

INVESTING IN „SONDERVERMÖGEN“ FUNDS IN GERMANY: AN ANALYSIS OF LEGAL STRUCTURE, REGULATORY REQUIREMENTS AND PERFORMANCE

Cicmil Danica¹

Abstract: *This paper provides an analysis of “Sondervermögen fonds“, or special investment funds, in Germany. These funds are structured as separate accounts, providing additional protection for investors, as their assets are legally separate from the assets of the fund manager. The Federal Financial Supervisory Authority (BaFin) regulates “Sondervermögen fonds“, ensuring that they are managed responsibly and in compliance with the German Investment Code (Kapitalanlagegesetzbuch or KAGB). The KAGB sets out the legal framework for the operation of “Sondervermögen fonds“ and covers various aspects, including authorization, investment restrictions, custody and administration of assets, supervision, and regulatory measures. The paper describes the legal structure, regulatory requirements, and performance of “Sondervermögen fonds“, highlighting their advantages over other investment vehicles. “Sondervermögen fonds“ have become a significant tool for investors in Germany and are expected to continue playing a crucial role in the country's investment landscape.*

Key words: *Sondervermögen fonds / legal structure / KAGB.*

¹ Univerzitet u Novom Sadu, Ekonomski fakultet u Subotici, Segedinski put 9-11, 24 000 Subotica; e-mail: cicmildanica@yahoo.com

INTRODUCTION

Sondervermögen funds, or special investment funds, are a type of investment vehicle that are widely used in Germany. These funds are structured as separate accounts, which means that the assets of the fund are held in trust for the benefit of the investors and are not available to the fund manager's creditors. The primary advantage of Sondervermögen funds is that they provide additional protection for investors, as their assets are legally separate from the assets of the fund manager. This can help to reduce the risk of loss due to fraud, mismanagement, or other types of financial misconduct. Sondervermögen funds are subject to regulation by the Federal Financial Supervisory Authority (BaFin), which sets requirements related to the fund's investment strategy, risk management, disclosure, and reporting. These regulations are designed to protect investors and ensure that the funds are managed in a responsible manner. Sondervermögen funds can invest in a wide range of assets, including stocks, bonds, real estate, infrastructure, and renewable energy projects. Some funds are focused on specific industries or sectors, while others are more diversified. In the German investment landscape, Sondervermögen funds are an important tool for investors who are looking to build diversified portfolios and manage their risk exposure. These funds offer a number of advantages over other types of investment vehicles, including transparency, liquidity, and legal protection. Overall, Sondervermögen funds have become an integral part of the German investment landscape and are likely to continue to play an important role in the years to come.

OVERVIEW OF SONDERVERMÖGEN FONDS

Sondervermögen funds are investment funds that are structured as special accounts and are subject to regulatory oversight by the Federal Financial Supervisory Authority (BaFin) in Germany. These funds are governed by the German Investment Code (Kapitalanlagegesetzbuch, or KAGB), which sets out the legal framework for their operation.

Sondervermögen funds are legally separate from the fund manager and are treated as distinct legal entities (Kuntze, 2010). This means that the assets of the fund are held in trust for the benefit of the investors and are not available to the fund manager's creditors. The fund manager is

responsible for managing the assets of the fund, but they do not own them (Müthlein & Hoffmann, 2017).

Sondervermögen funds are subject to a range of regulatory requirements under the KAGB (Benetele, 2016). The Kapitalanlagegesetzbuch (KAGB) is the German Investment Code that governs the regulation of investment funds in Germany. It was enacted on July 4, 2013, and replaced the Investment Act (Investmentgesetz or InvG) and the Investment Company Act (Kapitalanlagegesellschaftsgesetz or KAGG) (Sebastian & Schnejder, 2016).

