

German Regulatory Update

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Our speakers today



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01

FIDA

Daniel Lühmann



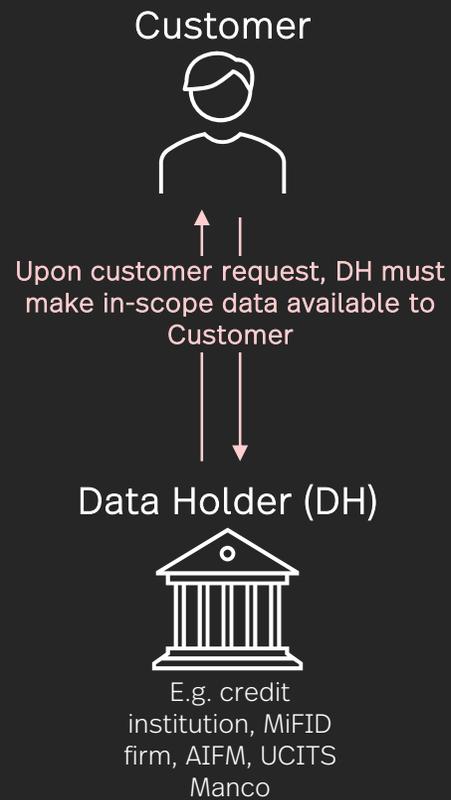
What is FiDA?

FiDA aims to expand “PSD2 Open Banking” style rules across broader swathe of the financial services industry

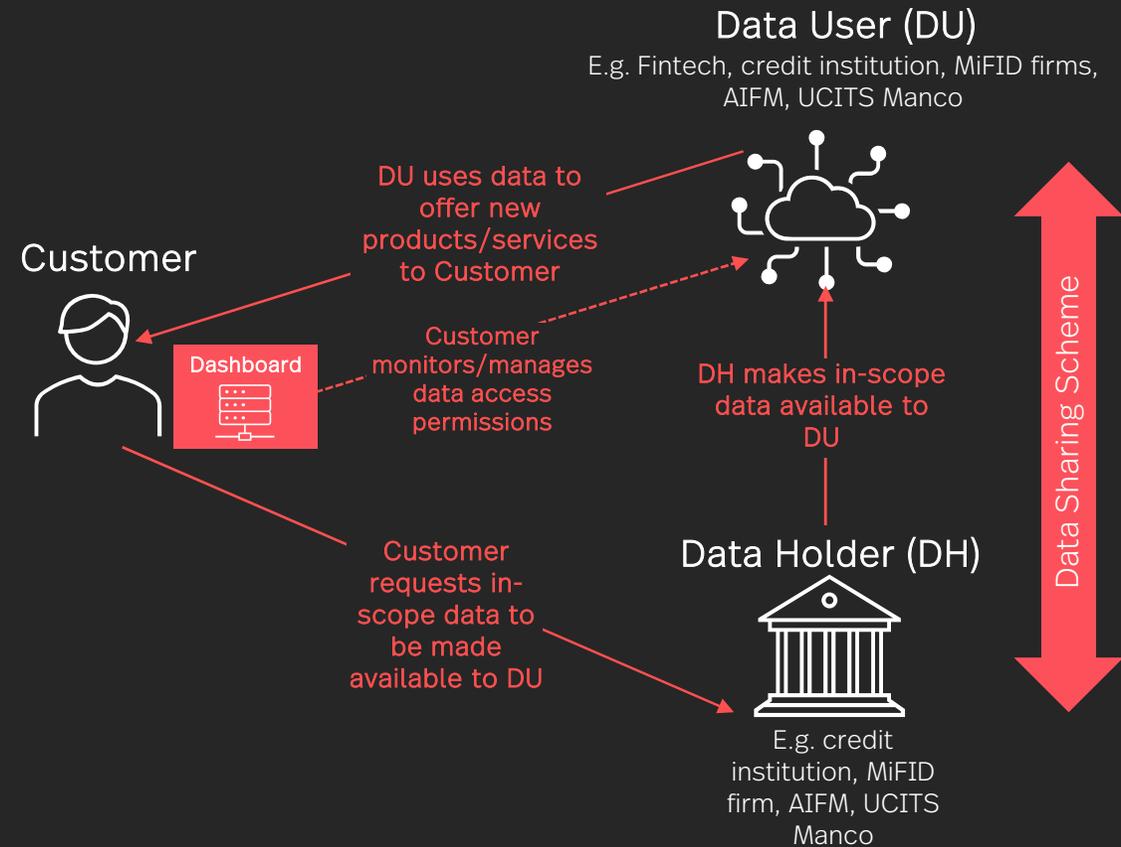
5 key aims

- Empower customers
- Boost innovation
- Enhance competition
- Standardise data exchange
- Enhance consumer protection

