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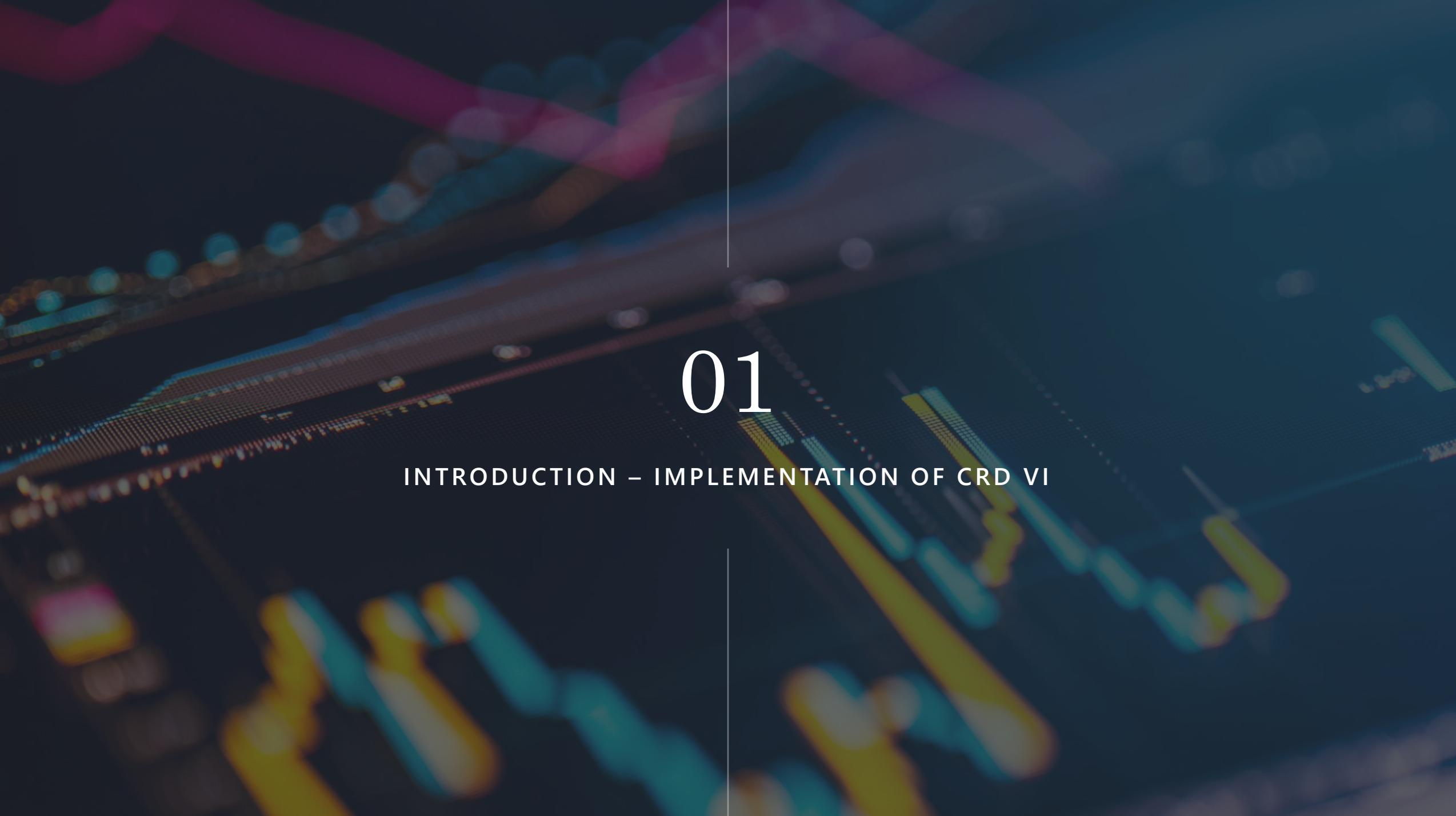
CAPITAL MARKETS KNOW-HOW SERIES

**CRD VI / BRUBEG: New Approval and Notification
Requirements for Transactions by CRR Credit Institutions
and (Mixed) Financial Holding Companies**

