

Retail investment funds in Turkey: regulatory overview

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MARKET STRUCTURE

1. What is the structure of the retail funds market? What have been the main trends over the last year?

The first legislation on retail investment funds in Turkey was the capital markets law promulgated in 1982. The first retail investment in Turkey was established in 1986 under this legislation.

The current structure of the investment funds market is based on the:

- Capital Markets Law No 6362 (Capital Markets Law).
- Communiqués issued by the Capital Markets Board of Turkey (CMB).

The CMB can also provide further guidance to the market by issuing resolutions and general letters and announcements.

Retail investors in Turkey can invest in investment funds through:

- Portfolio management companies.
- The Turkey Electronic Fund Purchase and Sale Platform (TEFAS), by the Istanbul Settlement and Custody Bank (Takasbank).
- Exchange traded funds traded on the Borsa Istanbul's (BIST) Structured Products and Fund Market.

Retail investors can also invest in real estate investment funds and venture capital investment funds.

Retail investors commonly use internet and mobile banking services to invest in investment funds.

The investment fund structure in Turkey is not differentiated into open-ended and close-ended funds, as:

- Fund investors always have the right to redemption (although some funds may apply an early redemption fee) of their participation in a fund (as would be the case with open-ended funds).
- Turkish funds are not free to issue new participation shares (as would be the case with closed-ended funds).

The market for retail investment funds is very active in Turkey, with participation from nearly all major financial institutions and a high trading volume. In 2020, despite the adverse effects of the COVID-19 pandemic on the global financial markets, the total trading volume in investment funds traded over TEFAS was TRY167 billion (according to the TEFAS website (www.tefas.gov.tr/)).

The Turkish government revised the tax treatment of retail investment funds in 2020 to promote investment funds that hold Turkish Lira-based underlying assets and to disincentive investment funds that hold foreign-currency based assets for a certain period of time. See *Question 17*.

2. How are interests in the open and closed-ended funds accessed and priced?

The participation shares (*katılma payları*) of retail investment funds do not have a nominal value or a face value (unlike bonds or shares). The unit price of participation shares is determined by dividing the fund's total value (total net asset value of the assets managed under the investment fund) by the total number of participation shares.

The unit price of participation shares is generally determined on a daily basis, although participation shares may be priced twice a day where the relevant investor information documentation of the investment fund specifically requires this.

Purchase and sale orders for participation shares are executed on the first price set after transmission of the relevant sale or purchase order. For money market funds and short-term debt instrument funds, purchase and sale orders for participation shares are executed on the last price set before the transmission of the relevant sale or purchase order.

Investment funds can distribute dividends, so long as the fund holds sufficient capital and complies with statutory ratios and the disclosure documents.

Participation shares are purchased and sold through the portfolio management companies. All major banks (public or private) allow their customers to purchase and sell participation shares in investment funds though their physical branches as well as through internet and mobile banking platforms.

Investors are not restricted to the investment funds managed by the financial institutions they are working with. Investors have access to all available investment funds traded in Turkey through the TEFAS platform, regardless of the bank, portfolio management company or financial institutions they are working with.

3. Are there any other retail fund options not mentioned in

In addition to retail investment funds (see Question 1), the Turkish capital market legislation allows for the establishment of pension investment funds, as well as investment funds that are established for the benefit of specific groups of people (such as employees of a certain company or members of a certain profession).

There are also unrestricted investment funds that are exempt from certain investor-protection regulations. However, only qualified investors can invest in such funds.

FUND VEHICLES AND STRUCTURES

4. What are the main legal vehicles used to set up a retail fund and what are the key advantages and disadvantages of using these structures?

The Capital Markets Law defines collective investment entities as either:

- **Investment companies (*yatırım ortaklıkları*).** Investment companies are organised as joint stock companies (*anonim şirket*) with fixed or floating capital, and offer shares to the public (subject to the relevant legislation and CMB approvals). Investment companies have legal personality. The investors' interests in an investment company are represented by shares issued by the company and purchased by the investor. Such shares are issued and transferred subject to the provisions of Turkish Commercial Code No 6102 (Turkish Commercial Code). The primary forms of investment companies are:

- real estate investment companies, which are investment companies that can invest in real estate, real estate-based capital market instruments, real estate projects, real estate-based rights and capital market instruments, and engage in other activities permitted by the relevant legislation. Real estate investment companies must invest at least 50% of their portfolio value in real estate, real estate rights and real estate projects. According to the listing in Public Disclosure Platform, there are currently 37 real estate investment companies active in Turkey. A number of major banks and conglomerates in Turkey own real estate investment companies. In addition, establishment of an infrastructure real estate investment company is also regulated under the Turkish law as a special type of real estate investment company. These companies, which operate portfolios consisting of infrastructure investments and services, must be exclusively for infrastructure-related activities. Therefore, at least 75% of their portfolio must consist of infrastructure investment and service projects;
- securities investment companies, which are investment companies whose main purpose is to buy and sell securities and to generate income from the profit sharing from, interest on and trading in those securities. It is also possible for securities investment companies to invest in gold and other

precious metals within certain restrictions under the relevant legislation. According to the listing in Public Disclosure Platform, there are currently three securities investment companies active in Turkey;

- venture capital investment companies, which are investment companies that direct their capital mainly to venture capital investments. Venture capital investment companies must invest at least 50% of their portfolio value in venture capital investments. According to the listing in the Public Disclosure Platform, there are currently six venture capital investment companies active in Turkey.
- **Investment funds (*yatırım fonları*).** Investment funds are portfolios of investment assets. The assets are held by a portfolio custodian company on behalf of and in the name of a portfolio management company (see Question 12). The portfolio management company then manages them on the investors' behalf. These relationships are determined by:
 - the principles of fiduciary ownership;
 - the contractual relationship between the investors and the portfolio management company;
 - the applicable legislation; and
 - bye-laws of the investment fund.

Investment funds do not have separate legal personality under Turkish law (except in the special case of real estate transactions involving title deed registries). The investors' interests in the investment funds are represented by participation shares.

As with investment companies, there are also specific forms of investment funds categorised in accordance with their specific area of investments, including:

- real estate investment funds, which are funds operating a portfolio of real estate related assets, and other transactions as determined by the CMB;
- exchange traded funds, which are funds that are based on an index aiming to reflect the performance of the index on which they are based, and whose shares are traded in the stock market. These funds reflect the shares in the index they are based on or the returns of other instruments (gold, foreign currency, and so on);
- venture capital investment funds, which are funds operating a portfolio of venture capital investments and other financial assets.

REGULATORY FRAMEWORK AND BODIES

Key Statutes, Regulations and Rules

5. What are the key statutes, regulations and rules that govern retail funds? Which regulatory bodies regulate retail funds?

The Capital Markets Law is the primary legislation governing investment funds. As portfolio management companies hold the investment assets funds for the benefit of the participation-unit holder investors on fiduciary ownership terms, the Turkish Code of Obligations No. 6098 (Turkish Code of Obligations) is also relevant to the ownership and management of assets in investment funds.

Secondary legislation on investment funds is set out by communiqués issued by the CMB, based on the general legal framework set out under the Capital Markets Law. The primary pieces of legislation applicable to retail investment funds include the:

- Communiqué on Principles of Investment Funds No III-52.1 (Investment Funds Communiqué).
- Communiqué on Principles of Exchange Traded Funds No III-52.2.
- Communiqué on Principles of Real Estate Investment Funds No III-52.3.
- Communiqué on Principles of Venture Capital Investment Funds No III-52.4.
- Communiqué on Principles Regarding Portfolio Management Companies and Activities of These Companies No III-55.1.
- Communiqué on Portfolio Depositary Service and Providers of This Service No III-56.1.
- Communiqué on Principles Regarding Financial Reporting of Investment Funds No II-14.2 (Financial Reporting Communiqué).
- Communiqué on Principles of Performance Presentation and Performance-Based Remuneration for Individual Portfolios and Collective Investment Schemes, and of Grading and Ranking Activities of Collective Investment Schemes No VIII.128.5.

The CMB is the regulatory body governing retail investment funds. The CMB is also responsible for ensuring reliability and stability in Turkey's securities market. Established in 1981, its objectives include:

- Ensuring fair and orderly functioning of the capital markets.
- The protection of investors' rights.

The main strategic objectives of the CMB are to:

- Enhance investor protection.
- Fully integrate the norms of international capital markets into Turkish capital markets legislation.
- Promote and enhance the effectiveness of both supply and demand sides of the capital markets.
- Promote transparency and fairness in the capital markets.
- Facilitate modernisation of the capital markets infrastructure.