Scenario 1: Data to Customer



Scenario 2: Data to Data User



Timeline



- Trilogues expected to continue throughout H2 2025.
- *Potential* final agreed Level 1 text by end 2025
- FISP approval processes to start
- Data Sharing Scheme set ups likely to start (depends on data category)
- Level 2 underlying legislation will be prepared
- 18 months* after agreed final text, FiDA Level 1 will enter into force and apply to firms
- Level 2 underlying legislation will start to apply

*Parliament: 30-36 months depending on the provision; Council: Phased approach 24-48 months

In a nutshell...

	Commission	Parliament	Council	<i>Commission simplification</i>
 <u>Data scope</u>	Wide definition	Significant amends	Significant amends	<i>10-year time bar; terminated contracts excluded</i>
 <u>Customer scope</u>	All - retail, professional, natural person, legal person	Consumer (natural person) or micro/SME only	All - retail, professional, natural person, legal person	<i>Natural person or SME only</i>
 <u>Firm scope</u>	Wide definition	Removes credit rating agencies and re-insurers	Removes re-insurers and micro/ SME crowdfunders	<i>Removes credit rating agencies and re-insurers</i>
 <u>Permission Dashboard</u>	DH to provide Customer with Dashboard to monitor/ manage data permissions given to DU	Aligned with broad concept but requires PSR consistency	Aligned with broad concept but requires PSR consistency	<i>Requires PSR consistency</i>
 <u>Data Sharing Schemes</u>	DH and DU to be members of Scheme within 18 months – govern access to different data types. Common standards to be set by members	Aligned with broad concept but 30 month phased timeline and requires common standards to be drawn from international / industry recognised standards	Aligned with broad concept but no timeline	<i>Common standards based on ESOs. Also proposes EU Digital Wallet option for customer authentication</i>
 <u>FISPs</u>	New category of firm – non-financial institution wanting to access customer data	Aligned with broad concept but requires FISP to be a legal person; “AISP” to obtain FISP authorisation; special authorisation process for “gatekeepers”; no third country FISPs	Aligned with broad concept but requires FISP to be a legal person; “AISP” to obtain FISP authorisation; additional authorisation process for “gatekeepers”; no third country FISPs	<i>“AISP “ to obtain FISP authorisation but via a simplified process; excludes “gatekeepers” from being able to become FISPs</i>

02

RIS

Dr Harald Glander
Bastian Kaufhold

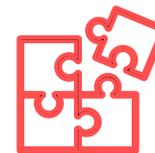
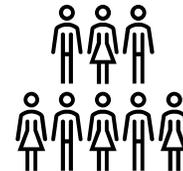


What is EU RIS?

“This is the most ambitious legislative proposal since the inception of EU financial regulation”