The KAGB is organized into nine main sections, each of which covers a different aspect of investment funds. These sections include (KAGB, 2023):

1. **General Provisions:** This section provides an overview of the KAGB and defines key terms.
2. **Authorization of Investment Undertakings and Managers:** This section outlines the authorization requirements for investment funds and fund managers.
3. **Requirements for the Management of Investment Undertakings:** This section sets out the requirements for the management and operation of investment funds
4. **Custody and Administration of Assets:** This section covers the custody and administration of fund assets, including the role of depositaries.
5. **Investment Restrictions:** This section establishes the investment restrictions for investment funds.
6. **Supervision and Supervisory Measures:** This section outlines the supervision and regulatory measures that may be imposed on investment funds.
7. **Liability and Sanctions:** This section covers liability and sanctions for violations of the KAGB.
8. **Cooperation with Other Supervisory Authorities:** This section outlines the cooperation between BaFin and other supervisory authorities.
9. **Transitional and Final Provisions:** This section includes transitional provisions for the implementation of the KAGB and final provisions.

In total, the KAGB contains 286 articles. It provides a comprehensive legal framework for the regulation of investment funds in Germany, including

Sondervermögen fonds, and aims to ensure investor protection, transparency, and effective risk management (Schlitt, 2015). The KAGB is periodically updated and amended to reflect changes in the investment landscape and regulatory requirements. Here are some of the main articles and regulatory requirements of the KAGB (KAGB, 2023):

§ 1 - Scope: This article sets out the scope of the KAGB and establishes the definition of an investment fund.

§ 20 – Depositary: This article sets out the requirements for the appointment of a depositary responsible for safekeeping and oversight of the assets of an investment fund.

§ 37 - Investment policy and risk management: This article requires management companies to establish and implement investment policies and risk management procedures for each investment fund.

§ 58 - Reporting obligations: This article outlines the reporting requirements for management companies, including periodic reports on the investment fund's performance and compliance with the KAGB.

§ 80 - Redemption and termination of investment fund units: This article sets out the procedures and requirements for the redemption and termination of units in an investment fund.

§ 177 - Cross-border marketing: This article governs the marketing of investment funds across national borders and establishes procedures for compliance with regulations in foreign jurisdictions.

§ 224 - Investor protection: This article sets out the measures and requirements for the protection of investors' interests, including rules on transparency and disclosure.

§ 258 - Transitional provisions: This article outlines the procedures for transitioning existing investment funds and management companies to compliance with the KAGB. In addition to the regulatory requirements set out in the KAGB, Sondervermögen fonds are subject to other regulatory requirements and guidelines, including those related to tax, accounting, and corporate governance.

Overall, the KAGB and other regulatory requirements help to ensure that Sondervermögen fonds are operated in a transparent and responsible manner, with a focus on investor protection and risk management (n.a., 2023).

The Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin) is the German Federal Financial Supervisory Authority and is responsible for supervising and regulating financial institutions in Germany, including real estate funds (Sondervermögen Immobilienfonds) (BaFin, 2023).

BaFin's role in the regulation of German real estate funds is to ensure that they comply with the legal and regulatory requirements set out in the Kapitalanlagegesetzbuch (KAGB) and other relevant laws and regulations (Roegel, 2021). This includes monitoring and supervising the activities of the fund managers, ensuring that investors are provided with accurate and transparent information about the funds, and conducting periodic inspections of the funds to ensure compliance with regulations.

BaFin's responsibilities also include the approval of new real estate funds, the revocation of existing fund licenses in cases of non-compliance, and the imposition of fines and other penalties for violations of regulations. In addition to its supervisory role, BaFin also plays a key role in promoting financial stability in Germany (BaFin, 2023). It works closely with other national and international regulatory bodies to identify and mitigate risks to the financial system, and to promote the adoption of best practices in the financial industry. Overall, BaFin's role in the regulation of German real estate funds is to promote transparency, protect investors, and maintain the stability of the financial system.

PERFORMANCE AND TRENDS

The history of banking regulation in the EU can be traced back to the 1970s, when the EU began to take steps to harmonize financial regulations, especially the ones related to banking. According to data from the Bundesverband Investment und Asset Management (BVI), the average annual return of Sondervermögen funds in Germany over the last ten years was around 2.7% (BVI, 2023). However, this varies widely depending on the specific fund and investment strategy, with some funds achieving significantly higher returns and others experiencing losses. In terms of risk profiles, Sondervermögen funds in Germany typically invest in a range of assets, including equities, bonds, real estate, and alternative investments such as private equity and infrastructure. As a result, their risk profiles can vary widely depending on their asset allocation and investment strategy.

