

BaFin aligns WpHG "Acting in Concert" attribution of voting rights with EU Law following ECJ Ruling

25 March 2026



BaFin has reacted to the ECJ judgment of 12 February 2026 (Case C 864/24) on the interpretation of "acting in concert" under the EU Transparency Directive by clarifying its future supervisory practice under German law.

Following the judgment, BaFin has issued a supervisory notice aligning the application of section 34 of the German Securities Trading Act (WpHG) with EU law, while at the same time confirming the continued application of section 30 of the German Takeover Act (WpÜG). The notice applies with immediate effect to all persons subject to voting rights notification obligations under sections 33 *et seq.* WpHG, as well as to market participants involved in procedures under the WpÜG, and will remain in force until section 34 WpHG is amended in a manner compliant with EU law.

Going forward, BaFin will attribute voting rights under section 34 WpHG only where there is an agreement obliging the parties to pursue a long term common policy regarding the issuer's management. In addition, BaFin will no longer apply the attribution rules under section 34(1) sentence 1 nos. 3 and 5 WpHG, as the Transparency Directive does not provide for corresponding attribution concepts. To this extent, BaFin's previous administrative practice, as reflected in its issuer guidelines and FAQs, will no longer apply.

By contrast, BaFin will continue to apply and interpret the voting rights attribution regime under the WpÜG without change. In BaFin's view, these rules remain compatible with EU law, as the Transparency Directive expressly permits stricter national attribution provisions in the context of takeover offers and other transactions affecting ownership structures or corporate control.

What this means for market participants:

The supervisory notice narrows the scope of voting rights attribution under the WpHG and provides welcome legal certainty for investors. Market participants should reassess their disclosure analyses and coordination arrangements in light of the regime now confirmed by BaFin.



Dominik Heß
Partner, Düsseldorf

Email: dominik.hess@cliffordchance.com
Telephone: +49 211 4355 5516

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice. If you would like to know more about the subjects covered in this publication or our services, please contact the authors or your usual contact at Clifford Chance.

cliffordchance.com

Clifford Chance, Königsallee 59, 40215 Düsseldorf, Germany

© Clifford Chance 2026

Clifford Chance Partnerschaft mit beschränkter Berufshaftung von Rechtsanwälten, Steuerberatern und Solicitors · Sitz: Frankfurt am Main · AG Frankfurt am Main PR 2669

Regulatory information pursuant to Sec. 5 DDG and 2, 3 DL-InfoV: www.cliffordchance.com/deuregulatory

Abu Dhabi • Amsterdam • Barcelona • Beijing • Brussels • Bucharest** • Casablanca • Delhi • Dubai • Düsseldorf • Frankfurt • Hong Kong • Houston • Istanbul • London • Luxembourg • Madrid • Milan • Munich • Newcastle • New York • Paris • Perth • Prague** • Riyadh* • Rome • São Paulo • Shanghai • Singapore • Sydney • Tokyo • Warsaw • Washington, D.C.

*AS&H Clifford Chance, a joint venture entered into by Clifford Chance LLP.

**Clifford Chance has entered into association agreements with Clifford Chance Prague Association SRO in Prague and Clifford Chance Badea SPRL in Bucharest.

Clifford Chance has a best friends relationship with Redcliffe Partners in Ukraine.



Lennart Göbel
Senior Associate, Düsseldorf

Email: lennart.goebel@cliffordchance.com
Telephone: +49 211 4355 5124



Markus Stephanblome
Partner, Frankfurt

Email: markus.stephanblome@cliffordchance.com
Telephone: +49 69 7199 1516



Christian Vogel
Partner, Düsseldorf

Email: christian.vogel@cliffordchance.com
Telephone: +49 211 4355 5773