- Mairead McGuinness

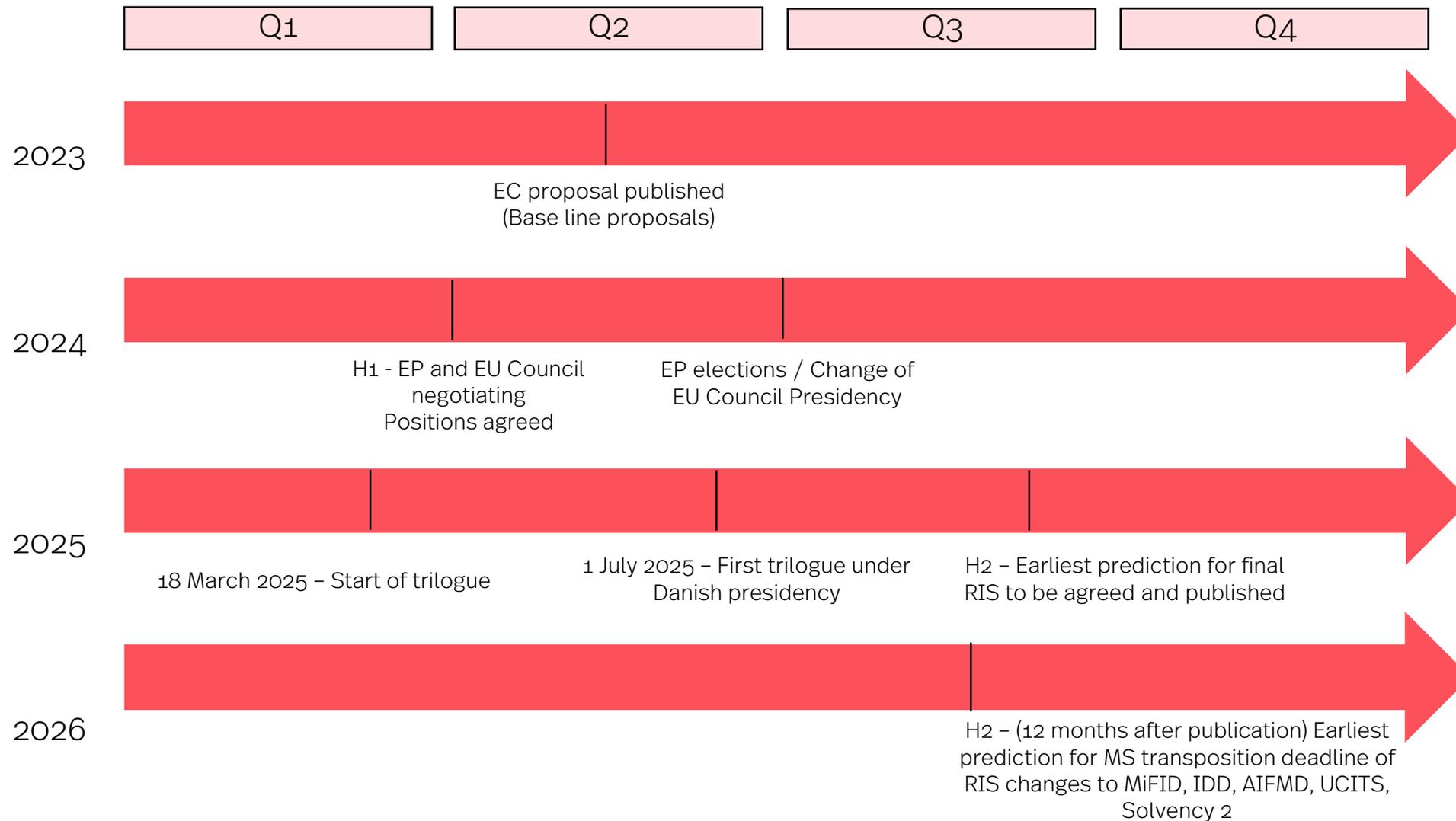
EU strategy to put consumers at the centre of retail investing



Proposals to amend MiFID, AIFMD, UCITS, PRIIPs, IDD, Solvency2

Key piece of the EU's broader 2020 Capital Markets Union Action Plan

Timing



Business Impact / Overview of Proposals

	Areas impacted		Key Proposals
	Revenue streams	Increased focus and scrutiny on how firms are pricing products and services. Push for “better value” to be delivered to customers. Pressure on pricing points throughout the manufacturing and distribution chains	VfM/benchmarks with quantitative + qualitative benchmarking, and undue costs compensation to investors
	Distribution streams	Changes to distribution relationships (potential ban on trail payment from XO sales, new suitability tests, new standards for advisory sales). Significant changes for distributors. Impact – new fee structures, new arrangements with product manufacturers (DAs)	Inducements reform with XO/RTO ban, restricted advice reform, new PM wording, 3-fold test and 3-year review
	Marketing practices	Focus on marketing practices – higher standards expected throughout the marketing life-cycle of a product/ service. Increase in marketing costs.	Marketing reforms with new definitions, enhanced disclosures, and marketing policy under management responsibility
	Client-facing comms	Higher standards being imposed on the information being provided to clients – pressures on internal teams and systems producing materials.	Enhanced disclosures incl. PRIIPs KID, costs + charges, and risk warnings
	Management body responsibilities	New responsibility - management bodies to ensure the protection of investors and act to promote the “best” interest of clients – increased oversight and reporting.	Advisor K&C reform codifying ESMA K&C guidelines, new sustainable understanding, and new certification regime and CPD
	Technology systems	Updates will be required to tech systems – e.g. new interactive tool for investors	
	Internal processes	Inevitable update to internal processes and procedures	
			Suitability + Appropriateness reforms with new ‘suitability lite’, additional S+A tests and enhanced disclosures
			Client categorisation EPC criteria widened
			Enhanced regulator powers incl. data gathering, supervisory powers and increased cross border scrutiny

