/858 of the European Parliament and of the Council of 30 May 2022 establishing a pilot regime for market infrastructure based on distributed ledger technology and amending Regulations (EU) No 600/2014 and (EU) No 909/2014 and Directive 2014/65/EU (OJ L 151, 2.6.2022, p. 1), provided that the operations concerned are carried out by the institution.';

8. In § 32(1f), first sentence, after the words 'Data provision service', a comma and the words 'subject to the derogation referred to in the first clause of Article 2(3) of Regulation (EU) No 600/2014' are inserted.

9. In § 33(1), first sentence, subparagraph 1 letter c, after the words 'Financial service institutions': the words 'trading on their own account in financial instruments and in the case of financial services institutions which:' are inserted.

10. In § 44, the following paragraph 5a is inserted after paragraph 5:

‘(5a) The Bundesanstalt and the Deutsche Bundesbank may request electronic submission in the event of requests for information and submissions in accordance with this provision. They may lay down more detailed rules on the method of transmission.'

11. The following § 46i in inserted after § 46h:

‘§ 46i

Assignment of deposited crypto-assets; Costs of segregation

(1) The crypto-assets held for a client as part of a crypto-deposit business shall be deemed to belong to the client. This does not apply if the client has given the right of disposal of the stored asset for the account of the institution or third parties.

(2) Paragraph 1 shall apply mutatis mutandis to the client’s share of crypto-assets in collective deposit and to private cryptographic keys held in isolation.

(3) If, in insolvency proceedings, the client does not agree to a separation of the assets of the institution by transferring the total holdings held by the institution to an institution designated by the insolvency administrator which operates the crypto-deposit business, he shall bear the costs of the separation. This does not apply if the conditions under which the other institution offers a continuation of the deposit relationship are unreasonable for the client. Sentences 1 and 2 shall apply mutatis mutandis to the transfer of essential parts of the total holdings held in custody.’

12. In § 53i, first sentence, after the word 'written', the words 'or electronic' are inserted.

13. § 53o paragraph 2 is amended as follows:

a) In sentence 1 the words 'in written form and' are deleted.

b) Sentence 2 is repealed.

14. The following § 6a is inserted after § 53q:

‘6a.

DLT pilot scheme under Regulation (EU) 2022/858

§ 1r

Competence

the Bundesanstalt is a competent authority within the meaning of Article 12(1) to (3) of Regulation (EU) 2022/858.

§ 1s

Exceptions to the authorisation requirement pursuant to § 32

(1) DLT market infrastructures within the meaning of Article 2(5) of Regulation (EU) 2022/858 which have been granted a special authorisation pursuant to Articles 8, 9 or 10 of Regulation (EU) 2022/858, do not require any further authorisation under § 32, insofar as the financial service or banking operation provided is covered by the special authorisation.

(2) Retail clients within the meaning of § 67(3) of the Securities Trading Act which, on the basis of an exemption pursuant to Article 4(2) of Regulation (EU) 2022/858, as a member or participant of a multilateral DLT trading system within the meaning of Article 2(6) of Regulation (EU) 2022/858 or DLT trading and settlement system within the meaning of Article 2(10) of Regulation (EU) 2022/858, do not require authorisation pursuant to § 32(1a) second sentence.

§ 1t

DLT settlement systems and DLT trading and settlement systems

The provisions of this Act on central storage deposits shall also apply to DLT settlement systems as defined in Article 2(7) of Regulation (EU) 2022/858 and to such DLT trading and settlement systems as defined in Article 2(10) of Regulation (EU) 2022/858 which are based on an authorisation under Regulation (EU) No 909/2014.

§ 1u

Documents and applications under Regulation (EU) 2022/858

(1) The documents to be submitted to the Bundesanstalt pursuant to Regulation (EU) 2022/858 shall be submitted in German. They must also be presented in English at the request of the Bundesanstalt. The Bundesanstalt may allow the documents or parts thereof to be drawn up and submitted exclusively in English.

(2) Applications under Regulation (EU) 2022/858 must be submitted electronically to the Bundesanstalt. The data format and transmission route shall be determined by the Bundesanstalt.

§ 1v

Operators of organised markets

(1) The provisions of this section shall also apply to operators of organised markets where they operate a multilateral DLT trading system as defined in subparagraph 6 of Article 2 of Regulation (EU) 2022/858 or a DLT trading and settlement system as defined in subparagraph 10 of Article 2 of Regulation (EU) 2022/858.

(2) The powers of the Bundesanstalt pursuant to § 44 shall apply mutatis mutandis to the operators of organised markets, provided that requirements under Regulation (EU) 2022/858 are concerned.’

15. § 54 Paragraph 1 is worded as follows:

(1) ‘ Any person who

1. conducts transactions which are prohibited under § 3, also in conjunction with § 53b(3) sentence 1 or sentence 2,

2. conducts banking transactions or provides financial services without permission pursuant to § 32(1), first sentence, or

3. acts in Germany as a data provision service without permission pursuant to § 32(1f)(1), subject to the exception provided for in the first clause of Article 2(3) of Regulation (EU) No 600/2014;

shall be punished by imprisonment to up to five years or a fine.’

16. § 57 is worded as follows:

§ 1‘

Provisions on administrative fines

(1) An administrative offence is deemed to have been committed by any person who, intentionally or negligently

1. contrary to the first sentence of paragraph 26b(1), does not ensure that crypto-assets or private cryptographic keys are kept separately;

2. does not ensure, contrary to the second sentence of paragraph 26b(1), that a share can be determined at any time, or

3. contrary to § 26b(2), does not ensure that crypto-assets or private cryptographic keys cannot be disposed of in the manner specified therein.

(2) The administrative offence can be punished by a fine of up to five hundred thousand euros. § 30 Paragraph 2, third sentence, of the Code of Administrative Offences shall apply.’

Article 21

Amendment to the Owner Control Regulation

§ 2 Paragraph 3 of the Owner Control Regulation of 20 March 2009 (BGBl. I, p. 562, 688), as last amended by Article 1 of the Ordinance of 19 December 2022 (BGBl. I, p. 2645) is worded as follows:

(3) ‘ Advertisements, documents, notifications and declarations may also be submitted in whole or in part in English. The Bundesanstalt may at any time request the submission of a translation or, in justified cases, a certified or publicly appointed or sworn interpreter or translator. § 23 Paragraph 2 sentences 3 and 4 of the Administrative Procedure Act shall apply mutatis mutandis. If the Bundesanstalt requires a translation, only the German-language version is legally relevant. Insofar as the Bundesanstalt requires a translation before confirmation of receipt of the complete notification, the notification is only complete within the meaning of § 2c(1) sentence 9 of the Banking Act or § 17(3) of the Insurance Supervision Act, if the translation has been submitted to the Bundesanstalt or the Deutsche Bundesbank’s head office responsible for the credit institution or financial

services institution concerned. If the Bundesanstalt requires a translation with regard to further information within the meaning of § 2c(1a)(3) of the Banking Act or § 17(4)(3) of the Insurance Supervision Act, this information shall only be deemed to have been received by the Bundesanstalt when the translation has been received by the Bundesanstalt.'

Article 22

Amendment to the Financial Services Supervision Act

The Financial Services Supervision Act of 22 April 2002 (BGBl. I, p. 1310), as last amended by Article 7 of the Act of 31 May 2023 (BGBl. 2023 I No 140), is amended as follows:

1. The Table of Contents is amended as follows:

   a) The following entry is inserted after the reference to § 4i:

      ' § 4j Applications and information in English'.

   b) The reference to § 16 m is worded as follows:

      ' § 16 m The creation of the levy claim; Determination of the amount of the levy and the due date; Obligation for electronic communications and regulatory authorisation'.

2. In § 4d(1) sentence 2, after the word 'anonymous', the words 'as well as in English' are inserted.

3. The following § 4j in inserted after § 4i:

'§ 4j

Applications and information in English

(1) Applications to the Bundesanstalt may also be submitted in whole or in part in English. The Bundesanstalt may at any time request the submission of a translation or, in justified cases, a certified or publicly appointed or sworn interpreter or translator. § 23 Paragraph 2 sentences 3 and 4 of the Administrative Procedure Act remains unaffected. If the Bundesanstalt requires a translation, only the German-language version of the application is legally relevant.

(2) If, by means of an electronic application in English, a period within which the Bundesanstalt must take action in a specific manner is to be set, the period of time shall begin on receipt of the application in English. The expiry of the period shall be suspended in such time as the Bundesanstalt requests a translation or, in justified cases, a certified or made translation by a publicly appointed or sworn interpreter or translator. The suspension ends as soon as there is a translation sufficient for these requirements. § 209 of the Civil Code shall apply mutatis mutandis. § 4h shall apply mutatis mutandis to the transmission of the translation request pursuant to sentence 2.

(3) By way of derogation from the first sentence of § 23(4) of the Administrative Procedure Act, a request made electronically in English, with the aim of maintaining a time limit vis-à-vis the authority for the benefit of a party, shall be deemed to have

been submitted at the time of receipt by the Bundesanstalt. If, upon receipt of the application, the Bundesanstalt requests that a translation or, in justified cases, a certified or publicly appointed or sworn interpreter or translator must be submitted within a reasonable period to be set by it, the effect of sentence 1 shall only occur if the translation is received within the deadline. This legal consequence must be noted when setting the time limit. § 4h shall apply mutatis mutandis to the transmission of the translation request pursuant to sentence 2.

(4) The Bundesanstalt's ordinances, forms and administrative regulations, which are aimed at the general public and may also be relevant to foreign market participants, shall be made accessible in English by the Bundesanstalt within six months of publication. Only the German version remains legally relevant.

(5) Special legislative regulations remain unaffected.'

4. § 15 In paragraph 1, subparagraph 10(c) is amended as follows:

a) Double letter aa is worded as follows:

'of § 39(3) or (4), respectively in conjunction with § 8(2), (3) or (4), or the third sentence of paragraph 19(1). Payment Services Supervision Act'.

b) Double letter bb is worded as follows:

'of § 8(2), including in conjunction with measures referred to in paragraphs 3 or 4 or the third sentence of Paragraph 19(1) of the Payment Services Supervision Act.'.

5. § 16 m is amended as follows:

a) The heading is worded as follows:

'§ 16m

The creation of the levy claim; Determination of the amount of the levy and the due date; Obligation for electronic communications and regulatory authorisation'.

b) (4) and (5) are worded as follows:

(1) ' The persons liable under Sections 16e to 16l are obliged to transmit to the Bundesanstalt the information, documents, communications, notifications and applications required for the purposes of setting and collecting the levy electronically, unless the Bundesanstalt determines a different way of transmission. For this purpose, they are obliged to use the electronic communication procedure provided by the Bundesanstalt and to set up electronic access for this purpose. This also applies to administrative acts which are communicated electronically in accordance with § 4f or which are delivered electronically in accordance with § 4g.

(2) The Federal Ministry of Finance may, by means of an ordinance which does not require the consent of the Bundesrat, adopt further provisions on the content, scope and form of the information and documents to be transmitted and on the access and use of the electronic communication procedure as well as on data formats for information and documents referred to in paragraph 4. The Federal Ministry of Finance may transfer the authorisation to the Bundesanstalt by means of a statutory instrument.'

c) The previous paragraph 4 becomes paragraph 6.

d) The previous paragraph 5 becomes paragraph 7 and in sentence 1 the words 'in written form' are replaced by the words 'in written or electronic form'.

6. § 16n paragraph 1, third sentence, is worded as follows:

‘Paragraphs 16 m(3) to (5) and (7) shall apply mutatis mutandis.’

Article 23

Amendment to the Ordinance on the delegation of powers to issue statutory ordinances to the Bundesanstalt für Finanzdienstleistungsaufsicht (Federal Financial Supervisory Authority)

The Ordinance on the delegation of powers to issue statutory ordinances to the Bundesanstalt für Finanzdienstleistungsaufsicht of 13 December 2002 (BGBl. 2003 I, p. 3), as last amended by Article 4 of the Act of 25 March 2022, is amended as follows:

1. § 1 is amended as follows:

a) In subparagraph 1, after the words ‘in accordance with the first sentence of paragraph 3(4),’, the words ‘of Article 24a(2);’ are inserted.

b) In subparagraph 5 the words ‘of the first and third sentences of paragraph 10(1)’ are replaced by the words 'of the second sentence of § 5(2), of the first and third sentences of § 10(1)'.

c) In subparagraph 8, the words 'as well as' are replaced by a comma.

d) In subparagraph 9, after the words 'Restructuring Fund Act', the words 'as well as' are inserted.

e) The following subparagraph 10 is inserted after subparagraph 9:

1. ‘ Ordinances pursuant to § 16 m(5) of the Financial Services Supervision Act‘.

2. The term ' § 310a' is added to § 1a subparagraph 1.

3. § 1e is worded as follows:

'The Bundesanstalt für Finanzdienstleistungsaufsicht shall be authorised to issue statutory ordinances in accordance with §§ 4a(2) sentence 1, 28(4) sentences 1 and 2 of the Payment Services Supervision Act by agreement with the Deutsche Bundesbank and after consulting the leading associations of the institutions.'

Article 24

Amendment to the Financial Services Supervision Fees Ordinance

The Financial Supervisory Fees Ordinance of 2 September 2021 (BGBl. I, p. 4077), last amended by..., is amended as follows:

1. § 1 is amended as follows:

   a) In subparagraph [last subparagraph in current version], the full stop at the end is replaced by a comma.

   b) After subparagraph [last subparagraph in current version], the following subparagraph YY is inserted:

   ‘[YY] Regulation (EU) 2022/858 of the European Parliament and of the Council of 30 May 2022 establishing a pilot regime for market infrastructure based on distributed ledger technology and amending Regulations (EU) No 600/2014 and (EU) No 909/2014 and Directive 2014/65/EU (OJ L 151, 2.6.2022, p. 1).’

2. The Annex is amended as follows:

   a) In the Table of Contents, the following subparagraph yy is added after subparagraph [last subparagraph in current version]:

   'yy individually attributable public services based on Regulation (EU) 2022/858'.

   a) After subparagraph [last subparagraph in current version]. the following subparagraphs yy and yy.1 are added:

‘No	Charge event	Fee in Euros
YY	Individually attributable public services based on Regulation (EU) 2022/858	
YY.1	Granting of a special authorisation, derogation or amendment to an authorisation or derogation pursuant to Articles 8, 9 or 10 of Regulation (EU) 2022/858	According to time expenditure’.

Article 25

Amendment to the Payment Institution Audit Report Ordinance

In § 3(3) of the Payment Institution Audit Report Ordinance of 15 October 2009 (BGBl. I p. 3648), last amended by Article 7(38) of the Act of 12 May 2021 (BGBl. I p. 990), each phrase 'Set 2' is replaced by: 'Set 3'.

Article 26

Amendment to the Payment Account Act

The Payment Account Act of 11 April 2016 (BGBl. I p. 720), last amended by Article 9(7) of the Act of 9 December 2020 (BGBl. I p. 2773), is amended as follows:

1. In the Table of Contents, the references to §§ 16 and 17 are worded as follows:

‘§ 16 Operation of comparison websites for payment accounts

§ 17 Requirements for comparison websites for payment accounts, reporting obligation for payment service providers'.

2. § 2, paragraph 6 is worded as follows:

(1) ‘ Relevant payment account services are the services associated with a payment account, which are included in the current list of the most representative services associated with a payment account, published by the Bundesanstalt pursuant to § 47(1).’

3. § 16 is amended as follows:

a) The heading is worded as follows:

§ 1‘

Operation of comparison websites for payment accounts'.

b) Paragraph 1 shall be: preceded by the following paragraph 1:

(1) ‘ A comparison website within the meaning of this subsection is a website that compares the criteria set out in § 17 in the manner prescribed in § 18 free of charge for the consumer. The Bundesanstalt operates a comparison website. This is called 'Comparative Website under the Payment Accounts Act'. Other operators may be certified for the operation of a comparison website in accordance with paragraphs 2 and 3.’;

c) The previous paragraphs 1 and 2 become paragraphs 2 and 3.

d) Paragraph 2 is worded as follows:

(1) ‘ The operator of a comparison website shall, upon request, be granted a certificate by an accredited conformity assessment body.’;

e) Paragraph 3 is amended as follows:

a%6) The words 'Paragraph 1' are replaced by the words 'Paragraph 2'.

b%6) The words 'as well as' are replaced by a comma.

c%6) After the words 'Certification symbols', the words ‘and for the retrieval of the data reported in accordance with § 17(2) from the Bundesanstalt and for their processing for the purposes of operating a comparison website’ are inserted.

4. § 17 is amended as follows:

a) The heading is worded as follows:

§ 1‘

Request for comparison websites for payment accounts, reporting obligation for payment service providers'.

b) The previous wording becomes paragraph 1.

c) The following paragraph 2 is added:

(1) ‘ Payment service providers are obliged to report to the Bundesanstalt the data on criteria referred to in paragraph 1 in conjunction with a statutory ordinance pursuant to § 19(1)(1) and (3). Changes and updates to the reported data as well as data on the criteria set out in paragraph 1 in conjunction with a statutory ordinance pursuant to § 19(1)(1) for newly-offered payment accounts shall be reported to the Bundesanstalt within three business days from their validity. For the ATM network criterion, a bi-annual change and update of the reported data is sufficient.'

5. § 19 is worded as follows:

§ 1‘

Power to issue statutory instruments Administrative provisions

(1) The Federal Ministry of Finance is authorised to enact, in agreement with the Federal Ministry of Justice and the Federal Ministry of the Environment, Nature Conservation, Nuclear Safety and Consumer Protection, more detailed provisions by statutory ordinance which does not require the approval of the Bundesrat

1. specifying and supplementing the requirements set out in §§ 17 and 18;

2. the definition of the requirements for accreditation and conformity assessment in relation to comparison websites;

3. the protection and design of the certification symbol for comparison websites, in particular its presentation, composition and size; and

4. the use of the certification symbol.

(2) The Federal Ministry of Finance is authorised to designate the authorities and bodies responsible for the implementation of this subsection and the regulations based on it by means of a statutory instrument which does not require the consent of the Bundesrat, in agreement with the Federal Ministry of Justice and the Federal Ministry for the Environment, Nature Conservation, Nuclear Safety and Consumer Protection.

(3) The Federal Ministry of Finance is authorised to adopt, by means of a statutory instrument which does not require the consent of the Bundesrat, in agreement with the Federal Ministry of Justice and the Federal Ministry for the Environment, Nature Conservation, Nuclear Safety and Consumer Protection, more detailed provisions to

comply with the requirements for comparison websites referred to in §§ 16 to 18, specifying:

1. the nature and form of the provision or transmission of the data to be reported pursuant to § 17(2), including the dates, the permissible data carriers, data formats and transmission channels; and

2. the retrieval of the data reported to the Bundesanstalt pursuant to § 17(2) by operators of certified comparison websites including the dates, permissible data carriers, data formats, transmission channels and addressees.

(4) The Federal Ministry of Finance may, in agreement with the Federal Ministry of Justice and Federal Ministry for the Environment, Nature Conservation, Nuclear Safety and Consumer Protection, adopt administrative provisions necessary for the implementation of this subsection and the regulations based on it by the competent authorities and bodies.

(5) The Federal Ministry of Finance is authorised to transfer the authorisations referred to in paragraphs 1 and 3 to the Bundesanstalt by means of a statutory instrument which does not require the consent of the Bundesrat, subject to the proviso that the statutory instrument of the Bundesanstalt is issued in agreement with the Federal Ministry of Finance, the Federal Ministry of Justice and the Federal Ministry for the Environment, Nature Conservation, Nuclear Safety and Consumer Protection.'

6. In § 46(2), first sentence, the words 'for the Bundesanstalt' are deleted.

7. In § 48(3), first sentence, after the word 'written', the words 'or electronic' are inserted.

8. § 53 is amended as follows:

a) Paragraph 1 is amended as follows:

a%6) The following subparagraph 6 is inserted after subparagraph 5:

1. ‘ contrary to

a) § 17 Paragraph 2 sentence 1 in conjunction with a statutory ordinance pursuant to § 19(3)(1), or

b) § 17 paragraph 2 sentence 2,

in each case also in connection with a statutory instrument pursuant to § 19(1) subparagraph 1, not making a notification, or making a notification that is incorrect, not complete or not timely.’

b%6) The previous subparagraphs 6 to 17 become subparagraphs 7 to 18.

b) In paragraph 2, the words: 'Subparagraphs 1 to 8 and 10' are replaced by the words 'Subparagraphs 1 to 9 and 11'.

9. In Annex 4, after the phrase '53002 Bonn', the phrases 'poststelle@bafin.de' and 'www.bafin.de/basiskonto' are inserted.

Article 27

Amendment to the Payment Services Supervision Act

The Payment Services Supervision Act of 17 July 2017 (BGBl. I p. 2446; 2019 I p. 1113), as last amended by Article 13 of the Act of 22 February 2023 (BGBl. 2023 I No 51), is amended as follows:

1. The Table of Contents is amended as follows:

   a) The following entry shall be added after the reference to § 4:

   ‘§ 4aElectronic transmission of administrative files; Power to issue statutory instruments’.

   b) The entry for § 12 shall be worded as follows:

   ‘§ 12

   Complaints, out-of-court dispute resolution and collective consumer information’.

   c) The following entry shall be added after the reference to § 62:

   '§ 62a Collective Consumer Information'.

2. § 1 is amended as follows:

   a) In paragraph 1, first sentence, subparagraph 3, after the words: 'approved' the words ‘including branches pursuant to § 53(1) of the Banking Act, which are authorised in Germany to provide both deposit transactions within the meaning of § 1(1), second sentence, subparagraph 1 of the Banking Act and credit transactions within the meaning of § 1(1), second sentence, subparagraph 2 of the Banking Act,’ are inserted.

   b) In paragraph 2, first sentence, subparagraph 2, after the word: 'are authorised' the words ‘including branches pursuant to § 53(1) of the Banking Act, which are authorised in Germany to provide both deposit transactions within the meaning of § 1(1), second sentence, subparagraph 1 of the Banking Act and credit transactions within the meaning of § 1(1), second sentence, subparagraph 2 of the Banking Act,’ are inserted.

   c) After paragraph 15, the following paragraph 15a is inserted:

   ‘(15a) Payment transaction means any provision, transmission or withdrawal of a sum of money, irrespective of the underlying legal relationship between the payer and the payee.’

3. In § 3(4), first sentence, the words ‘within the meaning of § 19’ are replaced by the words 'pursuant to § 1(1), second sentence, subparagraph 2'.

4. The following § 4a is inserted after § 4:

‘ § 4a

Electronic notification or provision of administrative files; Power to issue statutory instruments

(1) Administrative acts issued pursuant to this Act may be notified electronically in accordance with § 4f of the Financial Services Supervision Act or provided electronically in accordance with § 4 g of the Financial Services Supervision Act. Institutions as well as legal and natural persons who have submitted an application pursuant to this Act are obliged to use the electronic communication procedure provided by the Bundesanstalt and to open electronic access for the electronic retrieval of administrative acts notified or notified in accordance with sentence 1, unless the Bundesanstalt determines a different means of transmission.

(2) The Federal Ministry of Finance shall be authorised to adopt, in consultation with the Deutsche Bundesbank, further provisions on access to the electronic communication procedure referred to in paragraph 1, on its implementation and its use, by means of a statutory ordinance which does not require the consent of the Bundesrat. The Federal Ministry of Finance may transfer the authorisation by statutory instrument to the Bundesanstalt on the condition that the statutory instrument is issued in agreement with the Deutsche Bundesbank.’

5. § 10 is amended as follows:

   a) In the first sentence of paragraph 1, after the word: 'written' the words 'or electronic' are inserted.

   b) The following sentence is added to Paragraph 3:

      ‘If, despite a request from the Bundesanstalt to complete the application within one month, sufficient information or documents to enable the Bundesanstalt to decide on the application are not available within 12 months of receipt of the application by the Bundesanstalt, the application shall be rejected.’

   c) The second sentence of paragraph 8 shall read as follows:

      'The Federal Ministry of Finance may transfer the authorisation by statutory ordinance to the Bundesanstalt on the condition that the ordinance is issued in agreement with the Deutsche Bundesbank.'

6. § 11 is amended as follows:

   a) In the first sentence of paragraph 1, after the word: 'written' the words 'or electronic' are inserted.

   b) In paragraph 2, second sentence, subparagraph 2, after the comma at the end, the words ‘as well as for payment initiation services and account information services, proof of protection in the event of liability pursuant to § 16 or § 36,’ are inserted.

   c) The second sentence of paragraph 6 shall read as follows:

      'The Federal Ministry of Finance may transfer the authorisation by statutory ordinance to the Bundesanstalt on the condition that the ordinance is issued in agreement with the Deutsche Bundesbank.'

7. § 14, Paragraph 3 sentence 2 shall read as follows:

'The Federal Ministry of Finance may transfer the authorisation by statutory ordinance to the Bundesanstalt on the condition that the ordinance is issued in agreement with the Deutsche Bundesbank.'

8. § 15 is amended as follows:

   a) The second sentence of paragraph 3 shall read as follows:

      'The Federal Ministry of Finance may transfer the authorisation by statutory ordinance to the Bundesanstalt on the condition that the ordinance is issued in agreement with the Deutsche Bundesbank.'

   b) Paragraph 4, second sentence, is repealed.

   c) The following paragraph 6 is added:

      (1) ‘ § 297 paragraphs 1, 304(4) and 305(5) sentence 4 of the Stock Corporation Act shall not apply where the purpose of a transfer of capital is the release of own funds pursuant to Article 72 of Regulation (EU) No 575/2013.’

9. § 19 Paragraph 1 is amended as follows:

   a) The following sentence is inserted after sentence 1:

      ‘Bundesanstalt or the Deutsche Bundesbank may request electronic submission in accordance with this provision and lay down more detailed rules on the manner of transmission.’

   b) In the new sentence 5, the words 'Paragraphs 2 and 3' are replaced by the words 'Paragraphs 3 and 4'.

10. § 24, Paragraph 3 sentence 3 shall read as follows:

    'The Federal Ministry of Finance may transfer the authorisation by statutory ordinance to the Bundesanstalt on the condition that the ordinance is issued in agreement with the Federal Ministry of Justice.'

11. § 25 is amended as follows:

    a) In paragraph 1, fourth sentence, the words 'in text form' are replaced by the words 'written or electronic’.

    b) The second sentence of paragraph 5 shall read as follows:

       'The Federal Ministry of Finance may transfer the authorisation by statutory ordinance to the Bundesanstalt on the condition that the ordinance is issued in agreement with the Deutsche Bundesbank.'

12. In § 26(4), the words 'in text form' are replaced by the words 'written or electronic'.

13. § 28, Paragraph 4 sentence 3 shall read as follows:

    'The Federal Ministry of Finance may transfer the authorisation by statutory ordinance to the Bundesanstalt on the condition that the ordinance is issued in agreement with the Deutsche Bundesbank.'

14. § 29, Paragraph 3 sentence 2 shall read as follows:

'The Federal Ministry of Finance may transfer the authorisation by statutory ordinance to the Bundesanstalt on the condition that the ordinance is issued in agreement with the Deutsche Bundesbank.'

15. § 34 is amended as follows:

    a) In the first sentence of paragraph 1, after the word: 'written' the words 'or electronic' are inserted.

    b) The following sentence is added to Paragraph 2:

    ‘If, despite a request from the Bundesanstalt to complete the application within one month, sufficient information or documents to enable the Bundesanstalt to decide on the application are not available within 12 months of receipt of the application by the Bundesanstalt, the application shall be rejected.’

    c) The second sentence of paragraph 7 shall read as follows:

    'The Federal Ministry of Finance may transfer the authorisation by statutory ordinance to the Bundesanstalt on the condition that the ordinance is issued in agreement with the Deutsche Bundesbank.'

16. In § 38(9), first sentence, the words 'in text form' are replaced by the words 'written or electronic'.

17. In § 39(3), third sentence, the words 'in text form' are replaced by the words 'written or electronic'.

18. § 58, Paragraph 3 sentence 2 shall read as follows:

    'The Federal Ministry of Finance may transfer the authorisation by statutory ordinance to the Bundesanstalt on the condition that the ordinance is issued in agreement with the Deutsche Bundesbank.'

19. In § 60(2), first sentence, after the word 'written', a comma and the word 'electronic' is inserted.

20. In § 61(2), first sentence, after the word 'written', a comma and the word 'electronic' is inserted.

21. The heading for § 12 shall be worded as follows:

‘§ 12

Complaints; Out-of-court dispute resolution and collective consumer information’.

22. The following § 62a is inserted after § 62:

‘ § 62a

Collective consumer information

(1) the Bundesanstalt has made easily accessible on its website the electronic leaflet referred to in Article 106(1) of Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal

market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010 and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35); L 169, 28.6.2016, p. 18; L 102, 23.4.2018, p. 97; L 126, 23.5.2018, p. 10), as last amended by Delegated Regulation (EU) 2021/1722 of 18 June 2021 (OJ L 343, 28.9.2021, p. 1).

(2) Payment service providers shall make the electronic leaflet referred to in paragraph 1 available on their existing websites and in paper form at their branches, their agents and the bodies to which they have outsourced their activities, free of charge and in an accessible manner.'

Article 28

Amendment to the Securities Institute Act

The Securities Institute Act of 12 May 2021 (BGBl. I p. 990), as last amended by Article 14 of the Act of 22 February 2023 (BGBl. 2023 I No 51), is amended as follows:

1. The following information is inserted in the Table of Contents after the reference to § 78:

'Chapter 7a

DLT pilot scheme under Regulation (EU) 2022/858

§ 78a Jurisdiction

§ 78b Exceptions to the authorisation requirement under § 15

§ 78c Documents and applications pursuant to Regulation (EU) 2022/858'.

2. § 78, paragraph 1, third sentence, subparagraph 5 is amended as follows:

   a) In letter e, the word 'and' is replaced by a comma.

   b) In letter f, the full stop at the end is replaced by the word 'and'.

   c) The following point (g) is added:

      a) ' Articles 3 to 11 of Regulation (EU) 2022/858 of the European Parliament and of the Council of 30 May 2022 establishing a pilot regime for market infrastructure based on distributed ledger technology and amending Regulations (EU) No 600/2014 and (EU) No 909/2014 and Directive 2014/65/EU (OJ L 151, 2.6.2022, p. 1).'';

3. The following Chapter 7a is inserted after § 78:

‘Chapter 7a

DLT pilot scheme under Regulation (EU) 2022/858

§ 1a

Competence

The Bundesanstalt is a competent authority within the meaning of Article 12(1) of Regulation (EU) 2022/858.

§ 1b

Exceptions to the authorisation requirement pursuant to § 15

(1) DLT market infrastructures within the meaning of Article 2(5) of Regulation (EU) 2022/858 which have been granted a special authorisation in accordance with Article 8 or Article 10 of Regulation (EU) 2022/858, do not require any further authorisation under § 15 to the extent that the investment service provided is covered by the special authorisation.

(2) Retail clients within the meaning of § 67(3) of the Securities Trading Act who, on the basis of an exemption pursuant to Article 4(2) of Regulation (EU) 2022/858, are members or participants of a multilateral DLT trading system. within the meaning of Article 2(6) of Regulation (EU) 2022/858 or of a DLT trading and settlement system to carry out the own business within the meaning of Article 2(10) of Regulation (EU) 2022/858, do not require authorisation pursuant to § 15(4) sentence 1 for this purpose.

§ 1c

Documents and applications under Regulation (EU) 2022/858

(1) The documents to be submitted to the Bundesanstalt pursuant to Regulation (EU) 2022/858 shall be submitted in German. They must also be presented in English at the request of the Bundesanstalt. The Bundesanstalt may allow the documents or parts thereof to be drawn up and submitted exclusively in English.

(2) Applications under Regulation (EU) 2022/858 must be submitted electronically to the Bundesanstalt. The data format and means of transmission shall be determined by the Bundesanstalt.’

Article 29

Amendment to the Capital Investment Code

The Capital Investment Code of 4 July 2013 (BGBl. I p. 1981), as last amended by Article 15 of the Act of 22 February 2023 (BGBl. 2023 I No 51), is amended as follows:

1. In § 1(19)(22) the words 'required for the management of immovable property' are replaced by the words ‘referred to in § 231(3)’.

2. In § 7b(2) sentence 3, after the words 'Financial Services Supervision Act' the word 'electronic' is inserted in each case.

3. § 19 is amended as follows:

   a) The following paragraph 1a is inserted after paragraph 1:

      ‘(1a) the Bundesanstalt shall confirm the receipt of a complete notification in accordance with paragraph 1 immediately and at the latest within two working days of receipt of the notification.’

   b) The following paragraph 5a is inserted after paragraph 5:

      ‘(5a) Notifications, documents and declarations referred to in paragraphs 1 and 5 may also be submitted in whole or in part in English. The Bundesanstalt may at any time request the submission of a translation or, in justified cases, a certified or publicly appointed or sworn interpreter or translator. § 23 Paragraph 2 sentences 3 and 4 of the Administrative Procedure Act shall apply mutatis mutandis. If the Bundesanstalt requires a translation, only the German-language version is legally binding. Insofar as the Bundesanstalt requires a translation before confirmation of receipt of the complete notification, the notification is only complete within the meaning of subsection 2, sentence 1 once the translation has been submitted to the Bundesanstalt. If the Bundesanstalt requires a translation with regard to further information within the meaning of § 2c(1a) sentence 3 of the Banking Act, this information has not been received by the Bundesanstalt until the translation has been received by the Bundesanstalt.’

4. In paragraph 53(5), second sentence, the word 'written' is deleted.

5. § 221 is amended as follows:

   a) Paragraph 1 is amended as follows:

      a%6) In subparagraph 4, the full stop at the end is replaced by a comma.

      b%6) The following subparagraph 5 is added:

         1. ‘ Crypto-assets within the meaning of § 1(11) sentence 4 of the Banking Act for investment purposes, if their market value can be determined.’

   a) The following sentence is added to Paragraph 5:

      ‘The AIF capital management company shall ensure that the proportion of crypto-assets held on the account of the Other Investment Asset does not exceed 10 % of the value of the Other Investment Asset.’

6. § 223 Paragraph 1 is amended as follows:

   a) In sentence 1 after the phrase ' § 98(1)', a comma and the words 'paragraph 1b, first and third sentences' are inserted.

   b) In sentence 2, the word 'written' is deleted.

7. § 231 is amended as follows:

a) In the first sentence of paragraph 1, the following subparagraph 3a shall be inserted after subparagraph 3:

'3a. undeveloped land which does not satisfy the conditions laid down in points 2 and 3 and which is intended and suitable for the immediate construction of installations for the production, conversion, transport or storage of electricity, gas or heat from renewable energy sources, or on which such installations are constructed at the time of acquisition or on which such installations have already been built, if, at the time of acquisition, their value, together with the value of further such land already in the special fund, does not exceed 15 per cent of the value of the special fund;'.

b) In paragraph 3 the full stop at the end is replaced by a comma and the following words are added: 'which serve the production, conversion, transport or storage of energy from renewable energies within the meaning of § 3(21) of the Renewable Energy Act of 21 July 2014 (BGBl. I p. 1066), as last amended by Article 3 of the Act of 22 May 2023 (BGBl. I, p. 133), as amended, or required for charging stations for electric mobility.'.

c) In paragraph 4, the words 'Points 2, 3, 5 and 6' are replaced by the words 'Points 2, 3, 3a, 5 and 6'.

d) The following paragraph 6 is added:

(1) ' Investments referred to in paragraph 1, subparagraph 3a, and items referred to in paragraph 3 may also be used by the capital management company for the special property fund.'

8. § 260b is amended as follows:

a) In paragraph 1, the following subparagraph 1a is inserted after subparagraph 1:

'1a. Installations for the production, conversion, transport or storage of electricity, gas or heat from renewable energy sources,';

b) Paragraph 2 is amended as follows:

a%6) In subparagraph 1, after the words 'Infrastructure project companies', the words 'and installations for the production, conversion, transport or storage of electricity, gas or heat from renewable energy sources' are inserted.

b%6) In subparagraph 2, after the words 'infrastructure project company', the words 'or installation for the production, conversion, transport or storage of electricity, gas or heat from renewable energy sources' are inserted.

c) In paragraph 4, after the words 'Infrastructure project company', a comma and the words 'Installations for the production, conversion, transport or storage of electricity, gas or heat from renewable energy sources,' are inserted.

9. § 261 is amended as follows:

a) Paragraph 1 is amended as follows:

a%6) In subparagraph 8, the full stop at the end is replaced by a comma.

b%6) The following subparagraph 9 is added:

1. ‘Crypto-assets within the meaning of § 1(11) sentence 4 of the Banking Act for investment purposes, if their market value can be determined.’

a) In paragraph 2(4), after the words 'for production', a comma and the words 'for conversion' are inserted.

b) The following sentence is added to Paragraph 4:

‘The AIF capital management company shall ensure that the proportion of crypto-assets held for the account of the closed domestic public AIF does not exceed 10 % of the value of the Other Investment Asset.’

a) The following paragraph 8 is added:

(1) ‘ Investments referred to in paragraph 2(4) may also be operated by the capital management company for the closed domestic public AIF.’

10. § 284 is amended as follows:

a) paragraph 2(2) is amended as follows:

a%6) In letter j, the semicolon at the end is replaced by a comma.

b%6) After letter j, the following subparagraph k is inserted:

a) ‘Installations for the production, conversion, transport or storage of electricity, gas or heat from renewable energy sources,’;

b) In paragraph 3, first sentence, subparagraph 1, after the words 'or are involved in an organised market', the words 'and which are not companies within the meaning of paragraph 2(2)(f) and (h)’ are inserted.

11. The following sentence is added to § 305(7):

'The right of withdrawal in respect of stocks and shares of a European long-term investment fund in the meaning of Regulation (EU) 2015/760 shall be governed by Article 30 of this Regulation.'

Article 30

Amendment to the Money Laundering Act

§ 1 Paragraph 21(2) of the Money Laundering Act of 23 June 2017 (BGBl. I p. 1822), as last amended by Article 8 of the Act of 31 May 2023 (BGBl. 2023 I No 140), shall be worded as follows:

1. ‘similar services, insofar as these services are provided in accordance with the respective statutory provisions by obliged entities pursuant to § 2(1)(1) points 1 to 3 and 6 to 9 (correspondents) may be provided for the following respondents:

a) other CRR credit institutions or financial institutions as defined in subparagraph 2 of Article 3 of Directive (EU) 2015/849; or

b) undertakings or persons in a third country carrying out activities equivalent to those of such credit institutions or financial institutions.

This includes, in particular, relationships entered into for securities transactions or transfers of funds.'

Article 31

Amendment to the Insurance Supervision Act

The Insurance Supervision Act of 1 April 2015 (BGBl. I p. 434), as last amended by Article 9 of the Act of 31 May 2023 (BGBl. 2023 I No 140), is amended as follows:

1. In the Table of Contents, the following is inserted after the reference to § 310:

   '§ 310a Electronic transmission; Power to issue statutory instruments'.

2. § 17 is amended as follows:

   a) In paragraph 1 sentence 1, in part of the introductory sentence before subparagraph 1 and n paragraph 2, the word 'written' is deleted in each case.

   b) In paragraph 3 and the first, fourth and fifth sentences of paragraph 4, after the word: 'written' the words 'or electronic' are inserted in each case.

3. In § 18(3) sentences 1 and 3, after the word 'written', the words 'or electronic' are inserted in each case.

4. In § 62(1), second sentence, subparagraph 6, the words 'as well as sections 308 and 310' are replaced by a comma and the words 'sections 308 and 310 and the provisions of a statutory ordinance pursuant to § 310a'.

5. § 126, paragraph 2 is worded as follows:

   (1) ' Three months after the end of the financial year, the insurance undertaking shall transmit to the supervisory authority the entries made in the financial year in the list of assets; the Management Board shall certify the accuracy of the entries.'

6. In § 166(1), sixth sentence, after the word 'written', the words 'or electronic' are inserted.

7. In § 225, fourth sentence, the words 'the provisions of this Chapter and § 332' are replaced by the words 'the provisions of this Chapter, § 332 and the provisions of a statutory ordinance pursuant to § 310a'.

8. In § 293(1), first sentence, the words 'as well as sections 303, 305, 306, 310 and 333' are replaced by a comma and the words 'sections 303, 305, 306, 310 and 333 and the provisions of a statutory ordinance pursuant to § 310a'.

9. The following paragraph 8 is added to § 305:

   (1) ' In the event of requests for information and submissions, the supervisory authority may request electronic submission and lay down detailed rules on the method of transmission.'

