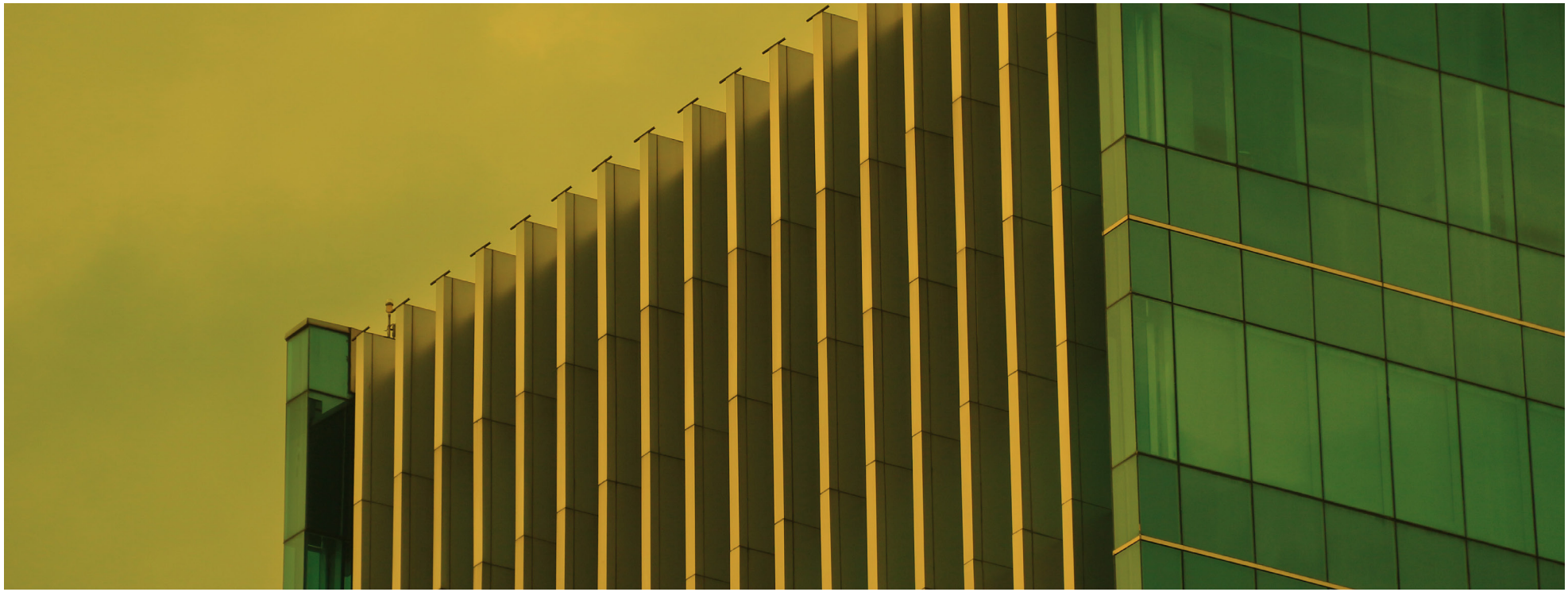

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January 2026

CRD VI EXPLAINED

Contents

INTRODUCTION

CRD VI marks a new chapter in the development of the EU's prudential rulebook, replacing a patchwork of national approaches on a range of issues with a harmonised framework across core supervisory topics. From structural transactions to governance and enforcement, the reforms recalibrate how banks plan, execute, and oversee their business.

The reforms also arrive at a moment of strategic change for banks in Europe. Consolidation pressures, digital transformation, and evolving risk typologies are testing legacy frameworks. CRD VI responds with targeted measures that shape how cross-border groups reorganise, how non-EU players access EU markets, and how management bodies demonstrate effective oversight and control.

This publication brings together market-leading lawyers from our **European Financial Institutions Group**, consisting of 'Best Friends' **BonelliErede, Bredin Prat, De Brauw Blackstone Westbroek, Hengeler Mueller, Slaughter and May,** and **Uría Menéndez**, to distil what changes matter most, where implementation will bite, and how supervisory practice is likely to evolve under CRD VI from 2026.

- Consolidation and cross-border integrations will in the future be viewed through a common prudential lens, creating a more unified approach to corporate reorganisations. This has implications for sequencing, documentation, and stakeholder engagement. **BonelliErede** analyses the new harmonised regime that will shape complex reorganisations, highlighting the operational friction points that can be anticipated.

