

The Banking Law Journal

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Editorial Office
101 Park Ave., 24th Floor, New York, NY 10178 (800) 543-6862
www.lexisnexis.com

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New Approval and Notification Requirements for Transactions by CRR Credit Institutions and (Mixed) Financial Holding Companies

*By Marcel Hörauf and Ulrike Binder**

In this article, the authors explain that New Jersey has joined certain other states in its broader approach to disparate impact enforcement and litigation than the federal government's, at least for the foreseeable future.

New approval and notification requirements for transactions in the German banking sector came into force on 1 April 2026 as a result of the BRUBEG (Banking Directive Implementation and Bureaucracy Relief Act) passed by the German Federal Parliament on 29 January 2026. This is in implementation of the CRD VI Directive (EU) 2024/1619, which harmonises the legal framework for M&A transactions in the banking sector in the EU.

The addressees of the new requirements are the European Union's Capital Requirements Regulation (CRR) credit institutions as well as authorised financial holding companies and mixed financial holding companies. The new requirements affect three types of transactions:

- the acquisition and divestiture of material holdings (share deal);
- the material transfers of assets or liabilities (asset deal); and
- restructuring in the form of mergers and divisions.

The new requirements must be taken into account when structuring transactions, as they can have a significant impact on timetables. For German institutions, the new requirements will lead to increased costs. Previously, approval was only required in Germany for the acquisition of qualifying holdings in banks, but now acquisitions by banks may also be subject to approval. Although there are simplifications for intragroup transactions, they are not generally excluded from the scope of the new regulations. The new regulations are in addition to the previous regulations on change of control procedures¹ but have different connecting factors and thresholds.

* The authors, attorneys with Mayer Brown, may be contacted at mhoerauf@mayerbrown.com and ubinder@mayerbrown.com, respectively.

¹ Cf. Section 2c German Banking Act, Kreditwesengesetz, KWG.

ACQUISITION AND DIVESTITURE OF MATERIAL HOLDINGS BY CRR CREDIT INSTITUTIONS OR FINANCIAL HOLDING COMPANIES OR MIXED FINANCIAL HOLDING COMPANIES (SHARE DEAL)

Scope of Application and Threshold Value

In future, the direct or indirect acquisition and divestiture of a “material holding” by a CRR credit institution or a financial holding company or a mixed financial holding company will be subject to a prior notification requirement. The acquisition is also subject to an approval requirement and may not be carried out until this approval has been obtained.

Acquisition of a material holding means the direct or indirect acquisition of shares in a company that does not have to be a regulated company. The holding is material if its value corresponds to 15% or more of the eligible capital of the institution or (mixed) financial holding company. In the case of institutions, the 15% threshold must be examined both on an individual basis and on a consolidated basis; in the case of (mixed) financial holding companies, the consolidated situation is decisive.

The eligible capital, consisting of Tier 1 capital and Tier 2 capital, is decisive for the value calculation, whereby the Tier 2 capital may not be included with more than one third of the Tier 1 capital. How the value of the investment is to be determined is not regulated by law. It is becoming apparent that book values will be used as a basis, meaning that the purchase price (acquisition cost) is of decisive importance. Insofar as this is subject to adjustments and this may affect the threshold, it may be necessary to make precautionary notifications in practice or consult with the competent authority.

Who Notifies What, When and to Whom?

- The acquirer must make the notification before the closing. If the acquirer has to undergo change of control procedure pursuant to Section 2c KWG at the same time, it makes sense to combine both notifications. Otherwise, it should be sufficient to file the notification after signing. The documents to be submitted to the competent authority are subject to more precise regulatory technical standards (RTS) by EBA (EBA-RTS), for which drafts are to be available by 10 July 2026. Until then, national competent authorities are to publish minimum information.
- At the same time, there is a notification requirement for the seller if it is a CRR credit institution or a financial holding company or a mixed financial holding company. This notification must also be made prior to closing and may coincide with a notification requirement pursuant

to Section 2c (3) KWG. It should be noted that the 15% threshold should be calculated on the basis of the seller's figures. It is therefore quite possible that notification requirements exist on only one side. There is no assessment requirement on the seller's side.

- If the threshold is exceeded on an individual basis, the notifications are to be addressed to the institution's competent supervisory authority (ECB for significant institutions; otherwise BaFin) and the German Federal Bank (Deutsche Bundesbank); if the threshold is exceeded at the same time on a consolidated basis, the consolidating supervisory authority must also be involved. The consolidating supervisory authority is responsible for (mixed) financial holding companies.

What Does the Assessment Depend on and What Deadlines Apply?