In recent years, there have been several trends and changes in the German investment landscape that have impacted the performance and risk profiles of Sondervermögen funds. One trend has been a shift towards sustainable and socially responsible investing, with many funds incorporating environmental, social, and governance (ESG) factors into their investment strategies (Paribas, 2021). Another trend has been an increased focus on real estate investments, with many funds allocating a larger portion of their assets to real estate in order to achieve higher returns and diversify their portfolios. This has been driven in part by the low interest rate environment in Europe, which has made real estate investments more attractive relative to other asset classes.

In terms of regulatory changes, the introduction of the Kapitalanlagegesetzbuch (KAGB) in 2013 has had a significant impact on the Sondervermögen funds market in Germany (Benetele, 2016). The KAGB introduced stricter regulatory requirements for fund managers, including increased reporting and disclosure requirements, and has led to a consolidation of the industry as smaller fund managers struggle to comply with the new regulations.

TYPES OF SONDERVERMÖGEN FONDS

Sondervermögen funds in Germany come in various types, each with its unique investment objectives and strategies. Here are some of the most common types of Sondervermögen funds in Germany (Raab, 2018) (Kühn, 2018):

- **Real Estate Funds:** These funds invest in different types of real estate, including commercial, residential, retail, and industrial properties. Real estate funds generate returns primarily from rental income and capital appreciation from the properties they own. They can be further classified into different categories such as core, value-add, and opportunistic funds, depending on their investment objectives and strategies. Examples of well-known real estate funds in Germany include the Commerz Real Institutional Fund, Deutsche Asset Management Grundbesitz Invest, and Union Investment Institutional Property.
- **Infrastructure Funds:** These funds invest in infrastructure assets such as toll roads, bridges, ports, airports, and utilities. Infrastructure funds

generate returns primarily from long-term contracts, such as concession agreements, which provide stable and predictable cash flows. Examples of well-known infrastructure funds in Germany include the DWS Infrastructure Fund, Allianz Global Investors Infrastructure Equity Fund, and Macquarie Infrastructure and Real Assets Fund.

- **Private Equity Funds:** These funds invest in privately held companies that are not listed on the public stock market. Private equity funds aim to generate high returns by acquiring stakes in promising start-ups or companies that are undervalued or in need of restructuring. Examples of well-known private equity funds in Germany include the Capvis Equity Partners Fund, Deutsche Beteiligungs AG Fund, and Triton Fund.
- **Renewable Energy Funds:** These funds invest in renewable energy projects such as solar, wind, hydro, and geothermal power. Renewable energy funds generate returns primarily from the sale of electricity generated from these projects, which are typically sold under long-term contracts. Examples of well-known renewable energy funds in Germany include the KGAL ESPF 4 renewable energy fund, the Aquila Capital Renewable Infrastructure Fund, and the BayWa r.e. Energy Ventures Fund.

Overall, Sondervermögen funds in Germany offer a diverse range of investment options to investors, each with its unique set of risks and returns. It is important for investors to carefully evaluate the investment objectives, strategies, and risks of each fund before investing. Additionally, investors should consider working with a financial advisor to help identify the most suitable investment options based on their financial goals and risk tolerance.

One of the publicly traded real estate fund would be UniImmo: Deutschland.

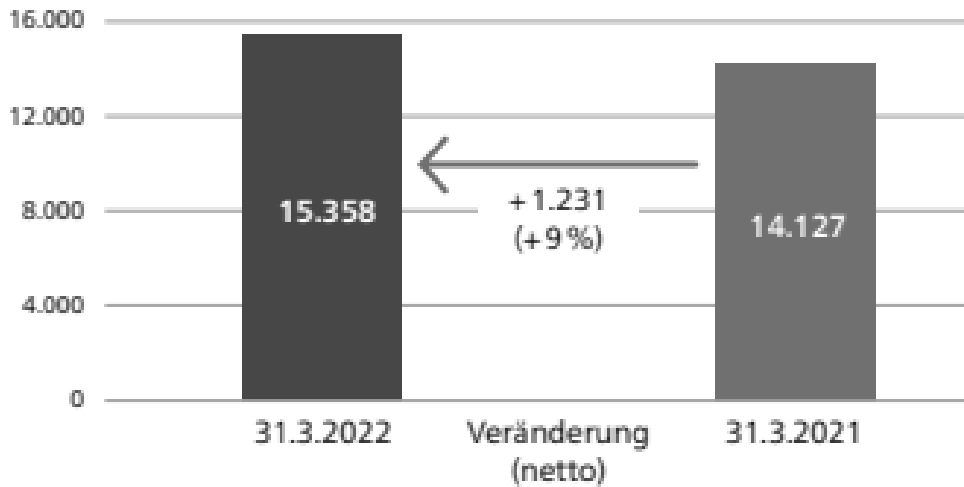
UniImmo: Deutschland is a Sondervermögen fund that invests in commercial and residential real estate properties across Germany. The fund is managed by Union Investment and was launched in 2006. As of December 2022, the fund had total assets under management of approximately 15.3 billion euros (Annual Report , 2022).