10. The following § 310a is inserted after § 310:

‘§ 310a

Electronic transmission; Power to issue statutory instruments

(1) The Federal Ministry of Finance is authorised, t, by means of a statutory ordinance which does not require the approval of the Bundesrat, to regulate the obligation and the procedure for the electronic submission and use of electronic communication procedures for notifications, advertisements, reports, applications and other information with the necessary documents to be submitted to the Bundesanstalt

1. under this Act and the regulations enacted pursuant to this Act, and

2. in accordance with the European Union Regulations referred to in § 295(1) and the Acts adopted for the implementation of those Regulations and Directive 2009/138/EC.

(2) By means of an ordinance as referred to in paragraph 1, in particular:

1. regulations are made on the electronic communication procedure to be used for the respective obligation to submit electronic submissions to the Bundesanstalt and which provisions apply to its use, including the obligation to access an electronic communication procedure within the meaning of Sections 4f and 4 g of the Financial Services Supervision Act, and

2. further provisions are made on the nature, scope, timing, form and data format of the submissions referred to in paragraph 1.

(3) The Federal Ministry of Finance may transfer the authorisation referred to in paragraphs 1 and 2 to the Bundesanstalt by statutory ordinance, which does not require the approval of the Bundesrat.‘’;

Article 32

Entry into force

(1) This Act shall enter into force, subject to paragraphs 2 and 3, on the day following its promulgation.

(2) Articles 8 and 9, Article 17(1)(a), Article 17, points 2 to 4, 6 and 8(b) and Article 18 enter into force on 1 January 2024.

(3) Article 16(11)(13) and (17) enter into force on 1 November 2025.

Explanatory notes

A. General part

I. Objective of and need for the provisions

Our country needs investment on an almost unprecedented scale. Only in this way can our prosperity be secured under changing conditions while at the same time adjusting society and the economy quickly to digitalisation and climate protection. It is necessary to strengthen the performance of the German capital market and to increase the attractiveness of the German financial location as an important part of Europe as a strong financial centre. In particular, start-ups, growth companies and small and medium-sized enterprises (SMEs) as drivers of innovation will facilitate access to the capital market and raising equity.

Shares and listed securities should become more attractive as an investment, in order to strengthen the demand side (incentives for shares as an investment) and the supply side (increase in the number of listed companies in Germany). Financial market supervisory law should therefore, as far as possible under national law, facilitate stock market admission procedures with the aim of making it easier for emerging and smaller companies to enter the stock market. In company law, additions are also possible to facilitate the acquisition of equity.

In the case of contracts between financial companies subject to authorisation, the GTC inspection is regarded as an obstacle to the legally secure design of contracts in accordance with international standards. The legally sound design of these contracts is also a prerequisite for reliable financing opportunities for the real economy. To this end, the provision of a narrowly limited exemption from the GTC inspection for contracts between financial entrepreneurs is envisaged.

Additional investments are particularly needed in the Federal Republic of Germany in order to swiftly adjust society and the economy to climate protection and to advance the energy transition. In order to achieve the climate targets, the construction of plants for the generation or transport of electricity from renewable energies is in the public interest and serves public safety. In line with the German Sustainable Finance Strategy, the Federal Government supports the financial sector by setting clear framework conditions for sustainable investments. For this reason, improvements should be made for private sector investments. At the same time, all suitable roof areas are to be used for solar energy in the future. In the case of commercial new buildings, this should be mandatory; for private new buildings it should become the rule. Solar systems can currently also be located on buildings on land that may be acquired and held by open property funds in Germany. In addition, land on which only facilities for the production, transport and storage of electricity, gas or heat from renewable energy has up to now not been a permitted asset for open property funds. However, in order to achieve the climate targets, it does not matter on which land renewable energy is generated. In line with the targeted improvements for private sector investment, it should therefore also be made easier for open-ended property fund providers to invest more in renewable energy for their investors in order to reduce the carbon footprint of fund property (buildings).

One aspect of making Germany as a financial location more attractive is the establishment of equal competitive relations with other European countries. In this context, VAT-related disadvantages have often been mentioned for funds located in Germany as well as for the consortium leaders in large financing. But the current crowd-funding liability regime in financial market law is also stricter than in other European Member States. In order to

compensate for these competitive disadvantages, alignment with the legal framework in other European Member States is carried out.

Digitalisation, debureaucratisation and internationalisation also make the German financial market and the German business location more attractive for both national and international companies and investors. Further developments of the legal framework for crypto-assets should contribute to making Germany a legally secure location for this technology of the future.

This includes, in particular, enabling equity issuance based on blockchain technology. The coalition agreement provides for the introduction of electronic equities for this legislative period (lines 5833-5835 'Digital financial services should operate without media breaks; for this purpose, we will create the legal framework and extend the possibility of issuing electronic securities to equities.') Currently, the Electronic Securities Act (eWpG) only permits the electronic issuance of bearer bonds (as does the Capital Investment Code by a reference to the eWpG for the electronic issuance of investment fund shares). There are two types of electronic securities: central repository securities (registered in a central register maintained by the central security depository or a custodian bank) and crypto-assets (registered in a register maintained by blockchain technology or similar technologies).

As digitalisation progresses, it is also necessary to contribute to a modern administrative culture in Germany in the financial market supervisory laws. Through the consistent use of digital solutions, processes for institutions, companies and citizens are to be simplified and, at the same time, by reducing bureaucracy, the Bundesanstalt is to be strengthened in its core tasks by creating the conditions for further increase in effectiveness and efficiency. This Act is therefore intended to adjust and develop regulations in supervisory laws which make these aspirations more difficult.

Despite recent expansions, the tax law framework for employee capital participation is perceived by the start-up industry as too narrow. The success of a start-up company depends largely on the acquisition of highly qualified specialists. For start-ups, it is therefore particularly important to issue shares in the companies to skilled staff. The promotion of innovative forms of participation and greater participation of workers in the productive capital of the economy is also an important concern of the Federal Government in general, as employee capital participation contributes to the wealth creation of employees. This goal is to be accompanied by tax support, in order to make it easier for start-ups to attract employees and retain them longer.

This, as well as further amendments to this Act in connection with equity investment, is also intended to further promote the still weak shareholder culture in Germany. The aim is for more citizens to invest in equities, as long-term equity investments can strengthen asset building and protect against inflation. A higher equity investment also benefits companies, because they can obtain equity more easily. This in turn increases investment and creates security buffers for times of crisis.

II. Main content of the draft

The regulatory requirements related to capital market access are simplified. For example, the minimum market capitalisation for an IPO will be reduced from EUR 1.25 million to EUR 1 million. It becomes possible to submit an application for admission to the stock exchange without the previously prescribed issue partner as co-applicant.

The ability to raise equity through the capital market is a core function and an important incentive for companies to go to the stock market. In particular, growth companies and start-ups should be able to be designed more flexibly by enabling the provision of registered shares with multi-voting rights in the articles of association. This removes a possible obstacle to the IPO for the founders and at the same time strengthens investment and inno-

vation opportunities. The admission of multi-voting shares is supplemented by legislative proposals to ensure minority and investor protection.

In addition, capital increases should be facilitated under certain conditions and their implementation should be accelerated. Thus, the limit for the simplified exclusion of subscription rights in equity law is to be raised from 10 percent of the share capital to 20 percent. Furthermore, the limits of conditional capital for mergers and subscription rights of employees and members of the management are to be increased from 50 percent and 10 percent to 60 percent and 20 percent respectively. It is also envisaged that disputes concerning the adequacy of the amount of the issue for certain capital measures pursuant to § 255 of the Stock Corporation Act will no longer be allowed in the context of a challenge procedure and will be decided instead in the appraisal proceedings.

The draft Act provides that registered shares may in future be issued in both forms of electronic securities under the eWpG, i.e. as central register securities and crypto-assets. For the issuance of bearer shares, the draft Act provides for a limitation of electronic issuance to central register securities. A further extension to crypto-assets would raise money laundering issues. As is apparent from its recommendations, the Financial Action Task Force (FATF), as an international set of standards in the field of prevention of money laundering and terrorist financing, classifies bearer shares as a risky instrument, for which it is crucial to make transfers comprehensible and prevent opportunities to conceal assets. The concrete design requirements, which should also be observed with regard to crypto-holder shares, are still outstanding in the current negotiations on an EU Money Laundering Regulation, which also includes a regulatory proposal on bearer shares. Therefore, no further categories of electronic bearer shares can currently be specified.

For the introduction of electronic shares, specific changes to the eWpG and the Stock Corporation Act are sufficient. The eWpG had already been formulated from the outset in such a way that a later introduction of electronic equities can take place without any problems. Changes in supervisory law are not required in connection with the introduction of electronic shares. In particular, the supervision by the Bundesanstalt of registering bodies does not change as a result of the fact that no longer exclusively electronic bearer bonds are entered in a crypto-asset register, but also (or only) electronic registered shares.

On the basis of the initial experience with the still quite new eWpG, individual amendments to this Act are to be made, to provisions which in practice have proved to be potentially impeding the issuance of electronic securities. Moreover, the experience of the evaluation of the Act announced in the Government’s explanatory memorandum to the Act on the introduction of electronic securities will be taken into account.

The European Regulation on markets in crypto-assets (EU) 2023/1114 (MiCA) lays down requirements to protect client assets in the event of the insolvency of crypto depositories. Deposited crypto-assets shall be excluded from access by the general creditors of the crypto depository. Institutions that operate the crypto-deposit business should therefore take precautions to separate their own crypto-assets from deposited crypto-assets. Corresponding regulations are to be included in the Banking Act (KWG).

The draft provides for an exemption for general terms and conditions from GTC inspection in accordance with Sections 307, 308 subparagraphs 1a and 1b of the German Civil Code (BGB), which are used in contracts for transactions subject to authorisation under the KWG, the Securities Institutes Act (WpIG) and the Payment Services Supervision Act (ZAG) between banks and other financial service providers who have authorisations under these laws. This is intended to make it possible to ensure that the contracts can also be drafted legally under German law in accordance with the internationally applicable standards for such contracts. The possibility of legally sound orientation to international standards is also important for the use of financial instruments to hedge against risks, in particular market rate and price fluctuations, as well as for the funding opportunities of credit

institutions and other financial service providers, and is therefore, at least indirectly, also relevant for financing opportunities, in particular the provision of credit to companies in the real economy. The scope exception covers general terms and conditions in all financial services contracts concluded with major financial entrepreneurs. Contracts with small and medium-sized financial entrepreneurs are covered by the scope exception only if they have a regulatory authorisation for the business that is the subject of the contract.

Open-ended property funds should also be allowed to acquire land on which there are only installations for the production, transport and storage of electricity, gas or heat from renewable energy sources and to operate these facilities themselves. Legal certainty is provided for the operation of installations in existing buildings.

Insofar as competition disadvantages for Germany as a financial location result from unequal implementation of European law requirements (VAT exemption for the management to venture capital funds and for the administrative services of consortium leaders), the legal framework is aligned with other European Member States.

The previous liability regime for basic investment information sheets in §§ 32c and 32d of the WpHG differs from the liability regulations in the Securities Prospectus Act for Securities Information Sheets (WIB) and the Asset Investment Act for Asset Investment Information Sheets. With the new version of § 32c, § 32d and § 32e of the WpHG, the liability regulations for project promoters of crowd-funding projects and for crowd-funding service providers are adapted to the liability regulations of these laws, especially on the legal side.

Achieving a digital nation and a digital administration also includes removing barriers to digitalisation (including the written form). A comprehensive digitalisation of administrative processes thus also contributes to the modernisation of the Bundesanstalt. This also includes the reduction of written form requirements and the ability to communicate electronically with institutions and companies. With the adaptation of §§ 4f and 4 g of the Financial Services Supervision Act (FinDAG), important conditions for the use of electronic means of communication for the notification and notification of administrative files have already been created. On this basis, this Act now adapts further legislation and enables addressees to participate in electronic communication procedures. In addition, legal written form requirements are supplemented by the possibility of electronic action, or a secure electronic communication channel is made available. In addition, further clarifying changes in the Act are to be addressed and the acceleration of the process is to be ensured.

The establishment of a comparison website on payment account fees at the Bundesanstalt will improve transparency about the supply of payment accounts for consumers and thus strengthen competition in this market.

For international market participants, the German financial market should also be made more accessible my making it possible for the Bundesanstalt to communicate with market participants in English as an international working language, In addition to the general requirements of the Administrative Procedure Act. In particular, it should also be possible to submit applications in English. Administrative requirements and forms relevant to international market participants should be available faster and more comprehensively in English. For this purpose, § 4d(1) of the FinDAG, which regulates the whistleblower’s office at the Bundesanstalt, is supplemented by the possibility of English-language notifications, and a new standard is included in § 4j of the FinDAG regulating English-language communication with the Bundesanstalt; among other things, the possibility to submit applications in English.

By improving the tax framework for employee capital participation, it is intended to make it easier for young companies to attract employees and to assert themselves in the international competition for talent. Employee shareholdings (referred to as 'asset shareholdings'

in the Income Tax Act) allow employees to participate more in the success of their company. At the same time, the opportunities of companies to attract and retain employees will be improved.

For this purpose, the tax exemption in § 3 subparagraph 39 of the Income Tax Act (EStG) is increased from currently EUR 1 440 to EUR 5 000 for employee capital participation and shares as an investment. On the other hand, the so-called dry income problem, which is a particular hindrance for start-ups and growth companies, is also largely solved. For this purpose, the scope of the deferred taxation scheme (§ 19a of the EStG) is significantly extended and its practical suitability is significantly improved. Among other things, provision is made for a deferral of taxation until the sale of the shares if the employer is willing to assume liability for the income tax.

The amendments also implement provisions from the coalition agreement.

III. Alternatives

The proposed amendments to the Payment Accounts Act to enable the operation of a comparison website for payment account charges will ensure the transposition of Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features. With the initial approach taken in Germany to implement this European requirement by certified private providers alone, no permanent operation of such a website compliant with the Directive could be achieved. The commissioning of the Bundesanstalt will guarantee this operation permanently in the future, regardless of whether (also) private providers wish to operate such a website.

The strengthening of employee capital participation contributes significantly to a sustainable expansion of the competitiveness of the German economy. Employees can participate in the company’s productivity progress and receive income from capital in addition to their wages. In addition, the retention of highly qualified specialists by German companies will be reinforced. Without the increase of the tax-free maximum amount for employee capital participations (§ 3 No 39 EStG) and the extensions to the tax date, an increased use could not be ensured. Without the special tax support for start-ups, German companies would lack an essential tool in the competition for highly qualified employees in international labour markets.

Insofar as the changes serve to align with VAT law in other European Member States, a turnover tax 'level playing field' is created in the EU for the taxation of administrative services of syndicated managers or venture capital funds with the aim of achieving equal competitive conditions for the German banking industry and German venture capital funds.

Moreover, while maintaining the status quo would be possible, it would be detrimental to the competitiveness and innovation of the financial location and the shareholder culture in Germany. The proposed changes generally lead to a reduction of bureaucracy and the facilitation of investment, without at the same time causing significant disadvantages, so the changes are consequently necessary.

IV. Legislative powers

The Federal Government’s legislative competence for the changes in the area of financial market law (including securities trading law, credit law, payment services supervisory law, insurance supervisory law and capital investment law) as well as securities and company law (including the Act on Electronic Securities, the Stock Corporation Act and the Deposit Act) derives from Article 74(1)(11) of the Basic Law (GG) – Law of the Economy.

In accordance with Article 72(2) of the Basic Law, the Federal Government shall have the power to lay down legislation for the subject matter of conflicting legislation, since provisions to safeguard legal and economic consistency are necessary in the general national interest. A uniform federal regulation is necessary because the issues raised in the draft affect legal and economic consistency in the Federal territory with regard to central points and the draft relates to the further development of existing federal codifications (Article 72(2) GG). The Act serves to safeguard legal unity, i.e. the application of the same norms in the federal territory. Since financial market supervisory, corporate and securities law is already regulated under federal legislation and the further development and modernisation of this law is concerned, only a federal regulation is appropriate; state legislation is excluded.

Also, the facilitation in the area of stock market admission law can only be achieved by means of a federal regulation. In this way alone, the planned arrangements can have the intended effect for all investors and issuers. A federal regulation is therefore required in the overall national interest.

In addition, the different exercise of supervision, for example of credit institutions, investment service institutions, payment and e-cash institutions, and thus the potentially different treatment for the same actual circumstances would lead to legal uncertainties and therefore unreasonable obstacles to cross-border legal transactions. In particular, it must be taken into account that payment and electronic cash institutions – as well as credit institutions and insurance companies – also operate across national borders and maintain branches and branches. Inconsistent requirements for the assessment of these nationwide undertakings would lead to unacceptable legal uncertainties for the undertakings concerned. In order to maintain economic unity, the provisions presented are also necessary because divergent national regulations entail significant disadvantages for the economy as a whole; they would create barriers or obstacles to trade in the federal territory and in the European Economic Area, as any decision on the location of a credit institution, payment or electronic cash institution would be made dependent on the regional rules. Requirements can only be made by federal regulations and have their effect only if they apply uniformly to business throughout the federal territory.

In view of the internationalisation of financial markets, federal regulations on electronic equities are required. The regulations are also necessary to maintain economic unity, as divergent state regulations entail significant disadvantages for the economy as a whole; different regulations in the individual states would result in a different level of transparency as well as market integrity.

The legislative competence of the Federal Government arises for the amendment to the Income Tax Act (Article 17) and the VAT Act (Article 18) from the second sentence of Article 105(2), first alternative in the Basic Law, as the tax revenue in this regard is wholly or partially due to the federal government.

V. Compatibility with European Union law and international treaties

The regulations are compatible with European Union law and international treaties.

As far as the regulations on the introduction of electronic shares are concerned, civil securities law (unlike the law on supervision of securities) has so far been harmonised only in individual ancillary aspects; the harmonisation of stock corporation law is limited to certain areas of company law, such as the legal framework for capital measures, implementation and coordination at general meetings or information obligations of issuers. The issue of shares by the issuers has so far not been regulated by European legislation The German legislature can therefore freely design the regulations on the creation and disposal of electronic shares.

Article 7 of Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features requires Member States to ensure that consumers have free access to at least one website that allows a comparison of charges levied by payment service providers at national level for at least the relevant payment account services. By adapting the Payment Accounts Act, this obligation is fulfilled.

VI. Impact of the Act

1. Legislative and administrative simplification

The provisions of the draft Act with regard to the introduction of electronic shares contribute to legal and administrative simplification with a view to the waiver of securities certificates.

The regulations on digitalisation, which provide for the reduction of written form requirements, lead to administrative simplification. In particular, internally digitally organised procedures of the Bundesanstalt can now be carried out without a change in media. In addition, to the extent that market participants are now to be able to submit applications to the Bundesanstalt in English, this speeds up and simplifies the application for the Bundesanstalt and market participants, since administrative procedures can be initiated without requiring a mandatory translation and translations only have to be requested if necessary.

By aligning the VAT rules with the treatment in the individual European Member States, the determination of the tax base is simplified.

2. Sustainability aspects

In principle, the proposed changes, insofar as they facilitate financing for companies, concern the German Sustainability Strategy in the areas of the UN Sustainable Development Goals (SDG) Economic Preparedness (Investment Climate), Indicator Area 8.3 and Economic Performance (Economic Growth) as a whole, Indicator area 8. By promoting the objective of technical innovation through better-funded companies, this also achieves SDG 9 (Industry, Innovation and Infrastructure) in Sub-Objective 9.1.a (private and public expenditure on research and development).

The transition from paper documents to electronic registers made possible by the draft for electronic equities allows for increased resource efficiency within the meaning of SDG 8 (Sub-Objective 8.4) and SDG 12 (Sub-Objective 12.2). By making securities issuance and securities transactions more open to modern technologies and improving the conditions for innovation in the financial sector, the draft takes account of SDG 9 – Industry, Innovation and Infrastructure – and SDG 8 – Growth and Jobs – tin the form of support for entrepreneurship, creativity and innovation (Sub-Objective 8.3) and the improvement to access of financial services (Sub-Objective 8.10).

In addition, the effects of the project correspond to sustainable development, since it facilitates investments in the energy transition, which is why it can be assumed that more installations for the production, transport and storage of electricity, gas or heat from renewable energies will be built than without the proposal. In the long term, this will have the effect of building more such plants, which serves the energy transition and climate protection as well as reducing land use. This affects SDG 7.2 (by expanding sustainable energy supply), SDG 11.1 (by using areas sustainably) and SDG 13 (by climate protection: reducing greenhouse gases).

The VAT measures concern the German Sustainability Strategy in particular in the area of economic performance (economic growth), indicator area 8.

The regulations on digitalisation by reducing written form requirements in various supervisory laws enable greater resource efficiency in the meaning of SDG 8 (Sub-Objective 8.4) and SDG 12 (Sub-Objective 12.2).

3. Budgetary expenditures exclusive of compliance costs

(Increased/reduced tax income ( ) in million EUR)

Serial No	Measure	Tax type/territorial authority	Full annual impact[1]	Financial year				
				2024	2025	2026	2027	2028
1	§ 3 No 39 EStG	**Total**	**- 355**	**- 320**	**- 355**	**- 355**	**- 355**	**- 355**
		Payroll tax	- 355	- 320	- 355	- 355	- 355	- 355
	Increase of the tax-free maximum amount for asset transfers (employee capital investments) from EUR 1 440 to EUR 5 000 p.a. with the possibility of conversion of remuneration up to EUR 2 000	Solidarity surcharge	.	.	.	.	.	.
		Federal Government	**- 151**	**- 136**	**- 151**	**- 151**	**- 151**	**- 151**
		Payroll tax	- 151	- 136	- 151	- 151	- 151	- 151
		Solidarity surcharge	.	.	.	.	.	.
		Federal states	**- 151**	**- 136**	**- 151**	**- 151**	**- 151**	**- 151**
		Payroll tax	- 151	- 136	- 151	- 151	- 151	- 151
		Municipalities	**- 53**	**- 48**	**- 53**	**- 53**	**- 53**	**- 53**
		Payroll tax	- 53	- 48	- 53	- 53	- 53	- 53
2	§ 19a of the Income Tax Act	**Total**	**- 365**	**- 70**	**- 255**	**- 365**	**- 365**	**- 365**
		Trade tax	- 155	- 30	- 110	- 155	- 155	- 155
		Income tax	- 105	- 20	- 75	- 105	- 105	- 105
		Payroll tax	.	.	.	.	.	.
	Extension of the tax system to include employee capital in certain undertakings, according to which the income from the transfer of assets to the employer's company is taxed only at a later date.	Corporation tax	- 95	- 20	- 65	- 95	- 95	- 95
		Solidarity surcharge	- 10	.	- 5	- 10	- 10	- 10
		Federal Government	**- 109**	**- 20**	**- 74**	**- 109**	**- 109**	**- 109**
		Trade tax	- 6	- 1	- 4	- 6	- 6	- 6
		Income tax	- 45	- 9	- 32	- 45	- 45	- 45
		Payroll tax	.	.	.	.	.	.
		Corporation tax	- 48	- 10	- 33	- 48	- 48	- 48
		Solidarity surcharge	- 10	.	- 5	- 10	- 10	- 10
		Federal states	**- 99**	**- 20**	**- 70**	**- 99**	**- 99**	**- 99**
		Trade tax	- 8	- 2	- 6	- 8	- 8	- 8
		Income tax	- 44	- 8	- 32	- 44	- 44	- 44
		Payroll tax	.	.	.	.	.	.
		Corporation tax	- 47	- 10	- 32	- 47	- 47	- 47
		Municipalities	**- 157**	**- 30**	**- 111**	**- 157**	**- 157**	**- 157**
		Trade tax	- 141	- 27	- 100	- 141	- 141	- 141
		Income tax	- 16	- 3	- 11	- 16	- 16	- 16
		Payroll tax	.	.	.	.	.	.
3	§ 4 Subpara. 8(a) and (g) of the VAT Act	**Total**	**- 100**	**- 85**	**- 100**	**- 100**	**- 100**	**- 100**
	VAT exemption for the granting of loans and credit collateral by lenders	VAT	- 100	- 85	- 100	- 100	- 100	- 100
		Federal Government	**- 53**	**- 45**	**- 53**	**- 53**	**- 53**	**- 53**
		VAT	- 53	- 45	- 53	- 53	- 53	- 53
		Federal states	**- 45**	**- 38**	**- 45**	**- 45**	**- 45**	**- 45**
		VAT	- 45	- 38	- 45	- 45	- 45	- 45
		Municipalities	**- 2**	**- 2**	**- 2**	**- 2**	**- 2**	**- 2**
		VAT	- 2	- 2	- 2	- 2	- 2	- 2

Serial No	Measure	Tax type/territorial authority	Full annual impact[1]	Financial year				
				2024	2025	2026	2027	2028

4 § 4 No. 8 h) VAT Act Extension of the VAT exemption for the management to investment funds	**Total**	**- 140**	**- 120**	**- 140**	**- 140**	**- 140**	**- 140**
	VAT	- 140	- 120	- 140	- 140	- 140	- 140
	Federal Government	**- 74**	**- 63**	**- 74**	**- 74**	**- 74**	**- 74**
	VAT	- 74	- 63	- 74	- 74	- 74	- 74
	Federal states	**- 63**	**- 55**	**- 63**	**- 63**	**- 63**	**- 63**
	VAT	- 63	- 55	- 63	- 63	- 63	- 63
	Municipalities	**- 3**	**- 2**	**- 3**	**- 3**	**- 3**	**- 3**
	VAT	- 3	- 2	- 3	- 3	- 3	- 3
5 Total financial impact	**Total**	**- 960**	**- 595**	**- 850**	**- 960**	**- 960**	**- 960**
	Trade tax	- 155	- 30	- 110	- 155	- 155	- 155
	Income tax	- 105	- 20	- 75	- 105	- 105	- 105
	Payroll tax	- 355	- 320	- 355	- 355	- 355	- 355
	Corporation tax	- 95	- 20	- 65	- 95	- 95	- 95
	Solidarity surcharge	- 10	.	- 5	- 10	- 10	- 10
	VAT	- 240	- 205	- 240	- 240	- 240	- 240
	Federal Government	**- 387**	**- 264**	**- 352**	**- 387**	**- 387**	**- 387**
	Trade tax	- 6	- 1	- 4	- 6	- 6	- 6
	Income tax	- 45	- 9	- 32	- 45	- 45	- 45
	Payroll tax	- 151	- 136	- 151	- 151	- 151	- 151
	Corporation tax	- 48	- 10	- 33	- 48	- 48	- 48
	Solidarity surcharge	- 10	.	- 5	- 10	- 10	- 10
	VAT	- 127	- 108	- 127	- 127	- 127	- 127
	Federal states	**- 358**	**- 249**	**- 329**	**- 358**	**- 358**	**- 358**
	Trade tax	- 8	- 2	- 6	- 8	- 8	- 8
	Income tax	- 44	- 8	- 32	- 44	- 44	- 44
	Payroll tax	- 151	- 136	- 151	- 151	- 151	- 151
	Corporation tax	- 47	- 10	- 32	- 47	- 47	- 47
	VAT	- 108	- 93	- 108	- 108	- 108	- 108
	Municipalities	**- 215**	**- 82**	**- 169**	**- 215**	**- 215**	**- 215**
	Trade tax	- 141	- 27	- 100	- 141	- 141	- 141
	Income tax	- 16	- 3	- 11	- 16	- 16	- 16
	Payroll tax	- 53	- 48	- 53	- 53	- 53	- 53
	VAT	- 5	- 4	- 5	- 5	- 5	- 5

Notes:
[1)] Effect for a full (assessment) period of 12 months

The further changes do not result in any further direct budgetary expenditure other than compliance costs for the federal government, state governments and municipalities.

4. Compliance costs

a) Compliance costs for citizens

The amendments to the Income Tax Act in the area of employee capital participation lead to low, non-measurable additional expenditure, since only supplementary information with a limited time cost must be provided in the context of the tax return to be made anyway (e.g. with regard to taxation of distributions, interest, etc., as well as capital gains or losses) and only a small number of citizens are affected. The provisions of § 3(39) and § 19a of the EStG are tax exemptions or reductions which are carried out through the tax deduction procedure. There are no figures available to the financial administration on the basis of which a further estimate would be possible on the basis of the previous use of the reductions.

The amendments to the Stock Corporation Act do not lead to changes for citizens, as the appraisal proceedings offers an equivalent alternative to the challenge procedure.

In other respects, there is no compliance cost for citizens.

b) Compliance costs for businesses

Amendments to the Civil Code

The amendment to the General Terms and Conditions Act does not lead to an immediate obligation to act or cease to act for the entrepreneurs who use General Terms and Conditions (GTC). They may change or supplement their terms and conditions due to the change in the Act, but do not have to. The existing Terms and Conditions that are effective will remain effective. The extent to which the legal change will lead to changes in terms and conditions in the future cannot be reliably estimated, because possible changes to the terms and conditions depend on too many unknowns.

If entrepreneurs to whose GTC the contracts are concluded modify or extend their GTC, the effort required in the creation or modification of their GTC for these entrepreneurs will be reduced. They then no longer have to check whether new clauses meet the requirements of §§ 307, 308 No 1a and 1b of the German Civil Code. For the affected entrepreneurs to whom the GTC are provided, effort required to comply will increase in many contracts. They will need to review their contractual partner’s terms and conditions more carefully because they can no longer rely on clauses that unreasonably disadvantage them to be ineffective.

However, the amount of the resulting compliance costs cannot be quantified. It cannot be reliably estimated whether and in how many cases entrepreneurs will change their terms and conditions and in how many cases they use the changed terms and conditions one or more times in relation to other entrepreneurs:

There is no statistical information on the number of terms and conditions used by financial companies for the contracts covered by the GTC regulation. Neither government bodies, such as the Bundesanstalt, the Bundesbank, or the Federal Statistical Office, nor the business associations, provide statistical information, since such information cannot be collected at reasonable expense for these bodies and associations as well as for the entrepreneurs. In addition, these would also be of little significance as mere 'snapshots'. The number of terms and conditions used differs considerably between the individual companies in the financial sector and is also subject to constant change due to the large number of contracts that lead to new contract designs. They cannot therefore be reliably collected in the short term by means of samples of the individual companies representative of the whole sector. This is due to the fact that under General Terms and Conditions pursuant to § 305(1) sentence 1 of the Civil Code, all contractual conditions are pre-formulated for a large number of contracts, which one of the contracting parties provides to the other contracting party. This includes not only the larger clauses used by financial companies, such as the GTC Banks/Sparkassen, or model contracts for certain types of contract, but also individual contract terms pre-formulated for several contracts or pre-formulated contract texts that are used for the conclusion of multiple contracts.

However, it is also due to the fact that the use of General Terms and Conditions differs between the individual entrepreneurs. How many pre-formulated contractual terms a trader uses depends in particular on the extent to which he can enforce his contractual conditions at the time of conclusion of the contract. Since the number of terms and conditions used cannot be reliably determined, the most important reference for a reliable estimate is missing.

There is the same uncertainty as to the other factors still necessary for the estimate. This also applies in particular to the number of possible GTC changes due to the legal change. This is because it is fundamentally at the discretion of the individual entrepreneurs whether and when they change or supplement their General Terms and Conditions, since

such a change is possible due to the change in the law, but not necessary. In addition, it may be associated with other necessary changes to the GTC. However, whether an entrepreneur changes or supplements his terms and conditions depends not only on him, but also on whether he can enforce the amended terms and conditions vis-à-vis his contractual partners. This in turn leads to the fact that even the entrepreneurs are currently not able to provide reliable information on the extent to which they will adjust their terms and conditions due to the change in the law.

Amendments to the Securities Trading Act, the Securities Prospectus Act, the Asset Investment Act and the Securities Display Ordinance on Digitalisation:

No compliance cost is to be assessed for these regulations. With regard to the newly created authorisation basis for a statutory ordinance such as in § 24a of the WpHG, it is not clear to what extent and in what form this will be used, so a current estimate would not provide meaningful results. In this respect, a subsequent ordinance will be accompanied by an estimate.

Moreover, the written form is often no longer used in these areas in practice. In this respect, the regulations partly serve to strengthen digitalisation by using an existing digital portal (MVP) and aligning the law with an existing practice.

More details:

§§ 9, 10 VermAnlG (Asset Investment Act): In these cases (communication of the publication of the prospectus, notification of the termination of the public offer and the complete redemption for each MVP) there is a regular registration for the technical procedure for an MVP due to the already existing obligation to use it for the electronic submission of prospectuses. No additional expense for the issuers or providers for an application for the Bundesanstalt's specialist procedure therefore arises. Cases in which these communications may subsequently be made by a different person than the original issuer of the prospectuses are negligible.

§ 24 VermAnlG (Asset Investment Act): The case of a special audit of the accounts has so far only happened once. In addition, no measurable additional effort can be estimated for the planned simple electronic submission. The obligation to submit for each MVP exists only on request and any effort required for a security for the first time registration for the MVP is negligible.

§ 18 WpPG, § 19 VermAnlG: The obligation to provide information electronically does not result in any measurable additional effort. Submission by MVP can only be requested if the obliged entity already has an MVP access. There is therefore no additional effort to register for the MVP technical procedure.

Further amendments to the WpÜG (Securities Transfer Act)

No compliance costs arise as a result of the changes in §§ 1 and 10 of the WpÜG.

The amendment to § 1 WpÜG does mean that the decision taken by the respective company no longer has to be notified separately to the Bundesanstalt. However, the decision still needs to be published and the publication subsequently sent to the Bundesanstalt, so that there is no measurable negative compliance cost.

The amendment to § 10 WpÜG only omits the Bundesanstalt as the addressee of the prior notification. However, there is no relief for the standard addressees concerned, as the prior notification is automatically sent to all required recipients by the selected publication service provider.

Amendments to the Stock Corporation Act

The amendments to the Stock Corporation Act to facilitate capital increase can reduce the costs for companies slightly as they can, in more cases, carry out capital increases with exclusion of subscription rights, which speeds up the measure in time. The transfer of disputes over the expenditure amounts to the appraisal proceeds can also result in minor cost savings for the companies.

The regulations enabling multi-voting shares do not entail any compliance burden for the economy. The requirement in the Stock Corporation Act to include in the subscriber list the number of voting rights attributable to the multi-voting shares, as well as the amendment to the obligation to publish in § 49 of the WpHG, only slightly supplement existing obligations, so that a new effort does not arise or is barely measurable.

Amendments to the eWpG (Electronic Securities Act)

The introduction of the electronic stock in the eWpG does not lead to compliance costs for the companies, as it is merely an additional option. Obligations for the companies are not associated with this. Both the companies issuing shares and the other companies involved in the issuance and custody or trading of shares may decide against use of this option. This also does not result in any new obligations for registering companies, as the issue of an e-share cannot be treated differently than the issue of an electronic bond on the basis of the previous legal situation.

Amendments to the Income Tax Act

The amendment to § 20(4b) of the Income Tax Act – taxation of acquisition costs in the case of early sale or transfer of the employee shareholding – leads to one-off staff costs of EUR 330 000.

The effect of this requirement is to lead to taxation of capital gains and part of the wage provided by the shareholding by means of withholding tax if the shareholding is not held for at least three years. Therefore, the 34 depositories in Germany (depository statistics BVI 2021) have to adapt their IT systems on a one-time basis in order to integrate the distinction in taxation depending on the holding period. According to the DATABUND association, an average of 15 programming days of 8 hours can be assumed when adapting specialist procedures. In the case of custodian banks, an internal company IT department is to be assumed, so that the wage rate for the 'provision of financial and insurance services' (K) sector should be set at a high level of qualification: EUR 80.90 per hour. As a result, the one-off compliance cost is around EUR 330 000 (= 34 depositories × 120 hours × EUR 80.90/hour) and consists entirely of personnel costs. The one-time fulfilment effort is assigned to the category 'Introduction or adaptation of digital processes'.

Custodian banks can then rely on the tried-and-tested system for paying the payroll tax, so that there is no additional annual compliance effort.

Moreover, the changes in the area of employee capital participation result in only a small, non-measurable additional effort by increasing the thresholds and extending the tax exemption with regard to the obligation of employers to transmit information electronically to the tax authorities. The provisions of § 3(39) and § 19a of the EStG are tax exemptions or reductions which are carried out through the tax deduction procedure. There are no figures available to the financial administration on the basis of which a further estimate would be possible on the basis of the previous use of the reductions.

If the introduction of electronic equities eliminates the existing intermediaries responsible for the capital gains tax retention, the registering authorities will in future have to provide the appropriate infrastructure for this purpose. In this respect, there may be a transfer of the compliance costs from the banks to the registry administrators.

The amendments in § 3 No 71 EStG also do not lead to compliance costs, as these are only editorial follow-up changes.

Amendments to the VAT Act:

There is a one-off minor conversion effort, which cannot be quantified, since it arises as part of the adjustments to be made annually due to changes in tax law and cannot be meaningfully calculated separately. If the traders do not provide other services subject to VAT, they will have a burden reduction from the year following the amendment through the elimination of the obligation to submit four or twelve advance VAT declarations.

Amendments to the Payment Account Act

The introduction of the reporting obligation in § 17(2) of the Payment Accounts Act (ZKG) creates a one-off compliance cost of approximately EUR 2.2 million for the development of the reporting procedure (compliance costs) and the first transmission of data on the comparative criteria (information obligation). The recurring information obligations will result in costs of EUR 30 900 for the subsequent event-related updating and transmission.

Amendments to the Capital Investment Code, in particular renewable energy installations

Insofar as the changes in the Capital Investment Code, as in the case of the extended investment opportunities in renewable energy installation investments and crypto-assets, open up voluntary additional investment opportunities, there is no compliance burden for business. In addition, unless compliance costs are shown in the table below, these are generally clarifying provisions, which also do not entail any compliance costs.

Amendment to the Money Laundering Act:

The regulation in the Money Laundering Act does not lead to measurable compliance costs for business. This is because firstly, the amendment to § 1(21) of the GwG makes it possible for credit institutions to apply the rules on correspondence also to business relationships with payment and electronic money institutions, without any obligation to standardise. Insofar as credit institutions opt to use this, they must, in particular, carry out a special examination of the money laundering prevention of the respective payment or electronic cash institution in the context of a so-called system audit. However, the additional costs resulting from this are at least compensated by the fact that the obligation to secure client funds pursuant to § 17 ZAG ceases to apply. Since the decision is made in the interest of the entrepreneur, it is not to be identified as a binding, additional compliance cost.

In addition, as well as in detail, the compliance costs for the economy are derived from the following tables, whereby both the case figures and the number of minutes of the respective activities of the specific processes are determined in accordance with the time value tables of business by the Bundesanstalt as the competent supervisory authority, with the exception of the information on the Income Tax Act, which has been determined by the Federal Statistical Office.