4 March 2026

AGENDA

1. Introduction – Implementation of CRD VI
2. Current Approval and Notification Requirements for M&A in the Banking Sector
3. Overview: Three Key Proposed Changes
4. Material Transfers of Assets & Liabilities (*Asset Deals*)
5. Acquisition & Divestiture (*Share Deals*)
6. Mergers & Divisions
7. Timeline



01

INTRODUCTION – IMPLEMENTATION OF CRD VI

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- In Germany: Transposition into national law by virtue of the **BRUBEG** (*Bankenrichtlinienumsetzungs- und Bürokratieentlastungsgesetz*)
- Much discussed proposed changes due to BRUBEG:
 - CRD Third-Country Branches → setting up EU-branch to provide core-banking services
 - Fit & Proper / Mapping of Duties → requirements for Board members / org. overviews
 - ESG Risk Management → designing and implementing plans for monitoring risks
 - Extended Powers of BaFin → periodic fines
- However, less attention has been paid so far to the upcoming **Approval / Notification Requirements for M&A Deals in the Banking Sector**



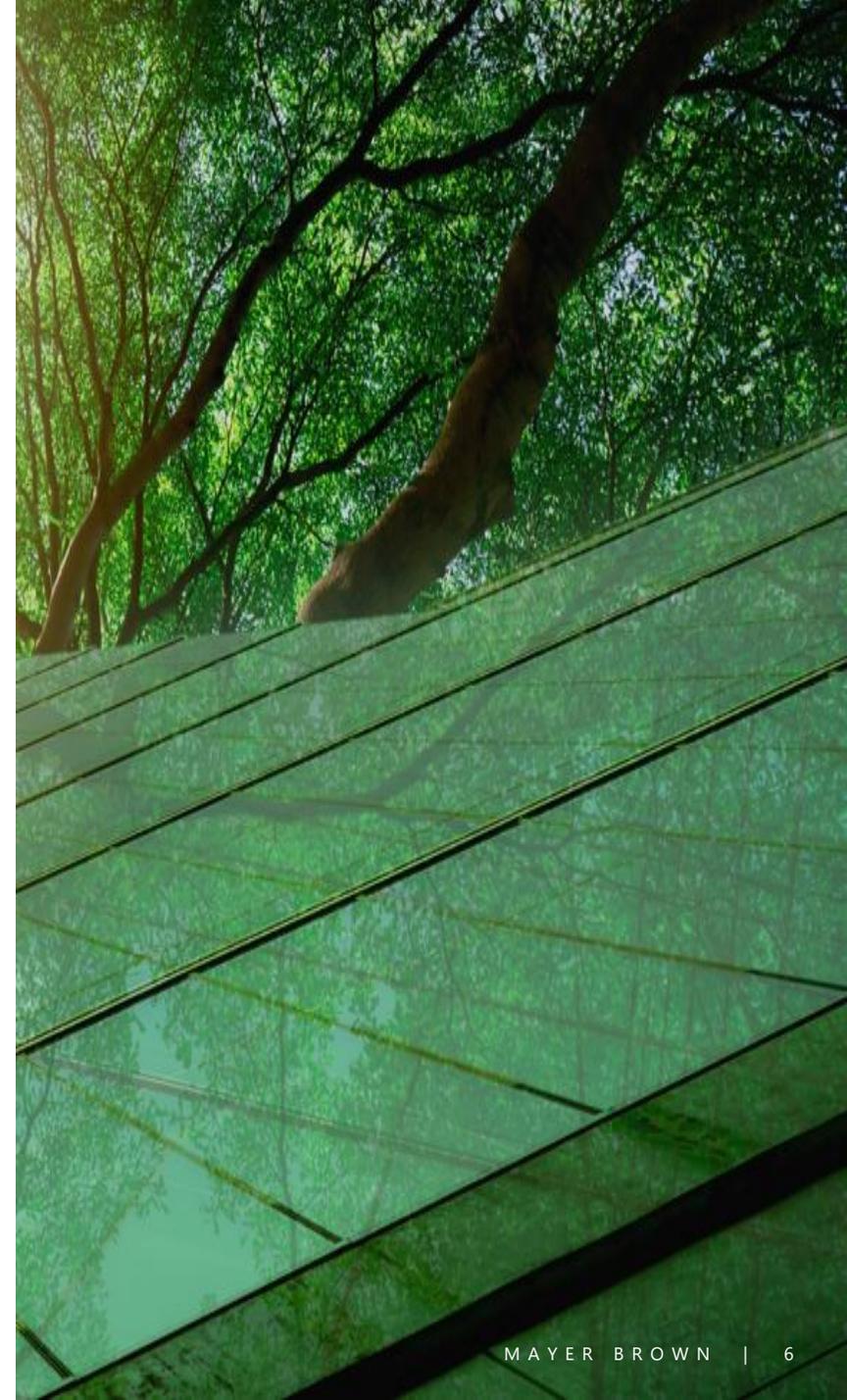
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CURRENT APPROVAL AND NOTIFICATION REQUIREMENTS FOR M&A
IN THE BANKING SECTOR