- A new notification duty brings greater visibility to material transfers of assets and liabilities, raising additional timing and execution questions for treasury, M&A, and operations teams. Against that backdrop, **Hengeler Mueller** examines the notification thresholds, carve-outs, and execution risks, and their chapter sets out how to plan for parallel filings and negotiate reciprocal covenants to ensure compliance.

- The new third-country branch framework requires the establishment of a branch to provide core banking services in the EU and tightens expectations around substance, risk management, and liquidity. This matters for international banking groups, which have to decide between branch and subsidiary models. **Slaughter and May** explain this framework and the strategic trade-offs many international banks may face.

- People and accountability are at the core of the new governance requirements under CRD VI. More prescriptive organisational and procedural requirements are aimed at improving the harmonisation of practices across the member states, facilitating supervisory effectiveness and enhancing governance. **Bredin Prat** analyses the changes in the fit and proper architecture, and potential challenges of the new requirements.

- CRD VI increases the emphasis on risk culture, clarity of duties, and genuine independence of control functions. These expectations translate into how boards and committees set risk appetite, allocate responsibility, and demonstrate effective challenge. **De Brauw Blackstone Westbroek** explores how to operationalise the new requirements and create a culture of shared accountability and prudent decision-making.

- Stronger enforcement toolsets and an accelerating trend towards more national cooperation and EU-wide supervision, such as under the new Authority for Anti-Money Laundering and Countering the Financing of Terrorism (AMLA), are evolving beyond CRD VI. **Uría Menéndez** assesses these developments of harmonised enforcement, information-sharing, and stronger sanctions, which will reshape compliance expectations.

In some member states, the transposition of CRD VI is not yet finalised as of the date of publication – we will focus here on explaining what the expected or desired outcome is or should be. For the UK, CRD VI marks the most relevant source of divergence yet in financial sector regulation since its departure from the EU – our overview of the UK framework aims to help you gain a first understanding of this.

Abbreviation Register

ACPR – French Prudential Supervision and Resolution Authority

AFM – Dutch Authority for the Financial Markets

AML/CTF – Anti-Money Laundering and Counter-Terrorist Financing

AMLA – Authority for Anti-Money Laundering and Countering the Financing of Terrorism

BaFin – German Federal Financial Supervisory Authority

CMVM – Portuguese Securities Market Commission

CRD – Capital Requirements Directive

CRR – Capital Requirements Regulation

DNB – Dutch Central Bank

DNO – Declaration of No-Objection

EBA – European Banking Authority

ECB – European Central Bank

ESG – Environmental, Social and Governance

ESMA – European Securities and Markets Authority

FCA – Financial Conduct Authority (UK)

FSA – Financial Supervision Act (Netherlands)

G-SIBs – Global Systemically Important Banks

ICT – Information and Communication Technology

KFHs – Key Function Holders

M&A – Mergers and Acquisitions

MaRisk – Minimum Requirements for Risk Management (Germany)

MiFID II – Markets in Financial Instruments Directive II

NCAs – National Competent Authorities

NPL – Non-Performing Loan

PRA – Prudential Regulation Authority (UK)

RTS – Regulatory Technical Standards

SMCR – Senior Managers and Certification Regime (UK)

SSM – Single Supervisory Mechanism

TCB – Third-Country Branch

BONELLIEREDE

CHAPTER 1 - MERGERS AND DIVISIONS

Background

CRD VI has introduced a new harmonised regime for mergers and divisions involving EU banks, (mixed) financial holding companies, and investment firms within the scope of CRR. In the European banking sector, changes in ownership structures have traditionally been subject to close and harmonised regulatory oversight. However, only some member states have required a prior assessment and authorisation of mergers and divisions involving EU banks by national competent authorities (NCAs).

As such, the EU so far had no consistent framework governing the assessment of these transactions. This changes now under CRD VI, which introduces a set of harmonised procedures and criteria for assessing mergers and divisions in an attempt to ensure a level playing field and ease cross-border transactions. The main features of this new regime are:

- **Single regime:** Applicable to both significant and less significant institutions, except where the proposed transaction requires a banking licence application or the approval of a (mixed) financial holding company.
- **Notification procedure:** Similar to the procedure governing qualifying holdings and resulting in either a positive or negative opinion. A positive opinion is essential for the completion of the transaction.
- **Competent authorities:** The one(s) that will be responsible for the supervision of either the resulting entity(ies) or the demerged entity.
- **Prudential assessment:** Similar to the qualifying holding procedure, with supervisory authorities assessing whether the involved stakeholders, together with the envisaged business model, are financially sound, as well as whether the implementation is "realistic and sound" from a prudential standpoint.