Compliance costs in a narrow sense Businesses

Recurring compliance costs

Act	Section	Contents	Status	Complexity	Time in minutes	Number of cases p.a.	Base number of cases	Periodicity	Enterprise number	Transmission	e-securities affected	Material costs	Comments	Total compliance costs (staff expenses + material expenses)
WpÜG	§ 11 Paragraph 1, sentence 5	Signature of the tender document by the tenderer	Repeal	low	195	-29	Analysis of historical data	Ad hoc	-	By post	no	EUR 61.80	Material expenses Shipping costs DHL	EUR -7,292.01
WpÜG	§§ 20 paragraphs 1, 26(5), 36, first sentence, 37(1), first sentence	Written submission of requests	Repeal	low	195	-50	Analysis of historical data	Ad hoc	-	By post	no	-	-	EUR -7,782.94
WpPG	§ 8 p. 3	Relief by limitation of the requirement that co-applicant assumes responsibility for prospectus	Amendment	High	3960	-16	Estimate based on historical case figures	Ad hoc	16	Online	Yes	-	-	EUR -158,400.00
BörsG (Stock Exchange Act)	§ 32 paragraph 2a	Partial deletion of the obligation to submit the authorisation application together with an issue partner (co-applicant)	Amendment	High	5525	-51	Estimate based on historical case figures	Ad hoc	16		No	-	-	EUR -119,192.67
SAG	§ 42 para 1a:	Submission of information and analyses required for the preparation and implementation of the resolution plan optionally or exclusively	New	Medium	334	5.5	Estimate based on reported translations from specialist units with 30 pages consid-	annually	-	online	No	-	-	EUR 2,434.48

Act	Section	Contents	Status	Complexity	Time in minutes	Number of cases p.a.	Base number of cases	Periodicity	Enterprise number	Transmission	e-securities affected	Material costs	Comments	Total compliance costs (staff expenses + material expenses)
		in English					ered to be an average case							
KWG	§ 53s	Enquiries to the Bundesanstalt as to whether the intended business is covered by the exemption; Presentation of the intended business activities	New	Medium	707	5	Estimate	Ad hoc	5	By post	No	-	-	EUR 4,684.76
FinDAG	§ 4j(1)	Submission of applications in English without translation	New	Medium	334	-1.6	Estimate based on reported translations from specialist units with 30 pages considered to be an average case	Ad hoc	-	online	No	-	-	EUR -708.21
WpIG	§ 78b	Enquiries to the Bundesanstalt as to whether the intended business is covered by the exemption; Presentation of the intended business activities	New	Medium	707	10	Estimate	Ad hoc	10	By post	No	-	-	EUR 9,369.52

EUR -276,887.07

Recurring compliance costs EUR -276,887.07

One-off compliance costs

Act	Section	Contents	Status	Complexity	Time in minutes	Number of cases p.a.	Base number of cases	Periodicity	Enterprise number	Transmission	e-securities affected	Material costs	Comments	Total compliance costs (staff expenses + material expenses)
WpÜG	§ 45	Application for the takeover law proceedings of the Bundesanstalt	New	Medium	79	50	Estimate	Non-recurring:	-	online	no	-	-	EUR 5,234.74
EStG	§ 20 Paragraph 4b	Employee capital participation: Taxation of acquisition costs in the event of early divestment or takeover	Amend-ment	High	7200	34	Estimate of stat. BA Adapting IT systems of 34 depositories, 15 programming days.	One-off	34		No	-	-	EUR 330 000
EStG	§ 44 paragraph 1, p. 4, subparagraph 3	Obligation to withhold capital gains tax by crypto-assets registrars: Introduction or adaptation of digital process flows	Amend-ment	Medium	7200	2	Estimate of stat. BA following Annual Tax Act 2022.	Non-recurring:	2	-	-	-	-	EUR 13 000
ZKG	§ 17 para. 2	Development of a process for preparing and transmitting data on comparative criteria	New	Medium	1087	1 500	Estimate	Non-recurring:	1 500	-	no	-	-	EUR 2,160,820.13

EUR 2,788,182.87

One-off compliance costs EUR 2,788,182.87

Recurring compliance costs – EUR 276 887.07

One-time compliance cost EUR 2.788.182,87

Compliance costs in a narrow sense Economy EUR 2.511.295,80

Information obligations on businesses

Recurring information obligations

Act	Section	Contents	Status	Complexity	Time in minutes	Number of cases p.a.	Base number of cases	Periodicity	Enterprise number	Transmission	e-securities affected	Material costs	Comments	Total compliance costs (staff expenses + material expenses)
WpÜG	§ 14 Paragraph 3, sentence 3	Notification and transmission of corrections to a tender document	New	low	126	1	Analysis of historical data	Ad hoc	-	online	no	-	-	EUR 100.58
eWpG	§ 20 (1):	No obligation to publish in the Federal Gazette, instead solely on the Bundesanstalt website	Amendment	low	0	50	Estimate based on the evolution of emissions figures in recent years	Ad hoc	-	digitally	no	EUR -30	No costs for publication in the Federal Gazette	EUR -1,500
KWG	§ 2c	Optional electronic instead of written notification of the intended acquisition of a significant shareholding	Amendment	High	0	150	Estimate based on information provided by the sector in retrospect over the past years	annually			no	EUR -6	No shipping costs	EUR -900.00
KWG	§ 3 (3):	Optional electronic submission of risk analyses	Amendment	low	0	5	Estimate, very low, as the threshold is very high	annually			No	EUR -3	No shipping costs	EUR -15.00
KWG	§ 24a	Optional electronic submission of changes to branches in the EEA	Amendment	low	0	40	An estimated 100 institutions with an average of 2 EEA branches, one in five resulting in a	annually			No	EUR -3	No shipping costs	EUR -120.00

Act	Section	Contents	Status	Complexity	Time in minutes	Number of cases p.a.	Base number of cases	Periodicity	Enterprise number	Transmission	e-securities affected	Material costs	Comments	Total compliance costs (staff expenses + material expenses)
							change							
KWG	§ 29	Extension of the scope of the audit to DLT	Amend-ment	High	1265	5	New business model, there is no estimation basis and no experience. On the basis of approximately 10 IT audits carried out, the proportion related to DLT is estimated at 5.	annually			no	EUR 2 500	Increased audit effort, increased audit costs	EUR 21 028.21
KWG	§ 44	Optional electronic submission of examination documents	Amend-ment	low	0	15	Estimate based on past figures and the assumption that the number of audits will increase, assumed to be a number of 150 audits, of which an estimated 10 %	annually			no	EUR -3	No shipping costs	EUR -45.00
KWG	§ 53i	Central counterparty may optionally provide electronic information about obtaining access	Amend-ment	low	0	5	Estimate based on information provided by the sector	annually			no	EUR -3	No shipping costs	EUR -15.00
KWG	§ 53o	Applications under the CSD Regulation will only be made electronically instead of in writing.	Amend-ment	low	0	1	There is one authorised CSD in Germany, new CSDs are not to be ex-	annually			No	EUR -3	No shipping costs	EUR -3.00

Act	Section	Contents	Status	Complexity	Time in minutes	Number of cases p.a.	Base number of cases	Periodicity	Enterprise number	Transmission	e-securities affected	Material costs	Comments	Total compliance costs (staff expenses + material expenses)
							pected							
Ownership Control Regulation	§ 2 (3):	Submission of notifications, documents and declarations in accordance with § 4j(1) to 3 FinDAG	Amend-ment	Medium	0	20	Estimate Percentage of case numbers for § 2c KWG and § 17(1) sentence 2 and § 17(2) VAG (Asset Investment Act)	annually			no		Dispensing with officially certified translation of the original or qualified translation	EUR -6 000.00
FinDAG	§ 4j(1) to (3)	Optional submission of applications in electronic form and English language	Amend-ment	High	245	-50	Estimate based on recent years	annually			no			EUR -16,517.08
FinDAG	§ 16m(4) and (5)	mandatory electronic submission of documents and applications	new	low	0	600	Estimate of applications in paper form from previous years	annually	600		no	EUR -3	No shipping costs	EUR -1,800.00
ZKG	§ 17 para. 2	Submission of updated data on comparison criteria	new	low	15	4 000	Estimate	ad hoc	1 500		no			EUR 30 900.00
ZAG	§ 28 Paragraph 1(1)	Announcement of the intended appointment of a managing director and an individual representative	New	Medium	17	25	Estimate	ad hoc		Online	no			EUR 363.38
ZAG	§ 28 Paragraph 1(11)(12)	Announcement of the intended appointment of a member of the Board/supervisory body	New	Medium	17	40	Estimate	ad hoc		Online	no			EUR 581.40

Act	Section	Contents	Status	Complexity	Time in minutes	Number of cases p.a.	Base number of cases	Periodicity	Enterprise number	Transmission	e-securities affected	Material costs	Comments	Total compliance costs (staff expenses + material expenses)
ZAG	§ 62a	Making the information sheet available	New	low	2	1 400	Estimate	ad hoc			no	EUR 50	Cost of paper, toner etc.	EUR 71 442.00
Capital Investment Code	§ 19 para 5a:	Holder control – optional submission of announcements, documents and declarations in English	New	Medium	2	45	Estimate 150 capital management companies, of which 10 % with ownership control procedures, of which 10 % English = 1.5, rounded to 2	annually	15		no			EUR 76.95
VAG	§ 17 paragraph 1, first sentence	Optional electronic instead of written notification of the intended acquisition of a significant holding (§ 17(1) sentence 1 no. 1) as well as reports of intended threshold overruns (§ 17(1) sentence 1 no. 2) or underruns or the termination of a significant holding (§ 17(1) sentence 1 no. 3)	Amend-ment	High	0	77	Estimate based on ONDEA (online database of compliance costs) (reflecting the administrative burden under § 17(3) and (4)). Since an electronic notification simplifies communication, those affected after likely to use this predominantly in future.	annually			no	EUR -6	Shipping costs are eliminated	EUR -462.00
VAG	§ 17 Paragraph 2:	Optional electronic instead of written notification of newly appointed legal or statutory representatives and new personally liable partners	Amend-ment	Medium	0	47	Estimate based on Ondea: Since an electronic notification simplifies communication, this is likely to be used predomi-	annually			no	EUR -3	No shipping costs	EUR -141.00

Act	Section	Contents	Status	Complexity	Time in minutes	Number of cases p.a.	Base number of cases	Periodicity	Enterprise number	Transmission	e-securities affected	Material costs	Comments	Total compliance costs (staff expenses + material expenses)
		with the facts essential for the assessment of their reliability					nantly in future.							
VAG	§ 126 (2):	Optional electronic submission of entries in the asset register instead of a transcript	Amend-ment	High	0	500	Estimate The vast majority of companies concerned are likely to make use of this	annually	525		no	EUR -45	Costs of binding the documents and internal and external shipping no longer apply (management to trustees and back)	EUR -22 500.00
VAG	§ 166 (1):	Optional electronic information from the receiving insurance undertaking to the pre-insurers on the effectiveness of the transfer of stock	Amend-ment	High	0	2	Estimate based on Ondea: Since an electronic notification simplifies communication, companies are likely to use this predominantly in future.	annually			no	EUR -2	No shipping costs	EUR -4.00

EUR 74,470

Recurring information obligations EUR 74,470

<u>One-off obligation to provide information</u>

Act	Section	Contents	Status	Complexity	Time in minutes	Number of cases	Base number of cases	Periodicity	Enterprise number	Transmission	e-securities affected	Material costs	Comments	Total compliance costs (staff expenses + material expenses)
ZKG	§ 17 paragraph 2	Initial preparation and transmission of data on comparative criteria	New	Medium	133	1 500	Estimate	One-off	1 500		no			EUR 170 572.50

One-off obligation to provide information EUR 170 572.50

Recurring information obligations EUR 74 470

One-off information obligations EUR 170 572.50

Information obligations for business EUR 245 042.94

One in One Out Rule

Overall, the changes mean an 'out' of EUR 233 417 in line with the federal government's 'one in one out' rule.

SME test

Small and medium-sized enterprises are not particularly burdened by the draft. Rather, the draft serves precisely to relieve these companies, namely through easier and better corporate financing. For this reason, no regulatory alternatives or support measures are appropriate.

c) Administrative compliance costs

The administration will incur recurrent net compliance costs as a result of the draft on the balance of around EUR 1.1 million. Of this, EUR 1 062 896,36 will fall on the federal government and EUR 20 654,57 on the federal states.

The Bundesanstalt generates recurrent compliance costs, in particular for the operation of the account fees comparison website, of around EUR 1 million per year.

The one-off compliance costs can be quantified at EUR 1 136 493,47, falling on the federal government and, at around EUR 1.1 million, mainly result from the changes made by the ZKG in connection with the operation of the account fees comparison website by the Bundesanstalt.

In detail:

Amendments to the rules on multi-voting shares:

The amendment to § 49 WpHG to enable multi-voting shares leads to only a small additional cost of EUR 80 per year. Unlike §§ 40 and 41 of the WpHG, the Bundesanstalt is not involved in the publication process. It follows that in practice only an occasional inspection (processing of inquiries and submissions) will take place. Over the past 24 months, this number has been in single digits. Assuming one case is accepted annually with 140 minutes duration for the substantive examination and collection of data at an hourly rate of EUR 33.80, this results in EUR 78.87.

Amendments to the Securities Trading Act, the Securities Prospectus Act, the Asset Investment Act and the Securities Display Ordinance on Digitalisation:

For the reason that there is no impact on compliance costs in these areas, reference is made to the relevant comments on compliance costs for business.

Amendments to the Income Tax Act

The facts relating to the tax regulations on employee capital investments and the appropriate tax treatment will usually have to be examined in the context of an external payroll tax audit. These control the workload by setting the appropriate focus, so that no quantifiable impact on the staff compliance costs in the tax offices can be expected.

The amendments to § 3 No 71 of the EStG also do not lead to compliance costs, as these are only editorial follow-up changes.

Changes in VAT law:

The adjustment as a result of the change in the VAT Act creates a one-off technical automation conversion effort in the federal states, which, however, cannot be quantified in detail, as it arises within the framework of the adjustments to be made annually due to changes in tax law and cannot be reasonably calculated here.

More detailed and further information can be found in the following tables, whereby both the case figures and the minutes of the respective activities of the specific processes are determined in accordance with the time value tables of the administration calculated by the Bundesanstalt in the course of execution:

Recurring compliance costs at federal level:

Act	Section	Contents	Status	Complexity	Time in minutes	Number of cases	Base number of cases	Periodicity	Enterprise number	Transmission	e-securities affected	Material costs	Comments	Total compliance costs (staff expenses + material expenses)
WpHG	§ 21	Audit of data transfer to financial authorities	Amendment	Medium	555	5	foreseeable inquiries from the tax authorities to the. VBS 1 p.a. facts to be assessed under tax law for an exchange of information by VBS on its own initiative (e.g. based on WpHG audit reports, supervisory discussions and customer complaints) 4 p.a.	ad hoc	1 400	By post	no			EUR 3 010.88
WpÜG	§ 11 paragraph 1, sentence 5	Checking the original signature of the tender document	Repeal	low	40	-29	Analysis of historical data	ad hoc		By post	no			EUR -914.85
WpÜG	§ 14 paragraph 3, sentence 3	Notification and transmission of corrections to a tender document	New	low	30	1	Analysis of historical data	ad hoc		online	No			EUR 23.66
WpÜG	§ 20 paragraph 1, 26(5), 36, first sentence, 37(1), first	Written submission of requests	Repeal	low	40	-50	Analysis of historical data	ad hoc		By post	no			EUR -1 577.33

Act	Section	Contents	Status	Complexity	Time in minutes	Number of cases	Base number of cases	Periodicity	Enterprise number	Transmission	e-securities affected	Material costs	Comments	Total compliance costs (staff expenses + material expenses)
	sentence													
WpÜG	§ 45	Release of notifications to the reporting and publication system of the Bundesanstalt	new	low	35	50	Estimate	ad hoc		Online	no			EUR 1 380.17
WpPG	§ 19	Audit of data transfer to financial authorities	Amendment	High	2355	2	The Bundesanstalt estimate (annual basis) of the expected requests from the tax authorities as well as the facts to be assessed under tax (criminal) law prior to a data transfer by the Bundesanstalt	ad hoc	270	By post	no			EUR 7 747.95
BörsG (Stock Exchange Act)	§ 32 (2a)	Partial repeal of the obligation to submit the authorisation application together with an issue partner	Amendment	Medium	1367	-16	Estimate based on historical case figures	ad hoc	16	online	no			EUR -23 731.12
VermAnlG	§ 4	Audit of data transfer to financial authorities	Amendment	High	2355	1	The Bundesanstalt estimate (annual basis) of the expected requests from the tax authorities as well as the	ad hoc	550	By post	no			EUR 3 873.98

Act	Section	Contents	Status	Complexity	Time in minutes	Number of cases	Base number of cases	Periodicity	Enterprise number	Transmission	e-securities affected	Material costs	Comments	Total compliance costs (staff expenses + material expenses)
							facts to be assessed under tax (criminal) law prior to a data transfer by the Bundesanstalt							
KWG	§ 2c(1a)	Optional electronic instead of written confirmation of receipt and request for further information by the supervisory authority	Amendment	Low	10	-150	Estimate based on information provided by the sector in retrospect over the past years	annually		online	no	EUR -3.75	Repeal of formal notification by recorded post	EUR -1 970.50
KWG	§ 2c(1b)	Optional electronic instead of written prohibition or restriction of significant participation	Amendment	Low	10	-5	Estimate based on information provided by the sector in retrospect over the past years	annually		Online	no	EUR -3.75	Repeal of formal notification by recorded post	EUR -65.68
KWG	§ 53s	Audits authorisation obligation of DLT-MTF, -SS, -TSS	New	High	3060	5	Estimate	ad hoc	5	By post				EUR 25 168.50
FinDAG	§ 4j(1) to (3)	Optional submission of (electronic) applications in English	New	High	65	452	Estimate, partly based on the average values of recent years	annually	340	online	no			EUR 48 330.10
FinDAG	§ 4j(4)	Making available the Bundesanstalt ordinances, forms and regulations in English within six months of	new	High	540	22	Estimate (where possible, translations of ordinances etc.	annually		online	No			EUR 19 542.60

Act	Section	Contents	Status	Complexity	Time in minutes	Number of cases	Base number of cases	Periodicity	Enterprise number	Transmission	e-securities affected	Material costs	Comments	Total compliance costs (staff expenses + material expenses)
		publication (requirement)					published prior to the entry into force of the amendment to the FinDAG were omitted from the calculation)							
FinDAG	§ 16m(4) and (5)	electronic dispatch of levy notices	new	low	0	15 000	Number of levies	annually	5941	online	no	EUR -0.85	Discontinuation of dispatch by letter	EUR -17 850.00
ZKG	§ 16 paragraph. 1	Maintenance of the comparison website	new	Medium	1945	1	Estimate	annually			no	EUR 300 000	Costs for maintenance, maintenance and bug fixing	EUR 301 507.37
ZKG	§ 16 paragraph 3	Regular preparation of the reported data on comparison criteria for private operators	new	Medium	1527	12	Estimate	monthly			no			EUR 19 881.54
ZKG	§ 16 paragraph 3	Providing data on comparison criteria for private providers	new	Medium	632	15	Estimate	ad hoc			no			EUR 10 285.80
ZKG	§ 17 paragraph. 2	Ensuring proper comparison	new	Medium	1175	650	Estimate	quarterly			no			EUR 591 906.25
ZAG	§ 28 paragraph 1(1)	Assessment of the suitability and reliability of managing directors	new	Medium	385	25	Estimate	ad hoc			no			EUR 10 443.13
ZAG	§ 28 Para-	Examination of the suitability and reliabil-	new	Medium	385	40	Estimate	ad hoc			no			EUR 16 709.00

Act	Section	Contents	Status	Complexity	Time in minutes	Number of cases	Base number of cases	Periodicity	Enterprise number	Transmission	e-securities affected	Material costs	Comments	Total compliance costs (staff expenses + material expenses)
	graph 1(11)(12)	ity of Supervisory Board members												
ZAG	§ 62a	Making the information sheet available	new	low	1	1	Estimate	ad hoc			no			EUR 0.79
WpIG	§ 78b	Audits authorisation obligation of DLT-MTF, -SS, -TSS	new	High	3060	10	Estimate	ad hoc			no			EUR 50 337.00
VAG	§ 17 Paragraphs 3 and 4	Optional electronic instead of written confirmation of receipt and request for further information by the supervisory authority	Amendment	High	10	-77	ONDEA – 2011111809164311_40X	Yearly		online	no	EUR -3.75	Repeal of formal notification by recorded post	EUR -1 011.52
VAG	§ 18 Paragraph 3	Optional electronic instead of written prohibition or restriction of significant participation	Amendment	Medium	10	-10	ONDEA – 2011111809302010_40X	annually		online	no	EUR -3.75	Repeal of formal notification by recorded post	EUR -131.37
														EUR 1 062 896.36

Recurring compliance costs of the Federal Government

EUR 1 062 896.36

Recurring compliance costs at federal state level:

Act	Section	Contents	Status:	Complexity	Time in minutes	Number of cases	Base number of cases	Periodicity	Enterprise number	Transmission	e-securities affected	Material costs	Comments	Total compliance costs (staff expenses + material expenses)
WpHG	§ 21	Audit of received data by tax authorities	Amendment	Medium	555	5	foreseeable inquiries from the tax authorities to the. VBS 1 p.a. facts to be assessed under tax law for an exchange of information by VBS on its own initiative (e.g. based on WpHG audit reports, supervisory discussions and customer complaints) 4 p.a.	ad hoc	1 400	By post	no			EUR 3 010.88
WpPG	§ 19	Audit of received data by tax authorities	Amendment	High	2355	2	The Bundesanstalt estimate (annual basis) of the expected requests from the tax authorities as well as the facts to be assessed under tax (criminal) law prior to a data transfer by the Bundesanstalt	ad hoc	270		no			EUR 7 747.95

Act	Section	Contents	Status:	Complexity	Time in minutes	Number of cases	Base number of cases	Periodicity	Enterprise number	Transmission	e-securities affected	Material costs	Comments	Total compliance costs (staff expenses + material expenses)
VermAnlG	§ 4	Audit of received data by tax authorities	Amendment	High	2355	1	The Bundesanstalt estimate (annual basis) of the expected requests from the tax authorities as well as the facts to be assessed under tax (criminal) law prior to a data transfer by the Bundesanstalt	ad hoc	550	By post	no			EUR 3 873.98
BörsG (Stock Exchange Act)	§ 10	Audit of data transfer to financial authorities	Amendment	Medium	555	5	Estimate	ad hoc	1 400	By post	no			EUR 3 010.88
BörsG (Stock Exchange Act)	§ 10	Audit of received data by the tax authorities	Amendment	Medium	555	5	Estimate	ad hoc	1 400	By post	no			EUR 3 010.88

EUR 20 654.57

Recurring compliance costs of the federal states EUR 20 654.57

One-off compliance costs at federal level:

Act	Section	Contents	Status	Complexity	Time in minutes	Number of cases	Base number of cases	Periodicity	Enterprise number	Transmission	e-securities affected	Material costs	Comments	Total compliance costs (staff expenses + material expenses)
WpÜG	§ 45	Development and implementation of the takeover law specialist procedure	new	High	2423	1	Predetermined by the process	One-off			No	EUR 42 850	additional internal IT costs due to existing cost forecasts as additional costs	EUR 63 975.84
WpHG	§ 26 (1):	One-off organisational changeover costs for the administration (change of internal compliance systems). If the Bundesanstalt receives the ad hoc announcement at the same time as it is published, it no longer contains insider information.		Medium	967	1	Defined by the process, one-off redesign	One-off	800	online	no			EUR 1 049.20
ZKG	§§ 16 Paragraphs 3, 17(2)	Creation of the process for processing the reported data	New	High	8758	1	Defined by the process, one-off step	One-off			no	EUR 450 000	Costs for IT application development	EUR 460 290.65
ZKG	§ 16 (1)	Programming and conception of the comparison website	new	High	9513	1	Defined by the process, one-off step	One-off			no	EUR 600 000	Costs for IT application development	EUR 611 177.78
														EUR 1 136 493.47

Act	Section	Contents	Status	Complexity	Time in minutes	Number of cases	Base number of cases	Periodicity	Enterprise number	Transmission	e-securities affected	Material costs	Comments	Total compliance costs (staff expenses + material expenses)
One-off compliance costs														EUR 1 136 493.47

Recurring compliance costs of the Federal Government EUR 1 062 896.36

Recurring compliance costs of the federal states EUR 20 654.57

One-off compliance costs of the Federal Government EUR 1 136 493.47

Compliance costs for the administration EUR 2 220 044.40

5. Additional costs

No further costs are incurred as a result of the changes.

6. Other consequences of the legislation

The rules do not affect the equality of people's living conditions, demographic change or people with disabilities.

The fact that the law is aimed in particular at newly-established companies/start-ups as well as small and medium-sized enterprises and that women are still significantly underrepresented in the start-up ecosystem results in a de facto asymmetrical effect of the Act. For example, the share of female start-ups in 2021 was 17.7 %; only 5.2 percent of the female founders' teams have already received funding of EUR one million or more, while the figure is 27.8 percent for the male founder teams (see the German Federal Government's start-up strategy, p. 14ff, https://www.bmwk.de/Redaktion/DE/Publikationen/Existenzgruendung/start-up-strategie-der-bundesregierung.pdf?__blob=publicationFile&v=1). However, in its start-up strategy, the Federal Government has set out to promote female founders through various measures, including through various funding programmes (Future Funds, EXIST Women) and greater participation of women in investment committees of state funds and investment companies. If this succeeds in promoting more female start-ups, the regulations will through the Future Financing Act also have an increasing impact on – proportionately – more women.

To the extent that the regulations as a whole aim to improve the shareholder culture in Germany, this could help women invest more in equities than so far appears to be the case. For example, studies suggest that women invest less in equities relative to men for various reasons (see e.g. https://www.diw.de/de/diw_01.c.679352.de/publikationen/wochenberichte/2019_39_3/die_geldpolitik_kann_das_investitionsverhalten_von_frauen_und_maennern_unterschiedlich_beeinflussen.html). One reason for this is that the investment behaviour of women is less risky than that of men. Shares tend to be less attractive to risk-averse people compared to other investment claims. Conversely, investing in equities is a long-term investment strategy that is superior to other forms of investment in terms of return. Therefore, improving shareholder culture could also help encourage women who are less risky on average to incorporate shares into their investment strategy. This would make sense both economically and in the sense of individual wealth building.

VII. Time limit; Evaluation

An evaluation of the provisions of the Payment Accounts Act, which makes it possible to operate the account fees comparison website by the Bundesanstalt, is not indicated despite exceeding the thresholds for an evaluation according to the State Secretary's Decision of 28 March 2012. This is because these rules comply with a corresponding obligation under Article 7 of the EU Payment Accounts Directive (Directive 2014/92/EU, see in detail the Special Part regarding Article 24). Regardless of the question of a national evaluation, however, all the requirements of the Payment Accounts Directive and in this context also the experience gained during its national implementation are expected to be evaluated by the Commission in the coming legislative period of the European Commission.

Moreover, neither a time limit nor an evaluation appear to be prompted, as these are measures that reduce bureaucracy for business and in part for the administration. If there is any positive compliance effort at all, the thresholds for an evaluation according to the State Secretary's Decision of 28 March 2012 will not be exceeded.

B. Specific part

Re Article 1 (Amendment to the Act on Appraisal Proceedings)

Re subparagraph 1

Re letter a

The insertion of the new subparagraph 1 in § 1 extends the scope of the appraisal procedure to the case of the determination of the compensation payment or the additional shares to be granted to shareholders, pursuant to § 255(4) to (7), § 255a AktG-E.

Re letter b

This is a consequential amendment to letter a.

Re subparagraph 2

Re letter a

Re double letter aa

As a result of the amendment to § 1, the rule on eligibility for applications is also supplemented by the case of the right to compensation if the subscription right is excluded.

Re double letter bb to ff

These are respectively consequential changes to double letter aa.

Re letter b

This is a consequential amendment to letter a.

Re subparagraph 3

Re letter a

The rules on the time limit for applications and the reasons for the application are also supplemented by the case of the right to compensation if the subscription right is excluded.

Re letters b to g

These are respectively consequential changes to letter a.

Re subparagraph 4

Re letter a

The legislation on the defendant is also supplemented by the case of the right to compensation in the event of exclusion of the subscription right.

Re letters b to g

These are respectively consequential changes to letter a.

Re letter h

According to the second sentence to be created in Paragraph 5 of the Act on Appraisal Proceedings, in proceedings concerning the compensation payment for shareholders whose subscription rights have been wholly or partly excluded, the new shareholder is to be consulted as a participant if the company so requests. Similar to a notice of dispute, this is intended to ensure that any objections made by the new shareholder to the amount of the compensation claim pursuant to § 255(4) sentence 1 AktG-E are already finally negotiated in the appraisal proceedings, so that the new shareholder cannot assert these objections to his exemption obligation again under Paragraph 255(4), second sentence, AktG.

Re subparagraph 5

This is a consequential amendment to subparagraph 1(a).

Re subparagraph 6

Pursuant to § 255a of the Stock Corporation Act, in the context of a capital increase pursuant to § 255(4) to (7) of the Stock Corporation Act, it may be declared in the capital increase decision that additional shares are granted instead of compensation by cash payment in accordance with § 255(4) sentence 2. Up to now, § 10a of the Act on Appraisal Proceedings has regulated the procedural enforcement to claims pursuant to § 72a UmwG. The new version now extends the scope of application to the claims under § 255a of the Stock Corporation Act. These are based on § 72a of the UmwG (Transformation Act).

Re subparagraph 7

Re letter a

The rules on the publication of the decision are also supplemented by the case of entitlement to compensation in the event of exclusion of subscription rights.

Re letters b to g

These are consequential amendments to subparagraph 1(a).

Re Article 2 (Amendment to the Civil Code)

Pursuant to § 310(1) of the Civil Code (BGB), General Terms and Conditions (GTC), which an entrepreneur uses vis-à-vis another entrepreneur are also subject to content control with regard to GTC legislation under the conditions laid down therein. Contracts in the financial services sector are also subject to these GTC regulations, regardless of the contractual partners.

In the case of transactions subject to authorisation in Germany and other prudential transactions concluded between traders in the financial services sector, in particular credit and securities institutions subject to authorisation and payment service providers ('financial entrepreneurs'), standard contractual clauses are often used, the legal form of which is also a prerequisite for regulatory recognition under national and international law. In particular, with regard to large-volume contracts, legal practice indicates that there is considerable legal uncertainty as to what extent the standard contractual clauses established in practice, also with regard to supervisory provisions, also comply with the GTC requirements, if there is as yet no case law on this matter. This may introduce uncertainty in the financial market for domestic and cross-border contracts between financial entrepreneurs. The possibility of legally certain alignment with international standards is also important for the use of financial instruments to hedge against risks, in particular price and price fluctuation risks, as well as for the refinancing opportunities of credit institutions and other financial service providers, and is therefore at least indirectly relevant for financing opportunities, in particular the provision of credit to companies in the real economy. Against this background, the new § 310(1a) sentence 1 BGB-E is intended to exclude certain contracts for financial transactions between financial entrepreneurs subject to authorisation in Germany from the scope of § 307 and § 308 subparagraphs 1a and 1b of the German Civil Code, so that they will no longer be subject to GTC inspection, even if the contracts are used.

§ 310 Paragraph 1a of the BGB-E provides for a limited scope exception from GTC inspection for contracts dealing with financial transactions subject to authorisation in Germany. Only contracts between financial entrepreneurs who, on the basis of their specific expertise or general expertise in domestic financial transactions and their size, do not require the protection by content control under GTC legislation, because they can typically help shape the contractual conditions. Financial entrepreneurs are treated as public bodies or international organisations in accordance with § 310(1a) sentence 4 of the BGB-E.

In the case of contracts covered by this exception, framework contracts are often widely used, on which the specific individual agreements are based. The framework contracts typically define significant parts of the content of future specific contracts in preparation and form a legal entity with the specific contracts. The reference to the framework contract regularly reflects the intention of the parties to make the relevant part of the framework contracts also the content of the specific contract. Therefore, in this respect, the framework contract is confirmed again as part of the agreement, so that the scope exception also applies to the framework contract, insofar as it has become part of a specific agreement after the entry into force of the area exception pursuant to § 310(1a) of the German Civil Code (BGB).

Re sentence 1

Sentence 1 regulates the conditions under which a contract falls within the scope exception. The scope exception only applies if the subject-matter of the contract is a transaction pursuant to sentence 2. The contracting party to provide the service typical for the contract must be a financial entrepreneur who provides the service in a commercial manner and is able to provide it lawfully. In the case of domestic contracts, lawful performance generally requires that the financial entrepreneur has a licence for the business and is subject to supervision. For entrepreneurs who have their registered office abroad and who do not have a domestic establishment, account must be taken of whether they can lawfully perform it at their registered office or place of business where the transaction is carried out. They must provide all the legal requirements for a legally operating financial undertaking there. If these conditions are met, the contract is covered by the scope exception if the client is also a financial entrepreneur who fulfils the requirements of § 310(1a) sentence 1 subparagraphs 1 or 2 of the BGB-E.

Re subparagraph 1

According to § 310(1a) sentence 1 subparagraph 1 of the BGB-E, contracts for financial transactions pursuant to § 310(1a) sentence 2 of the BGB-E are excluded from GTC inspection if a financial entrepreneur who is authorised to legally carry out the business in the contract concludes the contract with another financial entrepreneur who could also legally carry out the transaction as a provider and also carries out such transactions commercially. In the case of domestic transactions, these conditions apply only if the contractual partner has permission for such transactions and is subject to supervision.

Re subparagraph 2

Under paragraph 310(1a)(1)(2) of the BGB-E, the scope exception applies even if the other party is a 'large' financial entrepreneur who is able to legally and commercially carry out business other than that which is the subject of the contract at its registered office or establishment. In the case of domestic transactions, these conditions apply if the large financial entrepreneur has a licence for a transaction pursuant to § 310(1a) sentence 2 of the BGB-E and is subject to supervision. The 'large' financial entrepreneur, who is a contractual partner, does not have to have permission for the financial business that is the subject of the contract.

Re sentence 2

§ 310 The second sentence of paragraph 1a of the BGB-E specifies the material scope of the envisaged exception. General Terms and Conditions are recorded which are used in contracts that concern the transactions mentioned therein. All transactions recorded are subject to authorisation in the country and the domestic entrepreneurs that conduct them are subject to supervision.

Re subparagraphs 1 and 2

§ 310 (§ 1a) sentence 2 subparagraph 1 of the GB_E covers banking transactions pursuant to § 1(1) sentence 2 of the German Banking Act (KWG) and financial services pursuant to § 1(1a) sentence 2 of the KWG. This also covers the transactions of CSDs (subparagraph 6) and central counterparties (subparagraph 31), insofar as they are subject to an authorisation pursuant to Article 16 of Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257, 28.8.2014, p. 1) as amended or in accordance with Article 14 of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1), as amended.

Re subparagraph 3

§ 310 (§ 1a) sentence 2 No. 3 of the BGB-E covers investment services and investment ancillary services pursuant to § 2(2) and (3) of the Securities Institute Act.

Re subparagraph 4

§ 310 (§ 1a) sentence 2 subparagraph 4 of the BGB-E covers payment services pursuant to § 1(1) sentence 2 of the Payment Services Supervision Act.

Re subparagraph 5

§ 310 Paragraph 1a, second sentence, subparagraph 5 of the BGB-E covers the transactions of capital management companies pursuant to § 20(2) and (3) of the Capital Investment Code.

Re subparagraph 6

Pursuant to § 310(1a)(2)(6) of the BGB-E, the transactions are recorded of stock exchanges and their institutions which have a licence under the Stock Exchange Act. This applies in particular to the operation of trading systems on a private-law basis, such as the operation of over-the-counter traffic pursuant to § 48 BörsG or § 48a BörsG or the operation of an organised trading system pursuant to § 48b BörsG.

Sentence 3

§ 310a(1) sentence 3 of the BGB-E determines which requirements are to be imposed on a large financial entrepreneur within the meaning of § 310(1a) sentence 1(2) of the BGB-E. The thresholds on the number of employees, turnover and balance sheet total referred to in the third sentence of paragraph 310(1) of the BGB-E are based on the Commission Recommendation of 6 May 2003 concerning the definition of micro-enterprises and small and medium-sized enterprises (2003/361/EC). These criteria are also used here for the delimitation of large financial entrepreneurs and medium and small financial entrepreneurs for the purposes of § 310(1a) sentence 1 BGB-E. A financial entrepreneur shall be regarded as a large financial entrepreneur pursuant to § 310(1a) sentence 1(2) of the BGB-E if two out of three of the criteria set out in § 310(1) sentence 3(1) to (3) of the BGB-E have each been fulfilled in each of the two calendar years preceding the calendar year of the conclusion of the contract.

Re subparagraph 1

§ 310 (1a) sentence 3 subparagraph 1 of the BGB-E lays down the requirements for the number of employees which must be met in order for a financial entrepreneur to be regarded as a large entrepreneur. He must have an average of 250 employees. This number of employees must have been reached in the last two calendar years prior to the calendar year of the conclusion of the contract. With regard to the calculation of the average number of employees, the provisions of § 267(5) HGB (Commercial Code) apply in addition.

Re subparagraph 2

The second criterion is based on the threshold of revenue. As with § 267(2) HGB, the proceeds of sales within the meaning of §§ 275 and 277(1) of the HGB must be taken into account here. This includes, in particular, commission revenues, which are reported separately and are included in revenue. Sales revenues must be available in each of the previous two calendar years prior to the conclusion of the contract.

Re subparagraph 3

With regard to the fulfilment of the third criterion of the balance sheet total, the closing dates of the last two calendar years before the conclusion of the contract are also decisive. In addition, reference is made to § 267(4a) HGB to specify these requirements.

Sentence 4

§ 310 (§ 1a) sentence 4 of the BGB-E (German Civil Code) places certain state and international bodies equal to entrepreneurs pursuant to § 310(1a) sentence 1 of the BGB-E. If these entities, as providers or clients, conclude a contract with the entrepreneurs pursuant to § 310(1a) sentence 1 of the BGB-E or between themselves a contract for a transaction pursuant to § 10(1a) second sentence of the BGB-E, the area exception shall also apply. This also applies if, among other entrepreneurs, they meet the requirements for the applicability of the sector exemption or who act together with other public bodies as providers or clients. No specific additional requirements are placed on public bodies. They have sufficient expertise to carry out the transactions pursuant to § 310(1a) second sentence of the BGB-E, which they may carry out within the scope of their duties.

Re subparagraph 1

§ 310 (1a) sentence 4 subparagraph 1 of the BGB-E places entrepreneurs pursuant to § 310(1a)(1) of the BGB-E equal to the Deutsche Bundesbank. This is done in view of the special expertise and the great importance of contractual relations between the Bundesbank and financial entrepreneurs for the financial sector. In particular, the provision also covers contracts concluded by the Bundesbank with undertakings within the meaning of paragraph 1a, first sentence, and other agencies pursuant to sentence 3 for which certain financial entities do not require their own permission under supervisory law; e.g. agreement on the commencement of financing with the central bank or participation in payment transactions by a credit institution.

Re subparagraph 2

The Kreditanstalt für Wiederaufbau (Reconstruction Loan Corporation) is not considered a credit institution within the meaning of the Banking Act. In many areas, however, it is treated like a credit institution. Accordingly, in accordance with § 310(1a)(4)(2) BGB-E, it is also placed equal to entrepreneurs in accordance with § 310(1a) sentence 1 BGB-E. The Kreditanstalt für Wiederaufbau plays a key role in the German financial sector and has a special expertise in the transactions covered by this provision. This also applies in

particular to more complex domestic financing and financing with an international connection.

Re subparagraph 3

Pursuant to § 310(1a)(4)(3) of the BGB-E, also places entrepreneurs pursuant to § 310(1a)(1) of the BGB-E equal to the public debt management bodies pursuant to § 310(1a) sentence 1 BGB-E. The bodies of public debt management, which are further defined in § 2(1) no. 3a of the German Banking Act, include in particular the Federal Republic of Germany – Finanzagentur GmbH and comparable bodies at federal state level. The sectoral exception also applies in particular where these bodies do not conclude contracts on their own behalf, but on behalf of the respective local authorities for which they manage debts.

Re subparagraph 4

§ 310 (1a) 1a sentence 4 subparagraph 4 of the BGB-E places entrepreneurs pursuant to § 310(1a)(1) of the BGB-E equal to resolution institutions established in accordance with §§ 8a and 8b of the Stabilisation Fund Act. This is done in order to ensure the efficient continuity of the operations of resolution institutions in the international capital market in the particular public interest.

Re subparagraph 5

§ 310 (1a) sentence 4(5) of the BGB-E also places entrepreneurs pursuant to § 310(1a)(1) of the BGB-E equal to international financial organisations such as the World Bank, the IMF, the ECB or the European Investment Bank pursuant to § 310(1a) sentence 1 BGB-E.

Re Article 3 (Amendment to the Introductory Act to the Civil Code)

The transitional provision in Article 229 of the Introductory Act to the Civil Code clarifies that the new provision in § 310(1a) of the BGB-E applies only to contracts concluded after the entry into force of this Act. § 310 of the BGB in the previous version shall apply to contracts concluded before the entry into force, so that these contracts continue to be subject to GTC inspection insofar as they are based on the GTC of a contracting party.

Where reference is made to framework agreements in specific contracts based on them, the sectoral exception also applies to the framework contract referred to (see explanatory note to Article 2). For specific contracts concluded after the entry into force of the provision which refer to a framework contract concluded before the entry into force of that provision, it follows that the relevant contractual provisions of the framework agreement, insofar as they have become the content of the specific contract, fall within the scope of the exception.

Re Article 4 (Amendment to the Stock Exchange Admission Regulation)

In its § 2, the Stock Exchange Admission Ordinance regulates minimum amounts for securities to be admitted, to protect sufficient market liquidity. For shares to be admitted, paragraph 1 shall adjust the minimum amount of expected market liquidity to the minimum requirements laid down in Article 43(1) of Directive 2001/34/EC and shall be reduced from EUR 1.25 million to EUR 1 million. This measure was also recommended by the Deutsche Börse group in the white paper of 21 September 2021 'Strategy for the sustainable financing of the future of Germany' in order to strengthen the competitiveness of the capital market.

Re Article 5 (Amendment to the Securities Trading Act)

Re subparagraph 1 (Table of Contents)

The Table of Contents is adapted by the insertion of the new § 24a.

Re subparagraph 2

The addition introduced in § 6 enables the Bundesanstalt to request an electronic response and transmission within the framework of requests for information and submissions. In the event that there is an obligation to establish access to the Bundesanstalt's electronic reporting and publication system, the Bundesanstalt may also request submission by this means. In addition, it is possible for the Bundesanstalt to specify the format to be used.