Local or State Legislation

6. Within the jurisdiction, are there local state, provincial or similar laws that could apply to retail funds?

Turkey has a constitutional system where the state is a single entity. Therefore, there are no provincial or other local rules or legislation relating to capital markets or retail investment funds. The legislative framework is applicable to all retail investment funds in Turkey, regardless of the place of the parties' establishment or the place of the transaction.

Investment funds that are traded on the BIST are subject to additional requirements issued by the exchange, mainly relating to quotation and disclosure aspects.

Authorisation/Licensing of Funds

7. Do retail funds themselves have to be authorised, licensed or registered?

The establishment of retail investment funds is subject to authorisation by the CMB. The founder of the fund must submit an application to the CMB, along with draft bye-laws of the investment fund and any other required information and documents.

On submission, the CMB reviews the relevant information and documents and will resolve on authorisation of the proposed investment fund within two months of the application.

Establishment of the portfolio management company itself is subject to licensing by the CMB. Portfolio management companies are established as joint stock companies with the defined main areas of activity of the establishment and management of investment funds. The founders must apply to the CMB with the necessary documentation. On review of the application documentation, the CMB will resolve on the licensing of the portfolio management company within six months.

In addition to the authorisation and licensing requirements, the founders, managers and employees of portfolio management companies are also subject to minimum statutory requirements relating to their good standing and qualifications.

See Question 8.

Authorisation/Licensing of Managers/Operators

8. Do the operators of retail funds have to be authorised, licensed or registered? What are the key requirements that apply to managers and operators of retail funds?

Retail investment funds must be founded and operated by portfolio management companies, which are subject to licensing requirements for establishment, followed by licensing requirements for operation.

To obtain an establishment licence, the portfolio management company must have:

- The form of a joint stock company under the Turkish Commercial Code.
- Only registered (*nama yazılı*) and fully paid-in shares.
- An initial capital of a minimum of TRY6 million (in practice, the CMB may require a considerably higher initial capital to be paid in).
- Articles of association in conformity with the Capital Markets Law and the secondary legislation issued by the CMB.
- Founders that fulfil the following minimum statutory requirements as to their good standing and qualifications:
 - not being bankrupt, not having declared a bankruptcy and not having a bankruptcy postponement or a liquidation decision pending against them;
 - in organisations whose operating licences have been cancelled by the CMB, not being a person responsible for such cancellation;

- not having a conviction for certain criminal offences or administrative sanctions;
 - not having any outstanding tax debt that is due and payable;
 - meeting financial strength and reputation requirements.
- A clear and transparent shareholding structure.

To establish a portfolio management company, founders must apply to the CMB with necessary documentation demonstrating these requirements, based, where applicable, on the templates provided by the CMB. On review of the application documentation, the CMB will resolve on licensing of the portfolio management company within six months.

On obtaining an establishment licence, the portfolio management company must also apply for an operation licence within three months. To obtain an operation licence, portfolio management companies must:

- Continue to satisfy all requirements for establishment, as above.
- Satisfy the capital adequacy requirements of a minimum of:
 - TRY6 million for companies with assets under management of up to TRY200 million;
 - TRY8 million for companies with assets under management between TRY200 million to TRY1 billion;
 - TRY10 million for companies with assets under management between TRY1 billion to TRY7.5 billion;
 - TRY20 million for companies with assets under management exceeding TRY7.5 billion.
- If required, deposit and block security deposit amounts in accounts held with Takasbank.
- Execute an agreement regarding portfolio custody services with a portfolio custodian.
- Ensure all its managers and employees satisfy the minimum statutory requirements. Such requirements include minimum lengths of professional experience in the financial markets and CMB certifications, depending on the position of the manager or employee.
- Employ an adequate number of portfolio managers to conduct portfolio management activities.
- Establish a research unit with adequate number of research experts for its research activities.
- Establish an adequate organisation for work flow, communications, accounting, information and documentation systems, and employ adequate personnel and procure relevant technical equipment for these functions.
- Appoint a general manager.

In principle, portfolio management companies should operate the investment funds that they establish. However, it is permissible to have a contractual arrangement whereby a portfolio management company operates an investment fund established by another portfolio management company.