Assessment Criteria: From Qualifying Holding to a New Prudential Regime

Under CRD VI, proposed mergers or divisions undergo an assessment based on several complex and technical parameters. More specifically, the competent authorities assess:

- The reputation of the involved stakeholders;
- The financial soundness of these financial stakeholders and the proposed business model;
- The ability to comply with the prudential framework in the medium to long term;
- The "realistic and sound" implementation plan for the transaction from a prudential perspective (which entails an ex post monitoring obligation); and
- The absence of any money-laundering/terrorism-financing suspicions.

Main Points of Concern

Despite the extensive definitions that are adopted under CRD VI for the well-known concepts of "merger" and "division" – reasonably so, given 27 countries with different national laws to consider – this new regulatory framework will ensure a level playing field and foster the stability of the entities involved in these transactions.

Nonetheless, this new pan-European procedure might also lead to procedural slowdowns, depending on how it will be implemented and executed. Factors that may jeopardise the envisaged harmonisation and/or entail slowdowns are:

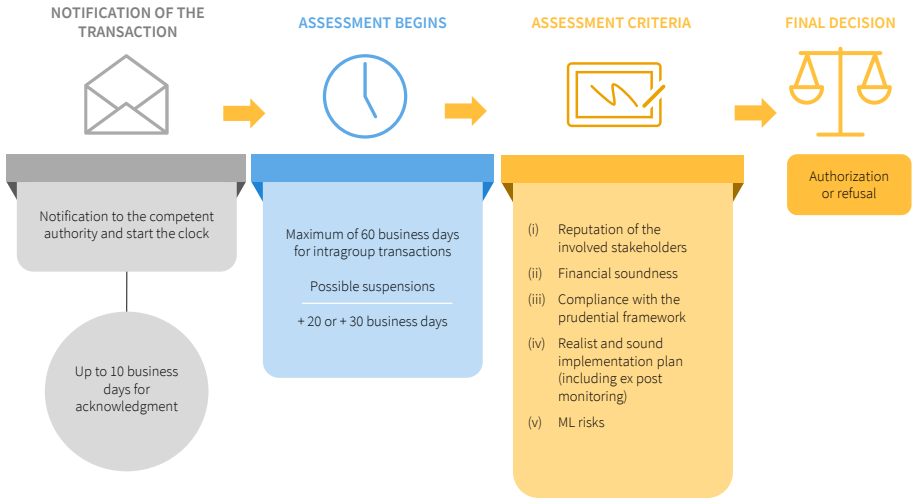
- The overall extensive timeframe, which: (x) entails up to 10 business days for the mere acknowledgement of receipt of the notification, and (y) fully defines only the maximum duration for intragroup transactions (up to 60 business days, with possible suspensions up to 20 or 30 business days, depending on the structure of the operation);
- The potentially limited timeframe within which the transaction can be performed; and
- The introduction of some evaluation criteria that may be interpreted differently by EU countries without proper coordination.

Among these evaluation criteria, the assessment of the implementation plan as "realistic and sound" from a prudential perspective could be the most debatable. The recent draft RTS published for consultation by the EBA on the prudentially relevant operations under CRD VI extensively specify that the assessment shall focus on the 'credibility' of the business and implementation plan, including, *e.g.*:

- The capabilities to implement the proposed merger;
- The credibility of the forecast assumptions;
- The calculation of the synergies (including dissynergies and integration costs) and their impact on profitability and capital;
- The material impact (if any) of the resulting accounting badwill on compliance with prudential requirements; and
- The completeness, clarity, and plausibility of the ICT integration plan.

Depending on the actual and final RTS, member states will have to ensure a consistent application of these provisions. To this end, those member states that already have regulatory frameworks for mergers and divisions which have been applied multiple times could facilitate this process.

ASSESSMENT CRITERIA: FROM QUALIFYING HOLDING TO NEW PRUDENTIAL REGIME



Key Takeaways

CRD VI marks a significant step towards European banking supervision based on common standards and enhanced cooperation, despite the potential issues described above. A harmonised – and consistent – implementation of this regime could encourage the development of more resilient and competitive banking groups that are able to operate across national borders while maintaining high levels of stability and transparency.