Re subparagraph 3

The adjustment removes the requirement for a tax offence or related tax procedure to justify the possibility of passing on information to tax authorities within the meaning of paragraph 6(2) of the Tax Code. This extends the transfer of confidential information to tax authorities to tax procedures that do not have to be related to a tax offence. This allows for a lower-threshold exchange of data and information between financial regulators and tax authorities in order to identify relevant facts and is thus capable of ensuring greater tax collection fairness.

Furthermore, it is necessary to standardise a clear threshold for information exchange with the tax authorities within the meaning of § 6(2) of the Tax Code. The indirect threshold laid down in paragraph 93(1) of the Tax Code, according to which information must be necessary for the determination of a situation relevant to taxation, is not sufficient. There is a need for a separate threshold under securities law, which, as a static minimum requirement, is based on the fact that the information is required for a tax procedure, but that the Bundesanstalt can demonstrate that the disclosure of the information conflicts with the requirements of other legal provisions.

An adaptation of national rules on secrecy must be carried out within the framework of European law requirements. Accordingly, the limits of the exchange of information with tax authorities must already be regulated in the national laws on the obligation of confidentiality.

On the other hand, under the first sentence of Article 34(1) of Regulation (EU) No 236/2012 of 14 March 2012 on short selling and certain aspects of credit default swaps, confidential information covered by professional secrecy shall not be disclosed to any other natural or legal person or authority, unless this is necessary for judicial investigations.

As a result, the exchange of data reported to the Bundesanstalt under the relevant European law requirements is directly restricted to the legal act justifying the notification to the tax authorities.

In addition, it should be borne in mind that the addressees referred to in the provisions on the obligation of secrecy pursuant to § 21(1) of the Securities Trading Act (WpHG) may have information that has been collected on the basis of different European legal acts or, in any case, depicts situations to which various European rules governing secrecy are linked.

For example, information on the trading of an investment firm on a frequent and significant scale on its own account in execution of client orders outside a regulated market, an MTF or an OTF is covered by the confidentiality obligations laid down in Article 76 of Directive

2014/65/EU (MiFID II) as a systematic internalisation within the meaning of Article 4(1) (20) of Directive 2014/65/EU (MiFID II).

At the same time, corresponding transactions in financial instruments by investment firms are facts concerning matters to be assessed in application of the requirements of Directive 2013/36/EU (CRD) and are therefore subject to stricter rules compared to Article 76 of Directive 2014/65/EU (MiFID II).

Re subparagraph 4

An authorisation basis for the adoption of a statutory instrument is introduced. The Federal Ministry of Finance may transfer the authorisation to the Bundesanstalt. The statutory instrument can specify which transmissions must be carried out in electronic form or by means of the electronic reporting and publication system of the Bundesanstalt.

Re subparagraph 5

The amendment abolishes the currently legally required transmission of ad hoc communications to the Bundesanstalt before the regular publication in the market. The issuer must now send the ad hoc notification to the Bundesanstalt immediately after its regular publication in the market. The previous prior notification to the Bundesanstalt extended the circle of insiders to the persons responsible for receiving and monitoring ad hoc communications with regard to the information contained in the ad hoc communication sent in advance to the Bundesanstalt. This regulation of an ongoing prior notification obligation to the Bundesanstalt is not necessary from a supervisory subparagraph of view and causes an avoidable insider risk from a compliance viewpoint.

Re subparagraph 6 and subparagraph 7 (recast §§ 32c, 32d and 32e(1))

The previous liability regime for key investment information sheets (KIIS) in §§ 32c, 32d of the WpHG differs from the liability regulations in §§ 11, 13 of the Securities Prospectus Act (WpPG) for securities information sheets (WIB) and § 22 Asset Investment Act (VermAnlG) for asset investment information sheets (VIB).

With the recast of § 32c, § 32d and § 32e WpHG, the liability rules for project promoters of crowd-funding projects and for crowd-funding service providers are adapted to the liability regulations of the WpPG and the VermAnlG. Thus, the reference to the members of the management and supervisory bodies is deleted. Above all, the content and scope of the liability of the responsible project promoters or crowd-funding service providers responsible at the level of the platform are more aligned with the investor according to the model of the special legal prospectus liability. This improves the legal responsibility position of the investor with regard to legal certainty, predictability and possible litigation risks.

Re subparagraph 8

The ordinance aims to increase the transparency of multi-voting shares.

Re subparagraph 9

The requirement for authorisation in writing is deleted here in order to allow for an electronic form of authorisation.

Re subparagraph 10

The addition introduced in § 107(5) of the WpHG makes it possible for the Bundesanstalt and the persons to whom the Bundesanstalt uses in carrying out its tasks to require electronic response and transmission within the framework of requests for information and submissions. In doing so, the Bundesanstalt may also stipulate the communication procedure to be used and the format to be used.

Re Article 6 (Amendment to the Market Access Information Regulation)

The amendment to § 10 of the Market Access Information Regulation aims to make communication in English even more possible between the applicant and the Bundesanstalt. It is already possible to provide a large part of the necessary information and documents, in particular the business plan, in English. The requirement to submit part of the documents in German is now deleted.

Re Article 7 (Amendment to the Securities Trading Notification Ordinance)

Here, the Bundesanstalt is granted the power to request the electronic submission of messages by ad hoc information pursuant to § 8 of the Securities Trading Notification Ordinance via its reporting and publication system.

Re Article 8 (Amendment to the Securities Acquisition and Takeover Act)

Re subparagraph 1

The transmission of the publication via the reporting and publication system of the Bundesanstalt serves to digitise the administrative procedure under takeover law. The previous notification of the decision need no longer be required, in order to relieve the target companies from unnecessary administrative burdens.

Re subparagraph 2

The term 'weekday' used partly in the Securities Acquisition and Takeover Act (WpÜG) was not defined by special law and included Saturdays according to the administrative practice of the Bundesanstalt in accordance with § 3(2) of the Federal Leave Act. The uniform calculation of all time limits under takeover law according to working days and the newly inserted definition thereof ensures that deadlines do not in principle end on days that are not working days at the Bundesanstalt’s headquarters in Frankfurt am Main responsible for securities supervision. De facto shortening of deadlines which hitherto occurred as a result of the expiry of the deadline on a Saturday, will no longer occur in future.

Re subparagraph 3

Reference is made to the justification for Article 5(3).

Re subparagraph 4

Re letter a

Advance notifications pursuant to § 10(2) sentence 1 WpÜG are made approximately 30 minutes before the publication of the relevant communication. These advance notifications have so far not been relevant to the Bundesanstalt under prudential law. In order to relieve bidders of unnecessary administrative burden, the prior notification to the Bundesanstalt is no longer required.

Re letter b

The transmission of the publication to the Bundesanstalt in accordance with § 10(3) sentence 1 WpÜG is always required. In the case of simultaneous publication, therefore, only transmission to the stock exchange management, but not to the Bundesanstalt, may be omitted.

Re subparagraph 5

In order to digitise the administrative procedure under takeover law, the offer document must in future be transmitted exclusively electronically via the notification and publication system of the Bundesanstalt. A signed version can therefore be waived in order to reduce the logistical effort of the bidders.

Re subparagraph 6

Re subparagraphs a and b

The purpose of calculating deadlines according to working days is to standardise the deadlines under takeover law and to ensure that they are not actually shortened by a deadline on Saturdays.

The new provision in § 14(2a) sentence 3 of the WpÜG serves to prevent fictitious authorisation (§ 14(2), first sentence, WpÜG) in cases where the Bundesanstalt has issued a ban on the offer, but this prohibition is not yet deemed to have been notified or served before the expiry of the relevant period. The extension by five calendar days corresponds to the deadline for notification or delivery fiction in § 4f(2), or § 4 g(2) sentence 1 of the Financial Services Supervision Act (FinDAG). The longer period in § 41(4) sentence 3 VwVfG is not to be taken into account, as public announcements take effect the following day pursuant to § 4h(1) sentence 2 FinDAG. In contrast to sentence 1, working days are not to be taken into account here, as the deadline is linked to the five-day notification or delivery fiction in § 4f(2) or § 4 g(2) sentence 1 FinDAG.

The extension of the deadline to ensure the fictitious notification or delivery is independent of whether or not the Bundesanstalt has previously extended the deadline for examining the offer document in accordance with § 14(2a) second sentence of the WpÜG.

Re letter c

Re double letter aa

The transmission of the published offer document via the notification and publication system of the Bundesanstalt serves to digitise the administrative procedure under takeover law.

Re double letter bb

In the event of the correction of an initially incorrect or incomplete offer document, in the interest of providing comprehensive information to the Bundesanstalt for the purposes of conducting a proper takeover procedure, a publication or notice within the meaning of § 12(3) no. 3 WpÜG shall also be notified to the Bundesanstalt without delay via the reporting and publication system of the Bundesanstalt.

Re subparagraph 7

The written form requirement for applications may be omitted due to the mandatory application via the notification and publication system of the Bundesanstalt.

Re subparagraph 8

Re letter a

The purpose of the amendment is to harmonise the time limits under takeover law.

Re letter b

The transmission of the change of offer via the notification and publication system of the Bundesanstalt serves to digitise the administrative procedure under takeover law.

Re subparagraph 9

The transmission of the publication via the Bundesanstalt's reporting and publication system serves to digitise the administrative procedure under takeover law. The amendment also aligns with the provision in § 23(1), second sentence, WpÜG.

Re subparagraph 10

The calculation of deadlines according to working days serves to standardise the deadlines under takeover law.

Re subparagraph 11

The written form requirement for applications may be omitted due to the mandatory application via the notification and publication system of the Bundesanstalt.

Re subparagraph 12

The transmission of the opinion on the reporting and publication system of the Bundesanstalt serves to digitise the administrative procedure under takeover law.

Re subparagraph 13

The transmission of the publication via the Bundesanstalt's reporting and publication system serves to digitise the administrative procedure under takeover law.

Re subparagraph 14

Re letter a

The calculation of deadlines according to working days serves to standardise the deadlines under takeover law. In particular, it is necessary to coincide with the time limit for submitting an application for exemption pursuant to § 37 of the WpÜG in conjunction with § 8 of the WpÜG Offer Ordinance.

Re letter b

The amendment serves the corresponding application of all possible deadline extensions for mandatory offers.

Re subparagraph 15

The written form requirement for applications may be omitted due to the mandatory application via the notification and publication system of the Bundesanstalt.

Re subparagraph 16

The written form requirement for applications may be omitted due to the mandatory application via the notification and publication system of the Bundesanstalt.

Re subparagraph 17

The rule clarifies that in the case of requests for information and reference, the Bundesanstalt's powers of order extend not only to 'whether' and 'what', but also to 'how'. In particular, in the case of requests for information on securities transactions, it may be necessary, for example, that the data is transmitted not in paper form, but in an appraisable electronic format.

Re subparagraph 18

In order to digitise the administrative procedure under takeover law, applications as well as legally required notifications, declarations, notifications or transmissions shall in future be transmitted exclusively electronically via the notification and publication system of the Bundesanstalt. An additional application signed in the original form is therefore no longer required. Secure identification of the sender takes place as part of the application for the technical procedure of the reporting and publication platform.

The costs incurred by the obliged entities for the use of the technical procedure of the reporting and publication platform for the one-off registration and the supporting documents to be provided in this context will be compensated by the waiver of the transmission of signed originals.

After registering for the technical procedure, the registration and publication platform can only be used after examination of the application and the evidence provided as well as activation by the Bundesanstalt. This activation usually takes place within one working day. This additional time requirement will be compensated to the extent that the corresponding deadlines (e.g. pursuant to § 37 WpÜG in conjunction with § 8 WpÜG Tendering Regulations) will be calculated in future according to working days instead of calendar days.

Moreover, the need for a prior application for the reporting and publication platform and the technical procedure for obliged entities does not create an unreasonable obstacle to the timely fulfilment of their capital market obligations. Insofar as applications or communications to be received by the Bundesanstalt had previously been in writing, with offer documents even signed in the original form, the time required for this also needed to be taken into account for compliance with the deadline and to make corresponding purchases and facilities by fax (if permitted) in advance. The one-time registration for the reporting and publication platform (unless otherwise available) and for the technical procedure is reasonable for the participants or the lawyers representing them, who are usually experienced in administrative proceedings in capital markets under takeover law.

Re subparagraph 19

Violations of the obligations to notify, transmit and publish under the law of transfer are sanctioned under § 60 of the WpÜG. The transmission obligations revised by this Act shall be included in the catalogue of administrative offences as a subsequent amendment. According to Article 17 of the Takeover Directive, Member States are to ensure compliance with takeover rules through sanctions.

Re Article 9 (Amendment to the WpÜG Offer Ordinance)

The calculation of deadlines according to working days serves to standardise the deadlines under takeover law. The extension from seven calendar days to seven working days which is accompanied by the revision also compensates for the time required for the appli-

cation for the registration and publication platform for the first time and the necessary release by the Bundesanstalt.

Re Article 10 (Amendment to the Securities Prospectus Act)

Re subparagraph 1

This is a consequent amendment to the amendment to § 32 BörsG.

Re subparagraph 2

The extension corresponds to the amendments to the Securities Trading Act and enables the Bundesanstalt to request information in electronic form within the framework of requests for information and submissions. In the event that an addressee is registered with the notification and publication system of the Bundesanstalt, the latter may also require submission by this means. In addition, the Bundesanstalt can set the format.

Re subparagraph 3

Reference is made to the justification for Article 5(3).

Re Article 11 (Amendment to the Stock Exchange Act)

Re subparagraph 1

Adaptation of the list to the insertion of the new regulations on special purpose acquisition companies for the purpose of listing.

Re subparagraph 2

§ 3(4) of the BörsG introduces a rule on the waiver of a hearing requirement in the case of requests for information and reference. The Securities and Exchange Commission can thus request, within their statutory powers, the provision of information and the submission of documents, without the need for the addressee first to be given the opportunity, in accordance with the Administrative Procedure Act of the respective federal state, to comment on the facts relevant to the request for information and document submission. The regulation is based on § 4i of the Financial Services Supervision Act (FinDAG). Also in the field of exchange supervision, general regulations that provide for a hearing under the respective federal state administrative procedural law do not meet the frequent urgent need for clarification of matters relevant to supervision by means of requests for information or submissions. On the contrary, in order to ensure a swift disclosure of supervisory matters and thus the effective exercise of supervisory powers, it is also appropriate and required in the area of stock market supervision to refrain from the additional procedural step of a hearing.

Re subparagraph 3

Re letter a

The amendments to § 4(2) of the BörsG serve to reduce the written form requirement and to introduce the electronic transmission of applications and documents also in the area of securities supervision law. The regulations are based on comparable regulations in financial supervision law.

Re letter b

This is a consequent amendment to subparagraph a. The Securities and Exchange Commission shall be authorised to specify the data format and the means of transmission for the electronic transmission of the request for authorisation.

Re letter c

A further linguistic/editorial adaptation is made to the changes in subparagraphs a and b.

Re subparagraph 4

Paragraph 1 shall be adapted linguistically to similar provisions in other supervisory laws (e.g. § 21 WpHG) and the word ‘raise’ shall be replaced by the word ‘publish’. As regards the amendment in paragraph 3, reference is made to the explanatory note to Article 5(3). At the same time, with the change of the confidentiality obligations in the Stock Exchange Act, the Federal Government’s legislative initiative in Bundesrat document 89/22 is addressed.

Re subparagraph 5

The amendment to § 21(3) serves to reduce the written form requirement and to introduce the electronic transmission of applications and documents also in the area of securities supervision law. The regulations are based on comparable regulations in financial supervision law.

The change to the appended second sentence is a consequential amendment. The Securities and Exchange Commission shall be authorised to specify the data format and means of transmission for the electronic transmission of the application for authorisation.

Re subparagraph 6

Re letter a

This is the correction of an editorial error.

Re letter b

The newly-inserted paragraph 2a provides for the possibility that the issuer’s mandatory joint application together with a credit institution, a financial services institution, a securities institution or an undertaking operating pursuant to § 53(1) sentence 1 or § 53b(1) sentence 1 of the Banking Act may be limited to sub-sectors of the regulated market with special obligations for issuers pursuant to § 42(1). In this way, the exchanges are given more flexibility to regulate the admission requirements in subdivisions of the regulated market differently. For subdivisions of the regulated market pursuant to § 42(1) with special obligations, admission would then continue to be requested by the issuer and a co-applicant pursuant to paragraph 1, while outside this sub-area the admission of securities to be traded on an exchange in the regulated market can be requested by the issuer alone. In this way, exchanges can establish segments where approval is possible for issuers with lower costs.

Re subparagraph 7

This is a correction of editorial errors.

Re subparagraph 8

Regulations for a specific legal form of a public limited liability company will be established to facilitate companies' access to the capital market. A Special Purpose Acquisition Company (SPAC) is a shell company with no operational business of its own, which is established to raise capital through an IPO and thereby acquire a non-listed company – indefinitely prior to the IPO – and thus indirectly bring it to the stock market. The sole object of the company is therefore the preparation of the IPO and the search for a suitable company that thus enters the stock exchange through the final transaction.

SPACs have the potential to bridge the gap between private equity and venture capital financing and a classic IPO by acquiring companies that are not yet ready for an IPO. Advantages are seen in particular in the shortening of the process of listing and pricing, which can be done more independently of unforeseen price fluctuations.

SPACs as a capital market law phenomenon originated in the United States in the 1980s and are an established instrument there. However, as a result of recent developments involving overheating in the SPAC market, regulatory requirements in the USA have significantly tightened. The International Organisation of Securities Commissions (IOSCO) published a report on SPACs in 2022, stating that national legislators should take measures specifically tailored to this form of transaction. It is emphasised that there can be no one-size-fits-all approach, due to the specifics/framework conditions in the individual countries.

The regulations in the Stock Exchange Act take into account the experience gained to date, especially in the USA, as well as the IOSCO report mentioned above, and create a legal framework that enables appropriate transactions, while also having a strong eye on adequate shareholder and investor protection.

It should be borne in mind that in the past there have also been some transactions in Germany that have been based on the SPAC model. The scheme creates a special legal form with the Börsenmantelaktiengesellschaft (BMAG), differing in a few points from the legal form of a normal limited company, which is closely linked to the stock exchange listing and the acquisition of a suitable target company. In principle, however, all requirements of capital markets law relevant to investor protection in connection with an IPO also apply to the BMAG. The possibility for companies to now carry out such a transaction under German law leads above all to greater legal certainty for entrepreneurs and investors, in line with the above-mentioned ISOCO report.

Re section 4a (Special purpose acquisition company for the purpose of listing)

Re § 44 (Definitions, applicable rules)

This provision contains a definition of SPAC limited company (paragraph 1) as a special purpose acquisition company and some other basic terms. It also regulates the conditions that must be met for the specific requirements laid down in Sections 45 to 47b to apply to the requirements set out in the Stock Corporation Act.

Re paragraph 1

The model commonly referred to as SPAC in the industry is further defined here. However, since the term 'Special Purpose Acquisition Company' and its abbreviation 'SPAC' are not suitable as a legal term in the Stock Exchange Act, the particular legal form is to be referred to as a Börsenmantelaktiengesellschaft (BMAG).

Similarly to the entrepreneurial company (limited liability) under § 5a GmbHG, an existing legal form is modified in a few respects and is described under company law by an additional 'Börsenmantel...'.

Re paragraph 2

The subject of the business activity is the acquisition of a suitable target enterprise. With the completion of the acquisition or transfer of this target company to the BMAG, this object has exhausted itself. Instead, the primary business object is the continuation of the business activities of the acquired target company. This acquisition can be carried out legally by various means (including acquisition of shares in the company, acquisition of the company's total assets, see § 179a(1) AktG, conversions). For this purpose, The Act defines the generic term 'target transaction'.

Re paragraph 3

The requirements set out for the BMAG are aimed at facilitating the entry into the stock exchange and the acquisition of a company that corresponds to the profile described in the listing prospectus. With the completion of the target transaction, the reason for these regulations falls away. Furthermore, it is neither reasonable nor appropriate for investor protection if a BMAG is listed on the stock exchange for a long period of time without a target transaction being made. Accordingly, paragraph 4 provides that the establishment in the legal form of the BMAG must be limited in the articles of association, while leaving a certain margin of discretion to the company. Therefore, the exact determination of the deadline for the regulation in the articles of association is left to the company. However, the maximum period should not exceed four years. Furthermore, the statutory body has the possibility to extend the time limit if it was previously shorter. It can then be extended by a maximum of 12 months.

Re paragraph 4

With regard to legal certainty and the guarantee of shareholder and investor protection, paragraph 4 provides that the specific requirements applicable to the BMAG shall not apply until cumulatively the above-mentioned conditions are met. This includes in particular the use of the additional BMAG designation as well as the admission of shares in trading in the regulated market. As a third condition, the articles of association must provide for the possibility of holding a virtual general meeting. There is therefore no obligation to hold the General Meeting in virtual form. The purpose of the regulation is merely to ensure that the statutes open up the option for this. This provision is intended to ensure that requirements for the execution of the target transaction are better implemented. In particular, it will make it easier for shareholders to assert their right to tender pursuant to § 47.

The BMAG must comply with all general requirements for admission to the stock exchange. In view of the legally regulated BMAG business model pursuant to § 3(2) of the Stock Exchange Admission Ordinance, the stock exchange management may waive the requirement of three years of existence.

Re paragraph 5

Similar to the entrepreneurial company (limited liability), it is necessary, with regard to the information function of company law and protection of trade, that the designation of the company contains an addition indicating the specific features of this legal form.

Re paragraph 6

The term 'initiator' refers to the persons who in the case of SPACs are also sometimes referred to as sponsors. These are active in raising the capital and develop the profile of the company to be acquired. They are not to be placed equal with founders within the meaning of § 28 of the AktG. Members of the Executive Board who are not founders within the meaning of § 28 of the AktG are to be regarded as initiators insofar as they hold shares or option rights. The rules also regulate some specific requirements for these persons. The definition is necessary, as the following regulations provide some specific requirements for

this group of persons. In order that these requirements cannot be circumvented by front men, trustees and other constructions, the requirements for the allocation of voting rights pursuant to § 34(1) of the WpHG apply mutatis mutandis.

Re paragraph 7

The BMAG is generally to be regarded as a public limited company to which the Stock Corporation Act applies, similar to that of the entrepreneurial company (limited liability), to which the general provisions of the Companies Act apply, unless otherwise stated in § 5a of the Act on Limited Liability Companies.

Only to the extent that deviating provisions result from this section, these shall prevail over the Stock Corporation Act if the requirements for the legal form of the BMAG, as specified in paragraph 5, are met.

It follows from Article 10 of Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statutes for a European Company (SE Regulation) that the provisions on BMAGs shall also apply to European public limited liability companies established in Germany, unless otherwise specified in the SE Regulation.

Finally, it is clarified that the Acts on employee participation, including the Act on the participation of employees in a European company (SEBG), are applicable to the BMAG.

Re paragraph 8

Instead of a public limited company, a European company may also be used as a BMAG, since the European company must be treated as a public limited company under national law under Article 10 of the SE Regulation. The negotiation procedure for the participation of employees in the SE is to be carried out on a regular basis in accordance with §§ 4 to 20 of the SEBG within the framework of the establishment of the European BMAG, provided that the companies involved in the establishment to a European SMAG employ at least ten employees alone or jointly with their affected subsidiaries. If the negotiated procedure could not be carried out in the context of an establishment without employees, the procedure shall be followed up as soon as the BMAG employs a sufficient number of employees alone or jointly with its subsidiaries, in particular after the execution of the target transaction. If no agreement is reached in these negotiations, §§ 22 to 33 of the SEBG on the SE Works Council and §§ 34 to 38 SEBG on employee participation shall be applied by act of law.

Re § 45 (Deposit; Agreement for use)

Re paragraphs 1 and 2

For SPACs, in practice, the capital raised by the investors is usually deposited in an escrow account and can only be released by resolution of the shareholders. The management of a BMAG should not have access to the trust account, for reasons of investor protection. This serves to ensure the appropriate use of the funds paid in by the shareholders to finance the target transaction and thus also to protect the shareholders of the BMAG. Paragraph 2 sentence 3 imposes in this connection a restriction on the costs of complying with the legal requirements (e.g. reporting obligations) as well as the preparation of the target transaction. These costs are necessary, but are incurred at a stage where the conditions for the release by the notary are not met. The scope of this exemption is capped at five per cent of the deposit obligations (including any surcharges). Paragraph 2 lays down corresponding obligations for the trustee and determines who may exercise the function of trustee within the meaning of this provision. Only notaries, credit institutions within the meaning of § 1(1) of the Banking Act and credit institutions domiciled in one of the states of the European Economic Community (according to § 53(1) sentence 1, § 53b(1) sentence 1 or paragraph 7 of the Banking Act) should be able to fulfil these requirements in

full. If a notary acts as a trustee pursuant to § 45(2), this constitutes a notarial custody activity within the meaning of § 23 of the Federal Notary Regulation. Paragraph 2, second sentence, clarifies that the general procedural provisions on notarial custody in § 6 of the Notarisation Act (BeurkG), i.e. Sections 57 to 62 of the BeurkG, apply to the execution of the depositary of payments made pursuant to paragraph 1 by a notary.

Re paragraph 3

The requirement that the Management Board should not have access to the payments to the deposit obligation has a potential tension with the requirements for raising capital, according to which the payments made on the contribution obligation must be freely available to the Management Board (§ 36(2), § 37(1) sentence 2 AktG, if applicable in conjunction with § 188(2) sentence 1 AktG).

It is therefore clarified that the described procedure for the BMAG does not conflict with these requirements. For example, a payment to the BMAG or an immediate deposit to the trustee's account is permitted. In the case of payment to the BMAG, the transfer to the trustee's account will be declared admissible.

Re § 46 (Competence of the General Meeting, information requirements)

Re paragraph 1

The target transaction is the core of the subject matter of the BMAG. The target transaction has not only economic effects but also legal implications. With the completion of the target transaction, the special legal form of the BMAG is transferred to a public limited company without any further special features. Therefore, with regard to general principles, shareholder protection and the case law of the Federal Court of Justice on the unwritten powers of the General Meeting, it follows that the target transaction requires the approval of the General Meeting.

Insofar as the target transaction takes place by means of the conversion, the decision requirement and the respective information and reporting obligations arise from the relevant provisions of the Conversion Act (including §§ 13, 62 and 65 of the UmwG). Therefore, target transactions carried out by means of conversion (e.g. merger for inclusion) are excluded from the scheme.

The provision of § 179a of the Stock Corporation Act on the requirement for resolution in case of transfer of all assets concerns only the transferring company. However, the BMAG is the acquiring company. However, the shareholders of the SMAG have a similar interest in information, explanation and documentation. Therefore, the corresponding validity of the provisions of § 179a(2) AktG is required, according to which the contract must be provided for inspection. The provisions on the conversion law show that in the case of significant contracts affecting the company as a whole, the interest in information worthy of protection goes beyond the possibility of access to also expect an explanation by the management. Thus, § 8 of the UmwG requires that the Management Board submits a report on the content of the merger agreement with particular regard to the impact on the shareholders.

This is also a matter of special interest in information to shareholders. The shareholders decide with their vote whether the company will take over the business of the target company or will prefer to exercise its right to tender pursuant to § 47. There is no prospectus available to them under Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC, nor an offer document as required by the WpÜG for public offerings. The Act therefore provides, in accordance with § 8 of the UmwG, that the Management Board shall report to SPAC in writing explaining and justifying in legal and commercial terms the

target transaction, the underlying contract and the adequacy of the consideration promised to the target company. The economic value of the target company must in particular be taken into account in accordance with recognised methods of valuation. A particular importance for investor protection and confidence in the BMAG model is that the target transaction concerns a company that fits the criteria set out in the BMAG listing prospectus. This aspect should therefore be explained in particular.

As also provided for in § 8(2) of the UmwG, the information interest of the shareholders is limited under sentence 4 by the company's legitimate interest in the confidentiality of facts whose publication is likely to cause a not insignificant disadvantage to one of the participating legal entities or to a related undertaking.

The right of shareholders to tender provided for in § 47(1) has the special feature that the filing of an objection to the minutes at the General Meeting is a prerequisite for the assertion of the right to tender. The Act therefore provides that, when convening the General Meeting, this fact must be clearly and separately pointed out.

In addition to this approval requirement for the target transaction, the General Meeting must simultaneously modify the business purpose of the company in the articles of association with a corresponding majority. The transaction therefore requires an additional change in the company's business purpose and therefore the approval of the Annual General Meeting by a three-quarters majority for a change in the articles of association.

Re paragraph 2

This provision is intended to ensure that shareholders who are considering making use of the right to tender pursuant to § 47 may lodge an objection on record in the minutes. For the text form, compliance with the form pursuant to § 126b is necessary and sufficient.

This requirement is accompanied by § 44(4)(3), according to which the company's articles of association must provide for the possibility of holding a virtual general meeting pursuant to § 118a of the Stock Corporation Act. At a virtual general meeting, shareholders can object to the minutes even without a physical presence, thus safeguarding the possibility of asserting the right to tender. However, even if the Management Board does not make use of this option (e.g. in the case of a smaller shareholder group), the provision in paragraph 2 ensures that shareholders can ensure the assertion of their right to tender.

Re paragraph 3

In accordance with the statutory provisions on structural changes and the principles of the German Federal Court on unwritten AGM competences, the Act provides for a qualified majority of three-quarters of the share capital represented at the General Meeting. Since the dissenting shareholders have a right to tender, under which the BMAG is obliged to take over the shares against reimbursement of the deposit amount, this quorum also helps to limit the outflow of funds from the company's assets resulting from the assertion of this claim.

The initiators (defined in § 44(6)) not only initiate the establishment to a BMAG, they also determine the profile of the company to be acquired and – as members of the management – also make the selection decision regarding the company to be taken over. In addition, they have a particular economic self-interest in obtaining the acquisition as soon as possible. Against this background, it is common in international practice that the initiators do not have voting rights when deciding on the target transaction.

It is appropriate that only the other shareholders have the right to vote in this resolution. Therefore, corresponding to the international practice described and in accordance with the recommendations of the IOSCO, paragraph 3 provides that the initiators have no voting rights within the meaning of § 45(3).

Re § 47 (Shareholders' rights to tender; admissibility of deposit repayment)

Re paragraph 1

For shareholders' protection and the willingness of investors to subscribe to shares in a SPAC, it is essential for shareholders who do not agree to the specific target transaction that they in principle recover their deposit.

This is to be done by means of the possibility that shareholders can recover the funds paid to the company on the basis of the deposit obligation, including any premium paid (so-called Agio) in return for the shares. In international practice, such a right to tender is an integral part of SPAC transactions.

Accordingly, paragraph 1 regulates such a right to tender. Since it would be contradictory to assert the right to tender if the shareholder voted for the target transaction, only those shareholders who voted against the target transaction and have declared opposition at the General Meeting are eligible. As always, there is also the possibility of having the opposition lodged by an authorised representative. This can also be done by means of a General Meeting in person, so that it does not necessarily have to be a virtual General Meeting. The provision in § 46(2) ensures that the company provides a representative to the shareholders.

Re paragraph 2

Pursuant to § 71(1)(8) AktG, the acquisition of treasury shares is limited to one tenth of the share capital. This limit shall be too tight for the practicability of the right to tender laid down in paragraph 1. Therefore, paragraph 2 provides that the upper limit is not 10 % but 30 % of the share capital. In addition, the list of severance payments in respect of which a purchase of treasury shares is permitted is supplemented by the reference to § 47(2) in § 71(1)(3) of the Stock Corporation Act. As this concerns the operation of a statutory settlement payment right, this provision is compatible with Article 60 of the EU Directive 2017/1132.

Re paragraph 3

It is clarified here that the requirements for raising capital and maintaining capital, including the requirements of case law on hidden contributions in kind and the return of paid-in funds under the provisioning law, are not precluded.

Re § 47a (Stock options)

At SPACs, the issue of subscription rights is common in international practice, especially in the form of so-called independent warrants, especially as an incentive for the initiators to successfully realise a target transaction. The rule clarifies that the granting of such option rights is also permissible for the BMAG, while respecting the limits of § 9(1) AktG.

The provision of paragraph 2 provides that the mandatory waiting period of at least four years provided for in § 193(2)(4) AktG does not apply to BMAG until the initial exercise of the option rights. This waiting time does not fit the concept of the process of the BMAG, which is aimed at the rapid execution of the target transaction.

Re § 47b (Termination of the Börsenmantelaktiengesellschaft; Dissolution: settlement)

Re paragraph 1

Here, the consequences of the expiry of the period for drafting are regulated in the legal form of a BMAG pursuant to § 45(3). It is clarified that if no target transaction of significant

scope has been carried out within this period, such a deadline is a mandatory reason for dissolution, so that the liquidation of the company is initiated. The execution of a target transaction is significant and prevents the emergence of a reason for termination by expiry of the deadline only if the volume reaches at least 20 percent of the value of the deposits, including any additional premium.

It is also stipulated that the expiry of the deadline also constitutes a reason for revocation of the admission to the stock exchange pursuant to § 39(1). Since, pursuant to paragraph 39(1), the revocation is at the discretion of the admission body, this does not mean that the authorisation is necessarily revoked or to be revoked, but makes it clear that in this case the admission body has the possibility of withdrawing the authorisation.

If a target transaction was carried out and the shareholders' right to tender was also honoured in accordance with § 47(1), then the SMAG has achieved the object of its specific business purpose. Accordingly, there is no longer any need for the specific requirements for the BMAG aimed at this specific purpose. Accordingly, in this situation, the expiry of the deadline leads to the company being continued as an ordinary public limited company within the meaning of § 1 of the Stock Corporation Act and the special features laid down in this section of the Stock Exchange Act no longer apply. Similarly to the limited liability of the Entrepreneurship, this transfer is not a change of form within the meaning of the Transformation Act.

This must be distinguished from the change of the business purpose in the course of the execution of the target transaction. The associated amendment to the statutes must in principle already take place together with the decision on the target transaction. This follows from the general requirements of the AktG.

The application of the laws on employee participation remains unaffected.

Re paragraph 2

This provision opens the possibility to decide, by a majority sufficient to amend the statutes in accordance with § 179(1) of the AktG, that the legal form of BMAG is dropped and that the company continues as an ordinary public limited company, even before the expiry of the period laid down in § 44(3). Insofar as the target transaction has been carried out, including the operation of the tendering right, such a development is also logical.

If a majority of the shareholders intend to continue the company, even though no target transaction is to be sought or the expiry of the maximum period pursuant to § 44(3) is imminent, it may also be decided by a majority sufficient to amend the statutes to continue the company in the form of a public limited company without the special BMAG-specific modifications. With the continuation as an ordinary public limited company, the reason for the safekeeping in the escrow account no longer applies. Therefore, the application for registration of the amendment to the articles of association must be accompanied by a confirmation of the deposit of funds from the escrow account pursuant to § 45(2) to the company at the free disposal of the Management Board. Since the reason for the listing also lapses in this situation, in this case the decision must be accompanied by an application for revocation of admission to trading on the regulated market pursuant to § 39(3). The corresponding application of the provisions of § 39(3) for such delisting also includes, in particular, a public offer to shareholders, where the consideration may not be less than the issue amount of the shares at the time of formation (plus any premium). This ensures that shareholders are adequately protected.

The application of the laws on employee participation remains unaffected.

Re paragraph 3

A BMAG does not conduct an operational business and therefore typically has only a small number of creditors with relatively low claims. On the other hand, shareholders have an interest in the timely distribution of assets.

Therefore, there is no reason in this situation for the blocking year which is mandatory under § 272(1) AktG. A different regulation appears to be appropriate. By way of derogation from § 272(1) AktG, the distribution of assets may take place after at least two months have elapsed after the notification to the creditors has been made public.

Re Article 12 (Amendment to the Asset Investments Act)

Re subparagraph 1

Reference is made to the justification for Article 5(3).

Re subparagraph 2

In the course of digitisation, the notification pursuant to § 9(2) sentence 3 shall be made electronically via the reporting and publication system of the Bundesanstalt. These notifications are thereby brought into line with what is already applicable to prospectuses and other documents in accordance with § 14(4).

Re subparagraph 3

The notifications pursuant to § 10(1) sentence 1 shall also be submitted electronically via the reporting and publication system of the Bundesanstalt. This is already practised in many cases.

Re subparagraph 4

The addition corresponds to the amendments to the Securities Trading Act and enables the Bundesanstalt to require information in electronic form as part of requests for information and submissions. In the event that an addressee is registered with the notification and publication system of the Bundesanstalt, the latter may also require submission by this means. In addition, the Bundesanstalt can set the format.

Re subparagraph 5

Re letter a

The results of the assessments shall no longer be transmitted to the Bundesanstalt in writing, but electronically and in a format that can be determined by it. The Bundesanstalt may require this to be done through its reporting and publication system.

Re letter b

The elimination of the obligation of the auditor to sign the report facilitates the now mandatory electronic communication. A qualified electronic signature is not required; the name of the responsible auditor is sufficient.

Re Article 13 (Amendment to the Stock Corporation Act)

Re subparagraph 1 (Amendment to § 10 AktG)

The amendment to § 10 AktG opens German legislation for electronic equities, namely for electronic registered shares entered in a central register pursuant to § 12 eWpG or in a crypto-assets repository pursuant to § 16 eWpG, and for electronic bearer shares entered

in a central register pursuant to § 12 eWpG (see the following justification for the amendment to § 10(1) AktG).

In future, public limited liability companies should therefore have the choice whether to issue their shares conventionally as securitised shares or as electronic shares within the meaning of the Electronic Securities Act. Electronic shares differ from conventional shares only in the fact that they are not securitised, but instead are entered in an electronic securities register. The entry into a central register pursuant to § 12 eWpG creates central register shares (cf. definition in § 4(2) eWpG), while entry into a crypto-assets register pursuant to § 16 eWpG creates crypto-shares (cf. definition in § 4(3) eWpG).

The new electronic shares will therefore not form their own type of shares. A difference in practice may be that they could be traded on different markets or platforms. However, the relationship between company and shareholder will not change.

The wording ‘named’ also applies to electronic equities; it is a technology-neutral designation and does not require a written identification of the shareholder on the security. Nor does the purpose of protection of the standard require a mandatory written form. The characteristic feature of the registered share is that the company is informed of the shareholder’s identity. Since this can be achieved by registering in a similar way to a written certificate of shares, this protection is sufficient. e-commerce by means of collective custody is also based on this mechanism. Here, too, the shareholder is not mentioned in writing on the deed, but is only indirectly identified by means of the blank endorsement.

Re letter a

Electronic bearer shares shall only be permitted as central register shares. On the other hand, electronic registered shares are allowed to be issued both as central register shares and as crypto shares in individual entries. This takes account of developments in recent years that registered shares have become the dominant model of share issuance internationally.

Any opening to bearer shares issued through blockchain technology or similar technologies will be discussed at a later stage for the reasons discussed in subparagraph II of the General Part above, when the negotiations on the EU Regulation on the prevention of the use of the financial system for money laundering or terrorist financing are concluded.

In the case of registered shares, the beneficial owner is always derived from the register of shares, so from the viewpoint of money laundering monitoring it is not problematic that crypto-named shares do not have to be recorded in individual entries on intermediate custodian accounts.

In addition, this would ensure that issuers maintain direct contact with shareholders through the share register, which may be important for the further development to the corporate strategy as well as for combating money laundering.

Re letter b

The new § 10(6) sentence 1 AktG clarifies that securitisation must be excluded for the introduction of electronic shares in the articles of association. By excluding securitisation only partially, there may also be a mixed stock (with partly securitised, partly registered shares). According to the new § 10(6) sentence 2 AktG, the decision to issue crypto shares must be expressly made in the articles of association. This is because the new technologies are at least currently not sufficiently familiar to many people and there may be reservations about crypto shares. Therefore, if the articles of association only generally permit entry in an electronic register, it can only mean a central register.

Re subparagraph 2 (Amendment to § 12 AktG)

Re letter a

Due to the changed content of the standard, the heading should also be adjusted.

Re letters b and c

Multi-voting shares, which grant voting rights beyond the share capital, are to be made possible again in German stock corporation law. First of all, the basic prohibition in § 12(2) AktG is to be repealed. At the same time, it is stated that the issue of multi-voting shares is only possible within the limits provided for by law.

