

# Acting in Concert, Acting Together

*How Germany's Regulatory Reset Changes Investor Engagement And What It Means For The Market*

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If you have spent any time dealing with collaborative engagement campaigns across borders, you will know the feeling: a room full of like-minded investors, a shared concern about a company's governance or climate trajectory, and then a question brings tension to the room — *“Could we be seen as acting in concert?”*

For stewardship professionals and portfolio managers, that question has long been the invisible constraint on one of the most effective tools in engagement. The logic of collaboration is sound: individual engagement with a large corporation often has limited impact for minority shareholders. Collaboration amplifies voice, shares costs, and produces more constructive dialogue with boards. For corporate issuers, facing a collective is even more daunting than dealing with individual investors — it increases pressure, attention, and often media scrutiny.

The [ICGN Global Stewardship Principles](#) (International Corporate Governance Network) reflect this shift. The 2020 version asked investors to be “prepared to collaborate.” The 2024 revision, Principle 3.7, calls on investors to disclose collaboration objectives, timelines, and outcomes, and to respect acting-in-concert rules, market abuse regulations, and confidentiality obligations — while ensuring voting decisions remain individually made. Similarly, the UK Stewardship Code no longer treats collaboration as a standalone principle (2026, Principle 3), signalling its maturation from aspiration to embedded practice. Both shifts reflect a convergence of regulatory caution and professional legitimacy.

## Germany: When Stewardship Met Takeover Law

German law had historically taken a comprehensive view of acting in concert, capturing not only formal agreements but also coordinated behaviour aimed at influencing corporate strategy. Under BaFin's previous administrative practice, Section 34(2) of the WpHG (Wertpapierhandelsgesetz — the German Securities Trading Act) was read broadly: voting rights could be attributed to shareholders who coordinated their behaviour vis-à-vis an issuer, even where coordination was limited to ESG dialogue. If aggregated voting rights crossed the 30% threshold under the WpHGÜ (Wertpapiererwerbs- und Übernahmegesetz — Germany's Takeover Act), investors could face a mandatory bid obligation.

Investors found themselves caught between SRD II (the EU's Shareholder Rights Directive II, which actively encourages engagement and collaboration) and Germany's national rules, which

could penalise the very same behaviour. BaFin attempted to provide clarity in a [2023 article](#), acknowledging that mere platform membership would not automatically trigger acting-in-concert provisions. But grey areas remained, particularly around coordinated voting or specific board demands. The [German Federal Government's Sustainable Finance Advisory Committee](#) recommended in 2024 the creation of a dedicated platform for collaborative investor engagement, highlighting the structural barrier the existing framework posed to sustainable economic transformation.

On 20 March 2026, BaFin issued a supervisory notice fundamentally altering its administrative practice on voting rights attribution. This followed a landmark ruling by the CJEU (Court of Justice of the European Union) on 12 February 2026, in Case C-864/24, holding that Germany's broad interpretation of "acting in concert" was incompatible with EU law. The Court held that stricter national attribution regimes are permissible only where "directly connected with takeover bids, mergers, or other transactions affecting ownership structure or control." Germany's sweeping application, which had caught ESG engagement in its remit, went beyond what EU law permits.

Under BaFin's new framework, "acting in concert" attribution applies only where there is a binding agreement to pursue, on a long-term basis, a common policy regarding the issuer's management. Coordinated pre-AGM engagement and aligned abstentions on remuneration now sit comfortably within the framework. Coordinated voting on board appointments or support for specific M&A outcomes do not. Investors operating between these poles should maintain documented legal analysis specific to each engagement context.

## **Implications for Corporate Issuers: AGMs and M&A**

Companies with a German listing should expect a more coordinated investor voice ahead of and during general meetings. In practical terms, this may manifest as more aligned shareholder questions, more consistent pre-AGM engagement requests, and — in some cases — coordinated abstentions or votes against specific resolutions, particularly on executive remuneration, board composition, or climate-related disclosures. IR and governance teams should treat this as an opportunity to understand investor concerns more efficiently.

The [ESMA "white list"](#) (European Securities and Markets Authority) remains a useful, if non-binding, reference point for issuers interpreting the scope of permissible investor coordination — though it predates the 2026 CJEU ruling and should be read in light of the updated legal framework. Coordinated votes against remuneration reports or aligned abstentions on capital measures are now more clearly a feature of the engagement landscape rather than evidence of a control-seeking coalition. Boards that engage proactively with leading investors ahead of AGMs will be better positioned to anticipate and respond to coordinated voting signals.

The CJEU ruling introduces an important nuance for M&A practitioners. The Court expressly confirmed that stricter national acting-in-concert regimes remain permissible where investor coordination is "directly connected with takeover bids, mergers, or other transactions affecting ownership structure or control." While ESG-related collaborative engagement now sits on much firmer legal ground, coordinated investor opposition to — or support for — a specific transaction remains a different matter. Companies involved in public M&A processes in Germany must still assess whether investor coalitions forming around the terms of a bid or restructuring could trigger mandatory offer obligations under the WpHGÜ. Legal and compliance teams should note

that the revised BaFin practice applies to attribution under the WpHG (voting rights transparency), while the mandatory offer threshold under the WpHGÜ continues to be assessed on its own terms.