Current status and outlook

- Trilogues initially started on 18 March 2025 under Polish presidency of the EU Council
- Last trilogue session under Polish Presidency did not take place as Member States seem to have diverging views on how RIS can be simplified
- Next trilogue scheduled for first day of Danish presidency of EU Council (1 July 2025)
- Next council working group scheduled for 4 July 2025
- It appears that Danish presidency wants to finalise RIS before 2026

03

Recent BaFin guidance on influence of investors on investment funds

Dr Harald Glander
Bastian Kaufhold



What is BaFin's draft guidance about?

- Addresses extent to which investors can exert influence on investment decisions for investment funds
- Perpetuates current legislative situation and BaFin administrative practice
- Consultation took place until 31 March 2025
- No scheduled publication for final guidance

Key points

- KVG ultimately responsible for management of investment funds, i.e. making a final investment decision (cf. Sec. 17 KAGB)
- Significant investor influence on investment decisions not compatible with KVG's responsibility
- (Draft) guidance aims to clarify line between permitted and prohibited investor influence



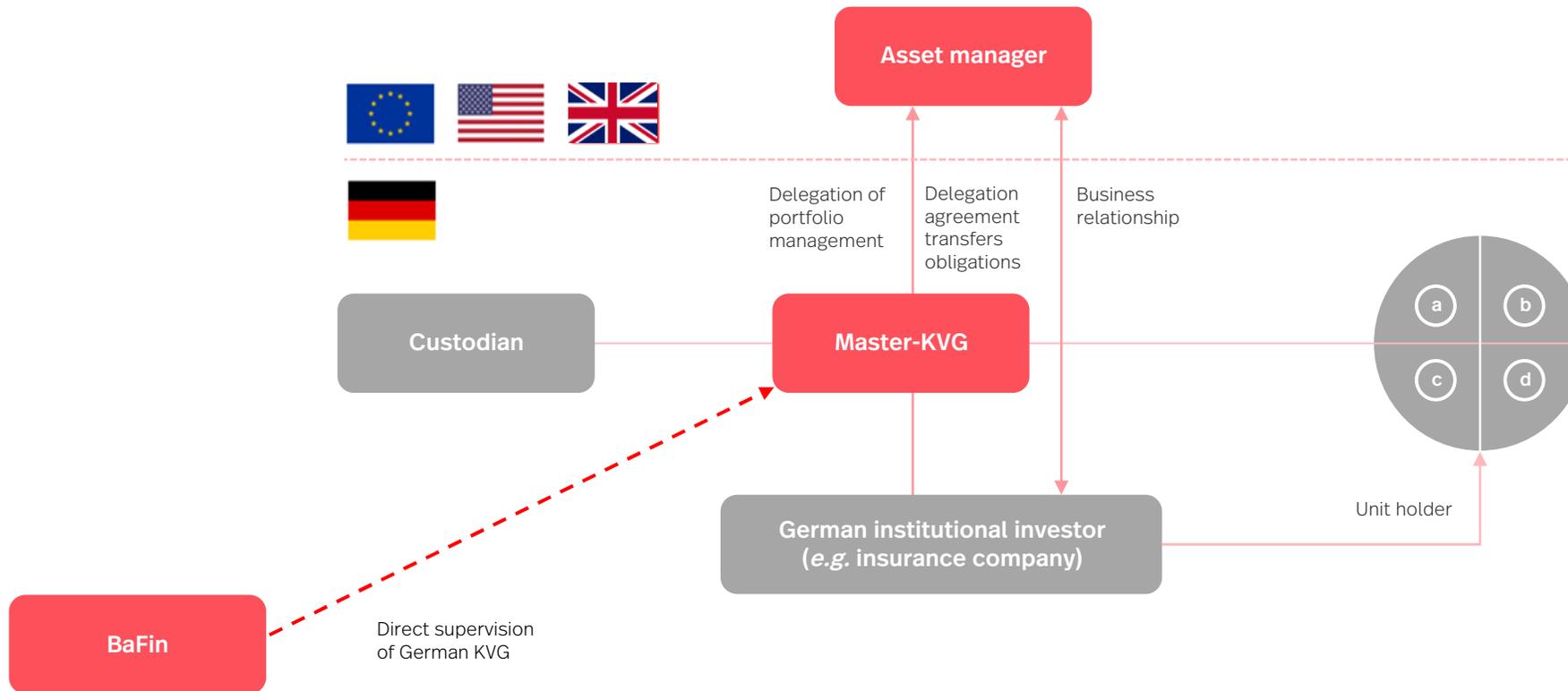
Permitted and prohibited influence

- Prohibited Actions
 - Direct instructions from investors regarding the purchase or sale of individual assets
 - Veto rights or approval requirements by investors concerning individual assets
- Permissible Actions
 - Investors may have veto rights or approval requirements concerning the general investment strategy
 - Actions must be within the agreed investment restrictions of the fund

Documentation obligations

- KVGs are also expected to document any form of investor influence on investment decisions
- This includes recording meetings, investment ideas, and any recommendations provided by investors
- If KVG outsources its portfolio management services to a third party asset manager, such asset manager must be contractually obligated to the same documentation obligations (i.e. via the IMA)