Active and Passive Management

9. Are the different types of retail funds typically actively managed or passively managed? Or can they be either?

Generally, retail investment funds in Turkey are actively managed. The level and frequency of transactions in the assets under management depends on the nature and portfolio of the retail investment fund.

Exchange traded funds that are traded in BIST's Structured Products and Fund Market are, by definition, passively managed funds. These funds are established to follow and replicate the performance of an underlying index, and are therefore not actively managed. However, the number and trading volume of exchange traded funds are relatively small when compared to the number and trading volume of all retail investment funds in Turkey.

As a third and hybrid option, robo-advisors, which are automated investment management systems based on algorithms and data analysis, are also available in Turkish market. Robo-advisors also provide retail investors with tailored investment allocation and diversification options.

MARKETING OF FUNDS

10. Who can market retail funds?

Portfolio management companies that are authorised to establish and manage retail investment funds are also authorised to market their retail funds.

Portfolio management companies can open up branches in Turkey and abroad, and can establish agency relationships with banks and intermediary entities. These agencies are also authorised to market and distribute participation shares in retail investment funds. Banks use online banking platforms to market retail investment funds and to facilitate their transactions.

In practice, major Turkish public and private banks have fully owned subsidiaries that are established as portfolio management companies. The banks then act as agencies to the relevant portfolio management companies, and use their physical and digital outreach to facilitate market participation in the shares in their retail investment funds.

Under the CMB's general letter to intermediary institutions, foreign investment funds and exchange-traded funds are subject to a different marketing regime under the Communiqué on Foreign Capital Market Instruments and Depository Certificates and Foreign Investment Funds No VII-128.4. Intermediary institutions are therefore not allowed to:

- Market foreign investment funds and foreign exchange-traded funds.
- List these instruments on their mobile and online platforms.

Investors can only invest in these instruments on a reverse-inquiry and non-solicited basis.

11. To whom can retail funds be marketed?

There are no general limitations on whom retail investment funds can be marketed to. Portfolio management companies, their branches and agencies can market retail investment fund participations to individuals through one-on-one communication, as well as through mass communication (including online platforms).

Investor information forms and other informative documentation must be accessible to the investor at all times. The investor information form must explain the structure, investment strategies and risk of the investment in a fact-based and reasonably understandable manner. The form must also be drafted in a short, concise and understandable format and made available in a readable font and format.

As a general rule, investors must take a risk-assessment and appropriateness test before investing in any capital market instrument. The risk level of the capital market instruments that can be sold to each investor is determined as a result of these tests. Therefore, retail investment funds with risk levels higher than the level acceptable to each investor cannot be sold to that investor.

Unrestricted investment funds that are exempt from certain investor-protection regulations can only be sold to qualified investors.

Foreign investment funds and exchange-traded funds can only be sold on a reverse-inquiry and non-solicited basis. See *Question 10*.

The general principles set out under the Capital Markets Law and relevant secondary legislation on advertising and the marketing of capital market instruments also apply to investment funds.

ASSETS PORTFOLIO

12. Who holds the portfolio of assets? What regulations are in place for its protection?

The portfolio management company holds the portfolio of assets through a portfolio custodian company. The legal relationship between the portfolio management company and portfolio custodian company is established under a written agreement. The legal relationship between the portfolio management company and investors is based on the fiduciary ownership principles set out under the Turkish Code of Obligations.

There are several sets of regulations for the protection of portfolio of assets. The assets under the investment fund are ring-fenced, in that they are separate from the assets of the relevant portfolio management company and portfolio custodian company. In addition, assets managed under the investment fund cannot be pledged or used as collateral (barring certain exceptions). Even if the management of the relevant portfolio management company or portfolio custodian company is transferred to the state, assets under the investment fund cannot be disposed of or used for any other purpose, and cannot be attached for collection of public debt. If the investment fund is dissolved, payment must be made to the holders of fund's participation shares only.