Embera Partners acts as a corporate defence adviser, and readers should note that observations in this section reflect that perspective as well as our stewardship experience. For target company boards, a more liberated collaborative engagement environment makes it easier for activist or ESG-minded shareholders to align messaging around deal opposition. On the opportunity side, a company seeking broad shareholder support for a recommended transaction can now engage more openly with organised investor groups. Transparent pre-bid engagement with collaborative investor platforms can be an effective tool to secure majority support and signal quality governance. Where doubt exists, early and documented engagement with BaFin or specialist counsel is advisable.

## **The Global Framework: ICGN, PRI, ESMA, and Japan**

This development enables the German market to align more closely with international standards. In many other jurisdictions, acting-in-concert rules have been interpreted less strictly than in Germany, enabling collaborative engagement platforms to emerge — such as the Investor Forum in the UK, Ethos in Switzerland, and Eumedion in the Netherlands. The [PRI \(Principles for Responsible Investment\)](#) also runs multiple collaborative programmes including PRI Advance. At the European level, ESMA’s white list protects discussions with fellow shareholders, representations to boards, tabling draft resolutions, and even agreeing to vote the same way on particular resolutions — with the notable exception of coordinated voting on board appointments.

Japan’s experience offers an instructive parallel. The FIEA (Financial Instruments and Exchange Act) imposes reporting obligations on “joint holders” — broadly analogous to acting-in-concert rules — triggered when aggregated holdings exceed 5%. Ambiguity around what constituted “joint holding” meant investors who merely discussed governance concerns risked classification as joint holders. In a market culture that prizes consensus, this had a pronounced dampening effect. The [FSA’s June 2025 revision of the Stewardship Code \(Version 3.0\)](#) elevated collaborative engagement from a recognised practice to an “important option,” clarified the scope of “joint holders” and “acts of material proposal,” and drew a clearer line between stewardship dialogue and coordinated influence over management outcomes. For further context, see the [ACGA’s analysis of Japan’s new Code](#).

The trajectories in Germany and Japan reveal a common pattern: both are moving towards greater accommodation of collaborative engagement while maintaining guardrails around control-seeking behaviour. Germany now applies a binding-agreement test for management policy. Japan has adopted a principles-based approach encouraging collaboration while maintaining sensitivity around board composition campaigns. The “voice versus control” distinction has become the central analytical frame in both jurisdictions.

It is worth noting that Germany still lacks a formally endorsed, regulator-backed stewardship code. The [DVFA Stewardship Guidelines \(last updated October 2023\)](#) provide a substantive voluntary framework and a credible foundation for a future code — but they remain an industry document rather than a regulatory instrument. The [EFAMA Stewardship Code \(last revised 2018\)](#) should also be revisited in light of the pace of regulatory change at both national and EU

level. Academic research, including the [ECGI coordinated engagements working paper](#) by Dimson, Karakas, and Li, and the [LSE Grantham Institute's 2025 analysis](#) on investor coalitions and corporate climate action, provides an empirical foundation for these policy discussions.

## Looking Forward

**For investors**, BaFin's announcement should be treated as a milestone rather than an endpoint. With reduced legal risk for non-binding engagement, coordinated investor action can now be used more confidently to amplify influence, especially on ESG and governance matters. Investors who adapt fastest will scale their influence through coordinated engagement while avoiding legal pitfalls by respecting the voice-control boundary. We recommend three priorities: first, treat collaboration as a stewardship tool to be optimised rather than a compliance risk to be minimised; second, establish internal governance frameworks to distinguish engagement from control-seeking behaviour; and third, strengthen transparency practices in line with global standards such as those from the ICGN and PRI. The CJEU ruling provides a foundation for challenging overly broad acting-in-concert regimes across the EU, and we would encourage EFAMA and its members to initiate a revision of the EFAMA Stewardship Code given the pace of change.

**For corporate issuers**, this regulatory evolution calls for a recalibration of engagement strategy. Treat coordinated investor engagement as signal, not threat: where a group of investors approaches a company with aligned asks on sustainability strategy, capital allocation, or board quality, this is increasingly normal professional stewardship. Review IR and governance disclosure practices, as the quality and specificity of a company's disclosures will increasingly determine the starting point for dialogue. Companies that publish clear, decision-useful information on board effectiveness, remuneration rationale, and sustainability strategy are less likely to face coordinated push-back based on incomplete information. For companies involved in or contemplating M&A activity, ensure legal advisers explicitly consider the new acting-in-concert framework in transaction structuring and defence planning — the clarity BaFin has provided on ESG engagement does not eliminate WpHGÜ mandatory offer risk in transactional contexts.

If a German Stewardship Code is developed — and we believe it should be — the issuer community is well placed to contribute to its design. Germany's Aktiengesetz (Stock Corporation Act) tradition places significant emphasis on formal shareholder rights and supervisory board accountability. A future Stewardship Code should reflect those structural features while equipping both investors and issuers with a shared framework for constructive dialogue. IR professionals, Aufsichtsrat members, and CFOs are well placed to engage with industry bodies including DVFA, DAI, and the GCGC as these conversations develop.

Effective stewardship requires — as we have long believed — a strong core and a light touch: firm conviction that collaborative engagement is essential to responsible ownership, combined with sensitivity to regulators' legitimate concerns about orderly markets. Collaborative engagement is not a threat to market integrity. It is one of the most effective tools we have for promoting the long-term sustainable value creation that benefits companies, investors, and the communities in which we all operate.

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