CURRENT APPROVAL AND NOTIFICATION REQUIREMENTS FOR M&A IN THE BANKING SECTOR

Currently, notification/"approval" was only required in Germany for the acquisition of qualifying holdings *in* banks, not *by* banks

- The **acquisition** of a "**qualifying holding**" in a **credit institution** or financial services institution requires prior notification and prior regulatory approval (so called **Change of Control Procedure** pursuant to § 2c German Banking Act (KWG))
 - A "**qualifying holding**" is defined as a holding that comprises at least 10% of the capital or voting rights of the institution concerned or that otherwise enables significant influence to be exercised over the management of this target company
- However, **acquisitions** of shareholdings **by** credit institutions as well as **mergers, divisions** and **asset deal** transactions in unregulated entities are **not yet subject** to a formal **regulatory approval procedure**
- This will change under the BRUBEG





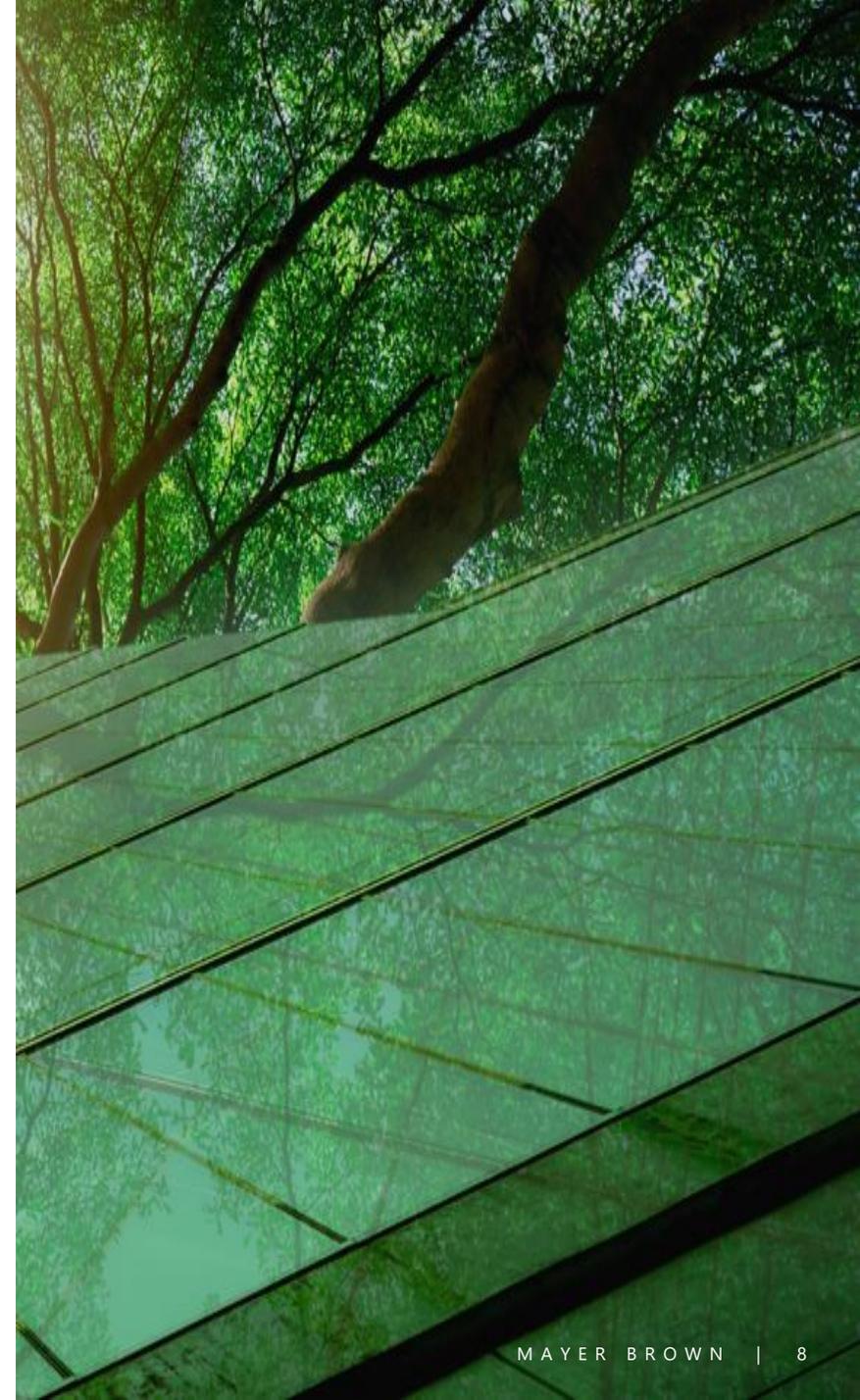
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OVERVIEW: THREE KEY PROPOSED CHANGES