- Regulated investors (e.g. pension schemes) are expected to participate in the documentation process, such as by countersigning meeting minutes prepared by the KVG (or an outsourced portfolio manager)

Are outsourced (non-German) asset managers subject to the requirements from the BaFin guidance?



Impact assessment

- BaFin's guidance may increase administrative workload for both KVGs and asset manager but offers valuable clarification on this matter
- Assessment of investor influence will still require a case-by-case approach
- Asset Managers managing accounts/funds established by KVGs should anticipate heightened compliance demands from KVGs and prepare to implement procedures
- Asset managers can reduce the risk of prohibited investor influence by conducting and documenting thorough due diligence before each investment.

04

Practical implications of the proposed Finanzmarktintegritäts- stärkungsgesetz with regard to outsourcing

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Outsourcing

German Fund Market Strengthening Act



Most significant changes



- New legal framework for lending services by Capital Management Companies
- Mandatory introduction of liquidity management instruments
- Extended requirements for management bodies of Capital Management Companies
- **Further requirements on outsourcing and outsourcing reporting**
- Extension of the permitted ancillary services without necessary portfolio management licence

German Fund Market Strengthening Act



Authorisation of Management Companies

- Requirement to provide detailed information on outsourcing providers and sub-outsourcing providers in the application process for authorisation



Marketing & Ancillary Services

- Clarification regarding
 - Marketing; and
 - Outsourcing of ancillary services



Reporting obligations

- Further requirements regarding reporting obligations
- Extension of applicability of certain reporting obligations to UCITs Management Companies

05

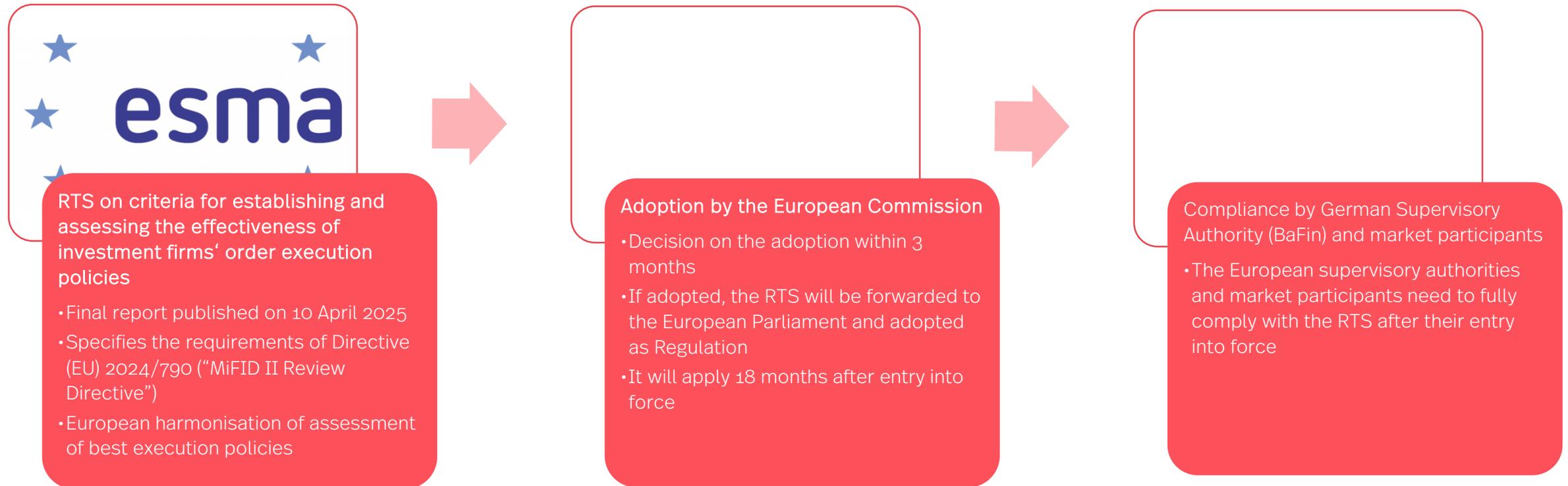
Requirements regarding best execution – update following latest RTS