INVESTMENT AND BORROWING RESTRICTIONS

13. Are there any investment or diversification restrictions for retail funds? If so, what are they?

The Investment Funds Communiqué sets out detailed investment restrictions and limitations for retail investment funds. In general, investment funds can only hold the following assets:

- Equities (including equities in private entities), and private and public debt instruments, issued in Turkey.
- Foreign equities, and foreign private and public debt instruments, to the extent that they can be legally purchased and sold in Turkey.
- Time deposit and participation accounts and deposit certificates up to a maturity of 12 months.
- Gold and other precious metals, and capital market instruments indexed to the value of precious metals, where they are traded on an exchange.
- Fund participation shares.
- Repo and reverse repo transactions.
- Lease certificates.
- Real estate certificates.
- Warrants and certificates.
- Takasbank money market and organised domestic money market transactions.
- Premiums and cash collaterals of derivative transactions.
- Structured foreign investment products and loan participation notes, where authorised by the CMB.
- Other investment instruments that are authorised by the CMB.

There are further investment requirements based on the specific type and name of the investment fund. For instance, funds that are named as debt instrument funds, equity funds or precious metals funds must hold a minimum of 80% of their assets in the respective asset type at all times. Money market funds must hold all of their assets in high liquidity money market and capital market instruments with a maturity of 184 days or less.

There are specific regulations and restrictions based on the type of transactions (publicly traded instruments, repo and reverse repo transactions, derivative transactions, and so on). For instance:

- Assets in the fund's portfolio that can be subject to repo transactions can be repurchased up to 10% of their fair value.
- Only up to 10% of the total fund value can be invested in reverse repurchase agreements executed outside the stock market.
- The amount of short position exposed due to derivative instruments cannot exceed the total value of the fund.

The Investment Funds Communiqué also sets out certain diversification requirements and restrictions, including the following:

- No more than 10% of the investment fund's total assets can be invested in instruments issued by the same issuer.
- The aggregate of all the assets that each exceed 5% of the total assets in the investment fund cannot exceed 40% of the total assets.
- No more than 20% of the investment fund's total assets can be invested in a money market or capital market instrument issued by the same group.
- An investment fund cannot hold more than 10% of all the outstanding debt instruments of a single issuer.
- An investment fund cannot hold more than 10% equity in any single issuer.
- No single founder can hold more than 20% of the equity in any single issuer through investment funds it has established.

There are also diversification requirements for warrants, certificates, bank deposits and so on. The diversification requirements are less strict for mortgage- and asset-backed securities.

Further diversification restrictions are applicable for assets under management and/or investments in related parties' assets, such as:

- The fund cannot hold more than 10% of the capital or voting rights of its issuer.
- Funds owned by a single founder under the management of the same director cannot collectively hold more than 20% of the capital or voting rights of any of its issuers.
- The sum of investments in intermediary institutions and partnership warrants and certificates cannot exceed 10% of the total fund value and the sum of warrants and certificates issued by a single issuer cannot exceed 5% of the total fund value.

14. Are there borrowing restrictions or conditions for retail funds? If so, what are they?

There is no specific regulation on borrowing by investment funds themselves, as investment funds do not have separate legal personalities and therefore by their nature cannot be party to loan transactions and cannot directly borrow money.

Portfolio management companies that manage investment funds are subject to borrowing restrictions and cannot:

- Issue debt certificates or other similar instruments.
- Borrow money, except for borrowing to meet short-term cash requirements.
- Collect deposits.

REDEMPTION OF INTERESTS

15. Can participants redeem their interest? Can the manager or operator place any restrictions on the issue and redemption of interests in retail funds? Are there any restrictions on the rights of participants to transfer or assign their interests to third parties?

Restrictions on Redemption of Interest

Investors can generally sell their participation shares by redeeming their participation shares with the portfolio management company in accordance with the terms and conditions set out in the fund's information documentation. The purchase of participation shares by investors can only take place if the value of the participation shares is paid in full and in cash.

In addition to the restrictions under the Investment Funds Communiqué, portfolio management companies can also set out conditions for the redemption of participation shares in the bye-laws of the investment fund. A common example of these restrictions is for investment funds to guarantee a certain rate of return, on the condition that investors hold the participation shares until a certain date or until maturity. Usually, in these cases investors waive their rights to the guaranteed return and/or accept capital losses in case of early redemption.

Restrictions on Rights to Transfer or Assign Interests to Third Parties

Portfolio management companies can set out restrictions on the rights of participants to transfer or assign their interests to third parties in the bye-laws of the investment fund.