CHANGES UNDER CRD VI / BRUBEG (1/2)

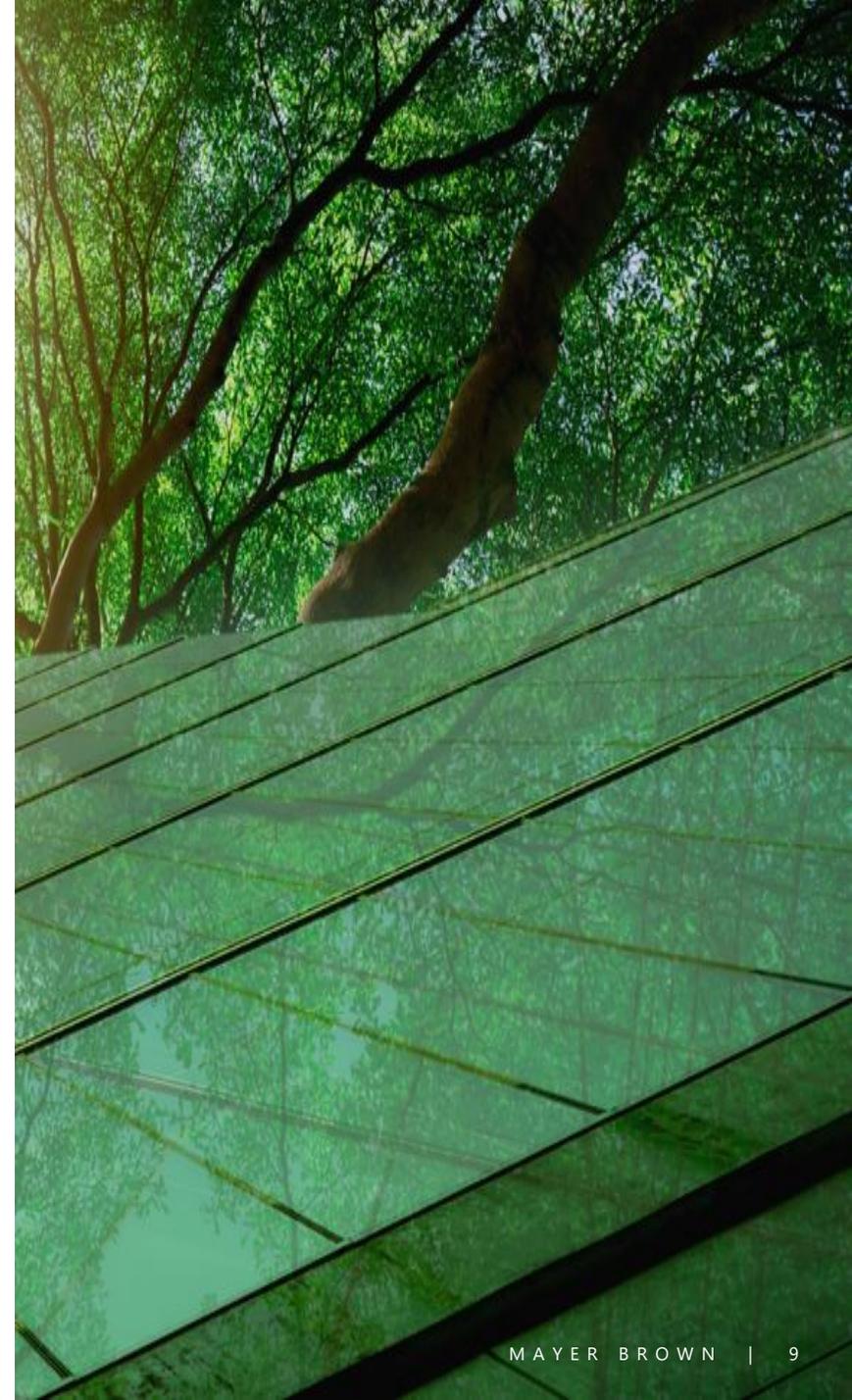
- **NEW:** also acquisitions **by** banks (CRR credit institutions and (mixed) financial holdings companies are regulated, namely:
 - Share deal (§ 2h KWG n.F.)
 - Asset deal (§ 24 para. 1f KWG n.F.)
 - Restructurings (§ 2i KWG n.F.)
- The new requirements are in addition to the afore-mentioned regulations on change of control procedures but have different triggers (*qualifying vs. material* holdings) and thresholds which may result in an accumulation of duties