Jochen Kindermann
Lena Schäfer



Best Execution

New ESMA Regulatory Technical Standards



Main requirements of the draft RTS



Establishment of order execution policy

- Investment firms shall create and maintain criteria for selecting execution venues, authorised by the supervisory authority
- Classes (and subclasses) of financial instruments need to be identified and assessed in the order execution policy
- Clients need to be provided with a justification if investment firms execute orders only on one execution venue



Monitoring and assessment of order execution policy

- Monitoring of effectiveness, compliance, quality, and price accuracy using reference datasets and relevant indicators
- At least one annual assessment of the policy, also in case of non-compliance or material changes to key indicators
- The policy must be updated after an assessment based on any deficiency determined



Client instructions and dealing on own account

- Client instructions need to be part of the order execution policy, ensuring a different approach to instructed orders
- Provide retail clients the option to leave venue selection to the firm for optimal execution if multiple venues are possible
- Investment firms must outline how to ensure best execution when executing orders through dealing on own account

Best Execution

How firms can ensure compliance



Order execution policy maintenance

- Regularly review and update the order execution policy and the existing execution venues
- Categorise financial instruments into classes and assess how orders in relation to these classes are executed
- Maintain reliable data on order execution and regularly take these use these for reviews of the policy



Handling client instructions

- Implement clear procedures for client instructions into the order execution policy
- Implement conflict checks and conflict management procedures
- Obtain client approval where necessary and implement systems for client risk information



Dealing on own account

- Ensure dealing on own account can be established as best execution within the order execution policy
- Implement control procedures such as price checks and conflict management when dealing on own account
- Ensure client information of risks and conflicts of interests when the firm is dealing on own account

06

New restrictions on warrant trading

Jochen Kindermann



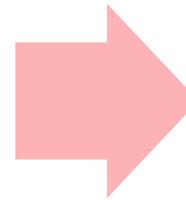
Restrictions on warrant trading

BaFin's market study



Market study on certain warrants

- BaFin conducted a market study on certain types of warrants between 2019 to 2023
- Approximately 543.000 German retail clients executed 113 million transactions



Findings alarmed BaFin

- 74% of retail clients suffered losses in trades
- Net loss of around EUR 3.4 billion
- BaFin intends to restrict trading of these warrants
- BaFin is conducting a hearing of market participants on the topic

Which types of warrants were subject of the study?



- So-called Turbo Certificates
- Transferable securities under MiFID II
- Replicate the leveraged performance of an underlying asset (short or long variants)
- Expire immediately upon reaching a predetermined knock-out threshold (a pre-determined price level of the underlying asset)

Restriction on warrant trading

New requirements



Standardised risk warning

- Firms must issue a risk warning indicating that 7 of 10 retail investors incur losses when trading Turbo Certificates
- The warning must be included in all communications related to marketing, distribution, and sales of Turbo Certificates
- The risk warning must ensure investors are fully informed of the potential financial risks before engaging in trading



Prohibition of incentives

- Prohibition of offering monetary incentives, such as reduced order fees or new customer bonuses to encourage trading
- Non-monetary incentives, including preferential customer service or gifts, are banned to prevent influencing investors
- The prohibition seeks to maintain fair trading practices and protect retail investors from undue influence



Enhanced suitability assessment

- Firms must conduct a test to educate investors on key product features of Turbo Certificates
- Retail clients must answer at least six questions correctly before purchasing Turbo Certificates
- The suitability assessment must be repeated every six months to maintain investor awareness and compliance



Thank you for your interest!