Since the Act on Control and Transparency in the Corporate Sector entered into force on 1 May 1998 (KonTraG, BGBl. I 1998 p. 786), multi-voting rights under § 12(2) AktG have been inadmissible. The possibility of issuing multi-voting shares with approval after the 1965 reform of shares, albeit very limited, was lifted. At the same time, the elimination of existing multi-voting rights was required on 1 June 2003, unless the General Meeting had previously decided to on their abolition or continuation (§ 5 of the Introductory Act to the Stock Corporation Act (EGAktG)). The declared aim of the KonTraG was to establish a 'one share – one vote' and to strengthen ownership control in accordance with the expectations of the capital market (see Bundestag document 13/9712, p. 12).

The advantages and drawbacks of multi-voting rights have also been taken into account in the debate on legal policy. First of all, the abolition of multi-voting shares was also called into question for non-listed public limited companies. In that case, there is no risk of adverse effects on the capital market, with the result that reduced requirements should be imposed and companies can be given more freedom to design (see Bayer, expert opinions for the 67th German Lawyers' Day, E 109; Habersack, AG 2009, 1, 10 f; Hüffer/Cook, AktG, 16th Ed. 2022, § 12(8)). Furthermore, with regard to an IPO, 'sensibly designed multi-voting rights' were regarded as an advantage for the acquisition of equity (Bayer/ Hoffmann, AG 2008, R 464, R 466). If the founders were guaranteed a certain degree of power and influence over the business strategy through multi-voting rights, the willingness to acquire equity through the capital market would increase.

Currently, there is an increasing need for multi-voting shares in corporate practice, especially in the field of start-ups and growth companies. The companies needed equity for their growth, but were reluctant to launch an IPO, especially in the case of innovative business models with specific know-how, because the founders and inventors would have to give up influence and control over the strategic direction of the company. Other legal systems, on the other hand, allowed multi-voting rights, over which the founders retain strategic control over the company even after a significant absorption of equity and can lead it with a long-term perspective. Ultimately, there is a competitive and location disadvantage for Germany, which results in growth companies either lacking investment capital and thus innovation and growth opportunities, or choosing a route through foreign legal forms or foreign listings (see DAI, BioNTech foreign listings, CureVac & Co., 2021, p. 10, 38 et seq.; Deutsche Börse Group, Strategies for Sustainable Financing for the Future of Germany, 2021, pp. 39 et seq.). At the same time, investors lost opportunities for investment.

It is therefore necessary to permit the articles of association to allow differentiation of voting rights in the form of multi-voting rights. The issue of preferential shares without voting rights, which is permissible under share law, is often not an alternative even for closed financing rounds. Investors demanded a possibility of influence and shares with voting rights, also with regard to a possible exit after an IPO (Oxera/Kaserer, How can IPOs for start-ups in Germany be facilitated? International comparison and recommendations for action, 2021, p. 22).

Experience from abroad shows that capital markets do not generally reject multi-voting rights and that a general expectation of a correlation between capital input and voting rights can no longer be assumed when securities are offered on the stock exchange (IPO) for the first time (see, for example, Cremers/Lauterbach/Pajuste, ECGI Working Paper No 550/2018, August 2022). Several countries, such as Sweden, can look back on a long tradition of multi-voting shares. In the USA, an increasing number of IPOs (especially start-up and technology companies) with multi-voting shares are observed, without this automatically leading to a lower valuation (Cremers/Lauterbach/Pajuste, op. cit.; Oxera/ Kaserer, op. cit., p. 20 et seq.; Final report of the Technical Expert Stakeholder Group, 'Empowering EU Capital Markets for SMEs', p. 33).

In the regulatory field, too, there is an increasing degree of flexibility in international comparisons. Several countries in the EU, too, have recently eased their market rules or allowed multi-voting shares under company law, others, such as France, Italy and the United Kingdom, are discussing the extended admission of multi-voting rights structures, especially after the IPO, in the context of reform initiatives.

There is also a change at EU level: The European Commission adopted on 7 December 2022 the draft of a 'Listing Act'. The objective of the Listing Act is to make public capital markets more attractive to EU companies and to facilitate SMEs' access to capital. The package includes, inter alia, the proposal for a Directive on structures with multi-voting shares in companies requesting admission of their shares to trade in an SME growth market (COM(2022) 761 final). The background to the proposal is the observation that companies need equity for their growth, but that the founders of SMEs and start-ups in particular refrain from going public out of fear of losing control of the company. Against this background, multi-voting rights are an effective mechanism for retaining company control. In addition, protection mechanisms would have to be provided for minority shareholders and the interests of the company, which the draft directive stipulates in part mandatory and partly optional form. The scope of the draft directive is limited to public limited companies seeking admission to an SME growth market and aims at minimum harmonisation to enable multi-voting shares in this area. The proposal for a directive does not include a limitation to specific company sizes, start-ups or growth companies. In an SME growth market, already (only) according to the definition, at least 50 % of eligible issuers must be SMEs (cf. § 48a BörsG).

German stock exchange law does not prohibit multi-voting rights structures and the admission of shares with multi-voting rights, so multi-voting shares of foreign companies can already be traded on the capital market here.

In order to strengthen innovations and to incentivise capital gains via the capital market, the developments described above as well as the changed needs and expectations should also be reflected in German stock corporation law and multi-voting shares should be admitted under company law, both for public limited companies as well as for SEs (European companies) (Article 10 of Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute of the European Company (SE) (OJ 2001 I 294 p. 1)) and for shares in limited partnerships (KGaA, § 278(3) AktG).

The re-admission of multi-voting shares should be supplemented by specific provisions in § 135a of the AktG-E on investor and minority protection, in particular to ensure the protection of investors, shareholders without voting rights and capital markets (see further detail under subparagraph 9). This is because even if, according to international experience, investors do not fundamentally reject shares with multi-voting rights and multi-voting shares are not generally associated with a lower valuation at the IPO, the disproportionate voting rights weaken the shareholders' rights without multi-voting rights and thus the ownership control. The holders of multi-voting rights have an influence that does not correspond to their capital and risk participation. They therefore bear a relatively lower risk of failure of the company and abuses and conflicts of interest are conceivable. It is therefore

appropriate not to allow multi-voting rights in the design without restriction, but to combine them with legal safeguards.

Re subparagraph 3 (Amendment to § 13 of the AktG)

The new sentence 4 clarifies that no signature, including electronic signature, takes place in the case of electronic equities. The purpose of the signature for embodied documents is to increase security against counterfeiting in respect of securities that are fit for circulation. For this reason, at least in parts of the literature, § 13 AktG is considered inapplicable for global documents or, in the absence of circulation, the need for special protection against counterfeiting is called into doubt. Entries in a central register or, in the case of crypto-assets, in crypto-asset registries held by the blockchain or similar technology are in fact in no way less forgery-proof than a signed document. In particular, pursuant to § 7 eWpG, the registering body shall maintain an electronic securities register in such a way as to ensure the confidentiality, integrity and authenticity of the data, and to take the necessary technical and organisational measures to prevent data loss or unauthorised alteration of data for the entire duration for which the electronic security is registered.

Re subparagraph 4 (Amendment to § 67 of the AktG)

When issuing registered shares, the public limited company must maintain a stock register. In accordance with § 67(1) sentence 1 of the AktG, name, date of birth, postal address and electronic address of the shareholder must be entered. In addition, the number of units or the number of shares and, in the case of nominal value shares, the corresponding amount, the shares attributable to the shareholder must be recorded. However, the obligation to maintain the share register does not mean that the public limited company must automatically be informed of the shareholder's identity. On the contrary, pursuant to § 67(1) sentence 2 AktG, the shareholder is obliged to provide the company with the necessary information pursuant to sentence 1. If he does not do so, he cannot derive rights from his shares pursuant to § 67(2) sentence 1 AktG. For listed companies, this is irrelevant in practice, as the reporting for normal shares is done automatically via the electronic trading system or the custodian of the share (mainly Clearstream Banking AG). In any event, since this option for electronic shares does not exist automatically, it should be regulated by law that in these cases a notification system must be set up by the public limited company. This can only be achieved by cooperating with the registering body of the central register or the crypto-assets repository.

Since in practice the share register is kept electronically by external service providers, the company is obliged to commission the service providers so that the corresponding reports can be made.

Re subparagraph 5 (Amendment to § 96 of the AktG)

This is an editorial correction. In the case of an earlier change, the line break to be re-inserted was accidentally omitted.

Re subparagraph 6 (Amendment to § 123 of the AktG)

The amendment aligns with the definition of the record date in accordance with Article 1(7) of Commission Implementing Regulation (EU) 2018/1212 of 3 September 2018 laying down minimum requirements implementing the provisions of Directive 2007/36/EC of the European Parliament and of the Council as regards shareholder identification, the transmission of information and the facilitation of the exercise of shareholders rights. This does not result in a material change in the time limit. In accordance with § 123(4) sentence 1 AktG in conjunction with § 67c(3) of the Stock Corporation Act and Article 5 and Table 4 of the Implementing Ordinance, the record date must be indicated in order to prove the right to participate in the General Meeting or to exercise the voting rights for bearer shares. Although Table 4 refers to 'Aufzeichnungsdatum' in B.1, it is apparent from the uniform Eng-

lish language version (‘record date’) that this is a translation error and refers to the reference date within the meaning of Article 1(7) of the Implementing Regulation. In order to record the relevant reference date correctly under German law (beginning of the 21st day before the meeting) in accordance with the implementing regulation, he previous day (close of business of the 22nd Day) must be entered in the table. Since the information contained in the books referred to in Article 1(7) of the Implementing Regulation does not change in the legal second between the closing date (24:00) and the beginning of the next day at the registered office of the company, the current legal situation does not contain any legal contradiction. Nevertheless, it entails the risk of misunderstandings and difficulties in practice, which is addressed by the alignment.

Re subparagraph 7 (Amendment to § 129 of the AktG)

The amendment to § 129(1) sentence 2 AktG provides that in the case of multi-voting shares, it is also necessary to indicate the votes assigned to them in the list of participants. The list is intended to facilitate the organisation of the General Meeting. In concrete terms, this means that the quorum can be determined on the basis of the list of participants and, in particular, that voting results can be determined by means of the subtraction procedure. Against this background, the change ensures that the multi-voting rights can be traced via the participant directory.

Re subparagraph 8 (Amendment to § 130 of the AktG)

Following the amendment to § 129(1), second sentence of the AktG, the second sentence of § 130(2), subparagraph 1 of the AktG, which concerns the determination on the resolution of listed companies, is also to be adapted The amendment ensures that the notarial minutes of the outcome of the decision can reproduce the votes cast on the basis of the multi-voting rights.

Re subparagraph 9 (Incorporation of § 135a of the AktG)

§ 135a of the AktG-E is to lay down the legal limits within which multi-voting rights can be provided, as well as the majority requirements for their introduction. The regulation provides for safeguards to be extended for listed companies and companies whose shares are included in over-the-counter trading. In addition, it is intended to make it possible to provide for further requirements for multi-voting shares in the articles of association.

Re paragraph 1

The first sentence clarifies the requirement for statute regulation. Multi-voting shares constitute a class of its own, so that in particular the information provided for in § 23(3)(4) of the AktG must be included in the articles of association. At the same time, it is stipulated that only registered shares may be endowed with multiple voting rights. This takes account, among other things, of the idea that multi-voting rights according to the meaning and purpose of the new regulation should be granted in particular to certain persons whose influence on the orientation and strategy is to be strengthened according to the will of the shareholders. It can be assumed that a restriction on transferability will be routinely applied, binding the transfer of the multi-voting shares to the consent of the company (§ 68(2) AktG). The scheme is also consistent with the restriction provided for in the first sentence of paragraph 2 that the additional voting rights after IPO expire in the event of the transfer of the share (in this case immediately).

The basic approach is that a flexible design of multi-voting rights is to be made possible so that the different needs of the individual companies can be taken into account. For example, no statutory limitation is provided for with regard to the group of persons who may be the holders of the multi-voting rights shares. It is sometimes proposed to restrict multi-voting shares to founders or shareholders who are also members of the Management

Board. However, such a limitation would probably not meet the needs of practical implementation. Thus, it is conceivable that a significant source of ideas, whose shares are to be endowed with multi-voting rights, is only subsequently becoming a shareholder. In this case too, the granting of multi-voting rights should be possible without the need for a new start-up. In addition, the main sources of ideas are not always members of the Management Board, so there should be no legal limitation to owner-managed companies. The opening in paragraph 3 ensures that the articles of association can here determine the appropriate modalities for the respective company.

In the same way, there is also no need to set a fixed voting ratio. At the same time, this makes it possible to provide for shares with different multi-voting rights in the articles of association and thus to create several classes of multi-voting shares, as is often the case abroad (e.g. in the USA).

In order to ensure minority and investor protection, however, the maximum number of votes to which a multi-voting share may entitle compared to a common share is to be laid down. Such a ceiling is also internationally widespread, in some cases limited to listed companies, and in some cases included in the stock exchange regulations. The maximum number in other European countries, for example, is 5:1 in Portugal and 10:1 in Sweden. Current reform plans in Italy also envisage a maximum of 10:1. The UK’s current listing rules include a maximum of 20:1 for the premium segment (currently in discussion following reform proposals by the Financial Conduct Authority (FCA), which essentially proposes a deletion).

Sentence 2 provides that multi-voting shares may grant no more than ten times the voting rights of a common share. The maximum voting ratio of 10:1 ensures that the objectives pursued by enabling multi-voting rights can be achieved, while at the same time the voting rights are not completely disconnected from participation in the business, but that the holders of the multi-voting rights must hold at least a relevant share of the share capital for control. The statutory setting of a ceiling also ensures legal clarity.

Decisions on the introduction of multi-voting rights must take account of the protection of minorities. For this reason, sentence 3 provides that all shareholders concerned must agree to the introduction of multi-voting rights. Ultimately, this usually means a requirement for approval by all shareholders, as both those shareholders whose shares are to be endowed with multiple voting rights and all other shareholders are affected in their voting rights by the introduction of the multi-voting rights. Thus, multi-voting rights cannot be created against the will of an affected shareholder. On the other hand, preference shares without voting rights are not 'affected' by a change to the voting rights relationship. Their preference remains untouched.

If the multi-voting shares are already provided for in the statutes of incorporation, unanimity is required. If, in the run-up to a planned capital increase, the issue of common shares (e.g. as part of an IPO) is to be endowed with additional voting rights by means of amendments to the articles of association, the amendment to the statutes also requires the approval of all affected shareholders. In this respect, it is a special provision which takes precedence over the general rules on majority requirements in § 179(2) and (3) of the AktG. At the same time, it is ruled out that multi-voting rights could be introduced by a simple or qualified majority decision under the statutes. In practice, this also means that multi-voting rights can only be introduced up to the IPO, since the approval of all affected shareholders can hardly be obtained afterwards. However, the need expressed by business for the introduction of multi-voting rights does not relate to the time after the listing, but in advance or in connection with the IPO.

Similarly, the approval of all affected shareholders is required if shares with multi-voting rights are to be issued in the context of a capital increase. It is not possible to issue multi-voting shares within the scope of authorised capital (cf. subparagraph 12).

The elimination of the multi-voting rights before and after IPO is possible by means of an amendment to the articles of association pursuant to § 179 of the Stock Corporation Act with the requirement for a special decision pursuant to paragraph 3 therein.

In addition, the level of protection for minority shareholders with regard to the introduction of multi-voting rights is further increased by § 16 AktG (e.g. under the circumvention regulation in § 71a(2) AktG).

Publicity and transparency of the existence and holders of multi-voting rights are also important for the protection of investors and the capital market. If this is ensured, it can be left to market participants to evaluate the multi-voting rights and to decide on the investment in the company (market control). The current law already contains several rules to ensure transparency: thus, it can be ascertained via an inspection of the articles of association in the commercial register whether there are multiple voting rights. In addition, the total number of votes for multi-voting shares and those of the remaining shares in accordance with § 152(1) sentence 4 AktG must be recorded on the balance sheet. In addition, pursuant to § 289a sentence 1 subparagraph 1 and § 315a sentence 1 subparagraph 1 of the Commercial Code, the class of shares and the associated rights and obligations must be indicated in the (group) position report of public limited companies and partnerships limited by shares, which use an organised market through voting shares issued by them.

Furthermore, there are obligations under limit company law pursuant to §§ 20 f. of the AktG, which also attach to voting rights. In the case of listed companies, the holders of multi-voting rights must also issue a notification of voting rights in accordance with §§ 33 et seq. of the WpHG as soon as a threshold of 3 percent is exceeded. Further transparency will be made through the proposed addition to § 49 WpHG, Article 5(8).

Multi-voting shares are also to be included in the prospectus for the IPO. The registration form for shares shall indicate whether there are more than one class of shares, including a description of the rights, privileges and restrictions bound to each class. In addition, the securities note must contain precise information on the voting rights of different categories of shares.

In practice, start-ups and growth companies are often founded in the legal form of a limited liability company (GmbH). In the partnership agreement to the GmbH, the shareholders may, by way of derogation from § 47(2) of the Act on Limited Liability Companies (GmbHG), agree on multi-voting rights either at the time of incorporation or by subsequent amendment to the partnership agreement. If the GmbH is to be converted into a public limited company at a later date – in particular against the background of a planned IPO – it would not be practical if the company had to be re-established in order to be able to establish multi-voting shares. Continuity is possible here under the current conversion law, without the need for additional changes in this respect. The condition for this is that the change of form decision pursuant to § 194(1)(5) of the Conversion Act (UmwG) with regard to the continuation of existing multi-voting rights provides for a regulation that is compatible with the requirements of § 135a(1) of the AktG-E for multi-voting shares, in particular that the voting ratio of 10:1 is not exceeded. Pursuant to § 241(2) UmwG in conjunction with § 50(2) of the UmwG, the decision requires the consent of any affected shareholders.

Re paragraph 2

Multi-voting rights structures should also be possible after an IPO according to the objective of the proposal. However, paragraph 2 provides for extended protection mechanisms for investor and minority protection, which also go beyond the mandatory safeguards provided for in the European Commission’s draft Directive. Also with regard to the scope of the draft Directive, in addition to the regulated market (§ 3(2) AktG), the extended protection mechanisms also include the outside market under § 48 BörsG (including the SME growth market pursuant to § 48a BörsG).

Sentence 1 provides for an event-related termination of the multi-voting rights after IPO or inclusion in the over-the-counter market, which is linked to the transfer of the multi-voting shares ('transfer-based Sunset Clause'). The background to the regulation is that the previous owners will no longer participate in the development to the company to the extent of the transfer. The purpose of the multi-voting rights is to enable them to control the corporate strategy even after the IPO in the growth phase. Against this background, the concept of transfer is to be understood broadly and includes not only contractual agreements but also all cases of individual or universal succession (such as § 1922 of the Commercial Code). Free tradeability is not restricted by the scheme.

In addition, the second sentence provides that the multi-voting rights for the period of ten years after IPO or inclusion in the over-the-counter market will be limited and then *ipso iure* will expire ('time-based Sunset Clause'). Even if this could be perceived in part by founders who want to secure themselves permanently multi-voting rights as a renewed obstacle to an IPO and a case-by-case consideration could be demanded, investor protection must be particularly taken into account. In the case of a change between the over-the-counter market and the regulated market, the earlier date shall be decisive for the start of the period. On the one hand, a period of ten years gives the founders sufficient time to implement their 'vision' even after the IPO and the associated growth phase. On the other hand, in view of the risks of multi-voting rights mentioned above, the time limit also ensures that holders of multi-voting rights do not have unlimited control, but only have asymmetric control over a company whose shares are traded publicly for a certain period after the IPO (Oxera/Kaserer, op. cit., p. 47, which also advocate a time-limit; for a time limit also the recommendations of the High Level Forum on Capital Markets Union, p. 66).

At the same time, the wording in sentence 2 clarifies that, by way of derogation from the period laid down therein, the statutes may also provide for shorter periods than ten years.

Sentences 3 and 4 are intended to create the possibility of maintaining the multi-voting rights beyond the statutory limitation of ten years. According to sentence 3, the statutes may provide that the period shall be extended once for a further period of up to ten years. This ensures greater flexibility for practice. Shareholders can decide that the multi-voting rights of the holders have proven themselves and that they continue to be necessary for the achievement to the objectives pursued by them or that they are still expected to have positive effects. The limitation to the one-off extension of up to a further ten years ensures that the extension cannot be unlimited indefinitely.

The fourth sentence requires a three-quarters majority of the share capital represented in the resolution for the extension decision. The provision in sentence 5 makes it possible to determine a larger majority of capital in the articles of association. The requirement of a qualified majority of capital ensures, on the one hand, that there is not an excessive hurdle which can hardly be reached after IPO. On the other hand, by focusing on a majority of capital, it is ensured that the holders of the multi-voting rights cannot enforce an extension against the will of the other shareholders solely through their use. In addition, the extension can be decided at the earliest one year before the expiry of the statutory period. This prevents early cementation of the multi-voting rights at a time when their (continuous) effects cannot yet be assessed.

The extension is also only effective if the shareholders of each voting class have agreed in the form of a special resolution which requires the majority of capital under sentence 4 or the higher majority of capital determined in accordance with sentence 5 in the articles of association.

In the event of the termination of multi-voting rights, the total number of voting rights in the affected company is reduced, which leads to a shift in voting weight and may result in an overrun to the control threshold pursuant to § 29(2) of the WpÜG. In such cases, an af-

fected shareholder may be exempted from the obligations under Article 35 of the WpÜG (control acquisition notification, mandatory offer) in accordance with § 37 WpÜG in conjunction with § 9 sentence 1 no. 5 of the WpÜG Offer Regulation. § 9 The first sentence of subparagraph 5 of the WpÜG Offer Regulation expressly contains the exemption ground for the 'reduction of the total number of voting rights in the target company'. This reason for exemption also covers the reduction of the total number of voting rights by the extinction of multi-voting rights.

Re paragraph 3

The articles of association may provide for further restrictions that go beyond the statutory provisions. For example, the potential holders of multi-voting shares may be limited or the validity of the multi-voting rights may be limited with regard to further resolutions. In addition, non-listed companies can also set sunset clauses for the extinction of the multi-voting rights.

Re paragraph 4

The approval of multi-voting rights does not require a fundamental change in the majority requirements within the scope of the General Meeting competences. The AktG already requires a double majority in the event of far-reaching decisions, in which, in addition to the majority of votes, a decision by a capital majority is required. As in the past, multi-voting rights are not taken into account when determining the capital majority. They are therefore not a means of bringing about such resolutions, so that the other shareholders to this extent are already protected. Corresponding protect is also proposed in the European Commission's draft directive of 7 December 2022 on structures with multi-voting shares (recital 11: 'The restriction on the exercise of voting rights may be implemented by requiring that an approval by qualified majority necessitates both a qualified majority of (...) the share capital represented at the general meeting of shareholders.'

Only selective restrictions on the validity of the multi-voting rights are provided in paragraph 4 by ordering, in accordance with the first sentence of paragraph 33b(2) of the WpÜG, that multi-voting rights have only a simple vote weight in individual decisions. This concerns, on the one hand, the appointment to the auditor by the Annual General Meeting pursuant to § 119(1) no. 5 of the AktG. The audit has to inform shareholders and ensure their right to participate in earnings as a key objective. The decision of the shareholders as to which auditors examines the accounts of their company is thus an important element to investor protection. Multi-voting shares should therefore only entitle one vote in this resolution.

In addition, when special auditors are appointed pursuant to § 142(1) of the Stock Corporation Act, the multi-voting rights shares are only given single votes in order to prevent blockage possibilities.

Re subparagraph 10 (Amendment to § 186 of the AktG)

The limit on the simplified exclusion of subscription rights is increased from 10 percent of the share capital to 20 percent. This makes capital increases easier and Germany will become more attractive as a business location, especially for growth companies. The practice has considered the 10-percent threshold for exclusion of subscription rights to be too low for capital increases (DAI, Foreign Listings of BioNTech, CureVac & Co./Recommendations for the policy for more IPOs in Germany, 2021, p. 35; Deutsche Börse AG, Strategies for the sustainable financing of the future of Germany/The performance of our capital market: What we need to do to harness the potential, 2021, p. 59). Especially for growth companies, the 10 % limit is too low to meet the high financing needs.

German stock corporation law provides, in principle, for a subscription right of the shareholders in the case of capital increases, which must be exercised within a two-week period (§ 186(1) sentence 2 AktG). This deadline is determined under European law (Article 72(3), fourth sentence, of Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 on certain aspects of company law, CSF Directive). However, foreign investors frequently insist on immediate commitments for financing (DAI, Foreign Listings of BioNTech, CureVac & Co./Recommendations for the policy for more IPOs in Germany, 2021, p. 36). Growth companies are often dependent on these because banks are reducing risk capital due to increased regulatory requirements (Deutsche Börse AG, strategies for sustainable financing of the future of Germany, 2021, p. 33) and the volume of German venture capitalists remains below international standards. In 2020, only 12 percent of the funding came from Germany for financing rounds of EUR 40 to 100 million (Deutsche Börse AG, p. 17.).

As a result, companies are dependent on the exclusion of rights as a possibility for a rapid capital increase. The current threshold for the simplified exclusion of 10 percent comes from the Act for small public limited companies and the deregulation of the Act on shares of 2 August 1994. In the nearly three decades since this scheme, the financing market for public limited companies has changed significantly. Start-ups and growth companies have become increasingly important. These are often extraordinarily capital-intensive due to the long development times up to product maturity and profitable scaling and thus rely on debt capital (Deutsche Börse AG, p. 12.). The limit of 10 % of the share capital is often no longer sufficient to meet this financing needs of growth companies (DAI p. 35; MüKo-AktG/Schürnbrand/Verse, 5th edition 2021, AktG § 186, paragraph 20).

By the increase to the limit, public limited companies will gain greater flexibility in their financing. The existing protection of the shareholders is maintained. These are still protected against dilution of their shares by the qualified majority requirement, the coupling of the issue amount to the stock exchange price (§ 186(3) sentence 4 of the AktG) and the possibility of repurchasing of shares on the stock exchange (see Bundestag document 12/7848, p. 9.). In the future, the right to cash compensation under § 255(3) to (6) of the Stock Corporation Act will be added to the extent that the issue amount is not only negligibly less than the 'true value' of the new share.

The new limit of 20 percent leads to harmonisation with European law. To this extent, such capital increases already have an exemption from the European prospectus requirement (Article 1(5)(A) of Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market and repealing Directive 2003/71/EC, Prospectus Regulation). French law already provides for the Rights Committee up to 20 % of the share capital (Code de Commerce Article L225-136 No 2).

Re subparagraph 11 (Amendment to § 192 of the AktG)

Conditional capital should be possible for business mergers up to a limit of 60 percent of the share capital. Accordingly, it is also proposed to raise the general quantitative limit from 50 ('half') to 60 percent of the share capital.

The increase in the limits on conditional capital for mergers gives public limited companies greater flexibility and greater scope for mergers with other companies. The current limit has been criticised as an obstacle compared to the more flexible law of the USA.

In addition, the special limit for subscription rights of employees and members of the management is to be increased from 10 percent to 20 percent. By increasing the limit for the grant of subscription rights, companies gain more opportunities when looking for talented employees. Employee shares enable greater identification with the company, a longer-term commitment by employees and the incentive to think entrepreneurially (BeckOGK/

Rieckers, 1.7.2022, AktG § 192, paragraph 52). This leads to significant importance of equity participations for public limited companies (see DAI, p. 33). Especially for start-ups, employee stocks offer an attractive and often necessary option to pay employees and managers competitive compensation compared to established companies without burdening the scarce liquidity (see Startup Association, Faire Mitarbeiterbeteiligung in Startups – mit Unternehmergeist Innovation und Wachstum beschleunigen (Fair employee participation in startups – accelerate innovation and growth with entrepreneurial spirit, 2020, p. 12 et seq.)). It follows that for more than 80 percent of start-up founders, employee shareholdings have a significant impact on the development to their company (Startupverband, p. 19.).

In order for German start-ups to remain competitive in international comparison, it is necessary to raise the ceiling for granting subscription rights. For startups from the USA, the employee share rate is on average 20 percent, while on the European average it is only 10 percent, with a range of 4 percent to 20 percent (https://www.indexventures.com/rewardingtalent/keyfindings). The conditional capital is particularly attractive for employee holdings, because the corresponding shares are already created with the issue. In addition, they may be subject to a number of conditions. This enables a forward-looking and individualised design of employee participations. The upper limit of the increase of 20 percent of the existing share capital at the time of the decision is based on practical legal experience and the evident need from legal practice.

In the case of conditional capital increases for the servicing of exchange or subscription rights on the basis of convertible bonds, a special limit of half of the share capital is maintained in accordance with the previous general limit.

The changes do not affect shareholders who already held shares prior to the capital increase. These are further protected by the fact that they must be notified in advance of the subscription rights (§ 193(2) No 2 AktG) and, in the case of § 192(2) no. 3 AktG, the distribution of subscription rights among members of the management and employees, success objectives, acquisition and exercise periods (§ 193(2) no. 4 AktG). On the basis of this comprehensive information, a three-quarters majority of the represented share capital must agree to the increase (§ 193(1) sentence 1 AktG). In addition, the improved growth opportunities and associated increases in value also benefit the existing shareholders. In view of the above, the economic interest of public limited companies in increasing their borders outweighs the interests of the existing shareholders, which are only marginally affected. The need of start-ups for easier participation of members of the management is thus sufficiently taken into account. An extension of the possibilities of authorised capital is therefore not appropriate from viewpoint of protecting the fundamental decision-making power of the General Meeting.

Re subparagraph 12 (Amendment to § 202 of the AktG)

The decision on the issue of multi-voting shares should be up to the General Meeting. The Management Board cannot therefore be authorised to issue multi-voting shares by means of the approved capital.

Re subparagraph 13 (Amendment to § 255 of the AktG)

Re letter a

The wording is unchanged in accordance with the previous provisions of § 255(1) of the Stock Corporation Act and is only supplemented by the reservation in the following paragraphs 4 to 7. The regulatory content shall remain unchanged with respect to the possibility of challenge in accordance with paragraph 1. Only within the scope of paragraphs 4 to 7 shall the right of appeal be replaced by a reference to the appraisal proceedings.

Re letter b

Due to the new provisions in § 255(4) to (7) of the AktG, a challenge based on the fact that the issue amount resulting from the increase decision or the minimum amount below which the new shares are not to be issued is unreasonably low is only possible if the subscription right is excluded in accordance with § 186(3) sentence 4.

Re letter c

This new regulation removes disputes concerning the adequacy of the amount of the issue in the context of a capital increase with a non-simplified exclusion of subscription rights from the annulment procedure and assigned to the appraisal proceedings. The shareholders are to receive compensation from the company in accordance with § 243(3) sentence 1 of the AktG-E by a compensation payment in cash or by shares, which is referred to in § 243(6) of the AktG-E.

The background is the desire from practice to be able to register capital increases as soon as possible after the decision has been taken and to make them effective. Such acceleration seems particularly desirable in cases where the subscription right is excluded, insofar as it is not a simplified exclusion of rights. In the case of the simplified exclusion of subscription rights pursuant to § 186(3)(4) AktG, it is, on the other hand, intended to continue with the well-established practice. This decision should continue to be open to challenge in accordance with § 255(1). In many cases, a decision in the release procedure pursuant to § 246a of the Stock Corporation Act (AktG) will already speed up the procedure because these will not be difficult evaluation questions.

Foreign investors often expect immediate commitments in financing rounds and their early implementation (DAI, p. 36). Growth companies are often dependent on these because banks are reducing risk capital due to increased regulatory requirements (Deutsche Börse AG, p. 33) and the volume of German venture capitalists is lagging behind in international comparison. In 2020, only 12 % of the funding came from Germany for financing rounds of EUR 40 to 100 million (Deutsche Börse AG, p. 17.).

A rapid capital increase is often not possible. The challenge envisaged up to now may mean that the capital increase decision cannot be registered for a longer period, as there is an block on the effectiveness of the decision on the capital increase for the duration of the judicial proceedings. This will result in blocking of registers for entry in the commercial register (§§ 21(1), 381 of the Act on the Procedure in Family Matters and in the Matters of Voluntary Jurisdiction). A judicial decision within a reasonable period of time is usually not to be expected. Nor would the release procedure (§ 246a of the AktG) remedy this problem. A decision in the release procedure may also take a few months (§ 246a (3) sentence 6 of the AktG). Its outcome is also uncertain due to the hurdle of § 246a(2) of the AktG. Furthermore, because of its nature as an urgent procedure, the release procedure is not suitable for taking a decision on the complicated evaluation questions (cf. MüKoAktG/J. Koch, 5. Ed. 2021, AktG § 255, recital 3).

The assignment to the right to seek annulment, which was previously also intended for the issue price, comes unchanged from the Stock Corporation Act in its version of 1965. At that time, the experience of the last decades about the potential burdens on societies due to the inhibition of the action for annulment had not yet been available. Similar arguments from 2005 and 2008 regarding the extensive use of the instrument of action for annulment can be used here (cf. the Act on Corporate Integrity and Modernisation of the Action for Annulment, Bundestag document 15/5092 p. 10 et seq. and the Shareholders Directive Implementation Act, Bundestag document 16/11642 S, 20f.). Nevertheless, this amendment is based on a new idea. It is not about avoiding the abuse of actions for annulment, but only about speeding up the registration of capital increase decisions. This does not deprive the shareholders concerned of their right to adequate payment in any way. Only

the review procedure will be amended, in such a way that it can only be carried out after the capital increase decision takes effect.

It should be emphasised that, in the event of an inadequacy of the issue amount, the shareholder's legitimate interest is to increase that amount of expenditure and not to eliminate the capital increase in itself. The legal consequence of the action for annulment of the invalidity of the capital increase as a whole (§ 248(1) of the AktG), goes far beyond this interest. An increase in the issue amount is also possible without major problems even after the capital increase, so that an inhibition of the effectiveness of the decision is not absolutely necessary.

For disputes over the amount of the expenditure, the appraisal procedure is the solution respecting the interests involved. This also corresponds to the prevailing view in the literature (MüKoAktG/J. Koch, 5. Ed. 2021, AktG § 255, recital 3, as amended). It takes into account the interests of all parties to an appropriate extent. The interest of the company and that of the investor in a rapid capital increase is taken into account by the fact that the increase is initially effective even in the event of a dispute. There is no risk of depriving the rights of the parties involved. The existing shareholders are protected from dilution, since they can have the expenditure amount reviewed and, if necessary, enforce a cash compensation to be borne by the new shareholder.

The new regulation harmonises the legal situation under capital company law, whereby certain disputes relating to the amount of payment obligations arising from company-law structural measures are subject to the ruling procedure. The unification carried out by the Act on the Proceedings of Company Law and the Second Act amending the Conversion Act will continue. The new regulation does not apply to the decision of the Management Board pursuant to § 204(1) of the AktG, as this is still not subject to challenge due to the lack of a resolution of the General Meeting.

The new paragraph 4 sentence 1 provides that the challenge to the capital increase decision can no longer be based on § 243(2) of the AktG. Similarly, the challenge is excluded if it is to be established that the value of the deposit attributable to a share is unreasonably low. However, this shall not apply in each case if the subscription right of the shareholders is excluded in whole or in part in a manner other than pursuant to § 186(3) sentence 4. Sentence 2 now provides that each shareholder may demand compensation from the company if the value of the contribution is unreasonably low and the subscription rights of the shareholders have been excluded in whole or in part. This compensation must be made by way of a cash compensation, unless shares are granted in accordance with Sections 255a, 255b of the Stock Corporation Act. The third sentence provides that the company may, when granting the shares, request an exemption from the right to compensation under sentence 2 or, if the latter has reserved the right to compensation at the time the shares are granted, reimbursement to the compensation under the second sentence. This also includes the further damages referred to in paragraph 6, second sentence. The company may make this additional payment only if it has provided for corresponding funds in the profit carry-forward or in the reserve, which can also be paid to the shareholders. The fact that society must, in principle, create these conditions is then apparent from the fifth sentence. The loss of assets must be offset by a profit carry-forward or by reserves that may be used to make payments to shareholders.

Paragraph 5 regulates the value determination for listed companies. In accordance with the first sentence, in the interest of process economy, the principle is to apply that the value of the shares granted must correspond to their stock market price. Sentence 4 provides, as a reference to the legal consequences, that, in accordance with Paragraph 5 of the WpÜG Offer Regulation, the average price over a reference period of three months before the decision on the issue of the new shares must be used. This requirement applies even if the shares of the public limited company are listed on an exchange abroad. Since the Stock Corporation Act refers to the WpÜG Offer Regulation only for the manner

in which the stock exchange price is determined and also does not establish any supervisory competences, it depends solely on the scope of the Stock Corporation Act, not that of the WpÜG Offer Regulation. This excludes the objection that the 'true value' of the company is not reflected in the exchange price for the sector of listed public limited companies, subject to typified cases of incorrect market price formation pursuant to sentence 3. The market price determined is not solely decisive if there are cases in which a continuous and functioning price mechanism cannot already be assumed under stock exchange law. In this way, market manipulation is to be prevented. In cases in which the stock market price alone is decisive, sentence 2 further provides that the claim pursuant to sub § (4) sentence 1 shall not apply if the issue amount does not significantly fall below the stock market price. An insignificant underrun does not give rise to the right to review the amount of expenditure in the first place. The principles developed under § 186(3)(4) AktG may be used for the question of when there is an insignificant undercutting. In cases of an insignificant difference in value, it is instead possible for the shareholders concerned to buy the shares that are in their view undervalued without creating a 'factual subscription right obligation'. Since a capital increase, in particular those in connection with transactions important to the company, will only be practicable if the issue amount can be lower than the current stock market price, a comparison must be made between the calculation under sentence 4 and the stock market price at the cut-off date, the expiry of the day preceding the decision on the issue of the new shares. The lower value is the lower limit for the expenditure amount.

Paragraph 6 grants interest on the compensation. This arises at the end of the day on which the implementation of the capital increase took place and is set at 5 percentage points per year above the respective base interest rate in accordance with § 247 of the Civil Code. Furthermore, sentence 2 clarifies that the assertion of further damages is not excluded.

Finally, paragraph 7 declares that the appraisal procedure for determining the compensatory payment is applicable. The court shall decide on application in accordance with the provisions of the Act on Appraisal Proceedings.

Re subparagraph 14

Re § 255a (Provision of additional shares)

§ 255a AktG-E is an addition to the draft regulation from the draft Act. The inclusion of the possibility of compensation by shares is intended to take account of the criticism that the cash compensation provided for so far was not considered the appropriate safeguard mechanism. It was considered problematic, in particular, in cases where the transfer of undertakings or shares in the company is intended to be made as a contribution in kind which is economically similar to a merger. In both cases, the external shareholders remain in the combined entity and also participate in the economic benefits of the merger. It is therefore appropriate for the receiving company to compensate for an unreasonably low deposit value in relation to the issue value of the shares as in the case of the merger by additional shares to be created by it.

Consequently, a corresponding compensation in shares is introduced in accordance with paragraph 72a of the UmwG. If the value of the contribution to a share of a capital increase pursuant to § 255(4) of the Stock Corporation Act is not appropriate, shareholders may demand compensation in cash. These potential co-payment claims lead to the risk of an uncertain amount of liquidity outflow for the public limited company. For new investors, the third sentence of § 255(4) presents the risk that they will have to make further payments to the company beyond their calculation if it subsequently turns out that the deposit is unreasonably low. A subsequent withdrawal from the capital increase is not possible. Pursuant to § 255a of the Stock Corporation Act, it is therefore intended to allow the possibility of offsetting a dilution in the event of an unreasonably low deposit by granting addi-

tional shares instead of cash compensation. In this way, the risk of an uncertain liquidity burden may be limited in the event that, according to the findings of the court responsible for the appraisal proceedings, the risk of an uncertain liquidity burden may be limited. At the same time, the interests of shareholders are taken into account: The eligible shareholders are provided by the granting of additional shares as if the value of the contribution in the capital increase had been appropriate. Shareholders whose deposit was unreasonably low can be protected from additional payments. The company should be able to fulfil the right to grant additional shares, in particular by transferring its own shares or by issuing new shares by way of a capital increase against contribution in kind (cf. explanatory note to § 255b).

§ 10a of the Act on Appraisal Proceedings regulates the procedural enforcement to the right to grant additional shares and the benefits to be granted on the basis of the compensation provisions.

Re paragraph 1

The first sentence of paragraph 1 establishes the possibility of granting additional shares instead of a cash compensation payment (§ 255(4) AktG). According to the first sentence of paragraph 1, this must already be specified in the capital increase decision. The decision cannot be left to the Management Board. According to the decision under sentence 1, the shareholder's claim consists exclusively in the granting of additional shares; cash payment can only be demanded in the cases referred to in paragraph 3. Conversely, the company may no longer replace the obligation to grant additional shares with compensation by means of cash payment.