- The assessment by the competent supervisory authority addresses in particular the sound and prudent management of the entity being acquired by the acquirer, the financial soundness and the ability of the proposed acquirer to meet the prudential requirements even after completion, as well as suspicions of money laundering and terrorist financing. In corresponding constellations, consultations with other competent authorities (e.g., of the target company, anti-money laundering competent authority) are provided for; the assessment period can be suspended, for example, in the case of third-country relationships or the need for AML consultations. The competent supervisory authority may oppose the proposed acquisition if the information provided by the acquirer is incomplete despite a request.
- The competent supervisory authority assessing the proposed acquisition generally has an assessment period of 60 working days, which can be suspended in certain cases and only begins once the authority has acknowledged, in writing, the receipt of the notification and all information required for the assessment promptly and in any event within 10 working days following receipt. If the competent supervisory authority does not oppose the proposed acquisition within the assessment period in writing, it shall be deemed approved. Special rules on the expiry of the deadline apply if a change of control procedure or a process for approval as a financial holding company is to be carried out at the same time.

Simplifications for Intra-Group Transactions

Acquisitions of material holdings within the same group or within the same institutional protection scheme² do not have to be assessed by the competent supervisory authority. The notification requirement remains in place, but the supervisory authority can decide not to carry out the assessment. In this case, it should not be necessary to submit the otherwise required documents. However, the supervisory authority should require a minimum amount of information in order to be able to make its discretionary decision on whether to carry out an assessment.

Sanctions

Fines may be imposed for breaches of the notification requirements (not, incorrectly, incompletely or late). Where a material holding is acquired despite opposition by the competent supervisory authority, the supervisory authority may require that the exercise of the corresponding voting rights be suspended or for votes cast to be declared null and void; disposals of shares can also be made subject to approval.

Practical Consequences

In future, it will be important for CRR credit institutions to carefully check whether the threshold can be reached before making an acquisition. If this is the case, the SPA must contain a closing condition to the effect that the proposed operation will only be closed if it has been approved. In addition, the documents for the assessment procedure must be compiled in parallel with the negotiation of the acquisition agreements. If a non-regulated company is acquired so that no change of control procedure is necessary, this can lead to considerable additional expense.

An execution condition in the SPA is also necessary for intra-group transactions that affect the thresholds. This is because the competent authority only formally decides whether it will enter into the assessment after proper notification. Preliminary coordination is advisable. The thresholds must also be checked on the seller side due to the notification obligation.

MATERIAL TRANSFERS OF ASSETS AND LIABILITIES (ASSET DEAL)

Scope of Application and Thresholds

The material transfer of assets or liabilities (asset deal) by CRR credit institutions and authorised financial holding companies or (mixed) financial

² Art. 113 (6) and (7) CRR.

holding companies will in future be subject to prior notification requirements. However, asset deals will not require approval in future either. The notification requirement applies to CRR credit institutions and (mixed) financial holding companies both as buyers and sellers. Transfers, according to the wording of the law,³ also include other types of transactions in addition to sales, although these are not described in more detail. The decisive factor is likely to be whether there is a balance sheet transfer. A transfer is material if it accounts for at least 10% of the total assets or liabilities of the transferring (or acquiring) company. If the transfer takes place exclusively within the group, the threshold is increased to 15%. For parent financial holding companies and parent mixed financial holding companies, the consolidated situation is decisive for the threshold test; otherwise, the individual level is generally relevant.

The denominator is the balance sheet total of the notifiable company. The numerator is based on the value of the items to be transferred. Although the law does not specify a valuation standard, as with the share deal, it makes sense to base it on the book value, as the concept of materiality is defined in accounting terms and the regulatory relevance is linked to the impact on the balance sheet. Corresponding interpretation aids are expected in future EBA-RTS. When calculating the assets to be transferred, the following assets are excluded:

- non-performing assets;
- assets for inclusion in a cover pool (covered bonds);
- assets intended for securitization; and
- assets/liabilities in connection with resolution instruments, powers and mechanisms (BRRD).

Who Notifies What, When and to Whom?

The notification must be made in advance, i.e., before the proposed transaction is executed. It should be sufficient for the notification to be made after the signing (provided it does not coincide with the closing). The notification must be addressed to the competent supervisory authority and the Deutsche Bundesbank. Minimum content details will be specified by EBA-RTS; until then, details on parties, subject matter, threshold calculation and transaction structure are particularly useful. Fines are envisaged for non-disclosures, incorrect, incomplete or late disclosures.

Practical Consequences

CRR credit institutions and (mixed) financial holding companies must keep an eye on the new notification requirements, which must be fulfilled before

³ Section 1 (9a) sentence 1 KWG as amended.

closing, and check in good time whether the relevant thresholds can be reached. This also applies to intra-group transactions. However, as there is no requirement for approval, the impact of the new regulations is significantly less than for share deals.

MERGERS AND DIVISIONS: INTRAGROUP AND EXTERNAL RESTRUCTURINGS

Scope Of Application

Mergers and divisions (spin-off and hive-down) involving CRR credit institutions or (mixed) financial holding companies will in future be subject to formal notification and approval. However, no materiality threshold applies. Both cross-border and purely national transactions are covered. It is necessary that a CRR credit institution or a (mixed) financial holding company is involved on at least one side of the merger or division (i.e., the company being acquired or the acquiring company).