The fund invests in a diversified portfolio of properties, including office buildings, retail properties, logistics facilities, and residential properties.

The portfolio is managed actively to optimize the value of the properties and generate stable returns for investors. The fund aims to provide long-term capital appreciation and stable rental income to its investors.

In terms of performance, UniImmo: Deutschland has achieved solid returns for its investors in the past. According to Union Investment, the fund generated a total return of 2.6% in 2022, despite the challenging economic environment caused by the COVID-19 pandemic and Russian-Ukrainian war (Annual Report, 2022). The fund has a low-risk profile and is suitable for investors seeking stable returns and diversification across different types of real estate properties. The fund is open to both retail and institutional investors, and the minimum investment amount is 50 euros.

The annual report is one of the main documents that funds need to publish and it includes a range of information related to the fund's performance and financial position. Section 120 of the KAGB contains several articles related to the annual reporting requirements for all investment funds in Germany. Specifically, § 50, 51, and 52 outline the requirements for the annual report, including the content and timing of the report (KAGB, 2023). § 50 states that the annual report must include information on the fund's performance, investment strategy, risk management, and fees, among other things. § 51 requires the report to be audited by an independent auditor, and § 52 sets the deadline for the report to be provided to investors. Below are some key metrics from annual report for 2022 for UniImmo Fund.

Chart 1. Change in fund assets from 2021 to 2022 (in Mio. EUR)

Source: Annual Report 2022 UniImmo

Chart number one shows the change in fund assets from 2021 to 2022, with the value of fund assets increasing by EUR 1.2 million. EUR.

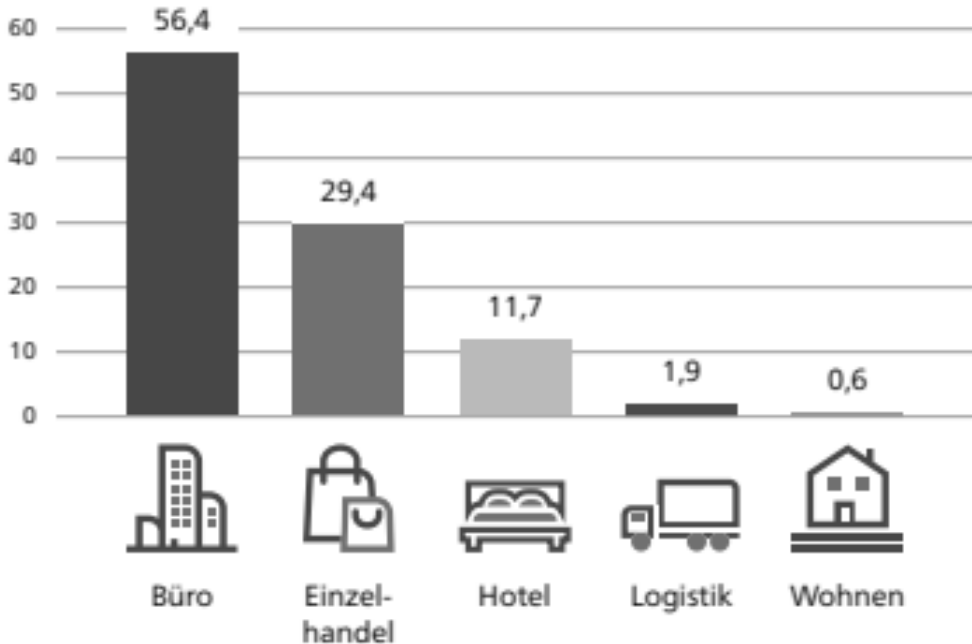
Table 1. Transactions by type of use

Ankäufe	Anzahl
Büro	5
Hotel	1
Kfz	1
Wohnen	1
Gesamt	8
Gesamtinvestition in Mio. EUR	1.043,4
Verkäufe	
Büro	1
Verkaufspreis in Mio. EUR	73,1