The effectiveness of the CRD VI implementation will ultimately depend on how each member state responds to the new requirements and applies them into its domestic legal framework.

NATIONAL BOXES

FRANCE

Under French law, mergers and divisions are not, as such, subject to standalone regulatory approval. However, depending on how they are structured, these types of transactions commonly trigger one or more regulatory approval requirements in practice. Similarly, regulatory approvals may be required depending on the impact of the transaction on the regulated entity.

The approval timelines envisaged for merger and division procedures under CRD VI are broadly aligned with those that currently apply to proposed acquisitions of qualifying holdings in the French financial sector. It remains unclear how the new procedures will align with the typically lengthier prior-approval processes triggered by mergers and divisions, noting that CRD VI already makes clear that merger and division procedures do not apply where the contemplated transaction requires new licences under Articles 8 or 21a of CRD VI. It is also uncertain how the new requirements will apply in an intragroup context, particularly where large and complex transactions are involved.

GERMANY

In practice, most mergers and divisions occur within banking groups and are rather rare between unrelated third parties. Divisions often pave the way for a later sale of a business, while mergers typically follow acquisitions to integrate the target. These intra-group steps are usually closely tied into the main M&A process and are already reviewed under qualifying-holding procedures. In that process, the acquirer provides a business plan explaining the structure and operations of the merged or split entities. Accordingly, the new CRD VI requirement mostly codifies existing supervisory practice rather than adding a new layer of oversight.

In Germany, the formal approval requirement for mergers and divisions of banks introduced by CRD VI is new. The draft of the German implementation mirrors its CRD VI blueprint. However, it proposes to extend the approval requirement to all financial holding companies, not just to financial holding companies approved under Article 21a CRD. Because the German transposition has no transitional rules, it is unclear whether ongoing mergers and divisions must be notified. Hence, early alignment with the German Federal Financial Supervisory Authority (BaFin) and/or the ECB is key.

ITALY

On 31 December 2025, the Legislative Decree No. 208/2025, implementing the CRD VI by amending the Italian Banking Act, was published in the Official Gazette. The new rules:

- Define in which instances the Bank of Italy is the competent authority in charge of approving these transactions. While the current regime grants the Bank of Italy general power to authorise each merger and division involving an Italian bank (regardless of its role), the amendments limit this to (a) mergers in which the resulting entity is an Italian bank; and (b) divisions in which the demerged company is an Italian bank.

- Set out the relevant assessment criteria, mirroring CRD VI with no additional guidance. Against this background, the existing provisions issued by the Bank of Italy in 1999 already mandate, among other things, with specific reference to mergers:

  (i) The drafting of an industrial plan (the so-called "merger project") detailing the economics of the envisaged transaction (including the overall envisaged costs and benefits to assess the economic rationale), the relevant steps and migration; and
  (ii) The assessment, by the supervisory authority for the granting of the approval, of the overall internal structure and organisation of the bank resulting from the merger; and

- Grant the Bank of Italy the authority to issue supervisory provisions to implement the assessment criteria and specify which mergers and divisions must be notified in advance, even if they fall outside of this authority.

EBA's draft RTS are consistent with and integrate into the current regulatory framework of the Bank of Italy, also taking into detailed consideration points of attention that have emerged in the context of major transactions in recent years (*e.g.*, badwill, IT systems migration, HR management).

NETHERLANDS

Under Dutch law, banks are required to obtain a declaration of no-objection from DNB or the ECB for the acts listed in Article 3:96 of the Financial Services Act (FSA). A merger is subject to a declaration of no-objection (DNO) where the balance sheet total of the merger counterparty exceeds one percent (1%) of the consolidated balance sheet of the bank. Dutch law does not contain a separate prudential regime for divisions, although certain demergers may fall within the concept of a financial or corporate reorganisation and therefore require a declaration of no-objection under the existing framework.

The Dutch implementing bill proposes to replace these current requirements to align them with the provisions of CRD VI. The terms "merger" and "division" (*fusie* and *splitsing*) are defined by incorporating a direct reference to Article 27h CRD VI, as these definitions are not fully aligned with the terms of the Company Law Directive and Dutch company law.

The DNO must be obtained either from DNB or, in the case of systemically important banks, the ECB. However, in practice, applications to the ECB will be initiated and submitted via DNB, and the legislator has expressed the expectation that this will remain the case for the new declaration of no-objection requirements under the revised FSA following implementation of CRD VI.