The second sentence of paragraph 1 makes it clear by reference to § 72a of the UmwG that subsequent mergers, divisions and changes of form do not result in the termination of the right to grant additional shares, provided that the form of the target right is a public limited company or shares of a limited partnership. The obligation to grant additional shares is passed on as a liability in (partial) overall succession to the target legal entity, and in the event of change of form it remains assigned to the new legal form of the company The shareholder's claim is now for the granting of additional shares in the target legal entity. The third sentence of paragraph 1 is intended to prevent the company's obligation to grant additional shares from being unable to be fulfilled because of a subsequent structural measure.

Re paragraph 2

Paragraph 2 contains a regulation for the event that, after the registration of the capital increase, the company makes a further capital increase in which the eligible shareholders were not sufficiently involved due to an unreasonable value of the contribution. Shareholders shall be compensated for the disadvantage arising from the fact that they were granted new shares to a lesser extent as a result of an inappropriate shareholding in the company's share capital, or that they had acquired subscription rights to a lesser extent than would have been the case if the contribution had been appropriately valued in the context of the first capital increase and, consequently, a reasonable shareholding in the share capital. Conversely, capital reductions carried out after registration of the capital increase without capital repayment shall be taken into account.

The first sentence of paragraph 2 provides that new shares which were not granted to eligible shareholders in the context of a subsequent capital increase from company funds due to the unreasonably low contribution and a consequently unreasonable shareholding in the share capital are to be granted retrospectively in accordance with § 212 of the Stock Corporation Act. Such new shares are also covered by the right to grant additional shares in accordance with paragraph 1. The new shares may in turn be granted by transfer of own shares or by the creation of new shares by means of a capital increase against con-

tribution in kind (cf. explanatory note to § 255b UmwG-E). In accordance with paragraph 2, sentence 1, the number of additional shares to be granted in accordance with paragraph 1 shall be reduced in the case of a subsequent capital reduction without repayment. The number of shares to be granted pursuant to paragraph 1 shall be reduced pro rata. The share corresponds to the ratio of the amount of the capital reduction to the share capital existing before the capital reduction. The quantitative changes resulting from a subsequent capital increase from company funds or subsequent capital reductions to the claim referred to in paragraph 1 shall be taken into account by the court dealing with the decision in the appraisal proceedings (see § 10a(1)(1) of the Act on Appraisal Proceedings).

The second sentence of paragraph 2 provides that subscription rights which do not granted to them in the context of a capital increase on the basis of deposits (§ 186 AktG) due to the inappropriate value of the contribution are to be granted retrospectively to the eligible shareholders. If the subscription right conferred on the eligible shareholders falls short of what would have been granted to them on the basis of an appropriate contribution from the outset, they shall be granted a subscription right equal to the difference. The amount of the subscription right to be granted must be determined by the court in its decision (cf. § 10a(1)(2) of the Act on Appraisal Proceedings). The third sentence of paragraph 2 provides for a substantive limitation period for the claim of the subscription right to be retrospectively granted. The claim must be invoked to the company in compliance with the deadline. The shareholder claiming his subscription right shall be transferred shares in a corresponding number or with a corresponding nominal amount. In return, he must make the contribution which would have been made if he had claimed the subscription right in the context of the subsequent capital increase. The company may fulfil the claim under paragraph 2, sentence 2, by transferring its own shares or creating new shares by means of a separate capital increase (cf. § 255b(5) UmwG).

Re paragraph 3

Paragraph 3 conclusively determines in which cases compensation shall be granted to eligible shareholders by cash payment instead of additional shares. If compensation is to be granted by means of cash, the court shall determine its amount (cf. § 10a(1)(3) of the Act on Appraisal Proceedings). The determination of the amount of the additional cash payment shall be based on the appropriate compensation from the outset. The provision thus corresponds to the procedure to be applied in the context of § 255(5) AktG:

Re subparagraph 1

In accordance with paragraph 3(1), cash payment shall be granted in order to compensate for fractional amounts.

Re subparagraph 2

In accordance with paragraph 3(2), compensation shall be granted in cash if the granting of additional shares has become impossible (§ 275 BGB). The provision shall be read together with the third sentence of paragraph 1, which expressly determines cases in which, despite subsequent conversion, there is no case of impossibility. Paragraph 3(2) is an exception, to be applied restrictively, to the principle that according to the declaration pursuant to paragraph 1 sentence 1 and sentence 2, company and shareholders are bound by the decision to grant additional shares instead of an additional cash payment. In particular, impossibility is to be assumed if the public limited company has in the meantime acquired a legal form in which the shareholding does not consist of shares or limited partnership shares by way of a change of form. This is the case, for example, in the case of a change of form into a limited liability company or in the case of the merger or division into an acquiring limited liability company. There may also be impossibility in the case of a cross-border conversion, if the law of the target legal entity does not allow the granting of additional shares. In the context of a split or divestiture, the granting of additional shares

may also become partially impossible if some of the acquiring or new entities cannot grant additional shares in accordance with their legal form.

Re paragraph 4

Paragraph 4 contains a right to grant a monetary compensation instead of additional shares in cases where the entitled shareholder has withdrawn from the company after the capital increase has become effective in the event of an interim structurally altering measure against severance payment. In contrast to the entitlement to additional cash payment referred to in paragraph 3, the right to compensation in cash shall not be directed to an initial cash settlement taking into account a deposit appropriate from the outset, but to the severance payment lost due to an unreasonable low deposit amount. Cases of resignation on the occasion of a subsequent structural change measure include, for example, the transfer of the shares in the event of a downstream conversion (e.g. pursuant to §§ 29 to 34, § 62(5) or §§ 207 to 212 of the UmwG). The same applies to the resignation against severance payments in the event of structural measures regulated in the Stock Corporation Act (e.g. § 305 AktG, §§ 320 to 320b AktG, §§ 327a to f AktG) or outside the Stock Corporation Act (e.g. § 39 BörsG). The decisive factor is that on the occasion of the structural measure the shareholder has surrendered all shareholdings (e.g. § 31 UmwG or § 34 UmwG) or lost them (e.g. § 327a AktG) and that the surrender or loss was based on a statutory severance offer or a severance payment obligation of the company. If the eligible shareholder is no longer a shareholder in the company when deciding on the right to grant additional shares pursuant to paragraph 1, the granting of additional shares is not appropriate, since either the shareholder has demonstrated an intention to leave by accepting the severance offer or the main shareholder by implementing the measure has demonstrated its majority power (e.g. in cases of § 327a of the Stock Corporation Act). The claim is now directed to compensation in cash. The amount of the compensation is determined by the amount by which the severance payment would have been increased on the basis of a contribution appropriate from the outset. If the shareholder does not sell his shares on the basis of a structural measure, the claim shall continue to be directed to the granting of additional shares. Any disadvantages may be taken into account as uncompensated damage (cf. paragraph 5 in conjunction with § 255(6) sentence 2).

Re paragraph 5

Paragraph 5 contains a right of shareholders to compensation in cash to compensate for disadvantages in the context of interim profit distributions. If the share of the profit allocated to eligible shareholders in the context of distributions of profits falls short of what they would have received on the basis of a contribution appropriate from the outset, they shall be compensated in the amount of the difference. The same applies in the event that, in the event of the interim conclusion of a control or profit transfer agreement, the entitled shareholders are entitled to a right to adequate compensation.

Re paragraph 6

Paragraph 6 refers to § 255(5) to (7) for the procedure for determining the granting of additional shares or a cash payment. With regard to the compensation referred to in paragraphs 3 and 4, sentence 2 determines a separate due date.

Re paragraph 7

Paragraph 7, first sentence, is for clarification. Sentence 2 provides that the company's right to an exemption from shareholders who have provided an unreasonably low contribution does not exist to the extent that shares are granted to the other shareholders instead of a cash compensation amount. In this case, there is no outflow of assets or liquidity of the company. The share of the remaining shareholders will not be diluted. On the contrary, the grant of new shares only reduces the relative share of shareholders who have made an unreasonably low contribution to an amount they would have received if

they were properly valued. Creditors are not affected by this, as the company does not drain any assets. General capital-raising rules remain unaffected by the capital increase, so that there is a shareholder obligation to make additional payments if the value of the contribution was below the nominal amount. The wording 'to the extent' makes it clear that an exemption right is inapplicable only in the amount of the value of the shares granted (§ 255(5)). Beyond that, the exemption right remains. Shareholders who wish to make a contribution, which may later be considered to be too low, can thus already largely ensure in the capital increase decision (cf. paragraph 1 sentence 1) that an exemption decision does not apply later or only in a small amount. Moreover, it is appropriate that they retain the risk in the event of too low deposits, including any resulting damages (cf. § 255(6) sentence 2).

Re § 255b (Capital increase to grant additional shares)

This provision is based on § 72b of the UmwG. Pursuant to § 255a of the Stock Corporation Act, shareholders and the company are given the opportunity to grant additional shares instead of a cash payment. The obligation to grant additional shares may be fulfilled by transfer of own shares, provided that the company holds them or acquires them in accordance with § 71 AktG. § 255b(1) to (4) AktG is intended to give companies the possibility to create the additional shares to be granted without liquidity outflow by way of a (further) capital increase in kind. In this way, the purpose of § 255a of the Stock Corporation Act to protect the company and the shareholders whose contribution is unreasonably low (§ 255(4) sentence 2) from an uncertain amount of liquidity burden can be fulfilled. The further capital increase to grant additional shares is a capital increase against contributions in kind. § 255b(1) to (4) AktG lays down special provisions in the event that the shareholder's right to grant additional shares is brought as a contribution in kind. The additional shares may be granted by way of an increase in capital in accordance with §§ 182 to 191 of the Stock Corporation Act on the basis of the judicial decision or on the basis of a claim established by the court settlement. Similarly, however, capital authorised in the course of the appeal proceedings may be created in advance of the capital increase or after the capital increase becomes effective and, after the decision has become legal, can be used by declaration of the Management Board.

Paragraph 5 contains a special provision for capital increases which are carried out in order to grant additional shares of subscription rights exercised in accordance with § 255a(2) sentence 3.

Insofar as § 255b does not contain any special provisions, the capital increase provisions of the Stock Corporation Act shall apply. In particular, the granting of additional shares must be carried out by means of a capital increase, taking into account the capital accumulation requirements under company law. The value of the contribution in kind in order to acquire the right to additional shares must reach the amount by which the share capital is increased. In order to ensure this, in particular pursuant to § 183(3) AktG, an examination of the value of the contribution to be brought is in principle required. The judicial decision in the appraisal proceedings determines the number of shares to be granted or the amount of the nominal value of the shares to be granted.

Re paragraph 1

In accordance with the first sentence of paragraph 1, the additional shares to be granted may be created by an increase in capital against contribution in kind.

The object of the contribution in kind is, in accordance with the first clause of the second sentence of paragraph 1, the right of the eligible shareholders to be granted additional shares established by the court or by court settlement. The claim is filed by assignment to the company. The second clause of the second sentence of paragraph 1 shall take account of the fact that the assignment to the claim between creditors and debtors in one

person would result in the termination of the claim by cancelling out. The second clause of the second sentence of paragraph 1 shall ensure that the eligible shareholders do not lose their claim before their additional membership rights have arisen. These arise upon registration of the implementation of the capital increase (paragraph 1 sentence 2 second clause). The assignment to the claim to the company thus exempts the company from a liability on condition of registration of the implementation of the capital increase.

Paragraph 1, third sentence, provides that a right to the grant of additional shares, which has been established by a court decision, can only be lodged when it has entered into force. This is intended to prevent the granting of additional shares from becoming a fait accompli while the existence of the claim according to the basis and amount has not yet been definitively established.

Re paragraph 2

Paragraph 2, first sentence, is a special provision in relation to § 183(1) sentence 1 of the AktG, and § 205(2) sentence 1 of the AktG on the contents to be fixed in the capital increase decision: The determinations required by these provisions, the subject matter of the contribution in kind, the person from whom the company acquires the object and the nominal amount, in the case of no-par value shares, the number of shares to be granted at the time of the contribution in kind, arise in the cases referred to in § 255b of the Stock Corporation Act from the court decision or court settlement. The determination of the deposit item referred to in paragraph 2(1) and the information referred to in paragraph 2(2) shall be the subject of the capital increase decision. If the capital increase takes place through the use of authorised capital, the determinations in accordance with paragraph 2 sentence 1 shall be made by the Management Board.

Paragraph 2, sentence 2 determines that §§ 182(4), 186, 187 and 203(3) AktG are inapplicable. The principle of subsidiarity of the capital increase vis-à-vis the fulfilment to outstanding contributions from previous capital increases (§ 182(4) AktG, § 203(3) AktG) does not apply to the granting of additional shares in the context of the capital increase, as this serves not to raise capital, but to ensure the appropriate participation of previously disadvantaged shareholders. §§ 186 and 187 AktG also do not apply. The additional shares are exclusively reserved for the shareholders who are not yet adequately involved. Subscription rights of ineligible shareholders therefore do not apply.

Re paragraph 3

Paragraph 3 contains provisions on the legal implementation of the deposit and the subscription and acquisition of the shares.

As with the capital increase pursuant to § 72b of the UmwG, the company shall appoint a trustee to implement a capital increase in order to grant additional shares. By law, the trustee is assigned the power to receive shares and cash additional payments and compensation, as well as other powers of action, in order to ensure the practicability of carrying out the capital increase. Otherwise, acts of cooperation by each eligible shareholder would be necessary, which, in the case of a large number of eligible shareholders, could prevent the implementation of the capital increase or, in any case, make it considerably more difficult. The trustee is authorised, in accordance with the second sentence of paragraph 3, to assign to the company, on his own behalf, the claims for the grant of additional shares established or granted by court settlement (subparagraph 1), to subscribe to the additional shares to be granted (subparagraph 2), to receive the additional shares, additional cash contributions and compensations in cash (subparagraph 3) and to make all other declarations necessary to carry out the capital increase and which would normally be made by the depositary and subscriber (subparagraph 4). He shall subsequently transfer the items received in accordance with subparagraph 3 to the eligible shareholders. The trustee does not become a shareholder or owner by virtue of his receiving the authority.

By registering the implementation of the capital increase (§ 189 of the AktG), the shares arise in the person of the eligible shareholders and not in the person of the trustee.

In accordance with the third sentence of paragraph 3, the provision of § 35(3) of the AktG shall apply mutatis mutandis to the claims for expenses and compensation to be fixed by the register court responsible for the registration of the capital increase.

Re paragraph 4

In accordance with paragraph 4, the application shall be accompanied by a final judicial decision or a court settlement in the original or a publicly certified copy. In this way, the Registry Court may examine whether the claims underpinning the capital increase actually exist for the grant of additional shares. Pursuant to the second sentence of paragraph 4, § 188(3) subparagraph 2 of the AktG does not apply, since the right to the grant of additional shares, which is the subject of the contribution in kind, is not based on any contractual relationship between the entitled shareholders and the company beyond the judicial decision or the court settlement.

Re paragraph 5

Paragraph 5 contains a special provision for the event of a capital increase for the creation of shares due to lost subscription rights pursuant to § 255a(2) sentence 2 and 3 of the AktG. In this respect, it is a capital increase to be separated from the capital increase pursuant to § 255b(1) sentence 1 of the AktG, which is based on a separate capital increase decision. The capital increase for the creation of shares due to subsequent granting of subscription rights takes place in accordance with the provisions of the AktG. Since the eligible shareholder is required to make a contribution in accordance with the general provisions of this capital increase, the specific provisions of paragraphs 1 to 4 shall not apply in that regard. Paragraph 5 only excludes § 182(4) and §§ 186, 187 and 203(3) of the AktG from application. It is thus clarified that the non-eligible shareholders as well as the eligible shareholders who have not exercised their subscription rights pursuant to § 255a(2) sentence 3 of the AktG do not have a subscription right.

Re paragraph 6

Paragraph 6 clarifies that the challenge to the further capital increase is also not based on § 243(2) or on the fact that the value of the contribution attributable to a share is unreasonably low.

Re Article 14 (Amendment to the Introductory Act to the Stock Corporation Act)

Re subparagraph 1

Re letter a

The previous transitional arrangement on multi-voting rights in § 5 EGAktG under the KonTraG is to be adapted as follows:

the provisions in § 5(1) and (2) of the EGAktG on the abolition of multi-voting rights as of 1 June 2003 and on their simplified disposal may no longer apply. However, since it cannot be ruled out that there are still pending proceedings aimed at compensation for abolition or elimination of multi-voting rights, the provisions previously contained in § 5(3) to (6) of the EGAktG should to this extent continue to apply (§ 5(1) EGAktG-E).

Furthermore, for reasons of the protection of existing and legitimate expectations, pursuant to § 5(2) of the EGAktG-E multi-voting shares, the continuation of which was decided by a company pursuant to § 5(1) sentence 1 of the EGAktG up to and including 1 June 2003, shall not subsequently be subject to the newly envisaged restrictions pursuant

to § 135a(1) sentences 1 and 2 and (2) of the AktG. It is different if a listing of these companies take place after the entry into force of this Act. As already explained in § 135a AktG-E, from that date there is an increased need for protection of investors and the market, so that it is justified, from that date, to determine the validity of the maximum number of voting rights as well as the arrangements for extinction by time and at the time of transfer.

The transitional provision on maximum voting rights is now enshrined in § 5(3) of the EGAktG.

Re letter b

This is a consequential amendment to letter a.

Re subparagraph 2

The regulation ensures that §§ 255 to 255 b AktG-E are only applicable to General Meetings which are convened from the date of entry into force of this Act, so that the new regulations relate solely to capital increase decisions taken in such meetings with exclusion of subscription rights.

Re Article 15 (Amendment to the Securities Deposit Act)

Re subparagraph 1 (Amendment to § 1 of the Securities Deposit Act)

The amendment aims – in order to further strengthen Germany's financial centre in an international comparison – to open the Securities Deposit Act law (DepotG) to electronic securities issued under foreign law, provided that these are acceptable. For these securities, the provisions of the DepotG on collective custody and collective components shall apply mutatis mutandis via the new § 9c of the DepotG. As a result, acceptable electronic securities issued under foreign law are treated as properties for the purposes of the DepotG. Whether this pragmatic solution and, in general, the treatment to securities as things makes lasting sense, will be examined in the context of the comprehensive reform of German securities law announced in the government's explanatory memorandum to the Act on the introduction of electronic securities. This reform would also review the use of the terms 'owner' and 'beneficiary' which is currently not congruent in eWpG and DepotG. For example, the 'owner' within the meaning of § 6(2) sentence 3 of the DepotG is, in relation to the rights and obligations under the eWpG a 'legitimate person' within the meaning of the eWpG.

Re subparagraph 2 (Amendment to § 9b of the DepotG)

These are consequential changes to the introduction of electronic equities.

Re subparagraph 3 (§ 9c of the DepotG – new –)

In order to be able to integrate foreign electronic securities into domestic trading, a statutory order is required, which – as is provided, for example, in § 6(2) sentences 1 and 2 of the Federal Debt Act for non-embodied collective debt book claims – makes the rules on the collection of securities applicable.

Paragraph 2 excludes the right to the delivery of effective items which cannot be guaranteed in the case of electronic securities of foreign origin.

Re subparagraph 4 (Amendment to § 24 of the DepotG)

This is an editorial amendment to align with the Act transposing Directive (EU) 2019/2034 on the prudential supervision of investment firms.

Re Article 16 (Amendment to the Electronic Securities Act)

Re subparagraph 1 (Amendment to § 1 of the eWpG)

In accordance with the opening for electronic shares by the envisaged addition of § 10 of the Stock Corporation Act (AktG) (see justification there), the scope of application of the Electronic Securities Act (eWpG) is extended to registered shares and central register holding shares.

Re subparagraph 2 (Amendment to § 5 of the eWpG)

The new paragraph 5 clarifies that the articles of association of the public limited company shall not be laid down in the case of electronic shares. The articles of association are available for everyone from the commercial register. In the case of shares, there are usually no accompanying issuance conditions, so § 5 of the eWpG is not applicable in these cases. However, it is also not excluded that there are emission conditions in addition to the statutes, which would then have to be laid down. If no emission conditions are laid down, no reference can be made to them within the meaning of § 4(4) of the eWpG or their deletion (§ 4(9), § 14(1) and (2), § 18(1) and (2) of the eWpG).

Re subparagraph 3 (Amendment to § 6 of the eWpG)

The additions in paragraphs 1 to 3 are each consequential changes to the introduction of electronic shares.

The newly envisaged paragraph 5 of § 6 eWpG clarifies in sentences 1 and 2 that in the case of electronic shares there must also be the basis for the exclusion of securitisation in the articles of association pursuant to § 10(5) of the AktG; it may therefore be necessary, if necessary, to amend the statutes of the General Meeting in order to be able to make use of the possibilities of § 6 of the WpG. The articles of association may only partially exclude the securitisation, so that there can be a mixed stock (with partly securitised, partly registered shares).

Re subparagraph 4 (Amendment to § 8 of the eWpG)

Re letter a

The addition takes into account that no-par value shares have no nominal amount pursuant to § 8(3) sentence 1 of the AktG.

Re letter b

It corresponds to a need in practice that the conversion of an individual entry into a collective entry in the emission conditions or the articles of association can be excluded. This is because the conversion can be very complex, especially if there are only individual entries in the securities register concerned.

Re subparagraph 5 (Amendment to § 9 of the eWpG)

The addition takes into account that no-par value shares have no nominal amount pursuant to § 8(3) sentence 1 of the AktG.

Re subparagraph 6 (Amendment to § 13 of the eWpG)

Due to the introduction of electronic shares, § 13 of the eWpG, which regulates the required register details in central registers, is to be supplemented. The register is intended to show at a glance all the features of the security that are essential for legal transactions;

in the case of electronic shares, further information is required in addition to the information already contained in § 13 of the eWpG.

Re § 13(1)(8)(a) of the eWpG: Central register shares may be issued as registered shares or bearer shares; it must therefore be stated in the central register which type of shares is referred to.

Re § 13(1)(8)(b) of the eWpG: Pursuant to § 10(2) sentence 1 of the AktG, registered shares may also be issued before the full performance of the issue amount. In accordance with the second sentence of § 10(2) of the AktG, the amount of the partial payment shall then be stated in the shares. Transferred to electronic shares, this means that such an amount of partial performance must be indicated in the securities register.

Re § 13(1)(8)(c) of the eWpG: It is necessary to indicate which of the two forms available under § 8(1) of the AktG, nominal value shares or no-par value shares, is referred to.

Re § 13(1)(8)(d) of the eWpG: If there is more than one class of the share in question, the class shall be indicated.

Re § 13(1)(8)(e) of the eWpG: In accordance with the amendment envisaged under Article 13 to the Stock Corporation Act registered shares may in future be issued with multiple voting rights. Multi-voting rights are also essential characteristics which must be included in the register for reasons of transparency.

Re § 13(1)(8)(f) of the eWpG: Pursuant to § 12(1) sentence 2 of the AktG, preferred shares may be issued as shares without voting rights. This restriction, which is essential to legal transactions, must be indicated in the securities register.

Re § 13(1)(8)(g) of the eWpG: Pursuant to § 68(2) sentence 1 of the AktG, the articles of association may bind the transfer of registered shares to the consent of the company. This restriction of marketability, which is essential for legal transactions, must be indicated in the securities register.

Re subparagraph 7 (Amendment to § 14 of the eWpG)

This is an consequential amendment to subparagraph 4. According to the new sentence 2, for the registration of the abolition of multi-voting rights under paragraph 135a of the AktG-E, an instruction of the issuer alone is sufficient.

Moreover, due to the fact that there are usually no conditions for issuing shares, there is no need to amend § 14(1) sentence 1 and (2) sentence 1; if there are no issuing conditions, there is nothing to delete. The same applies to the parallel provision of § 18.

Re subparagraph 8 (Amendment to § 16 of the eWpG)

The addition takes into account that there are usually no issuance conditions for shares.

Re subparagraph 9 (Amendment to § 17 of the eWpG)

Due to the introduction of electronic shares, § 17 of the WpG must also be supplemented in parallel with the envisaged supplement to § 13 eWpG (to the justification of which is referred). § 17 of the WpG regulates the required registry information in a crypto-assets repository.

In the case of this information, the registering body must ensure that the data in accordance with § 17(3) of the eWpG is linked in such a way that they can only be retrieved together by the requester. This link is unlikely always to be possible on a blockchain-based basis, so the registry authority should regularly combine the information 'off-chain' in its

system. Access to individual data in the blockchain, i.e. an 'on-chain' retrieval of incomplete register information – which should be possible for anyone who has access to the blockchain and on which the registry-keeping body can hardly have any influence – does not constitute an inspection of the register via the registering body pursuant to § 10 eWpG, so that § 17(3) of the eWpG is not relevant in this regard. Re § 17(1)(8)(a) of the eWpG: Shares may only be issued as crypto-assets in the form of registered shares, not as bearer shares; however, in order to clarify legal transactions, the crypto-asset register should explicitly state that these are registered shares. It is thus made clear that pursuant to § 67(2) sentence 1 AktG, rights and obligations consist of registered shares only for and against those registered in the share register in relation to the company.

Re § 17(1)(8)(b) of the eWpG: Pursuant to § 10(2) sentence 1 of the AktG, registered shares may also be issued before the full performance of the issue amount. In accordance with the second sentence of § 10(2) of the AktG, the amount of the partial performance must then be reported in the shares – transferred to crypto stocks, this means that such an amount of the partial performance must be reported in the crypto-asset repository.

Re § 17(1)(8)(c) of the eWpG: It is necessary to indicate which of the two forms available under § 8(1) of the AktG, nominal value shares or no-par value shares, is referred to.

Re § 17(1)(8)(d) of the eWpG: If there is more than one class of the share in question, the class shall be indicated.

Re § 17(1)(8)(e) of the eWpG: If the registered shares have multiple voting rights, this must also be stated.

Re § 17(1)(8)(f) of the eWpG: Pursuant to § 12(1) sentence 2 of the AktG, preferred shares may be issued as shares without voting rights. This restriction, which is essential to legal transactions, must be reported in the crypto-assets repository.

Re § 17(1)(8)(g) of the eWpG: Pursuant to § 68(2) sentence 1 of the AktG, the articles of association may bind the transfer of registered shares to the consent of the company. This restriction of marketability, which is essential for legal transactions, must be reported in the crypto-assets register.

Re subparagraph 10 (Amendment to § 18 of the eWpG)

This is an consequential amendment to subparagraph 6. According to the new sentence 2, for the registration of the abolition of multi-voting rights under paragraph 135a of the AktG-E, an instruction of the issuer alone is sufficient.

Re subparagraph 11

In order to relieve issuers of bureaucratic effort, the obligation to publish in the Federal Gazette should be deleted and only a notification to the Bundesanstalt is required. This amendment is due to enter into force on 1 November 2025, so that the Bundesanstalt can provide the necessary technical infrastructure in a timely manner. The Bundesanstalt continues to maintain a public list on the Internet of the crypto-assets notified to it. The information contained in the public list is extended to include the information previously published in the Federal Gazette. A formal or substantive examination of the notification of an issuer by the supervisory authority is still not carried out. The issuer therefore remains responsible for the content of its communication. The manner and the specific content of the notification should be regulated in due time before the legislative amendment enters into force.

Re subparagraph 12 (Amendment to § 21 of the eWpG)

The new sentence clarifies that there is no liability on the part of the issuer for the fault of the registry-keeping body in addition to its liability under § 7(2) sentence 2. In this respect, the issuer shall only be liable for its own fault in the selection of the registering body, i.e. he shall be liable for damage caused by the registering authority only if he has not applied due diligence in the selection of the registering authority, unless the damage would have occurred even if he had taken this due diligence.

Re subparagraph 13 (Amendment to § 23 of the eWpG)

Re letter a

This is a consequential change to subparagraph 11(b).

Re letter b

This is a consequential change to subparagraph 11d.

Re subparagraph 14 (Amendment to § 25 of the eWpG)

Pursuant to § 25(2) of the eWpG, the right from the security is transferred with the transfer of the electronic security pursuant to § 25(1) of the eWpG, i.e. with agreement and transfer in the electronic securities register. The newly envisaged sentence 2 of § 25(2) of the eWpG clarifies that in this respect the provision of § 67(2) sentence 1 of the AktG – according to which rights and obligations consist of registered shares in relation to the company – is *lex specialis*. In order to assert the rights and obligations arising from registered shares in relation to the company, the registration in the electronic securities register is not sufficient, and it must also have been entered in the share register.

The new paragraph 3 sentence 1 of § 25 of the eWpG concerns the case of a restriction on transferability pursuant to § 68(2) of the AktG: If in the case of electronic shares, the articles of association of the public limited company bind the transfer of ownership to the consent of the company, the registering body may only make the transfer after the consent of the company.

The newly provided paragraph 3 sentence 2 of § 25 eWpG clarifies that a transfer of electronic registered shares by endorsement is not possible, since this would not be possible in an electronic form – as already shown by the reference in § 68(1) sentence 2 of the AktG to the formal requirements of the Bills of Exchange Act. An amendment to § 68(1) sentence 1 of the AktG is not necessary in view of this clear finding.

Re subparagraph 15 (§§ 30a, 30b of the eWpG - new -)

After § 5 eWpG, which contains special provisions on debt securities law in the Civil Code, a new § 6 is to be inserted, which contains special provisions on electronic shares. Since these special provisions relate to the management to the electronic securities register, they should be located in the eWpG and not in the AktG.

Re § 30a of the eWpG:

The new § 30a of the eWpG sentence 1 clarifies that the registering body may also be mandated by the issuer to maintain the share register pursuant to § 67(1) sentence 1 AktG by means of a corresponding contract. Sentence 2 clarifies that this contract may be terminated without notice for good reason if the issuer transfers securities registered in accordance with § 22 – possibly on instructions of the supervisory authority pursuant to § 21(2) sentence 2 – to another securities register. In this way, a divergence between the

management of the securities register and the management of the stock register can be avoided.

Re § 30b of the eWpG:

The new § 30b of the eWpG contains a special provision in the event of exclusion of a defaulting shareholder pursuant to § 64(3) of the AktG. If the excluded shareholder is already registered in the electronic securities register, the issuer shall have the right to have him discharged and to have it registered instead to the person who has paid the arrears amount in accordance with § 65(1) AktG. This is a derogation from the principle of § 25 eWpG, according to which the transfer of ownership of the electronic security presupposes the agreement between the person to be subscribed and the newly registered person.

For this purpose, the issuer must prove to the registering authority that the shareholder has been excluded by publication in the company journals pursuant to § 64(3) sentence 1 of the AktG. § 64 Paragraph 4, first sentence of the AktG, according to which new documents are issued in place of the old documents and must indicate the arrears in addition to the partial payments made, shall not apply. An indication of the arrears amount is not necessary to inform legal transactions, since the new person can only be entered in the electronic securities register if he has paid the arrears amount; in accordance with § 13(1)(8)(b) or § 17(1)(8)(b) of the eWpG-E, the indication of the partial payments made is already derived from the electronic securities register.

Re subparagraph 16

This is an ancillary editorial correction.

Re subparagraph 17 (Amendment to § 31 of the eWpG)

These are consequential changes to: subparagraph 11.

Re subparagraph 18 (Amendment to § 33 of the eWpG)

The existing transitional arrangement in sentence 1 shall be extended to electronic equities. Securitised shares issued before the entry into force of this Act should therefore have the possibility to be into electronic equities by entry into the central register held by the CSD. In the case of shares securitised by a collective deed, the transitional arrangement allows a replacement of the collective deed by a collective entry in the electronic securities register, even without the consent of the individual shareholders, since the rights and interests of the shareholders are not affected in this case. For shareholders, the entry in their custodian account is crucial and it is assumed that it is irrelevant for them whether the total issue is securitised by a collective deed held with the securities collection bank or is kept in a central register with a securities collection bank.

In accordance with the proposed addition to sentence 2, a claim to the issue of individual securities documents in accordance with the articles of association of the public limited company remains unaffected by the replacement pursuant to § 6(3) sentence 1, because otherwise the rights and interests of the holders could be affected.

Re Article 17 (Amendment to the Income Tax Act (EStG))

Re subparagraph 1 (§ 3 of the EStG)

Re subparagraph (a) (No 39)

Re double letter aa (clause before sentence 2)

Under the current legal situation, the employee's benefit in the context of a current employment relationship resulting from the free or discounted transfer of shareholdings within the meaning of § 2(1)(a), (b) and (f) to (l) and (2) to (5) of the Fifth Capital Formation Act (shares, partnership shares, etc.) in the employer's company is exempt from tax, provided that the benefit does not exceed EUR 1 440 in the calendar year.

The maximum amount will be increased from EUR 1 440 to EUR 5 000 with effect from 2024.

Re Double letter bb (sentence 2)

In the current legal situation, shareholdings can also be financed by conversion of remuneration.

Due to the sharp increase in the maximum amount, to avoid undesirable arrangements (wage optimisations), it is appropriate to limit the tax advantage by supplementing the second sentence. In future, insofar as the benefit exceeds EUR 2 000 per calendar year, shareholdings will only be exempt from tax if the shareholdings are granted in addition to the wage already owed (as defined in § 8(4) of the EStG). This also makes possible to a limited extent pure pay conversion models and the implementation of matching plans (financing the shareholding by the employer and the employee).

Re subparagraph (b) (No 71)

Pursuant to Paragraph 3(71) of the EStG, the INVEST grant is exempt from tax. The INVEST funding conditions have been adapted with the Funding Directive on the subsidisation of venture capital of private investors for young innovative companies of 6 February 2023. (Federal Gazette AT 15 March 2023 B1)

The changes are in particular:

1. Increase in the acquisition subsidy from 20 percent to 25 percent and convertible loans from 10 percent to 25 percent;

2. Introduction of an 'INVEST budget' of EUR 100 000 in profit grants per investee;

3. 10 000 minimum investment amount (previously EUR 25 000);

4. 200 000 maximum eligible investment amount per investment;

5. Limitation of the EXIT grant to 25 percent (previously 80 percent) of the investment amount.

The existing tax exemption of grants under the INVEST programme in § 3 subparagraph 71 of the EStG must be adapted editorially to the new eligibility conditions. There is a need for adjustment due to the extension of the eligible companies to include registered cooperatives, for the acquisition grant due to the increase of the acquisition grant to 25 percent (§ 3 subparagraph 71 letter a EStG) and in the case of the EXIT grant due to a limitation to 25 percent of the investment sum (§ 3 subparagraph 71(b) double letter ee of the EStG).

Re subparagraph 2 (§ 17(2a) sixth sentence – new –)

Under the new paragraph 17(2a) sixth sentence of the EStG, the provisions of the new § 20(4b) also apply to cases in which the employee's participation in the employer's undertaking is 1 % or more. For details see the new § 20(4)b of the EStG and the corresponding individual reasons.

Re subparagraph 3 (§ 19a)

§ 19a of the EStG (introduced as from 2021 with the Fund Location Act) contains provisions under which, under certain conditions, the monetary advantages from asset holdings are not initially taxed (tax exemption at the time of transfer). Taxation will only take place at a later stage, i.e. in the event of an injunction (in particular the sale), the termination of the employment relationship or at the latest after 12 years (deferred taxation). Irrespective of the deferred taxation, the tax exemption amount is already taken into account in advance in accordance with paragraph 3(39) of the EStG. The amendments to § 19a of the EStG aim to promote start-up and SME companies by improving employee recruitment and retention and also to mitigate the so-called dry-income problem for employees.

With various amendments, the tax provisions on the deferred taxation of the monetary benefits arising from employee participation in assets are extended in § 19a of the EStG and thus, in particular, the granting of company shares as an element of remuneration for companies and their employees is made more attractive.

§ 19a of the EStG is not an incentive instrument for companies; taxpayers with income from employment work are supported (§ 19 EStG). Against this background, § 19a EStG does not constitute aid within the meaning of EU law, the amendment to which would require approval by the European Commission.

Re subparagraph (a) (Paragraph 1)

Re double letter aa (sentence 1)

In practice, the company shares are typically not granted by the employer itself, but to the (founding) shareholders. By supplementing the first sentence of paragraph 19a(1) of the EStG, it is made clear that this situation is also a supported condition.

Re double letter bb (Sentence 3 – new –)

According to the third sentence of § 3(39) of the EStG, employers who belong to the same group within the meaning of § 18 of the AktG are to be regarded as employers within the meaning of the first sentence of § 3(39) of the EStG. There is a need, as feedback from practice has shown, to transfer this rule (so-called group clause) to the scope of § 19a of the EStG. Accordingly, a new sentence 3 is added to § 19a(1) of the EStG.

Re subparagraph (b) (Paragraph 3)

Re Sentence 1: The amendments to § 19a(3) of the EStG extend the scope of the tax regime.

In future, it will no longer be based on the simple turnover, but in terms of annual turnover and the annual balance sheet total, on double the SME threshold and in terms of the number of people employed, on four times the SME threshold. Companies will then have to employ less than 1 000 employees and may have an annual turnover of up to EUR 100 million or an annual balance sheet total of up to EUR 86 million.

In addition, the time component of the threshold will be extended from two to seven years. Support may be granted thereafter if the thresholds have not been exceeded at the time of

the transfer of the shareholding or in any of the six preceding calendar years. This scheme, too, aims to increase the number of undertakings in which workers benefit from the support.

In addition, the relevant founding period of the company will be extended from twelve to 20 years before the investment participation date. This also increases the number of companies where workers can benefit from the support.

The second clause clarifies that the thresholds must be based solely on the employer's undertaking.

Re Sentence 2: A second sentence makes it legally clear that the thresholds referred to in sentence 1 are determined in accordance with Articles 4 and 5 of the Annex to the Commission Recommendation of 6 May 2003. statement of accounts. On the other hand, the status of a company to be taken into account will only be lost or acquired if there is an overrun or undershoot in two consecutive financial years. So far, this has only been regulated in the Federal Ministry of Finance letter of 16 November 2021 (Federal Tax Gazette I page 2308) and has led to uncertainty, since the wording of the Act does not refer to this and refers to 'the timing of the transfer'. There is no reference to Article 3 of the Annex to the Commission Recommendation of 6 May 2003, as this would be contrary to Paragraph 19a(3), second clause of the EStG (concerning the employer's undertaking).

Re subparagraph (c) (Paragraph 4)

Re double letter aa (Subparagraph 2 of the first sentence)

Under current law, the monetary benefit arising from participatory shareholdings is taxed no later than twelve years after the transfer of the shareholding. It will in future only take place (at the latest) after 20 years.

The postponement to the tax date also applies to participatory shareholdings that are or were transferred before 2024.

Re double letter bb (sentence 4)

The addition ensures that, in the case of so-called leaver events (i.e. repurchase of shares upon leaving the undertaking), only the remuneration actually paid to the employee is decisive because it does not usually reflect the market value.

This also applies to participatory shareholdings that are or were transferred before 2024.

Re subparagraph (d) (Paragraph 4a – new –)

Re paragraph 4a – new —

The background to the new regulation is the so-called dry-income problem. This occurs because the transfer of a shareholding leads to taxable wages (in-kind) among workers, without any liquid funds (so-called 'dry income').

Feedback from practice has shown that the so-called dry-income problem with the Fund Location Act was insufficiently mitigated, especially for the event 'termination of the employment relationship'. This is now being addressed by an extension of § 19a of the EStG by a new paragraph 4a.

According to that, taxation will no longer take place for the situations 'expiry of 20 years' and 'termination of employment' if the employer irrevocably declares on a voluntary basis that it assumes liability for the payroll tax to be withheld and payable. In these cases, only the later 'sale' event triggers taxation. The otherwise usual report freeing from liability is

not possible here. Through the declaration with the income tax registration, the permanent establishment tax office learns of the corresponding facts and can check the appropriate tax treatment in the context of an external payroll tax audit.

According to sentence 2, a claim to liability by the permanent establishment tax office then no longer requires any further discretionary examination by the permanent establishment tax office. The permanent establishment tax office may, if the employee can no longer be accessed as a taxable person – e.g. because he has moved abroad without notification – directly contact the employer. This secures the tax entitlement of the tax authorities.

Re subparagraph 4 (§ 20 paragraph 4b – new-)

Under the current legal situation, shareholdings of assets which are granted preferentially for tax purposes may under § 3 subparagraph 39 of the ETsG be sold by the employee without loss of the tax exemption immediately after the transfer, as there are no statutory blocking or holding periods. This is equivalent to a tax-free cash wage payment because no downstream or deferred taxation is foreseen either. In view of the sharp increase in the allowance from EUR 1 440 to EUR 5 000, the possibility of undesired transfer of the allowance becomes more important.

In order to counteract this, tax law 'immediately' provides an incentive for compliance with a retention period. § 20 New paragraph 4bof the EStG stipulates that, in the cases referred to in § 3 No 39 of the EStG, the tax-free monetary benefits do not form part of the acquisition cost in determining the profit on capital income if the shareholding has been sold or transferred free of charge within three years. As a result, 25 % withholding tax is levied not only on any capital gain, but also on the share of wages left tax-free. As a result, at least 25 % withholding tax will be paid to the tax authorities if the employee sells the shareholding early. The corresponding bureaucratic burden on custodian banks (withholding tax) seems proportionate, compared with the introduction of a special system with 'real' locking and holding periods.