(... which is not free from irony, since according to its title, the BRUBEG – Banking Directive Implementation and Bureaucracy Relief Act – is intended to serve the purpose of reducing bureaucracy)



CHANGES UNDER CRD VI / BRUBEG (2/2)

- For some transactions, only **notification** to the regulator is required, for others, (also) **approval** requirements apply
- Regulator has **long timeframes** for making its decisions, which possibly only start after all required documents have been submitted
- **More planning is needed**, timetables need to take new approval and notification requirements into account
- Agreements may have to provide for new **closing conditions** (approval)
- Guidance by the regulator on documents to be provided does not yet exist
- Many **details** of the new rules are still **unclear**





04

MATERIAL TRANSFERS OF ASSETS & LIABILITIES (*ASSET DEALS*)

MATERIAL TRANSFERS OF ASSETS & LIABILITIES (ASSET DEALS)

- Asset Deals differ from the other two following transaction types in that there is a notification requirement but **no approval requirement**.
- The notification requirement for Material Transfers of assets and liabilities applies to **both the transferring and acquiring CRR credit institution or (mixed) financial holding company**
 - The legal basis for the “**transfer**” is not limited to purchases, but any kind of risk transfer
 - A Transfer is “**material**” if it accounts for at least **10%** of the total assets or liabilities of the transferring/acquiring CRR credit institution or (mixed) financial holding company (intragroup dealings increase threshold up to **15%**) (§ 1 para 9a KWG)

MATERIAL TRANSFERS OF ASSETS & LIABILITIES (*ASSET DEALS*)

- **Who notifies what, when and to whom?**

- Notification must be made before the proposed material transfer
 - Provided that signing and closing do not coincide, it should be sufficient for the notification to be made **after the signing**
- Notification must be addressed to the competent supervisory authority (ECB/BaFin) **and** the German Federal Bank (*Deutsche Bundesbank*)
- Details will be specified by Regulatory Technical Standards of EBA (**EBA RTS**) to come
- **Fines** are envisaged for non-disclosures, incorrect, incomplete or late disclosures

- **Practical Consequences:**

- Previously unregulated Asset Deals are now subject to notification requirements
- In addition to the **timing** of the notification, Institutions must now also keep an eye on the quantitative thresholds and **calculate** them when preparing the transaction

ASSET DEAL

What is regulated?