Source: Annual Report 2022 UniImmo

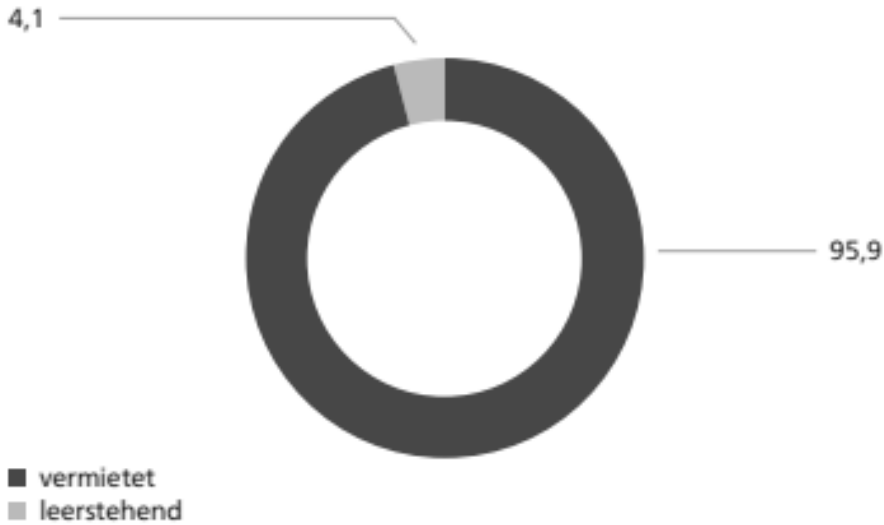
Table one shows the number of transactions made in 2022 and the individual asset classes. Accordingly, 5 acquisitions were made in office buildings, one in hotels, one in workshops and one in residential buildings. Chart number two shows the percentage of the portfolio's main use. One can see that 56.4% of the portfolio is invested in offices, 29.4% in retail, 11.7% in hotels, 1.9% in logistics and 0.6% in residential.

Chart 2. *Main types of use (in %)*

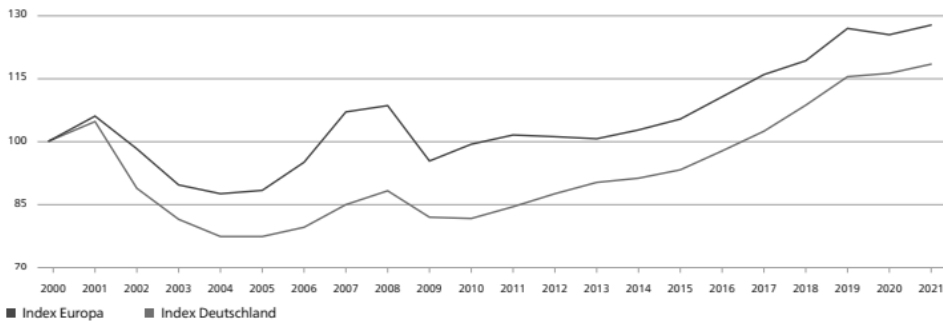


Source: Annual Report 2022 UniImmo

Chart number three shows the occupancy rate by rental income and one can see that only 4.1% is not rented.

Chart 3. *Occupancy rate by rental income*

Source: Annual Report 2022 UniImmo

Chart 4. *Peak rental development for office space*

Source: Annual Report 2022 UniImmo

Chart number four shows the peak rental development for office spaces throughout years with a visible positive trend.

CONCLUSION

In summary, Sondervermögen funds in Germany are investment vehicles that allow investors to pool their money together and invest in various asset classes, such as real estate, infrastructure, renewable energy, and private equity. These funds are regulated by the KAGB and supervised by BaFin to ensure investor protection and transparency. Investors considering investing in Sondervermögen funds in Germany should evaluate the fund's investment objectives and strategies, assess the fund's risk profile, and consider fees and expenses. Building a diversified portfolio across different asset classes and seeking guidance from a financial advisor can also help reduce the risk of losses.