The mergers and divisions subject to the new regulations are explicitly defined in Section 1 (9c) and (9d) KWG in exact implementation of CRD VI. Divisions are only covered if they take place in return for the granting of shares.

Under the German Transformation Act (Umwandlungsgesetz, UmwG), the granting of shares is sometimes not required by law, not permitted (particularly in group situations) or can be waived. In practice, the waiver option is frequently used in intra-group divisions in order to simplify them. Due to the clear wording of the new regulation, which is subject to fines in the event of violations and corresponds to the requirements of CRD VI, it does not appear permissible to extend the scope of application of the notification and assessment obligations to waiver cases. It remains to be seen how the competent supervisory authorities will react to this. In the case of mergers, variants without the granting of shares are also covered by the scope of the new regulations.

Who Notifies What, When and to Whom?

The notification requirement applies to both the company being acquired and the acquiring company, provided that they are CRR credit institutions or (mixed) financial holding companies. In the case of mergers or divisions between CRR credit institutions, both are therefore obliged to notify. Shareholders of the merging or dividing companies are not subject to notification, even if they have to approve the measure.

The wording in Section 2i (1) KWG (as amended) regarding the addressee of the notification is unfortunately very unclear. There is some indication that, in the case of a merger, the notification should (only) be made to the competent supervisory authority responsible for the acquiring company. In the case of a

planned division, the notification must be sent to the competent supervisory authority responsible for supervising the company carrying out the division. In practice, it may be advisable to notify the competent authorities of the transferring and the acquiring entity. If the acquiring entity only becomes a credit institution or (mixed) financial holding company as a result of the merger or division and is therefore required to be licensed in accordance with Section 32 or Section 2f KWG, the assessment in accordance with Section 2i KWG (as amended) does not apply. This is particularly relevant in the case of mergers or divisions to form a new company.

Deadlines

The proposed merger or division must be notified after the acceptance of the draft terms of the respective operation and before its completion. The transaction may only be completed once the competent supervisory authority has issued a positive opinion. The German Transformation Act does not provide for “acceptance” of the merger or division plan (in practice, both are contracts rather than plans). Practitioners should therefore be granted flexibility as to when exactly they notify. In particular, early notification after the preparation of the final draft by the management of the companies involved should be permitted. Early notification allows the competent authority’s assessment to be initiated at an early stage, which is important for completing the project on schedule.

The main reason for uncertainty in the timetables is that only mergers/divisions between CRR credit institutions or financial holding companies or mixed financial holding companies are subject to an assessment period (of 60 working days) for the competent supervisory authority. If an unregulated company or a financial services company that is not a CRR credit institution is involved on one side of the merger/division, no deadline is set within which the competent supervisory authority must decide and after which an approval is deemed to have been granted.

What Does the Assessment Depend On?

When assessing the permissibility of the proposed merger/division, the same standards apply as for the authorisation of credit institutions and the acquisition of a material holding (see above). The reliability and soundness of the financial stakeholders involved, the ability of the entity resulting from the proposed transaction to meet the prudential requirements, the feasibility of the planning and the absence of reasonable suspicion of money laundering or terrorist financing are taken into account.

This will also determine which documents must be submitted. Information on this will initially be made available on the competent authority’s website. Further information will be derived from the EBA-RTS.

Intra-Group Mergers and Divisions

There are simplifications for intra-group mergers, but only if the transferring and the acquiring entity are CRR credit institutions or (mixed) financial holding companies. Only in this case can the competent supervisory authority refrain from carrying out the assessment, and it has discretion in this respect. The notification requirement therefore remains in place and, as with the share deal, the competent supervisory authority requires a minimum amount of information in order to be able to exercise its discretionary decision. The law does not provide for any exemptions from the duty to assess in the case of intra-group divisions. However, since, as described above, only divisions involving the granting of shares fall under the new regime, group-internal restructurings can in practice often be structured in such a way (and subject to tax considerations) that they do not fall within the scope of the new regulations by waiving the granting of shares. It is to be hoped that the competent authorities will not attempt to restrict this approach.

Practical Consequences

The new notification and approval requirements are a considerable burden, particularly for intra-group restructurings. They must be included in structuring considerations at an early stage, as they can have a significant impact on the timetable. It is preferable to choose structural variants that avoid the notification and assessment requirement.

If an approval requirement cannot be avoided, good time planning is particularly important, especially in cooperation with the commercial register. In order to be able to use annual balance sheets as closing balance sheets for the commercial register application, the application must be submitted within eight months of the end of the financial year. If the approval has not been received by then, it must be agreed with the commercial register whether the application can still be filed within the deadline. However, the entry should only be made after approval has been granted, as otherwise the prohibition on enforcement would be violated. However, it remains unclear what consequences this would have, as Section 2i KWG (as amended) does not provide for any powers of intervention corresponding to Section 2h KWG (as amended) (see above).

ENTRY INTO FORCE AND TRANSITION

The new requirements entered into force on the first day of the quarter following their promulgation, i.e., 1 April 2026. Germany therefore missed the implementation deadline for CRD VI, which expired on 11 January 2026.