PORTUGAL

While Portugal has not yet published a draft for transposing CRD VI, there are several points that merit consideration to ensure that the national framework is clear and "investment friendly":

- The assessment criteria to be applied by the competent authority should be clearly and exhaustively defined. The transposition should include a specific list of information to be submitted with the notification.

- CRD VI sets an assessment timeframe only for transactions involving entities within the same group. To achieve greater predictability, it would be helpful for the national rules to also set forth assessment timeframes for mergers and divisions between financial institutions that are not part of the same group. In doing so, the maximum periods under CRD VI applicable to those third-party transactions should not go beyond the maximum assessment timeframes established thereunder.

SPAIN

Mergers, divisions, and similar transactions involving a Spanish bank already require prior approval by the Ministry of Economy. Spain has not yet finalised the transposition of CRD VI, leaving it unclear how the new regime will interact with and modify the Spanish framework currently in force.

Certain aspects will necessarily require adjustment and clarification. In particular, it should be clarified whether the Ministry of Economy will retain approval powers, or whether exclusive competence will be assigned to the ECB or the Bank of Spain for less significant institutions. It is also necessary to determine whether the current requirement to obtain reports from other supervisory authorities will be maintained. Finally, it should be clarified whether the new regime will apply only to mergers and divisions in which the absorbing or resulting entity is a Spanish bank, or whether – as is currently the case in Spain – it will apply to any transaction in which a Spanish bank is involved.

UNITED KINGDOM

Under UK law, a person who decides to acquire or increase control over a UK authorised firm must obtain prior approval from the Prudential Regulation Authority (PRA) or the Financial Conduct Authority (FCA) (as applicable). Where the target firm is a PRA-authorised UK bank, the PRA is the relevant regulator for this purpose, although they must consult with the FCA as part of their assessment of the proposed transaction.

This regime is set out in Part 12 of the Financial Services and Markets Act 2000 (as amended). “Control” in this regard includes the holding of 10% or more of the shares or voting power in the target firm or any parent undertaking of the target firm, and in certain scenarios a person can be attributed voting power held by that person’s subsidiaries (such as where the subsidiary is a “controlled undertaking” of the person in question).

Accordingly, in most scenarios, mergers or divisions involving UK banks are subject to prior PRA approval. However, as the UK regime does not specifically bite on “mergers and divisions”, this will depend on the transaction structure that is being contemplated. Where approval is required, the PRA’s assessment will focus on similar criteria to those specified under CRD VI, such as the financial soundness of the proposed acquirer and whether the target firm, post-acquisition, will be able to comply with its prudential requirements.

UK banks do not generally require prior PRA approval to dispose of a subsidiary (irrespective of whether that subsidiary is itself PRA- or FCA-authorised). They are, however, required to pre-notify the PRA, assuming they are disposing of “control” in that subsidiary.

HENGELER MUELLER

CHAPTER 2 - MATERIAL TRANSFERS OF ASSETS AND LIABILITIES

Background

CRD VI introduces a new obligation to notify supervisors of material transfers of assets and liabilities. Institutions need to take this new obligation into account in their future deal planning and execution.

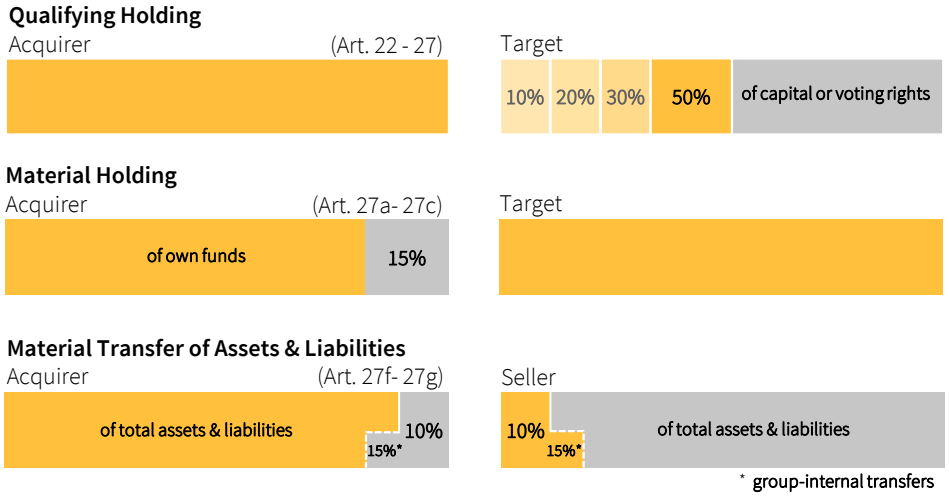
Articles 27f and 27g of CRD VI require institutions, financial holding companies, and certain mixed financial holding companies to notify supervisory authorities in advance of a planned material transfer. The policy intent is twofold: to give supervisors a clear, timely view of material balance-sheet movements and any related prudential or financial crime risks, and to foster a level playing field so that comparable transactions are treated consistently across member states. The European Banking Authority (EBA) is requested to specify the content and format of these notifications in regulatory technical standards by July 2026, a first draft of which was published by the EBA in its Consultation Paper dated 5 December 2025 (EBA/CP/2025/25). The regulatory technical standards will also help align national practices.