Re subparagraph 5 (§ 43)

These are changes that have become necessary through the introduction of electronic securities. The Act on the introduction of electronic securities makes it possible that certain bonds and future shares no longer have to be securitised in a document, but can also be issued electronically. The securitisation of securities in a document is likely to become increasingly important with the Act on the introduction of electronic securities. The explicit reference to electronic securities takes this into account and ensures that there are no changes to the previous capital gains tax deduction processes.

Re subparagraph 6 (§ 43a(2), second sentence, subparagraph 2)

Re letter a

This is a consequential change from the insertion of paragraph 4b in § 20 of the EStG in the capital gains tax procedure. In the future, the paying agencies have to take into account that in the event of a sale or free transfer of a shareholding within three years, the tax-free monetary benefit will also have an impact on the acquisition cost.

Re letter b

In order to ensure correct taxation on disposal within the period laid down in paragraph 3(39) of the EStG in conjunction with paragraph 20(4)(b) of the EStG, in the case of a transfer of custody to another depository of the same taxable person, the amount of the additional payment and the tax-free monetary benefits to the receiving payer must be communicated to the receiving paying agency. If, in the cases referred to in § 20(4b) of the EStG, the assets are transferred free of charge to a third party (e.g. family members)

within three years of the acquisition, only the additional payment shall be transmitted as acquisition costs, since the tax-free monetary benefits do not then belong to the acquisition costs.

Re subparagraph 7

Re letter a

This is a consequential change resulting from the introduction of electronic shares. Subparagraph c contains a rule whereby the debtor of capital income is the disbursing body if the securities collection bank does not regulate dividends. This provision shall apply equally if the shares have not been entrusted to a securities collection bank for safekeeping but a registering body in accordance with § 12(2) or § 16(2) of the eWpG does not regulate dividends.

Re letter b

Debt securities and, in future, registered shares may also be issued as so-called crypto-assets under the Act on the introduction of electronic securities. If the crypto-assets are held and managed by a custodian credit institution of the final client or the owner of the crypto-assets (defined in § 3(2) of the eWpG as the holder), the previous tax deduction regimes shall also apply to these securities. However, the introduction of the crypto-assets repository also makes it possible to manage own assets without the requirement to an intermediary, such as a custodian bank or a CSD. For these cases, self-administration is required to take over the task of tax deduction, which was previously ensured by the custodian bank. Therefore, the registrar of a crypto-asset will be subject to the obligation to deduct tax if there are otherwise no deductions due to the disappearance of intermediaries. This has already been the case for electronic debt securities entered in a crypto-assets repository. With the introduction of electronic shares, the regulation is extended accordingly to electronic shares.

Re subparagraph 8 (§ 52)

Re letter a

The amendment to § 3 No 71 of the EStG is to be applied for the first time in the assessment period 2023 due to the amendments to the INVEST Funding Directive in 2023.

Re letter b

§ 52 Paragraph 27 of the EStG regulates the first application of § 19a of the EStG in the version inserted into the Income Tax Act by the Fund Location Act and is now no longer relevant. The rule is repealed for the purpose of orderly legislation.

Re Article 18 (Amendment to the VAT Act)

Re subparagraph 1 and subparagraph 2

Article 135(1)(b) and (c) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (VATSystRL) exempt, inter alia, the granting and brokering of loans and the management of credit by creditors and the brokering and assumption of liabilities, warranties and other collateral and guarantees, as well as the management of credit collateral by creditors.

When these exemptions were transposed into national law, the legislature did not explicitly mention the 'management' of the loans or collateral in § 4(8)(a) (‘the granting and brokering of credits’) or letter g of the UStG (‘the assumption of liabilities, warranties and other collateral and the brokering of these transactions’).

This means that in Germany – unlike in other EU Member States – the administrative services of the consortium leader to the other consortiums are subject to VAT in the case of open syndicated loans.

This additional cost burden on German lenders weakens them as a credit partner in the financing of large international investments by cooperating banks. The German banking industry thus suffers a competitive disadvantage vis-à-vis banks from other EU Member States.

The amendment extends the VAT exemptions to the management of loans and credit collateral by lenders in order to fully transpose the provisions of EU law into national law. Consultancy or administrative services of other entrepreneurs who are not themselves lenders of a syndicated loan continue to be subject to VAT in accordance with EU law.

The legislative amendment creates a 'level playing field' in the EU for the taxation of administrative services of consortium leaders and thus a level playing field for the German banking industry.

Re subparagraph 3

The basis in EU law for the exemption for the management to special assets is Article 135(1)(g) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (so-called VAT System Directive – MwStSystRL). Accordingly, Member States shall exempt the management of special funds defined by the Member States as such.

Under national law, the scope of the VAT exemption covered investment funds within the meaning of the UCITS Directive and the management of alternative investment funds (AIFs) subject to a level playing field, as well as the management of venture capital funds.

In order to ensure equal competition with other European Member States, the scope of the VAT exemption is extended.

The amendment to the Act exempts the administrative services of alternative investment funds within the meaning of § 1(3) of the Capital Investment Code from VAT.

Re Article 19 (Amendment to the Restructuring and Resolution Act)

Re subparagraph 1

This is a necessary adaptation of the Table of Contents as a result of the introduction of a new regulation.

Re subparagraph 2

According to the provisions of § 42(1a) first sentence, first clause, information, analyses, notifications, notifications pursuant to § 42(1) and other documents to be submitted to the Bundesanstalt as resolution authority in accordance with the provisions of this Act shall, in principle, be prepared and submitted in German. This is without prejudice to the language regime provided for in Article 81(4) of the SRM Regulation, which provides exclusively for communication between the SRB and the national resolution authorities.

The obligation under paragraph 1a, clause 1 of the first sentence, does not prevent the Bundesanstalt from communicating with the Institute in a foreign language prior to the submission of documents and, for example, from responding to requests from the Institute or from exchanging information. The same applies to the exchange of information between resolution authorities, which has no legal effect on the institution. This includes English-language frameworks governing cooperation or decision-making between the au-

thorities. In particular, the Bundesanstalt shall not be prevented from using the SRB's guidelines and general instructions to be followed in accordance with Article 31(1), second subparagraph, letter a of the SRM Regulation, as well as other documents and working aids of the SRB or documents of the European Supervisory Authorities (ESAs) or the Financial Stability Council (FSB), which are available exclusively in English, nor from using English or conducting their administrative practice in English. The German language remains decisive for administrative action vis-à-vis the Institute, even if these administrative actions are based on documents submitted by the Institute in English or foreign-language guidelines, frameworks or work aids. This does not apply to purely internal administrative operations, such as attachments to resolution plans.

In addition, the Bundesanstalt may require that the documents must also be submitted in English (paragraph 1 sentence 1 clause 2). This avoids time-consuming translations of the documents by the Bundesanstalt and takes into account that the transmission is normally bound by certain deadlines in accordance with the requirements of European law.

On the other hand, it is necessary to avoid duplication of work by preparing the documents both in German and in English where this is necessary due to competitive disadvantages vis-à-vis institutes from English-speaking countries or from countries that in principle only allow submission in English. Therefore, sentence 2 grants the resolution authority the power to permit the submission of the documents to be submitted only in English. This provision constitutes a special legal exception to § 23(2) to (4) of the VwVfG, since in the case of documents for which the Bundesanstalt permits submission in English, in principle no translations are to be produced by the Institute or by the Bundesanstalt.

As in other areas of banking and capital market supervision, in resolution law, English is the usual language for communication between supervised entities and authorities as well as for the exchange of information between resolution authorities. A translation of any exchange of information and communications into the German language leads to considerable duplication and competitive disadvantages compared to jurisdictions which also allow communication in English. In future, in order to avoid duplication of work and competitive disadvantages, the Bundesanstalt, as resolution authority, should have the opportunity to allow the institutions to produce and submit documents exclusively in English. This does not change the fundamental binding force of the German language in accordance with the requirements of German administrative procedural law.

Re subparagraph 3

Communication with the undertakings within the meaning of § 1(1) shall in principle take place electronically in accordance with the provisions of § 42a(1). This provision establishes the basis for electronic communications between the entities concerned and the resolution authority. This is an reflection of modernisation through the progressive digitalisation of the work processes in the Bundesanstalt, which wants to speed up digitalisation. This electronic communication procedure shall cover communications, information, notifications and documents to be transmitted or submitted under the Restructuring and Resolution Act, unless the resolution authority determines a different means of transmission on a case-by-case basis. It also covers notifications to be sent on the basis of actions by the resolution authority on the basis of the SRM Regulation or in the implementation of a decision of the SRB. Undertakings shall be required to use the electronic communications procedure provided by the resolution authority for the purposes of these notifications and to set up electronic access for this purpose. In addition, the resolution authority may notify or deliver administrative acts to the companies via this electronic communication procedure on the basis of §§ 4g and 4f of the Financial Services Supervision Act. This also allows the electronic provision of decisions for setting minimum requirements for own funds and eligible liabilities (MREL). The obligation to verify whether the resolution authority has communicated electronically results from the significant correspondence, which often re-

lates to a deadline day and should therefore be retrieved promptly; regular review of emails received should now be the normal business practice.

The obligation to use the electronic communication procedure is appropriate, since the companies are in an often recurring exchange relationship with the Bundesanstalt as part of their activities as a resolution authority and are therefore engaged in extensive correspondence, e.g. in the context of the calculation of MREL decisions or for the determination and elimination of settlement obstacles. The respective entities and the resolution authority should be able to do so electronically in relation to any communicative exchange in the context of resolution. As far as possible, existing and used IT structures should be used for communication with the Bundesanstalt. The obligation to electronic communications is also intended to take account of an otherwise further increase in personnel and material costs (e.g. in particular the considerable quantities of paper) in the future, making sense both economically and ecologically. In the interests of all parties, therefore, simpler and legally secure electronic communication should be the standard case in the future, in particular because it is not a single communication, but basically ongoing communication with the resolution authority. On the one hand, the Restructuring and Resolution Act authorises the resolution authority for many standards to require the companies concerned to submit information or documents. On the other hand, the resolution authority is also empowered by many standards to require a specific action from the respective companies. Here, therefore, there is a reciprocal communication relationship which justifies a general obligation of companies to use a provided electronic communication procedure. This electronic communication procedure makes it easier for companies to submit the above-mentioned information, documents and notifications, etc., so this reduces the administrative burden. Especially in the course of commercial transactions, electronic communication is the normal case. Electronic submission and transmission will in particular avoid media breaches and errors that may be caused by this. In view of the current digitalisation efforts in the public administration, the Bundesanstalt should also carry out administrative processes as completely electronically as possible in order to strengthen digital competences and in the sense of data- and technology-driven optimisation. Ultimately, due to its potential savings, digitalisation leads to lower personnel and material costs, which in turn has a cost-effective effect on the financial structure of the Bundesanstalt financed by the levy. Because the electronic communication process provided is operated by the Bundesanstalt, users have the necessary confidence in its integrity and security. Companies may use authorised representatives for electronic communications. If these are persons who were already registered with the Bundesanstalt in an electronic access procedure before the entry into force of the scheme and who were thereby authorised, this authorisation shall continue to apply. The continuing validity of previously proven authorisations serves to simplify and speed up procedures in order not to have to request a new notification of representative from the companies in the short term. This legal fiction only applies to the extent that the power of attorney still exists. If previously authorised representatives are no longer authorised for representation with regard to the notification and service, the termination of the authorisation shall be notified to the resolution authority. Moreover, in the interest of a legally effective notification or service, any changes to the power of attorney shall only become effective once they have been notified to the resolution authority.

§ 42a(2) contains an authorisation to issue statutory ordinances to the Federal Ministry of Finance to establish further provisions on the information, notifications, communications and documents to be transmitted pursuant to § 42a(1), as well as the access and use of the electronic communication procedure. This creates the necessary flexibility to regulate technical details, in particular on data formats, and to be able to adapt them promptly and appropriately if necessary, e.g. due to technical progress or practicability considerations. With the possibility of transferring a statutory ordinance to the Bundesanstalt, it is possible to use the particular familiarity of the Bundesanstalt with the issue and the existing experience in administrative practice in previous electronic communications.

Re subparagraph 4

In resolution colleges, it is common practice for authorities with different language regimes to cooperate in English. This need is reflected in the second sentence of § 156(2). In the case of institutions for which the Bundesanstalt is a group resolution authority, it can therefore be agreed between the authorities involved in the resolution college that the communication between the authorities is in English and that resolution plans, presentations, joint decisions and protocols are drawn up in English.

However, insofar as the legal acts of the resolution colleges have to be communicated to the institution, this must be done in German in accordance with § 23(1) of the VwVfG. This may require a translation or summary in German.

Re Article 20 (Amendment to the Banking Act)

Re subparagraph 1

The purpose of the amendment is to adapt the Table of Contents to the introduction of new regulations, in particular as a result of the introduction of new regulations on crypto custody.

Re subparagraph 2

Re letter a

The amendments are intended to open the possibility of switching to electronic submission of notifications pursuant to § 2c of the German Banking Act (KWG), including the required information, documents and declarations.

However, in order to achieve the necessary legal certainty, clarity and predictability, it must be ensured that the notifications are written in the sense of documentation. This is further ensured by the formal requirements of the bearer control regulation adopted pursuant to § 24(4) of the German Banking Act (KWG). The oral or telephonic form of notifications pursuant to § 2c KWG are thus excluded.

Re letter b

In future, the wording 'written or electronic' will allow electronic processing of procedures in the event of notifications from the supervisory authority to the interested purchasers instead of a previously exclusively written procedure.

The electronic transmission made possible here is not equivalent to the 'electronic form' of the Administrative Procedure Act (VwVfG). The electronic form is standardised in § 3a(2) sentence 2 of the VwVfG. This involves the furnishing of a document with a qualified electronic signature. By contrast, the term 'electronic' covers all electronic communications; it does not impose any special formal requirements. The simple email and communication, e.g. via special government mailboxes, are therefore recorded.

As a result, the oral or telephonic form of such communications remains excluded, so that the requirements of Directive 2013/36/EU with regard to a written form, i.e. a documentation or fixing of the procedural step, continue to be complied with. At the same time, the processing of owner control procedures is made more flexible and paves the way for further digitalisation.

Re subparagraph 3

The written form requirement is unnecessary. The added value of the written form requirement in contrast to electronic trading lies above all in the issuer or identity function of the

signature. The objective of the written form requirement was rather the traceability of the risk analysis for supervision or by supervisors. In the case of electronic documentation, this is still ensured.

Re subparagraph 4

Electronic procedures within the meaning of Sections 4f and 4g of the Financial Services Supervision Act are of particular importance because they enable the legally secure exchange between the applicant and the Bundesanstalt. The Ordinance may therefore require access to such a procedure within the meaning of these provisions, so that administrative acts may also be notified electronically to the Bundesanstalt through this procedure. Furthermore, the Bundesanstalt should be able to prescribe electronic communication with the supervised entities in an appropriate and efficient way for both sides.

Re subparagraph 5

The deletion of the word 'written' makes it possible to require an electronic submission by means of a statutory ordinance pursuant to § 24a(4) of the KWG for notifications of change pursuant to § 24a(4) sentence 1 of the KWG. Electronic transmission may be accepted by the competent authorities in accordance with Article 3(1)(b) of Commission Implementing Regulation (EU) No 926/2014 of 27 August 2014 laying down implementing technical standards with regard to standard forms, templates and procedures for notifications relating to the exercise of the right of establishment and the freedom to provide services according to Directive 2013/36/EU of the European Parliament and of the Council.

Re subparagraph 6

The provision imposes the obligation on institutions operating the crypto-deposit business (§ 1(1a) second sentence, subparagraph 6) to store the stored values and keys separately from their own values and keys and separately from the values and keys of other clients (paragraph 1 sentence 1), e.g. by using separated public addresses. This prudential separation of assets subject to supervision justifies also assigning the stored assets and keys to the client’s assets under liability law (§ 46i KWG-E). At the same time, the provisions of Article 75(10) of the MiCA on the insolvency-proof clients’ rights to the stored values and keys in the future will be incorporated into applicable law. The separation from the values and keys of other clients required pursuant to paragraph 1 sentence 1 may be deviated from in the case of a bundled custody, such as the use of omnibus solutions where crypto-assets of different clients are stored under a public key. In this case, however, it must be ensured that the proportion to which each client is entitled in the bundled custody can be determined at any time (paragraph 1 sentence 2).

Pursuant to paragraph 2, it is also necessary to ensure that stored values and keys are not disposed of without the express consent of the client.

Re subparagraph 7

The addition made here also extends the auditor’s statutory audit to the requirements of Regulation (EU) 2022/858.

Re letter c

Re subparagraph 8

A clarification is added here that the authorisation by the Bundesanstalt relates only to data provision services that fall within the national authorisation requirement and therefore do not have to be authorised by the European Securities and Markets Authority (ESMA).

Re subparagraph 9

The recast ensures that institutions that carry out the crypto-deposit business and also trade in financial instruments on their own account must have an increased initial capital of EUR 750 000 (§ 33(1)(1)(c)).

Re subparagraph 10

This is essentially a clarifying provision. Accordingly, the Bundesanstalt and the Bundesbank may request that information and documents be transmitted electronically.

Re subparagraph 11

The provision clarifies that crypto-assets, including private cryptographic keys held in the course of crypto-deposit business (§ 1(1a) second sentence, subparagraph 6) remain inaccessible to the general creditors of the crypto depository: Clients should be able to oppose third-party enforcement access under § 771 of the Code of Civil Procedure; in insolvency proceedings concerning the assets of the depositary, they shall be entitled to a right of separation within the meaning of § 47 of the Insolvency Code. The provision thus draws the liability consequences from the fiduciary nature of the custody transaction, which identifies the client as beneficial owner. It follows from the case law on the treatment of fiduciary relationships under liability law, according to which the trustor is entitled to a third party right of opposition and segregation to the trust property. By linking this consequence to the existence of a crypto-deposit business within the meaning of paragraph 1(1a) second sentence, subparagraph 6 of the KWG, and thus to the existence of the obligation to segregate assets pursuant to § 26b(1) of the KWG-E, it makes an examination superfluous of the requirements which the case law places on trust relationships which provide the trustee with a third-party right of opposition and segregation. In this respect, these requirements are replaced by the requirements of § 26b(1) KWG-E. The supervisory review of compliance with the asset separation bid provides objective assurance that only those fiduciary agreements are recorded that give the client a genuine economic justification. For this very reason, the assignment of the stored values to the client's assets shall cease if the client has consented that the institution may dispose of the values on its own account or on behalf of third parties (paragraph 1 sentence 2).

Paragraph 1 assigns the crypto-assets held for a client to the assets of the client, which are kept separately from the values and keys of the institution and other clients in accordance with § 26b(1) sentence 1 of the KWG-E and which can therefore be assigned to the client individually. The second sentence of paragraph 1 excludes values that the client has released for disposal on behalf of the institution or third parties.

Pursuant to paragraph 2, in accordance with the principle laid down in paragraph 1, shares in jointly held assets (§ 26b(1) sentence 2 of the KWG-E) and private cryptographic keys stored in isolation shall also be assigned to the client's assets. Insofar as a regulation therein lays down a provision for the asset allocation of private cryptographic keys, it is not intended to determine whether these keys are eligible for special rights or whether the authorisation on them follows the authorisation of the public key or the values stored under that key. Precisely in view of the outstanding clarification of the underlying property and property allocation issues, it is to be ensured that the private cryptographic keys are also protected from access by the creditors of the institution.

No explicit provision is made for crypto-assets within the meaning of § 4(3) of the eWpG. According to § 2(3) of the eWpG, these are considered movable goods. Clients are entitled to the third party right of opposition and separation with regard to their right of ownership. The clarification of the assignment to the client's assets provided by the regulation therefore does not matter.

In insolvency proceedings concerning the assets of the depositary, paragraph 3 imposes on the client the costs of separation in cases where he objects to a separation by way of transfer of the total holdings held in custody to another crypto depositary designated by the insolvency administrator. The additional costs associated with individual transfers and the associated costs are thus to be avoided. Wherever they arise at the client's request, they should also be borne by the client. Sentence 2 makes an exception to this in cases in which a transfer sufficient to the requirements of sentence 1 is to be made to the new depositary on terms that are unreasonable for the client, for example because the safekeeping of the new depositary does not offer the same security as the previous custody under German law or because the storage fees are disproportionate in view of the subject matter of the custody and in relation to the usual market rates. According to the third sentence, the aforementioned provisions shall also apply if not the entire custody holding but only substantial parts of it are to be transferred to a designated by the administrator. Consequently, where individual clients insist on issuing the assets directly to them or to a crypto depositary designated by them, sentences 1 and 2 remain applicable in relation to the other clients. The same applies if the holdings are transferred only in part to a new depositary. On the other hand, it is not possible to apply to individual transfers or transfers of only minor parts. The purpose of sentences 1 and 2 to enable the most cost-effective and easy processing of separation claims does not appear to be achievable in such transfers.

Re subparagraph 12

The written form requirement is unnecessary. There is no written form requirement in the EMIR, in particular Article 7(4) or Article 8(4).

Re subparagraph 13

The written form requirement is unnecessary. The provisions of European law do not preclude deletion. In particular, the provisions of Regulation (EU) No 909/2014 do not contain any written form requirement for applications to the competent authority. A written form requirement cannot be found in the wording of the application for authorisation as a CSD referred to in Article 17, the request for extension and outsourcing of activities referred to in Article 19, the request for the establishment to a CSD referred to in Article 48(2), the application under Articles 54, 55 for authorisation of banking-type ancillary services, or the request for extension of the banking-type ancillary services referred to in Article 56.

It is true that Article 23(7) requires that the modification of the information provided must be notified in writing to the competent authority. However, no application is made in this case, so that the scope of § 53o(2) KWG is not affected.

Re subparagraph 14

The adjustments made here complement the provisions of Regulation (EU) 2022/858 for Distributed Ledger Technology (DLT) based market infrastructures (DLT pilot scheme) in national law.

No specific implementation of the addition made in Article 4(1)(15) of Directive 2014/65/EU (MiFID II) to Article 18 of the DLT Pilot Scheme is required. The existing definition of the term 'financial instrument' in § 1(11) of the Banking Act, § 2(5) of the Securities Institute Act and § 2(4) of the Securities Trading Act is technology-neutral and therefore already includes instruments issued by means of distributed ledger technology, insofar as they also fulfil the characteristics of the term.

§ 53r designates the Bundesanstalt as the competent supervisory authority within the framework of the DLT pilot scheme. The provision transposes Article 12 of Regulation (EU) 2022/858.

§ 53s(1) clarifies that DLT market infrastructures do not require additional permission under this Act for the activities permitted to them under the DLT pilot scheme. The fact that no additional permission is required under this Act does not mean that the DLT market infrastructures as such would be exempted from compliance with the other requirements for the corresponding activities. For example, a financial services institution operating a DLT MTF in accordance with Article 4, 8 of Regulation (EU) 2022/858 shall also meet the requirements applicable to the operation of an MTF (in accordance with Regulation (EU) 2022/858). A CSD operating a DLT MTF as DLT-TSS shall also comply with the applicable requirements (in accordance with Regulation (EU) 2022/858).

Even if the activity of a DLT SS or DLT TSS includes crypto-assets repositories pursuant to § 1(1a)(2) subparagraph 8 of the KWG and is covered by the special authorisation under the DLT pilot scheme, no separate permission is required under this Act. In this case, however, the DLT SS or DLT TSS must comply with the requirements of the eWpG and the regulations adopted under it. Similarly, a DLT SS or DLT TSS under the eWpG should also be able to maintain a central register under the eWpG, just like a CSD, in accordance with § 12(2)(1) of the eWpG, insofar as this is covered by the special approval under the DLT pilot scheme as part of the activity under the DLT pilot scheme.

Even to the extent that the activity of a DLT SS or DLT TSS under the DLT pilot scheme includes the crypto-deposit business pursuant to § 1(1a) p.2 subparagraph 6 of the KWG – in the variant of securing private cryptographic keys that serve to hold, store or dispose of crypto-assets for others pursuant to § 4(3) of the eWpG – and this is covered by the special authorisation under the DLT pilot scheme, no separate permission under this Act is required.

In such cases, the DLT SS or DLT TSS must take special precautions in the event that the DLT pilot scheme is terminated or if it otherwise loses its special authorisation under the DLT pilot scheme and therefore is no longer permitted to maintain an electronic securities repository or crypto-deposit business under the DLT pilot scheme. Paragraph 53s(2) of Regulation (EU) 2022/858 takes up recital 26 of Regulation (EU) 2022/858 and ensures that retail investors who, on the basis of an exemption pursuant to Article 4(2) of Regulation (EU) 2022/858, do not require authorisation to do so as a member or participant of a DLT MTF or DLT-SS, are not required to do so. Regarding the legally secure definition of retail investors, reference is made to the definition of retail clients in § 67(3) of the Securities Trading Act.

§ 53t clarifies that the provisions of this Act on CSDs apply to all DLT settlement systems (DLT-SS) and DLT trading and settlement systems (DLT-TSS) operating on the basis of an authorisation under the CSD Regulation (EU) 909/2014 (cf. Article 9(1) and (2) and Article 10(1) and (2) of Regulation (EU) 2022/858). In particular, this may be relevant insofar as, in the case of a new entity entering the market (Article 10(2) of Regulation (EU) 2022/858), the definition of a CSD pursuant to § 1(6) of the KWG is not formally fulfilled, for example due to failure to report the system within the meaning of Article 2(a)(3) of Directive 98/26/EC (see Article 7(2) of Regulation (EU) 2022/858). These new companies entering the market may also be covered by the scheme in § 1(9)f of the German Banking Act (KWG), so that the KWG requirements as described in Article 6(2), first clause, subparagraph (a) of Regulation (EU) 2022/858 apply to these entities. The provisions of this Act on CSDs, on the other hand, do not apply to a DLT TSS operating on the basis of an authorisation under Directive (EU) 2014/65/EU.

§ 53u lays down rules on language and form for applications under the DLT pilot scheme and allows the Bundesanstalt a flexible design in this regard.

§ 53v(1) declares that the rules adopted for the implementation of Regulation (EU) 2022/858 also apply to operators of organised markets to the extent that they operate a multilateral DLT trading system (DLT-MTF) or DLT trading and settlement system (DLT-

TSS). The operators of organised markets are therefore subject to the supervision of the Bundesanstalt regarding the requirements of Regulation (EU) 2022/858. This creates a single supervisory framework for the DLT-specific aspects of DLT trading and settlement systems and ensures that in the case of a DLT trading and settlement system (DLT-TSS), the supervision of the sub-components trading system and settlement system is carried out uniformly by the Bundesanstalt. The responsibility of the Securities and Exchange Commissions of the federal states for supervision in accordance with the Stock Exchange Act remains unaffected.

In the light of the fact that an audit in the context of the statutory audit pursuant to § 29 is not provided for in these cases, § 53v(2) of the Bundesanstalt is intended to enable the Bundesanstalt to check or have verified compliance with the requirements of Regulation (EU) 2022/858 and the compensatory measures imposed under it by operators of organised markets.

Re subparagraph 15

The amendment to § 54 KWG in the form of the introduction of a new subparagraph 3 serves to further transpose Directive (EU) 2019/2177. This Directive introduced, inter alia, the new Article 27b in Regulation (EU) No 600/2014. In turn, Article 70(4)(b) of Directive 2014/65/EU on markets in financial instruments provides for the creation of a sanctioning option for this Article. This requirement is taken into account here with the creation of a new criminal offence. Supervisory activities which are carried out without the necessary permission are to be classified as criminal offences in § 54 KWG, in accordance with the national system of law because of their particularly negative significance.

Re subparagraph 16

The new provision of fines of § 57 makes it possible to sanction infringements of the newly introduced § 26b. The amount of the fine is already based on the requirements of Article 92 of the draft Regulation of the European Parliament and of the Council on crypto markets and amending Directive (EU) 2019/1937.

Re Article 21 (Amendment to the Owner Control Regulation)

The new § 2(3) of the Owner Control Regulation aims to make it easier for foreign market participants to enter the German market and thus to make the financial location more attractive for international investors. In order to reduce barriers to market entry and to minimise the effort, especially for first steps, it should be possible in the future to conduct the communication between the interested acquirers and the holders of significant holdings with the Bundesanstalt in owner control proceedings in English as well. In this respect, it is a special rule taking priority over the more general provision of Paragraph 23 of the Administrative Procedures Act. The decision as to whether the Bundesanstalt requires a translation is at the discretion of the Bundesanstalt in the course of their duties.

Sentence 5 concerns the case where the Bundesanstalt requests a translation as part of the examination of the completeness of a notification. In this case, it is clarified that the notification is only complete with the requested translation. Accordingly, the Bundesanstalt must certify completeness only after receipt of the translation. This means that the Bundesanstalt must check within the two-day deadline whether a translation is required. Otherwise, provided that the documents are otherwise complete, it must certify completeness and start the assessment period.

Sentence 6 concerns the case where the Bundesanstalt requires a translation of further information which it requests during the assessment period. In this case, too, this information is only fully received by the Bundesanstalt when the translation is available, with the consequence that the suspension only ends at that point in time. The maximum periods referred to in § 2c(1a) sentences 7 to 9 of the German Banking Act (KWG) and § 17(4)

sentences 7 to 9 of the Insurance Supervision Act (VAG) remain unaffected. This means that the suspension ends if the Bundesanstalt does not require a translation before confirmation of receipt of the further information.

Re Article 22 (Amendment to the Financial Services Supervision Act)

Re subparagraph 1

Re letter a

This is a consequential amendment to the insertion of the new § 4j Financial Services Supervision Act (FinDAG).

Re letter b

This is a consequential amendment to the amendment in § 16m of the FinDAG.

Re subparagraph 2

Whistleblowers can make valuable contributions to detecting the misconduct of individuals or entire companies within the financial sector and to curb or correct the negative consequences of this misconduct. Whistleblowers can contact the whistle-blower office in various ways. Tip-offs can be submitted in writing (via post, email or a specially designed electronic reporting system) and verbally (by telephone or in person). Within the framework of a discretionary decision, the Bundesanstalt has previously processed submissions drawn up by the reporting persons in English and ensured communication with them. With the extension of paragraph 1, this practice is transparently enshrined in law for the public and, in particular, potential whistle-blowers.

Re subparagraph 3

The new § 4j of the FinDAG aims to make it easier for foreign market participants to enter the German market and thus to make the financial location more attractive for international investors. In order to lower barriers to market entry and to minimise the effort, especially for first steps, it should be possible in the future to submit applications to the Bundesanstalt also in English. In this respect, paragraph 4j of the FinDAG is a special rule taking precedence over the more general provision of paragraph 23 of the Administrative Procedures Act.

At the same time, the scheme also facilitates the Bundesanstalt insofar as it is no longer required in principle to request a translation without delay under § 23(2) of the Administrative Procedures Act. This is also in the interest of an effective and rapid implementation of tasks by the Bundesanstalt and facilitates communication with international market participants.

In this respect, the first sentence of paragraph 1 gives applicants the opportunity to use the English language when applying. This possibility is not only opened up to market participants based or domiciled abroad, but also to all market participants who have an interest in this, including, for example, German subsidiaries of foreign financial market companies. Especially if they use English as a de facto working language in Germany, this makes the German financial market more attractive.

It should not only be possible to submit applications in full in English, but also only partially. This includes in particular the option to submit some or all documents to be submitted in English. In cases where certain documents were previously available to the applicant only in English, this is intended to facilitate the application by eliminating the need for a prior translation.

Sentence 2 clarifies that, notwithstanding sentence 1, the Bundesanstalt may request the submission of translations in the further course of the proceedings. In this respect, both the whether and when to request a translation are at the discretion of the Bundesanstalt if this is necessary in the interest of an effective and expeditious processing of applications by the Bundesanstalt. It is therefore decisive whether the application decision can be made appropriately on the basis of an English-language application in individual cases. When considering discretion, account must be taken, inter alia, of the specific subject-matter of the proceedings, in particular its scope, complexity and the existence of novel legal and factual issues. However, it can also be taken into account with regard to the fact that the court language is German, whether (urgent) legal remedies are to be expected on the part of the applicant in the further course of the proceedings in order to avoid procedural disadvantages for the Bundesanstalt. This is not an administrative act, but only an interim decision (also indicated for § 23 VwVfG in Fehling/Kastner/Störmer, administrative law, 5. A. 2021, recital 24 aE).

As in the second sentence of § 23(2) of the VwVfG, the presentation of a certified or publicly appointed or sworn interpreter or translator may only be required in justified cases. In order to interpret this condition, reference can be made to the jurisprudence and literature available on the second sentence of paragraph 23(2) of the VwVfG.

Sentence 3 is the consequence of the fundamental validity of § 23 VwVfG and in this respect has a purely declaratory nature. Sentence 4 is the consequence of paragraph 1, first sentence.

Paragraph 2 clarifies paragraph 1, specifying, in particular, that electronic applications in English, by way of derogation from § 23(3) of the Administrative Procedure Act, initiate notice periods. This should lead to an acceleration of operations in favour of foreign market participants and in this respect also increase the attractiveness of Germany as a financial location. This is because they do not have to obtain a – costly and time-intensive – translation for certain applications.

The concept of an electronic application is broader than § 3a VwVfG and in particular also includes applications received via a special electronic portal or by simple email. This is done to facilitate applications. The wording 'electronic' is deliberately broad and covers – to the extent permitted by law – both the submission of form-bound and non-form-bound applications without a restriction to applications which correspond to the electronic form pursuant to § 3a VwVfG. In addition, this is also in the interest of further digitisation of the Bundesanstalt’s public communications.

However, in order to respect, in addition to the intention of acceleration, the principle of legality of the administration and to enable the Bundesanstalt to have effective and effective supervision, it must also be able to investigate thoroughly in cases where it finds itself unable to do so on the basis of an English-language application, without this leading to the expiry of the notice period and the subsequent negative consequences. In these cases, it is therefore possible for the Bundesanstalt to inhibit the expiry of the deadline by a translation request. This is an interlocutory decision, not separately countervailable, within the meaning of § 44a of the Administrative Court Code (as well as the translation request under paragraph 1). Since paragraph 2 is in any case only applicable to electronic applications, the translation request may also be transmitted electronically by the means with which the application has been received, as access is then opened in accordance with § 3a(1) of the VwVfG (see also Hornung in: Schoch/Schneider, administrative law, 2nd El April 2022, § 3a VwVfG, paragraph 41).

Here, too, the decision as to whether the Bundesanstalt requires a translation is at the discretion of the Bundesanstalt in the course of their duties, as laid down in the second sentence of paragraph 1. To this extent, the same principles of conduct of assessment apply here.

Only when a translation is received by the Bundesanstalt which satisfies the requirements of the request – for example by a publicly appointed or sworn interpreter or translator – the suspension ends and the notice period continues. Sentence 4, § 209 of the Civil Code shall apply mutatis mutandis, so that the period during which the expiry was suspended is not included in the notice period. The Bundesanstalt may also publish the translation request in accordance with § 4h.

Paragraph 3, first sentence, regulates the time at which applications submitted to the Bundesanstalt in English are deemed to have been received. This is basically the time of submission. The more general provision of paragraph 23(4) of the VwVfG also provides that foreign-language applications may be considered to have complied with the time limits in these cases if a translation is received within the time limit set by the authority. The first sentence of paragraph 3 goes beyond this only insofar as the requirement and submission of a translation may be waived.

However, in order to enable the Bundesanstalt to properly process the application in individual cases, it also has the possibility, in addition to the general possibility under the second sentence of paragraph 1, to request a translation within a certain time limit. A special feature of the second sentence of paragraph 1 is that if the translation is not submitted within the prescribed period, the legal consequence of the first sentence of paragraph 3 does not occur. That is, in accordance with the basic provisions of § 23(4) of the VwVfG, only the date of receipt of the translation is decisive. In accordance with the third sentence of Paragraph 23(4) of the VwVfG, this must be noted when setting the deadline. In doing so, the Bundesanstalt must set a reasonably long period of time.

In the interest of a citizen-friendly administration and in order to clarify for the applicant as soon as possible whether the application is sufficient in English, the Bundesanstalt shall decide as soon as possible whether it requests a translation, which is why it must immediately request a translation in accordance with the second sentence of paragraph 3. The term 'immediately' corresponds to the first sentence of § 23(2) of the VwVfG. For the notion of electronic application and details of access, please refer to the Explanatory Notes to paragraph 2. The Bundesanstalt may also publish the translation request in accordance with § 4h.

The Bundesanstalt may also request the submission or a certified translation or a translation made by a publicly appointed or sworn interpreter or translator. For the time limit to be observed by the applicant, it is necessary that the translation meets the requirements laid down by the Bundesanstalt.

Paragraph 4 stipulates that the Bundesanstalt shall translate and publish legal ordinances issued by it, as well as forms and administrative provisions. The publication of legal ordinances, forms and administrative provisions facilitates the submission of applications and gives foreign market participants the opportunity to understand the basics of the administrative action and the specification of the legal framework by the Bundesanstalt. This applies only to documents that may be relevant to foreign market participants. A time frame of six months is foreseen as a guideline.

Paragraph 5 stipulates that deviating provisions of special law take precedence over § 4j of the FinDAG. This ensures that divergent standards, in particular based on European law, remain effective.

Re subparagraph 4

The need for amendment arises due to changes in the provisions of the Payment Services Supervision Act (ZAG). This is an adaptation of the legal references resulting from the amendment to the standard in § 19 ZAG in Article 27(9).

Re subparagraph 5

Re letter a

The heading of the standard is recast to reflect the extended regulatory content.

Re letter b

In future, communication between the persons liable to pay the levy with the Bundesanstalt when collecting and fixing the levy should in principle be carried out electronically. For this purpose, paragraphs 4 and 5 of § 16m are recast. This provision establishes the basis for electronic communication between the persons liable to pay the levy and the Bundesanstalt. The decree of an obligation to use the electronic communication procedure is justified, as the persons subject to levy are regularly in a close and permanent supervisory relationship with the Bundesanstalt. Furthermore, the electronic communication procedure makes it easier for them to submit information and documents, thereby reducing the burden on them. It also facilitates procedures for associations.

In future, the portal already existing at the Bundesanstalt will be further developed in its functionality, so that in future administrative files will also be able to be transmitted to those subject to levy. This contributes to the modernisation of the Bundesanstalt by progressive digitalisation of its work processes. For the above-mentioned forms of communication and specialist procedures, the persons liable to pay the levy are obliged to use the electronic communication procedure provided by the Bundesanstalt and to set up electronic access for this purpose. Information, documents, communications, notifications and applications relating to the collection and fixing of the levy shall be transmitted to the Bundesanstalt through this electronic communication procedure, unless the Bundesanstalt determines a different means of transmission on a particular occasion. In addition, the Bundesanstalt may notify or deliver administrative acts to the person liable to pay the levy via this electronic communication procedure on the basis of §§ 4g and 4f of the Financial Services Supervision Act, in particular the decision on the levy to be paid. In the interests of all parties involved, a simpler and legally secure electronic communication should be the standard case in the future. A manual decision can be considered, for example, in case of technical problems.

§ 16m(5) contains the authorisation to issue a statutory ordinance. By means of this, the further details for electronic communication between the persons subject to levying and the Bundesanstalt can be created. The regulation provides the necessary flexibility to regulate the technical details of formats and to be able to adapt them in a timely and appropriate manner if necessary, e.g. due to technical progress. It is a simple and cost-effective process.

Re letter c

This is an editorial consequence to the recasting of paragraphs 3 and 4.

Re Letter d

This is an adjustment to the numbering as a consequence of the recasting of paragraphs 3 and 4. In addition, in order to further digitise communication with the Bundesanstalt, the previous written form requirement for the declaration of commitment pursuant to sentence 1 is replaced by the possibility of doing so electronically.

The electronic transmission made possible here is not equivalent to the 'electronic form' of the Administrative Procedure Act (VwVfG). The electronic form is standardised in § 3a(2) sentence 2 of the VwVfG. This involves the furnishing of a document with a qualified electronic signature. By contrast, the term 'electronic' covers all electronic communications; it

does not impose any special formal requirements. The simple email and communication, e.g. via special government mailboxes, are therefore recorded.

Re subparagraph 6

In accordance with the levy determination laid down in § 16m, electronic communication shall also be able to be used for the determination of the payment to the levy in accordance with § 16n. The reference is therefore extended.