Material transfer of assets or liabilities by CRR credit institutions and authorized (mixed) financial holding companies, as sellers or buyers **need to be notified (no approval requirement)**

"Transfers" include sales and other types of transactions resulting in balance sheet transfer

Materiality thresholds:

10% of total assets or liabilities of transferring (or acquiring) company

Intra-group threshold: 15% if transfer exclusively within group

Calculation:

Denominator: balance sheet total of notifiable company, numerator: value of items to be transferred

Valuation: not defined. Book value, market value, purchase price?

→ book value seems recommendable (as for share deals)

Excluded assets that do not count upon calculating the transferred assets:

Non-performing assets

Assets for inclusion in cover pool (covered bonds)

Assets intended for securitization

Assets/liabilities in connection with resolution instruments, powers and mechanisms (BRRD)



05

ACQUISITION & DIVESTITURE (*SHARE DEALS*)



SHARE DEAL – OVERVIEW

- **What is regulated:**
 - Acquisition or sale of a „**material holding**“
 - by a CRR credit institutions or financial holding company or a mixed financial holding company
- **Acquisition:**
 - means acquisition of shares in another entity, either directly or indirectly
 - Acquired entity (target) does not need to be regulated
 - Requires prior **approval, to be obtained by the buyer**
- **Sale: reciprocal to the acquisition**
 - needs to be **notified** by the seller



SHARE DEAL

- **What is a material holding?**
 - Value corresponds to at least 15% of the **eligible capital** of
 - the CRR credit institutions, at either individual or consolidated level, or
 - the (mixed) financial holding company
 - **Eligible capital:**
 - Tier 1 and Tier 2 (up to one third of the Tier 1 capital)
 - **Calculation of the value of the acquired shares:**
 - Not stipulated in the new rules, no guidance from the regulator existing, yet
 - Book value (at acquirer) / purchase price likely to be decisive. If purchase price is subject to increases/decreases and this may have an effect on reaching the threshold, early communication with the regulator is recommendable



SHARE DEAL – NOTIFICATION AND APPROVAL PROCESS

- **Who notifies and when**

- Acquisition to be notified by the buyer, before closing. Timing not stipulated in more detail. Notification after signing should be sufficient.
- If an institution (bank or financial services provider) is acquired and corresponding approval requirements are triggered, these must be satisfied in parallel. As such notification needs to be done before signing, it should be combined with the newly required notification.
- Notification to be made to the supervising authority (BaFin or ECB), possibly also consolidating supervisory authority
- Seller notifies in parallel (if thresholds are met on its side and it is a CRR credit institutions or a (mixed) financial holding company)

- **Assessment criteria:**

- Similar to criteria upon acquisition of a qualifying holding in a bank: sound and prudent management of acquired entity by acquirer, financial soundness of acquirer, ability to meet prudential requirements even after completion, no suspicions of money laundering and terrorist financing

- **Assessment period:**

- Generally, 60 working days, from receipt of complete notification and all required information by the regulator; regulator needs to confirm receipt; period can be suspended in certain cases (third-country relationships, AML consultation needs)
- If no opposition within assessment period: deemed approved



SHARE DEAL – INTRA-GROUP TRANSACTIONS AND SANCTIONS

- **Simplifications for intra-group transactions:**
 - Acquisitions of material holdings within same group or institutional protection scheme (Art. 113(6) and (7) CRR) do not have to be assessed by competent supervisory authority
 - But: Notification requirement remains, **regulator has discretion** on whether or not to carry out assessment
 - Authority needs minimum information to make discretionary decision
- **Sanctions:**
 - Fines for non-compliance with diverse obligations
 - **If acquisition is undertaken despite opposition, the regulator may:**
 - Suspend voting rights
 - Declare votes cast null and void
 - Appoint voting rights trustee
 - Make disposals of shares subject to approval



SHARE DEAL – PRACTICAL CONSEQUENCES

- **Before any acquisition, carefully check whether 15% threshold can be reached** – on both sides
- **If threshold is reached:**
 1. **SPA must contain closing condition:** Transaction may only close once approved. Also required for intra-group transactions, until regulator has formally declared that no review will be undertaken
 2. **Parallel preparation:** Documents for assessment procedure must be compiled in parallel with negotiation of acquisition agreements