Participation shares can be freely traded on the BIST if the bye-laws of the investment fund explicitly permit quotation on an exchange, and the BIST approves the quotation of the relevant investment fund.

Secondary transactions in participation shares are allowed for investment funds that are not quoted in BIST, if:

- The information documentation allows for secondary trading.
- Prospective purchasers (other than the issuing portfolio management company) are announced in the Public Disclosure Platform (*Kamuyu Aydınlatma Platformu*).

REPORTING REQUIREMENTS

16. What are the general periodic reporting requirements for retail funds?

Investors

Under the Financial Reporting Communiqué, investment funds must prepare financial statements in accordance with the Turkish Financial Reporting Standards (TFRS), which are based on the International Financial Reporting Standards.

Investment funds must prepare and issue annual financial statements (as well as bi-annual financial statements for investment funds that declare participation share prices more than once each year), as well as monthly portfolio diversification reports and daily price reports.

Portfolio management companies' boards of directors are responsible for the preparation and content of the financial reports. The member of board of directors that is responsible for internal control must also review and give an objective opinion on the financial statements.

Financial statements of the investment funds must be publicly disclosed within 60 days of the end of the relevant financial or investment period. Annual financial statements must be audited, and interim financial statements must be reviewed by independent auditors.

Portfolio diversification reports must be publicly disclosed within six business days from the last day of each month.

All these reports must be accessible on the website of the portfolio management company.

Regulators

Portfolio management companies must report to the CMB on investments in related parties' assets (see *Question 13*), with sufficient detail as to the identity of the related party and information on the assets. This information must be supplied each January and, if any changes occur to the information provided in the report, within six business days of the change.

CMB can request information on retail investment funds at any time, regardless of the periods and deadlines set out under the Investment Funds Communiqué and relevant legislation.

Investment funds are bound by the legislation on financial reporting and valuation of assets, as issued by the CMB. The CMB can audit by at any time the accounts and transactions of the founders, managers and custodians of the investment fund.

TAX TREATMENT

17. What is the tax treatment for retail funds?

Funds

Investment funds themselves have no legal personality and are therefore not subject to tax.

Portfolio Management Companies

As joint stock companies established in Turkey portfolio management companies are corporate taxpayers. Accordingly, they are subject to corporate tax on profits, which is 25% for 2021 and 23% for 2022.

Resident Investors

For natural person retail investors, the tax treatment of investment funds depends on the nature of the investment fund in terms of the assets in management, as well as how long the investor holds the participation shares. Tax is payable on revenue arising from the redemption of participation shares, as follows:

- According to the tax treatment revised by the Turkish government in 2020 to promote investment funds, any revenues from arising from redemption of participation shares in investment funds are subject to a withholding tax of 0%, unless the investment is categorised as either variable, hybrid, Eurobond, foreign debt, foreign or unrestricted funds, which are subject to a withholding tax of 10%. This revised tax treatment will apply from 30 September 2020 to 31 July 2021 (unless further extended).

- Subject to exceptions, any revenues from investment funds with a minimum asset allocation of 80% to equities traded on the BIST are subject to a withholding tax of 0%.
- Any revenues from investment funds with a minimum asset allocation of 50% to equities traded on the BIST where the investor holds the participation shares for at least one year are not subject to withholding tax or declaration.

For corporate investors, revenues from participation shares are included in tax base for corporate tax calculation. In addition, revenues from the participation shares are subject to a withholding tax of 0%.

Under the Income Tax Law No 193 (Income Tax Law), dividends obtained from participation shares are deemed to be capital instrument returns. Although tax treatment of such investment fund dividends is not explicitly referred to under the Income Tax Law, the general consensus is that the tax treatment for revenues from redemption of participation shares also applies to revenues from investment fund dividends. As the market practice around investment fund dividends evolves, there may be further clarification from tax authorities on this issue.

The managers of investment funds must withhold the necessary taxes from payments to be made to the investors.

Other factors, including applicable international tax treaties, may affect the overall tax treatment of revenues from investment funds.

Non-Resident Investors

The tax treatment of natural person retail investors is the same as for resident investors (see *above*, *Resident Investors*).

For corporate taxpayers, revenues from participation shares are subject to a withholding tax of 0%.

REFORM

18. What proposals are there (if any) for the reform of retail fund regulation?

There are no current proposals to reform or substantially amend the retail investment fund legislation.

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