A transfer is considered material if it equals at least 10% of the entity's total assets or total liabilities, or 15% where the transfer occurs within the same group. The draft regulatory standards by the EBA specify that materiality shall, in principle, be assessed based on book values. Materiality is assessed at the level of each involved legal entity. This means intra-group transfers must be notified when the 15% threshold is met on a solo basis, even if the transfer appears immaterial at group level. The same percentages apply for financial holding companies, but based on their consolidated situation.

Several categories of transactions are expressly out of scope, including transfers of non-performing assets, assets moved into covered bond pools or securitisations, and transfers effected via resolution tools. These carve-outs remove a substantial portion of high-volume activity (such as NPL trades, securitisations, and covered bond allocations), narrowing the pool of transactions that could otherwise be caught. They also prevent duplicative oversight under existing frameworks and focus the new notifications on exceptional, prudentially relevant transfers which are not otherwise comprehensively supervised.

The new regime is a notification regime, not an approval process. As such, it is not only less invasive than the non-objection processes that apply to the acquisition of qualifying holdings or material holdings and to mergers and divisions under the CRD, but also to portfolio transfers in the insurance sector which are subject to prior regulatory approval under Solvency II.

SIMPLIFIED OVERVIEW OF NOTIFICATION AND APPROVAL THRESHOLDS



Supervisors are not expected to conduct a detailed assessment against prescriptive criteria, but rather to issue an acknowledgement of receipt only. Nevertheless, governance, record-keeping, and internal approvals should reflect the statutory trigger and timing requirements, as missing a required notification may lead to supervisory measures.

Main Points of Concern

There are some misgivings about the practical implementation of the new notification requirements.

Firstly, the new notification requirement is not confined to classic asset disposals such as loan portfolio sales. Also shares qualify as assets, implying that a share transfer which meets the thresholds may trigger a notification as a material transfer, even where it sits alongside a qualifying holding or material holding filing. While approval requirements triggered by the acquisition of qualifying or material holdings should arguably replace the lighter notification requirement, that position has not been formally endorsed in CRD VI. Pending EBA clarification, planning for parallel filings remains the prudent approach.

A related issue is that the notification trigger can arise in share deals even when no qualifying holding or material holding filing is required at the target level. One example is where investment is made by a regulated entity whose balance sheet thresholds for a material transfer are met, but the stake does not cross the relevant ownership percentages at the target for a qualifying holding procedure to kick in.

Secondly, the obligation captures both outbound and inbound transfers. Although the legislative text refers to “sales” and exempts only certain types of divestitures, the CRD VI recitals and EBA’s mandate to specify information to be collected from the proposed acquirer indicate that acquiring material asset positions also triggers a notification requirement. This interpretation fits the policy aim of giving supervisors a complete picture of transactions that reshape prudential risk, regardless of direction, at least to the extent that the parties involved are banks or financial holding companies. From an execution perspective, acquirers should be prepared to provide a concise description of the assets or liabilities, the transaction rationale, prudential risk effects (including capital and liquidity), and the post-transaction structure.

Thirdly, CRD VI aims at full harmonisation across the EU, and the German draft implementation indicates a close (near-verbatim) transposition. That said, some divergences may persist at the edges, as shown by the German draft, which appears to require all parties involved in a material transfer to notify, even when the threshold in their own organisation has not been met, and even though a counterparty typically cannot assess materiality against the other side’s balance sheet. Pending clarification of this point, transaction documents should include reciprocal information covenants and tailored representations to confirm if thresholds are met, and they should provide for cooperation obligations to support compliance with notification requirements.