Re Article 23 (Amendment to the Ordinance on the delegation of powers to the Federal Financial Supervisory Authority)

Re subparagraph 1

Re letter a

The amendments serve to sub delegate the authorisation to issue a statutory ordinance pursuant to § 24a of the WpHG to the Bundesanstalt.

Re letter b

The newly created ordinance authorisation pursuant to § 5 of the German Banking Act (KWG) is to be transferred to the Bundesanstalt, since it has a greater specialist expertise with regard to the provisions on access, implementation and use of electronic communications and the obligation of the electronic communication procedure to be made in the corresponding ordinance.

Re subparagraph (c), d and e

The ordinance authorisation pursuant to § 16 m(5) of the FinDAG is thereby to be transferred to the Bundesanstalt, since it has a greater specialist expertise with regard to the detailed provisions to be laid down in the relevant ordinance for the purpose of levying the levy for the purposes of compulsory use of an electronic communication procedure provided by the Bundesanstalt for the purpose of setting and collecting the levy and for opening access to this and the file formats to be used.

Re subparagraph 2

The newly created ordinance authorisation pursuant to § 310a VAG is to be transferred to the Bundesanstalt, since it has a greater specialist expertise with regard to the provisions on access, implementation, use of electronic communications and the obligation of the electronic communication procedure to be made in the corresponding ordinance.

Re subparagraph 3

The newly created ordinance authorisation pursuant to § 4a of the ZAG is to be transferred to the Bundesanstalt, since it has a greater specialist expertise with regard to the provisions on access, implementation, use of electronic communications and the obligation of the electronic communication procedure to be made in the corresponding ordinance.

Moreover, an editorial recast of the wording takes place in order to clarify that the hearing relates to the adoption of the regulation and not to Paragraph 28 of the ZAG.

Re Article 24 (Amendment to the Financial Services Supervision Fees Ordinance)

Re subparagraph 1 (§ 1)

The rules on the basis of which the Bundesanstalt may charge fees for individually attributable public services must be supplemented by Regulation (EU) 2022/858 of the European Parliament and of the Council of 30 May 2022 on a pilot scheme for market infrastructure based on distributed ledger technology and amending Regulations (EU) No 600/2014 and (EU) No 909/2014 and Directive 2014/65/EU.

Re subparagraph 2 (Fees list)

Re letter a

This is an adaptation of the Financial Supervisory Fee Regulation (FinDAGebV), which has become necessary as a result of the implementation of Regulation (EU) 2022/858 of the European Parliament and of the Council of 30 May 2022 establishing a pilot scheme for market infrastructure based on distributed ledger technology and amending Regulations (EU) No 600/2014 and (EU) No 909/2014 and Directive 2014/65/EU. For Regulation (EU) 2022/858 of the European Parliament and of the Council of 30 May 2022 establishing a pilot scheme for market infrastructure based on distributed ledger technology and amending Regulations (EU) No 600/2014 and (EU) No 909/2014 and Directive 2014/65/EU, separate charges had to be included in the FinDAGebV and the Table of Contents adjusted accordingly.

Re letter b

This is an adaptation of the FinDAGebV required by the implementation of Regulation (EU) 2022/858 of the European Parliament and of the Council of 30 May 2022 establishing a pilot scheme for market infrastructure based on distributed ledger technology and amending Regulations (EU) No 600/2014 and (EU) No 909/2014 and Directive 2014/65/EU. For Regulation (EU) 2022/858 of the European Parliament and of the Council of 30 May 2022 establishing a pilot regime for distributed ledger technology-based market infrastructures and amending Regulations (EU) No 600/2014 and (EU) No 909/2014 and Directive 2014/65/EU, separate charges had to be established in the FinDAGebV, which are now listed under subparagraph YY et seq.

Re YY.1

The individually attributable public services according to the individual charges are administrative procedures, each of which cause different time expenditures or the frequency of which is very low. A time-dependent fee was therefore chosen for the respective charges. The amount of fees therefore depends on the individual administrative burden.

Re Article 25 (Amendment to the Payment Institution Audit Report Regulation)

The need for amendment arises due to changes in the provisions of the Payment Services Supervision Act. This is an adaptation of the legal references resulting from the amendment to the standard under Article 27(9).

Re Article 26 (Amendment to the Payment Account Act)

The first subparagraph of Article 7(1) clause 1 of Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features (OJ L 257, 28.8.2014, p. 214, ‘the Payment Accounts Directive’) requires Member States to ensure that consumers have free access to at least one website that allows

a comparison of charges charged by payment service providers at national level for at least the relevant payment account services. The Payment Accounts Directive was transposed in the Payment Accounts Act of 11 April 2016. The previous provisions of the Payment Accounts Act provide that operators of websites comparing offers of payment accounts can request the issue of a certificate confirming the legally compliant implementation of their payment account comparison. The requirements imposed on the website operators and their products result from §§ 17 and 18 of the Payment Accounts Act (ZKG). These criteria are specified in a statutory ordinance to be issued on the basis of § 19(1) of the ZKG. The certification is carried out by a conformity assessment body accredited by the German accreditation body.

This model for the implementation of Article 7 of the Payment Accounts Directive by means of accreditation and certification was based on the expectation that the requirement to Article 7 of the Payment Accounts Directive could be met solely by means of voluntary application for certification by private operators of websites. These expectations have not been met. In 2021, the only provider of a private comparison website which complied with the standards laid down in §§ 17 and 18 of the ZKG and the Comparative Website Ordinance, ceased operating the website.

In order to ensure full implementation of the requirements of the Payment Accounts Directive, according to which at least one such comparison website is permanently available to consumers, a comparison website operated by the State is therefore to be set up, which is offered in addition to the still possible comparison websites by certified private providers. The responsibility for setting up and operating this website is transferred to the Bundesanstalt.

In general, the Bundesanstalt performs its tasks in accordance with § 4(4) of the FinDAG exclusively in the public interest. This also applies to the previous and future tasks assigned to it by the ZKG.

Re subparagraph 1

Editorial adjustments are made.

Re subparagraph 2

Editorial adjustments are made.

Re subparagraph 3 (§ 16 of the ZKG)

For reasons of expertise, responsibility for setting up and operating a comparison website is transferred to the Bundesanstalt by amending § 16 of the ZKG (incorporation of a new paragraph 1). This task falls within the competence of the Bundesanstalt for collective consumer protection pursuant to § 4(1a) of the FinDAG, according to which the Bundesanstalt is already obliged to protect the collective interests of consumers vis-à-vis the undertakings supervised under the relevant supervisory laws. This also applies to payment service providers supervised under § 46 of the ZKG.

As is apparent from sentences 3 and 4 of the new paragraph 1, in addition to the Bundesanstalt, other operators may also offer a certified comparison website.

According to the future § 16(3) of the ZKG-E, operators of certified comparison websites are also entitled to retrieve the data on comparison criteria to be reported by payment service providers to the Bundesanstalt pursuant to § 17(2) of the ZKG-E and to process them exclusively for the purpose of operating the certified comparison website. This emphasises that initiatives by private operators for appropriately qualified comparison websites are still possible and desirable.

The certification of private websites will then continue to be carried out by private conformity assessment bodies, which can be accredited for this purpose. Here too, the initiative of private bodies is needed. There is still no provision for a State Conformity Assessment Body, nor is there an obligation for State bodies to establish or ensure accreditation of such a body.

In addition, editorial adjustments are made following the insertion of the new paragraph 1.

Re subparagraph 4

In order to be able to efficiently and effectively cover the essential part of the German market when comparing payment accounts, required by § 18(6) of the ZKG and under the Payment Accounts Directive, § 17(2) of the ZKG-E introduces a legal obligation for payment service providers to report data on comparative criteria to the Bundesanstalt.

Re subparagraph 5

Since the data to be reported pursuant to § 17(2) of the ZKG-E on comparative criteria are aligned with the relevant payment account services pursuant to § 2(6) of the ZKG-E, these will in future be specified in a statutory ordinance to be adopted on the basis of § 19(1) of the ZKG-E in accordance with the provisions on reporting obligations.

Details on the transmission of data on comparison criteria by payment service providers to the Bundesanstalt within the framework of the notification obligation pursuant to § 17(2) of the ZKG-E or on the provision of data on comparative criteria by the Bundesanstalt for operators of comparative websites certified in accordance with § 16(2) of the ZKG-E shall be specified on the basis of a statutory ordinance to be issued in accordance with § 19(3) of the ZKG-E.

The power to issue statutory instruments pursuant to § 19(1) and (3) of the ZKG-E may be transferred to the Bundesanstalt responsible for implementation. The statutory ordinances by the Bundesanstalt require agreement by the relevant Ministries. In addition, the powers to issue statutory instruments in § 19 of the ZKG are updated with a view to changed departmental responsibilities within the Federal Government.

Re subparagraph 6

An editorial consequential change is made.

Re subparagraph 7

The addition of § 48(3) of the ZKG serves the transposition of the Online Access Act, by which the Federal Government, states and local authorities have committed themselves to offer all administrative services for citizens and companies also online via administrative portals.

The electronic transmission made possible here is not equivalent to the 'electronic form' of the Administrative Procedure Act (VwVfG). The electronic form is standardised in § 3a(2) sentence 2 of the VwVfG. This involves the furnishing of a document with a qualified electronic signature. By contrast, the term 'electronic' covers all electronic communications; it does not impose any special formal requirements. The simple email and communication, e.g. via special government mailboxes, are therefore recorded.

Re subparagraph 8

A breach of the obligation to notify pursuant to § 17(2) of the ZKG-E is punishable under § 53(1)(6) of the ZKG-E. The fine is necessary in order to enable the Bundesanstalt to effectively enforce the notification obligation and thus ensure that the data necessary for the

operation of the comparison website on comparative criteria for a substantial part of the market within the meaning of § 18(6) of the ZKG are available.

Re subparagraph 9

The addition of Annex 4 of the ZKG serves the implementation of the Online Access Act, by which the Federal Government, states and municipalities have committed themselves to offer all administrative services for citizens and companies also online via administrative portals.

Re Article 27 (Amendment to the Payment Services Supervision Act)

Re subparagraph 1

With the insertion of §§ 4a and 62a of the ZAG, the Table of Contents must also be adapted accordingly.

Re subparagraph 2

Re letter a

Branches pursuant to § 53 of the Banking Act, which have authorisation to operate the deposit and credit business, are also considered as payment service providers in accordance with Article 1(1)(a) of Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010 and repealing Directive 2007/64/EC.

Re letter b

In accordance with Article 1(1)(a) of Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC, branches pursuant to § 53 of the German Banking Act (KWG) which have an authorisation to operate the deposit and credit business are also considered to be electronic money issuers in Germany.

Re letter c

Since the following paragraphs 16, 19, 21 and 22 each contain the term 'payment transaction', its definition is hereby taken from in Article 4(5) of Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010 and repealing Directive 2007/64/EC and from the first sentence of § 675f(4) of the Civil Code.

Re subparagraph 3

This corrects an editorial mistake – the reference to loans in millions.

Re subparagraph 4

In the process of the digitisation of the Bundesanstalt’s processes as far as possible, paragraph 1 establishes the basis that the communication of the companies subject to authorisation and registration with the Bundesanstalt within the scope of the granting of permits and registration according to the regulation in paragraph 1 is in principle conducted electronically. Until now, communication between the Bundesanstalt and the institutes was already possible through a portal set up by the Bundesanstalt, but without a statutory

regulation for ZAG institutions in this connection. Functionally, with the introduction of this legislative amendment, the portal will transmit administrative acts to the institutions and applicants. In this way, the Bundesanstalt may on the basis of §§ 4g and 4f of the Financial Services Supervision Act use this electronic communication procedure to notify or deliver administrative acts, in particular decisions on the granting of permission or registration.

The companies subject to authorisation and registration are required to use the electronic communication procedure provided by the Bundesanstalt for the above-mentioned forms of communication and specialist processes to set up electronic access for this purpose. In the interest of all parties involved, simpler and legally secure electronic communication should be the normal case. A manual notification can only be considered in exceptional cases if technical problems arise. Institutions and applicants may use authorised representatives for electronic communications. If these are persons who were already registered and thereby authorised with the Bundesanstalt in an electronic access procedure for the bank levy before the entry into force of the scheme, this authorisation shall continue to apply. The continuing validity of previously proven authorisations serves to simplify and speed up procedures in order not to have to request a new notification of authorisation in the short term. This legal fiction only applies to the extent that the power of attorney still exists. If previously authorised representatives are no longer authorised representatives with regard to notification and service, the termination of the authorisation shall be notified to the Bundesanstalt. Furthermore, in the interest of legally effective notification or service, any changes to the authorisation of attorney shall only become effective once they have been notified to the Bundesanstalt.

Paragraph 2 contains an ordinance empowering the Federal Ministry of Finance to establish more detailed provisions on the access and use of the electronic communication procedure and the relevant data formats. This creates the necessary flexibility to adapt technical details, access, implementation and use of the electronic communication procedure referred to in paragraph 1 in a timely and appropriate manner, e.g. due to technical progress or practicability considerations. With the possibility of transferring a statutory ordinance to the Bundesanstalt, it is possible to use the particular familiarity of the Bundesanstalt with the issue and the existing experience in administrative practice in previous electronic communications.

Re subparagraph 5

Re letter a

The first sentence of § 10(1) of the ZAG stipulates that written permission of the Bundesanstalt is required. In the course of the digitisation of the Bundesanstalt’s processes as far as possible, this written form requirement is supplemented by the electronic form. This is intended to allow for electronic authorisation. Under to the new wording, written permission by the Bundesanstalt is still possible.

The electronic transmission made possible in this case cannot be equated with the 'electronic form' of the VwVfG. The electronic form is standardised in § 3a(2) sentence 2 of the VwVfG. This involves the furnishing of a document with a qualified electronic signature. By contrast, the term 'electronic' covers all electronic communications; it does not impose any special formal requirements. The simple email and communication, e.g. via special government mailboxes, are therefore recorded.

Re letter b

This amendment to the second sentence of § 33(4) of the German Banking Act (KWG) serves to accelerate the procedure.

Re letter c

The changes made are for editorial legal clarification. They now comply with the regulatory logic of the power to issue statutory instruments under the Banking Act.

Re subparagraph 6

Re letter a

The first sentence of § 11(1) of the ZAG stipulates that written permission of the Bundesanstalt is required. In the course of the digitisation of the Bundesanstalt's processes as far as possible, this written form requirement is supplemented by the possibility of electronic submission. This is intended to allow for electronic authorisation. Under to the new wording, written permission by the Bundesanstalt is still possible.

Re letter b

The changes made are for editorial legal clarification. Electronic cash institutions that provide payment initiation or account information services must also have protection in the event of liability in accordance with §§ 16 and 36 of the ZAG, which must be proven in the application procedure.

Re letter c

The changes made are for editorial legal clarification. They now comply with the regulatory logic of the power to issue statutory instruments under the Banking Act.

Re subparagraph 7

The changes made are for editorial legal clarification. They now comply with the regulatory logic of the power to issue statutory instruments under the Banking Act.

Re subparagraph 8

Re letter a

The changes made are for editorial legal clarification. They now comply with the regulatory logic of the power to issue statutory instruments under the Banking Act.

Re letter b

This is an editorial clarification, since institutions within the meaning of the ZAG are not permitted to be securities institutions at the same time.

Re letter c

Pursuant to subparagraph f of the second clause of Article 28(3) of Regulation (EU) No 575/2013, recognition as Common Equity Tier 1 capital in relation to profit transfer agreements shall only take place when the notice period specified therein is agreed. § 297 However, the first sentence of paragraph 1 of the Stock Corporation Act provides – irrespective of the agreements reached – for termination without notice for good reason. Therefore, this provision of the Stock Corporation Act was declared inapplicable for the purposes of the transfer of own funds by the first sentence of § 10(5) of the Banking Act, inserted by the Risk Reduction Act. Accordingly, this provision is also incorporated into the Payment Services Supervision Act.

Re subparagraph 9

Re letter a

This is essentially a clarifying provision. According to this, the Bundesanstalt and the Bundesbank may require that information and documents be transmitted electronically or, where appropriate, provided orally, in a form which may be specified in more detail.

Re letter b

This is an adaptation of the legal references resulting from the amendment to the standard in subparagraph 9a.

Re subparagraph 10

The changes made are for editorial legal clarification. They now comply with the regulatory logic of the power to issue statutory instruments under the Banking Act.

Re subparagraph 11

Re letter a

In the course of the digitisation of the Bundesanstalt's processes as far as possible, the written notification is supplemented by an electronic notification.

Re letter b

The changes made are for editorial legal clarification. They now comply with the regulatory logic of the power to issue statutory instruments under the Banking Act.

Re subparagraph 12

In the course of the digitisation of the Bundesanstalt's processes as far as possible, the written notification is supplemented by an electronic notification.

Re subparagraph 13

The changes made are for editorial legal clarification. They now comply with the regulatory logic of the power to issue statutory instruments under the Banking Act.

Re subparagraph 14

The changes made are for editorial legal clarification. They now comply with the regulatory logic of the power to issue statutory instruments under the Banking Act.

Re subparagraph 15

Re letter a

The first sentence of the first sentence of § 34 of the ZAG provides that written registration of the Bundesanstalt is required. In the course of the digitisation of the Bundesanstalt's processes as far as possible, the written form is supplemented by electronic registration. According to the new wording, written registration by the Bundesanstalt is still possible.

Re letter b

This amendment to the second sentence of § 33(4) of the German Banking Act (KWG) serves to accelerate the procedure.

Re letter c

The changes made are for editorial legal clarification. They now comply with the regulatory logic of the power to issue statutory instruments under the Banking Act.

Re subparagraph 16

This is the editorial alignment to the terminology previously used in the ZAG with the amendments made by this Act.

Re subparagraph 17

This is the editorial alignment to the terminology previously used in the ZAG with the amendments made by this Act.

Re subparagraph 18

The changes made are for editorial legal clarification. They now comply with the regulatory logic of the power to issue statutory instruments under the Banking Act.

Re subparagraph 19

§ 60(2) sentence 1 of the ZAG stipulates that complaints to the Bundesanstalt about payment service providers or e-cash issuers must be lodged in writing or by transcript. In the course of the digitisation of the Bundesanstalt's processes as far as possible, the written form is supplemented by the possibility of electronic submission. Since the submission of a written complaint serves the purpose of informing the competent authority of important facts, it is also sufficient, for example, to submit a simple electronic (encrypted) email to the authority. A document with a handwritten signature or the special possibilities for substitution in § 3a(2) of the VwVfG are not mandatory, but would still be possible. The possibility of submitting a transcript should be maintained for reasons of consumer protection.

Re subparagraph 20

§ 61(2) sentence 1 of the ZAG stipulates that complaints to the Bundesanstalt about payment service providers or e-cash issuers must be lodged in writing or by transcript. In the course of the digitisation of the Bundesanstalt's processes as far as possible, the written form is supplemented by the possibility of electronic submission. Since the submission of a written complaint serves the purpose of informing the competent authority of important facts, it is also sufficient, for example, to submit a simple electronic (encrypted) email to the authority. A document with a handwritten signature or the special possibilities for substitution in § 3a(2) of the VwVfG are not mandatory, but would still be possible. The possibility of submitting a transcript should be maintained for reasons of consumer protection.

Re subparagraph 21

With the insertion of § 62a of the ZAG, the heading of section 12 must be adjusted accordingly.

Re subparagraph 22

§ 62a of the ZAG incorporates the regulatory content of Article 106 of Directive (EU) 2015/2366 (2nd Payment Services Directive, PSD2) to clarify German law. Article 106 of Directive (EU) 2015/2366 relates to collective consumer information and not pre-contractual and therefore civil law information from which individual rights for consumers can be derived. For this reason, transposition is made into supervisory law, corresponding to the responsibility of the Bundesanstalt for collective consumer protection

Re Article 28 (Amendment to the Securities Institute Act)

Re subparagraph 1

The newly inserted §§ 78a to 78c, which serve to support the provisions of Regulation (EU) 2022/858, were also to be included in the Table of Contents. § 78c lays down rules on language and form for applications under the DLT pilot scheme and allows the Bundesanstalt a flexible design in this regard.

Re subparagraph 2

The adjustments made here support the provisions of Regulation (EU) 2022/858 (DLT pilot scheme) in national law.

The addition made here also extends the auditor’s statutory audit to the requirements of Regulation (EU) 2022/858.

Re letter c

Re subparagraph 3

No specific implementation of the addition made in Article 4(1)(15) of Directive 2014/65/EU (MiFID II) to Article 18 of the DLT Pilot Scheme is required. The existing definition of the term 'financial instrument' in § 1(11) of the Banking Act, § 2(5) of the Securities Institute Act and § 2(4) of the Securities Trading Act is technology-neutral and therefore already includes instruments issued by means of distributed ledger technology, insofar as they also fulfil the characteristics of the term.

§ 78a designates the Bundesanstalt as the competent supervisory authority within the framework of the DLT pilot scheme. The provision transposes Article 12(1) and (2) of Regulation (EU) 2022/858. There is no allocation of competence with regard to CSDs (Article 12(3) of Regulation (EU) 2022/858), as these are not covered by the Securities Institutions Act.

§ 78b(1) clarifies that DLT market infrastructures do not require additional permission under this Act for the activities permitted to them under the DLT pilot scheme. The fact that no additional permission is required under this Act does not mean that the DLT market infrastructures would per se be exempted from complying with the other requirements for the corresponding activities. For example, a securities institution that operates a DLT MTF in accordance with Article 4, 8 of Regulation (EU) 2022/858 shall also meet the requirements applicable to the operation of an MTF (in accordance with Regulation (EU) 2022/858).

§ 78b(2) takes up recital 26 of Regulation (EU) 2022/858 and ensures that retail investors who, on the basis of an exemption pursuant to Article 4(2) of Regulation (EU) 2022/858, are admitted as a member or participant in a DLT MTF or DLT-SS and, where appropriate, carry out their own business subject to authorisation in principle, do not require authorisation under that Act. Regarding the legally secure definition of retail investors, reference is made to the definition of retail clients in § 67(3) of the Securities Trading Act.

§ 78c lays down rules on language and form for applications under the DLT pilot scheme and allows the Bundesanstalt a flexible design in this regard.

Re Article 29 (Amendment to the Capital Investment Code)

Re subparagraph 1

This is a consequential amendment to the amendment in subparagraph 7(b) (§ 231(3) of the KAGB).

Re subparagraph 2

This is an editorial alignment to the wording with parallel regulations in other supervisory Acts.

Re subparagraph 3

Re letter a

The new paragraph 1a is intended to transpose Article 11(1) of Directive 2009/65/EC in conjunction with the first clause of Article 10a(1) of Directive 2004/39/EC and the first clause of Article 12(1) of Directive 2014/65/EU. Previously, the two-day period pursuant to § 2c(1) of the German Banking Act (KWG) was indirectly applicable through the reference in paragraph 1 sentence 2.

Re letter b

The new paragraph 5a aims to make it easier for foreign market participants to enter the German market and thus to make the financial location more attractive for international investors. In order to reduce barriers to market entry and to minimise the effort, especially for first steps, it should be possible in the future to conduct the communication between the interested acquirers and the holders of significant holdings with the Bundesanstalt in owner control proceedings in English as well. In this respect, it is a special rule taking priority over the more general provision of Paragraph 23 of the Administrative Procedures Act. The decision as to whether the Bundesanstalt requires a translation is at the discretion of the Bundesanstalt in the course of their duties.

Sentence 4 concerns the case where the Bundesanstalt requests a translation as part of the examination of the completeness of a notification. In this case, it is clarified that the notification is only complete with the requested translation. Accordingly, the Bundesanstalt must certify completeness only after receipt of the translation. This means that the Bundesanstalt must check within the two-day deadline whether a translation is required. Otherwise, provided that the documents are otherwise complete, it must certify completeness and start the assessment period.

Sentence 5 concerns the case where the Bundesanstalt requires a translation of further information which it requests during the assessment period. In this case, too, this information is only fully received by the Bundesanstalt when the translation is available, with the consequence that the suspension only ends at that point in time. The maximum periods specified in § 2c(1a)(7) KWG which are applicable in accordance with § 19(2) sentence 1 of the KAGB, shall remain unaffected. This means that the suspension ends if the Bundesanstalt does not require a translation before confirmation of receipt of the further information.

Re subparagraph 4

In order to take account of the changed needs in the course of the digital transformation, the written form will also be waived for the notification of unplanned changes in the future.

Re subparagraph 5

Re letter a

The change will allow other investment assets to invest directly in crypto-assets for their investors. Until now, this was only possible for professional and semi-professional investors, but not public AIFs. This expansion of investment opportunities is intended to help make Germany's financial location more attractive.

Re letter b

Since crypto-assets can be extremely risky investments and the acquisition is limited to 20 percent of the fund's value even for open special AIFs with fixed investment conditions, the share of Other Investment Assets that may be invested in crypto-assets should be limited to 10 percent of the fund's value.

Re subparagraph 6

Re letter a

In future, Other Investment Assets should also be able to make use of the liquidity management tool set out in § 98(1b). The additional possibility of using withdrawal restrictions enables Other Investment Assets to make better use of the instruments appropriate for their respective liquidity management.

Re letter b

This is also the deletion of a regulation on the written form which is no longer necessary in the course of digitisation.

Re subparagraph 7

Re letter a

The new subparagraph 3a extends the catalogue of permitted assets which may be acquired for a property special asset to include unbuilt land within the meaning of §§ 72 and 145 of the Valuation Act, i.e. land without buildings which is designed and suitable for the construction of installations for the production, conversion, transport and storage of electricity, gas or heat from renewable energies (renewable energy installation). This makes it possible for capital management companies to invest in such installations even if there is no direct structural link to a building. The addition is intended to ensure that special property funds can make a greater contribution to the energy transition than before. A distinction must be made between so-called rooftop systems or other installations which have a certain structural connection with a building and installations which constitute the only development to a plot of land (open area installation). The construction and operation of rooftop systems has already been permitted, with certain legal clarifications required by amendments to paragraph 3 and the new paragraph 6. On the other hand, under the current legal situation, the acquisition of land on which only a renewable energy plant is located or is to be built is not permissible. This will be changed by the new subparagraph 3a.

The energy transition is a declared goal of this federal government. In order to achieve the climate targets, the construction of plants for the generation or transport of electricity from renewable energies is in the public interest and serves public safety. However, in order to achieve the climate goals and the contribution that special property funds can make to this, it does not matter on which land renewable energy is generated. Renewable energies that are not produced close to buildings also make a valuable contribution, e.g. wind or solar power in an open area. Therefore, the acquisition of land on which renewable en-

ergy investments are located or on which they are to be built should be made possible. A development with a building should not be necessary for this, i.e. land on which only open space facilities are or will be located should also be possible to purchase.

In order to preserve the character of property funds as an investment vehicle for investing in property, a land purchase should still be maintained. The property fund is therefore not intended to purchase installations that are located on land unrelated to the property fund. Otherwise, it would be conceivable that a fund called a property fund might in future not invest in property at all, but only acquire renewable energy plants.

The acquisition and operation of renewable energy plants is not intended to become the main purpose of a property fund through the possibility of acquiring such installations. A fund that bears a corresponding designation should also be predominantly invested in property. An inclusion of undeveloped land with renewable energy plants in property funds as well seems desirable and appropriate in view of the need for the energy transition. One of the goals of the Paris Agreement on Climate Change is to bring financial flows into line with climate targets. Property funds reach many investors in the Federal Republic of Germany, whose investments can in this way then also contribute to the energy transition if the investors so wish. The investment limit of 15 percent is based on the limit set out in paragraph 1(5) for other land and building rights as well as rights in the form of residential property, etc.

Due to the transparency requirements of the Capital Investment Code, investors can easily see whether a property fund can also invest in renewable energy investments and can align their investment decisions accordingly. Risk and liquidity management to a capital management company wishing to acquire such investments for a property fund must be geared towards the different risk profile compared to a building, as is apparent from the general provisions of the Capital Investment Code.

Re letter b

The current legal situation already permits the operation of rooftop installations for property funds. However, there are often problems of demarcation and interpretation in practice, which may impede the expansion of existing property funds with rooftop installations or may even exclude the acquisition of new properties for property funds in the future. Because there are cases where the rooftop system either produces more electricity than is needed for the building, or where the tenants do not take the electricity from the plant at all. For this reason, such installations have often not easily been able to be regarded as the property’s management objects.

In order to implement the energy transition, however, it is precisely necessary that more roof areas are used to generate energy. For example, the coalition agreement of the parties supporting the Federal Government (p. 44) states that in future all suitable roof areas will be used for solar energy. In the case of commercial new buildings, this should be mandatory; for private new buildings it should become the rule. In individual federal states, such obligations, or similar obligations, already exist or are planned. However, with the increasing use of roof areas by solar systems, property funds would increasingly be excluded from the purchase of modern or modernised buildings in the future if they were not allowed to purchase such installations even if they are not or not exclusively used for the management of the property and are therefore no longer considered necessary in individual cases. It is also difficult to understand why precisely property held by property funds should not make their roof areas available for solar energy production.

On the one hand, the addition corresponds to previous administrative practice and clarifies that 'necessary' for management is not to be understood in the strict technical sense. The addition also takes account of the fact that the market has changed the demands on technical building equipment over time. Items for charging stations for electric vehicles or

electric bicycles are also not directly necessary for the management to a property. Undoubtedly, however, the equipment of a modern building with charging stations will be indispensable in the future.

According to the German Sustainable Finance Strategy, the Federal Government supports the financial sector by setting clear framework conditions for sustainable investments, which is why paragraph 3 is expanded to include rooftop systems and charging stations.

Re letter c

The amendment is a consequential amendment to insert the new subparagraph 3a in the first sentence of paragraph 1.

Re Letter d

The new paragraph 6 stipulates that the operation of both outdoor and rooftop installations is a permissible activity of the capital management company for the property fund, including the sale of electricity. Up to now, some of the installations have been leased, as there was legal uncertainty as to whether electricity generation is one of the permitted activities for an open property fund without depriving it of its asset management nature. In future, more and more buildings will also be equipped with corresponding installations due to legal requirements; especially in the case of new buildings, these facilities will be part of the normal inventory. Separating the other management of the building from the operation of such an installation would entail an artificial division of the building management. The creation of legal clarity serves to ensure that investors of property funds can also participate in this progress and that open special property funds will not be discouraged, for example, from acquiring new buildings in the future. The provision also applies to special infrastructure assets through the reference in § 260a.

Re subparagraph 8

Re letter a

For open infrastructure funds, the catalogue of eligible assets will be extended to include directly held renewable energy installations, thus enabling the direct purchase of such installations for the first time. Up to now, only indirect acquisitions via an infrastructure project company have been possible.

Re letter b

For the investment in renewable energy plants, risk spreading shall be undertaken in line with that for investments in infrastructure project companies.

Re letter c

This is a consequential amendment to the introduction of the new subparagraph 1a in paragraph 1. Paragraph 4 is intended to ensure that an open infrastructure fund actually invests in infrastructure. This will also in future include directly-held renewable energy plants.

Re subparagraph 9

Re letter a

The change is intended to allow closed domestic public AIFs, such as Other Investment Assets, to invest directly in crypto-assets for their investors. Until now, this was only possible for professional and semi-professional investors, but not public AIFs.

Re letter b

In line with the amendments to open funds, the regulation also allows closed domestic AIFs to purchase plants for the conversion of energy from renewable energy.

Re letter c

As crypto-assets can be highly risky investments, the share of the closed domestic audience AIF that may be invested in crypto-assets should be limited to 10 % of the fund's value, as with Other Investment Assets,

Re Letter d

The new paragraph 8, in line with the regulation in subparagraph 7(d), stipulates that the operation of renewable energy plants is a permissible activity of the capital management company for the closed domestic public AIF, including the sale of electricity. Closed domestic public AIFs are already allowed to purchase and operate such investments, but in the course of the changes to open funds by this Act, there was a need for legal certainty. An explicit provision for open property funds could raise the question of whether, in the absence of such a regulation, closed funds would (any longer) be permitted to operate the investments themselves. In order to avoid legal uncertainty, the equivalent rules for open and closed funds are established.

Re subparagraph 10

Re letter a

In future, the change will also allow special open funds with fixed investment conditions to purchase renewable energy plants directly.

Re letter b

The amendment clarifies that only the entities referred to in letter i of paragraph 2 are covered by the investment limit for holdings, but not property companies and PPPs or infrastructure project companies as eligible assets listed separately in paragraph 2. Since there are no such investment limits with regard to property companies, PPPs or infrastructure project companies for special public property funds and infrastructure funds, a limit for special AIFs cannot be justified. Legal uncertainty could serve to hamper, in particular, the expansion of the infrastructure for renewable energy plants as envisaged by this Act.

Re subparagraph 11

The supplement stipulates that in 1:1 application of the European Long-Term Investment Funds Regulation (ELTIF Regulation) as regards the withdrawal of shares by investors, only the provisions of Article 30 of this Regulation apply. The ELTIF Regulation lays down detailed rules for the protection of retail investors. There is no need for further national regulations. In particular, the amendments to the ELTIF Regulation by Regulation (EU) 2023/606 aim to make the opportunities associated with ELTIFs to participate in long-term assets such as infrastructure more attractive for retail investors, for example to mobilise capital for the energy transition. Particular attention was paid to investor protection at European level. Possible contradictions in this regard by national legislation could hamper the objectives of supplementing the ELTIF Regulation.

Re Article 30 (Amendment to the Money Laundering Act)

The amendment in subparagraph 2 aligns the wording of § 1 paragraph 21(2) of the Money Laundering Act (GwG) with the wording in Article 3(8) of Directive (EU) 2015/849. This wording also corresponds to the definition in Article 2(19) of the draft EU Money

Laundering Regulation currently being negotiated at EU level (see document COM(2021) 420 final, available on the EU online portal EUR-Lex). According to this wording, a correspondent banking relationship may also include business relationships between credit institutions and financial institutions within the meaning of the EU Money Laundering Directive, both with and among themselves, where services similar to those listed in subparagraph 1 are provided by a correspondent institution to a respondent institution. For example, the Directive lists securities transactions and cash transfers.

This amendment clarifies that a CRR credit institution and a financial institution within the meaning of the EU Money Laundering Directive, e.g. a payment institution pursuant to § 1(1)(1) or an electronic money institution pursuant to § 1(2) sentence 1 subparagraph 1 of the ZAG, can also enter into a contractual correspondence relationship with each other and the corresponding regulations for correspondent banks are applicable to such a relationship. This also applies, for example, to the establishment of accounts pursuant to § 17 ZAG. The proper application of the regulations for correspondence relations to these constellations is therefore no longer obstructed by the restrictive wording of the previous version of subparagraph 2. Thus, business relations between credit institutions with payment and electronic cash institutions (respondents) are now also subject to a system audit by credit institutions under money laundering law (correspondents). This has not been the case up to now. The provisions for the identification of beneficial owners, including the provisions of § 3(4) sentence 2 of the GwG, do not preclude the sole application of the principles for correspondence relationships without an overview of the contractual partners of the payment institution.

Re Article 31 (Amendment to the Insurance Supervision Act)

The amendments to the Insurance Supervision Act reflect the growing importance of electronic communications.

Re subparagraph 1

This is a consequential adjustment in the Table of Contents to the new § 310a.

Re subparagraph 2, subparagraph 3

The amendments to § 17(1) and (2) are intended to provide the possibility of switching to electronic submission of notifications pursuant to § 17(1) and (2), including the required information, documents and declarations. In order to achieve the necessary legal certainty, clarity and predictability, it must be ensured that the notifications are 'written' in the sense of documentation. This is ensured by the current formal requirements of the Owner Control Regulation. The oral or telephonic form of notifications pursuant to § 17(1) and (2) is still excluded.

The electronic transmission made possible in this case cannot be equated with the 'electronic form' of the VwVfG. The electronic form is standardised in § 3a(2) sentence 2 of the VwVfG. This involves the furnishing of a document with a qualified electronic signature. By contrast, the term 'electronic' covers all electronic communications; it does not impose any special formal requirements. The simple email and communication, e.g. via special government mailboxes, are therefore recorded.

The wording 'written or electronic' in § 17(3) and (4) and § 18(3) will in future allow electronic processing of proceedings in the event of notifications from the supervisory authority to the interested acquirers. This makes the handling of owner control procedures more flexible and paves the way for further digitalisation. The oral or telephonic form of such communications remains excluded. This complies with the requirements of Directive 2009/138/EC (Solvency II) with regard to the written form, i.e. the documentation or fixation of the process step.

Re subparagraph 4

This is a sequential amendment to the new § 310a.

Re subparagraph 5

Up to now, § 126(2) provided that insurance undertakings must submit the entries made in the financial year to the supervisory authority in paper form (‘the copy’). The recast allows for electronic submission instead. In addition, the date of submission is clarified: the entries must not be submitted to the supervisory authority by the end of the financial year, but only three months after the end of the financial year. This is in line with administrative practice.

Re subparagraph 6

The required information to the pre-insurers may in future be made electronically instead of in writing.

Re subparagraph 7

This is a sequential amendment to the new § 310a.

Re subparagraph 8

This is a sequential amendment to the new § 310a.

Re subparagraph 9

The new paragraph 8 clarifies that the supervisory authority may require that information and documents also be submitted electronically. In doing so, the supervisory authority can also make provisions on the way in which a specific submission is made.

Re subparagraph 10

In the course of the digital conversion, the Bundesanstalt procedures will also be switched to electronic implementation as far as possible. A mandatory, standardised electronic submission of documents to the Bundesanstalt contributes to the efficient processing and interlinking of information through the use of IT.

A statutory ordinance on the basis of the new § 310a is intended to progressively create an obligation that the messages, notifications, reports, applications and other information to be submitted to the Bundesanstalt in accordance with the aforementioned legal provisions must be transmitted electronically with the necessary documents. This also includes specifications for the data formats with the corresponding file and security requirements.

The Ordinance may lay down details on the use of an electronic communication procedure, in particular how electronic submissions are to be made. Electronic procedures within the meaning of Sections 4f and 4g of the Financial Services Supervision Act are of particular importance because they enable the legally secure exchange between the applicant and the Bundesanstalt. The Ordinance may therefore lay down the obligation to use such a procedure within the meaning of those provisions, so that administrative acts of the Bundesanstalt may also be communicated and delivered electronically through this procedure.

The Ordinance thus constitutes the basis for the conversion of existing submission obligations to an exclusively electronic submission to the Bundesanstalt. In this respect, the power to issue statutory instruments includes all notification, reporting, reporting, information and submission requirements as well as application procedures under the VAG, the

statutory ordinances adopted on the basis of the VAG and the European Union regulations referred to in § 295(1) and the acts adopted for the implementation of these ordinances and Directive 2009/138/EC. It therefore covers all the addressees of the aforementioned legislation, in particular interested acquirers and holders of a significant holding, small insurance undertakings, burial funds, pension schemes and pension funds. For undertakings established in another Member State or Contracting State which operate through a subsidiary or provide services in Germany, for collateral funds and for insurance holding companies and mixed financial holding companies, it is clarified by an addition to §§ 62, 225 and 293 that the provisions of a statutory ordinance pursuant to § 310a are applicable.

Re Article 32 (Entry into force)

Re Paragraph (1)

In principle, the provisions of the Future Financing Act should come into force as soon as possible, namely on the day following the announcement, in order to achieve the objectives pursued as soon as possible.

Re Paragraph (2)

By way of derogation from paragraph 1, the changes in wage and income tax in the EStG shall not enter into force until 1 January 2024. The amendments are to be applied for the first time for the assessment period 2024 and the wage tax deduction is to be made for 2024 in accordance with the general rules of application in § 52(1) of the EStG in the version in force on 1 January 2024.

This does not apply to the amendments in §§ 43 and 44 of the EStG (Article 17(5) and (7)), as these are due to the introduction of the electronic share, which shall enter into force in accordance with paragraph 1 on the day following the promulgation of the Act. The amendments to § 3 No 71 of the EStG and the 27th sentence of § 52(4) of the EStG are also to enter into force on the day after the Act was promulgated, since they are to be applied for the assessment period 2023.

The amendments to § 4(8)(a), (g) and (h) of the UStG shall enter into force on 1 January 2024. The companies concerned will thereby be given sufficient time for necessary – including technical – conversion measures. Retroactive application is not possible for the part dealing with VAT legislation.

The amendments to the WpÜG and the WpÜG Offer Ordinance will only come into force on 1 January 2024 in order to ensure sufficient time for the technical conversions by the Bundesanstalt and the market participants.

Re paragraph 3

By way of derogation from paragraph 1, the regulations governing the publication of crypto-asset issues by the Bundesanstalt shall not enter into force until 1 November 2025. Publication requires the establishment of an automated process for processing the notifications of issuers. The publication in the Federal Gazette can only be replaced when this procedure is available to the Bundesanstalt.