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RESTRUCTURING - MERGERS & DIVISIONS

RESTRUCTURINGS - OVERVIEW

- **Notification and approval requirements apply to mergers and divisions (spin-off, hive-down)**
- **What is covered?**
 - The new rules also apply to transactions according to the German Transformation Act, namely **mergers, spin-offs and hive-downs**, if at least one of the involved entities (the transferring or the acquiring entity) is a CRR credit institution or (mixed) financial holding company
 - Spin-offs and hive-downs are only subject to the new rules if they are implemented **against granting of shares in the acquiring entity**. Under the German Transformation Act, such granting of shares is sometimes not required by law, not permitted (particularly in group situations), or can be waived. The waiver option is frequently used in intra-group transactions. In our view, the clear wording suggests that waiver cases are not subject to the new notification and approval obligations.
 - For mergers: also variants without granting of shares are covered
 - **No materiality threshold** applies

RESTRUCTURINGS – REGULATORY PROCESS

- **Who must notify?**

- Transferring AND acquiring entity (provided they are a CRR credit institution or (mixed) financial holding company)
- Shareholders NOT subject to notification, even if they must approve measure

- **To whom must they notify? (wording unclear in the law)**

- For **mergers**: Notification to competent supervisory authority responsible for acquiring company
- For **divisions**: Notification to competent authority responsible for company “carrying out division”
- **In practice**: Advisable to notify authorities of both, transferring and acquiring entity

- **Exception – licensing takes precedence:**

- If acquiring entity only becomes credit institution or (mixed) financial holding company as result of merger/division → licensing required under § 32 or § 2f KWG → assessment under § 2i KWG does NOT apply

RESTRUCTURINGS – FILING AND TIMELINES

Timing of notification:	<p><u>After acceptance of draft terms and before completion</u></p> <p>But: German Transformation Act does not provide for "acceptance"</p> <p>Early notification after preparation of final draft by management should be permitted; early notification allows assessment to be initiated early (important for timeline)</p>
Assessment period – critical limitation:	<p>60 working days: ONLY for mergers/divisions between CRR credit institutions or (mixed) financial holding companies</p> <p>NO deadline: If unregulated company or non-CRR financial services company is involved on one side</p>
Assessment criteria:	<p>Same standards as for licensing of credit institutions and share deal acquisition: reliability and soundness of financial stakeholders; <u>ability of resulting entity to meet prudential requirements; feasibility of planning, absence of suspicion of money laundering or terrorist financing</u></p>
Documents to be filed:	<p><u>Details to come in EBA-RTS</u></p>

RESTRUCTURINGS – EXEMPTIONS AND HANDLING

Simplifications for intra-group mergers (NOT divisions):

- If both, transferring and acquiring entity are CRR credit institutions or (mixed) financial holding companies, competent supervisory authority can refrain from carrying out assessment (discretionary)
- Notification requirement remains, authority requires minimum information to exercise discretion

For intra-group divisions:

- Law provides NO exemptions from assessment duty
- BUT: Only divisions with granting of shares fall under regime, intra-group restructurings can often be structured such that no new shares are issued as consideration

Practical consequences:

- Can have significant impact on timetable
- Preferable to choose structural variants avoiding notification and assessment requirement
- If approval requirement cannot be avoided: Good time planning essential, especially with commercial register
- To use annual balance sheets as closing balance sheets: Application to commercial register must be within 8 months of financial year end
- To be considered if application can be made before required approval is granted – risk of registration without approval?



07

TIMELINE

TIMELINE

BRUBEG enters into force on first day of quarter following promulgation

Friday, 6 March 2026: TOP 1 in the 1062nd meeting of the Federal Council (*Bundesrat*)

Expected entry into force: **1 April 2026**

Germany missed CRD VI implementation deadline which was 11 January 2026

Outstanding regulatory guidance:

- EBA RTS drafts due by **10 July 2026**
- Will specify documents to be submitted to competent authority
- Until then: National authorities to publish minimum information requirements

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