Key Takeaways

Institutions should map the new thresholds against the transaction pipeline and also internal approval frameworks for both acquisitions and disposals. Transaction documents should include information-sharing provisions to support threshold assessments on both sides. Finally, institutions will have to monitor the forthcoming EBA technical standards and national transpositions, which will shape the content and timing of notifications. In the meantime, a prudent approach is to treat notifications for material transfers of assets and liabilities as other M&A-related notification requirements: plan early and ensure supervisors receive a clear, consistent narrative about the transaction and its prudential impact.

NATIONAL BOXES

FRANCE

Under the current framework in France, transfers of assets and liabilities by banks may need to be approved by the regulator beforehand, particularly where the transaction involves the acquisition of significant business lines or otherwise materially affects the regulated entity.

The CRD VI requirement to submit prior notification for certain material transfers of assets and liabilities is not likely to carry significant operational impact, given the regulatory approvals these transactions typically already require. It remains to be seen how this new requirement will play out in an intragroup context, in particular where large and complex transactions are concerned.

GERMANY

In Germany, CRD VI introduces a new notification requirement. Until now, there was no general duty to notify regulators about material transfers of assets or liabilities, except where a regulated business was carved out into a newly established entity. In such cases, the newly established entity typically needed a banking licence, unless it was immediately merged into an already regulated institution.

Under CRD VI, all parties to a transfer must notify, even if some do not meet the materiality threshold. This increases transparency but will likely add administrative complexity for restructurings and balance-sheet optimisation. To manage the risk and compliance burden, parties could include reciprocal information covenants or tailored representations and warranties in the documentation.

ITALY

The introduction of a new harmonised notification regime for the transfer of liabilities and assets will not have a material impact since the Italian regulatory framework has long had a similar regime. Indeed, bulk transfers of assets and legal relationships to a bank may either require authorisation (if it is not an intragroup transaction and it exceeds 10% of the transferee bank's own funds) or prior notification (regardless of whether it is intragroup or not, if it exceeds 5% own funds). In addition, this procedure provides for procedural simplifications (both in terms of requirements and deadlines).

With the envisaged new CRD VI regime, Legislative Decree No. 208/2025 removes the Bank of Italy's authorisation power to align it with the European framework, leaving the latter with the power to issue the relevant implementing provisions.

NETHERLANDS

Under the bill implementing CRD VI, the requirement under Dutch law to obtain a declaration of no-objection for the acquisition of assets and liabilities above a certain materiality threshold will be removed. Instead, in line with CRD VI, a prior notification requirement will become applicable for certain structural changes, that is, divestments and material asset or liability transfers. While DNB will not be able to object to these notifications, it could take measures if the bank or financial holding fails to notify, in line with Article 66 of CRD VI.

In the latest version of the bill, the Dutch legislator introduced a transitional regime with respect to asset/liability transfers. Where a bank has applied for a declaration of no-objection for the acquisition of assets or liabilities above the materiality threshold prior to the entry into force of the revised FSA, the notification requirement will not apply in addition.

PORTUGAL

Under the current framework in Portugal, there is no general, standalone duty to notify material transfers of assets or liabilities undertaken by banks in the ordinary course of business. Instead, notification or prior authorisation obligations arise only where the structure of a contemplated transaction triggers a specific regulatory regime, such as corporate reorganisations (including mergers and demergers), changes in qualifying holdings, resolution measures, or other activity-specific rules.

In implementing the prior-notification requirement under CRD VI, the national regime should not go beyond the requirements at the EU level. Rather, it should be calibrated in a way that prevents unwarranted and disproportionate supervisory interference in ordinary business operations and safeguards the management autonomy of each bank.

SPAIN

For Spanish banks, there was previously no formal procedure or requirement to notify this type of transaction – notwithstanding transactions where the transfer of assets and liabilities was structured through a merger, division, or similar transaction, and required authorisation by the Ministry of Economy.

In practice, most of these transactions are typically shared and discussed in advance with the ECB and its Joint Supervisory Teams, or the Bank of Spain in the case of less significant institutions, within the ongoing supervisory dialogue, especially when material thresholds are reached.