The historical performance of Sondervermögen funds in Germany has been positive, with some funds achieving significant returns while maintaining a low-risk profile. The market for these investment vehicles has seen some recent shifts in investment strategies, such as a focus on sustainable investments and a growing interest in real estate and infrastructure funds.

Looking to the future, Sondervermögen funds in Germany are expected to continue to attract investors due to their potential for diversification, stable returns, and the growing interest in sustainable investments. However, regulatory changes and evolving market conditions may impact the performance and availability of these funds in the future.

REFERENCES

1. Annual Report . (2022). *UniImmo: Deutschland Jahresbericht*.
2. BaFin. (2023, March). *Federal Financial Supervisory Authority*. Preuzeto sa <https://www.bafin.de/EN>
3. Benetele, F. (2016). Offene Immobilienfonds. *Immobilienwirtschaftslehre - Recht*. Springer Gabler, 573-602.
4. BVI. (2023, March). *Bundesverband Investment und Asset Management*. Preuzeto sa <https://www.bvi.de/service/statistik-und-research/wertentwicklungsstatistik/>
5. KAGB. (2023, March). Preuzeto sa Gesetze im Internet: <https://www.gesetze-im-internet.de/kagb/>
6. Kühn, M. (2018). Besteuerung von Investmentfonds und Anleger. *Die Investmentsteuerreform*, 7-95.

7. Kuntze, M. (2010). *Sondervermögen in Bund und Ländern*. Jahrbuch für öffentliche Finanzen.
8. Müthlein, T., & Hoffmann, T. (2017). Anlage in Immobilienfonds. *Immobiliengeschäft*, 283-195.
9. n.a. (2023, March). *Hörtkorn Finanzen*. Preuzeto sa <https://www.hoertkorn-finanzen.de/investment-wiki/kapitalanlagegesetzbuch-kagb/>
10. Paribas, B. (2021, Septembre). *BNP Paribas Real Estate*. Preuzeto sa <https://www.realestate.bnpparibas.de/blog/esg/esg-immobilienwirtschaft>
11. Raab, W. (2018). Fondstypen. *Grundlagen des Investmentfondsgeschäftes*, 61-76.
12. Roegele, E. (2021). Die Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin). *Verbraucherwissenschaften*, 539-566.
13. Schlitt, M. (2015). *Rechtsfragen rund um notleidende Fonds. Rechtsfragen des Verbrauchercreditgeschäfts*. De Gruyter.
14. Sebastian, S., & Schnejder, S. (2016). KAGB 2.0, What's Next! (KAGB 2.0, was noch kommt!). *Fokus*, 26-27.

INVESTIRANJE U „SONDERVERMÖGEN“ FONDOVE U NEMAČKOJ: ANALIZA PRAVNE STRUKTURE, REGULATORNIH ZAHTEVA I PERFORMANSI

Danica Cicmil

Sažetak: Ovaj rad se bavi analizom Sondervermögen fondova, ili posebnih investicionih fondova, u Nemačkoj. Ovi fondovi su organizovani putem odvojenih računa, tako da obezbeđuju dodatnu zaštitu za investitore, jer su njihova sredstva pravno odvojena od sredstava menadžera fonda. Federalna finansijska nadzorna agencija (BaFin) reguliše Sondervermögen fondove, osiguravajući da se njima upravlja odgovorno i u skladu sa nemačkim Zakonom o investicijama (Kapitalanlagegesetzbuch ili KAGB). KAGB utvrđuje pravni okvir za rad Sondervermögen fondova i obuhvata različite aspekte, uključujući

ovlašćenja, ograničenja ulaganja, čuvanje i administraciju imovine, nadzor i regulatorne mere. Rad opisuje pravnu strukturu, regulatorne zahteve i performanse Sondervermögen fondova, ističući njihove prednosti u odnosu na druge investicione instrumente. Sondervermögen fondovi su postali značajan alat za investitore u Nemačkoj i očekuje se da će i dalje igrati ključnu ulogu u investicionoj sferi zemlje.

Ključne reči: *Sondervermögen fondovi / pravna struktura / KAGB.*