UNITED KINGDOM

UK banks do not require prior approval from the PRA or the FCA for material transfers of assets or liabilities. However, in divergence to the position under CRD VI, there is also no general notification requirement which applies in relation to any such transfers. Rather, whether a notification is strictly required depends on the circumstances and rationale for any material transfer of assets and/or liabilities, and the anticipated impact on the UK bank in question. For example, in order to comply with UK banks' obligation to deal with regulators in an open and cooperative way, the UK regulators have made clear that they expect to be notified of any proposed restructuring, reorganisation, or business expansion which could have a significant impact on a firm's risk profile or resources, thereby potentially capturing a material transfer of assets and/or liabilities.

Notwithstanding the position outlined above, the UK regulators have numerous levers they can utilise in the case of a UK bank that undertakes a material transfer of assets and/or liabilities that causes them concern. As such, in most cases it is prudent to engage with the PRA and FCA in the advanced stages of any proposed material asset transfer, to ensure they are generally supportive.

SLAUGHTER AND MAY

CHAPTER 3 - THIRD-COUNTRY BRANCHES OF INTERNATIONAL BANKS

Background

CRD VI pushes international banks yet again to review their corporate and business strategy for the EU. Step by step over the last decade, the loss of passporting rights for the UK, regulators' increasing push for substance in the EU (notably under the European Central Bank and its desk-mapping review), and the need for non-EU institutions to operate through a single intermediate parent undertaking have often left international institutions with a complex patchwork of approaches to serve their EU clients.

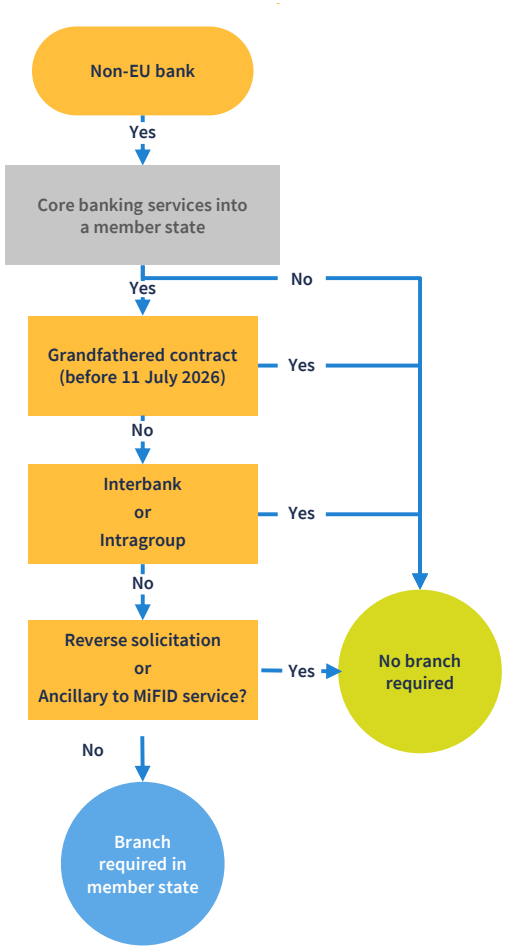
While many international banking groups, in the meantime, operate through an EU subsidiary with a branch network across the EU, branches of their non-EU banks co-exist (so-called third-country branches or TCBs). This is partially due to historic reasons and partially because of a perceived need of their non-EU corporate clients. Cross-border servicing also remains important, whether this is for the wealth management business with (ultra) high-net-worth individuals or family offices, or in the context of trading activities where financial centres outside the EU, such as New York and London, are still dominating.

Against this background, CRD VI eliminates national approaches for TCBs and cross-border business, addressing what many regulators in the EU perceived as an unacceptable risk allowing for forum shopping of non-EU banking groups.

The New Framework under CRD VI

At the centre of the new regime in CRD VI are Article 21c and Article 47, which aim at creating a clear authorisation perimeter for core banking services under EU-wide, dedicated requirements. Core banking services are defined as the taking of deposits and other repayable funds, lending, and guarantees and commitments. Where an institution established within a non-EU country intends to directly (that is, not through an EU subsidiary) provide these

THIRD-COUNTRY BRANCH REQUIREMENT FLOWCHART



core banking services to clients in a member state, it will be required to establish a TCB authorised by the regulator in that member state, unless an exemption applies.

Like EU subsidiaries, all new, but also existing TCBs will be subject to EU-wide harmonised requirements for organising and conducting their business. However, unlike subsidiaries, they will not benefit from EU passporting rights enabling the provision of these services on a cross-border basis into another member state. As a result, non-EU institutions will be required to set up TCBs in each member state in which they provide core banking services.

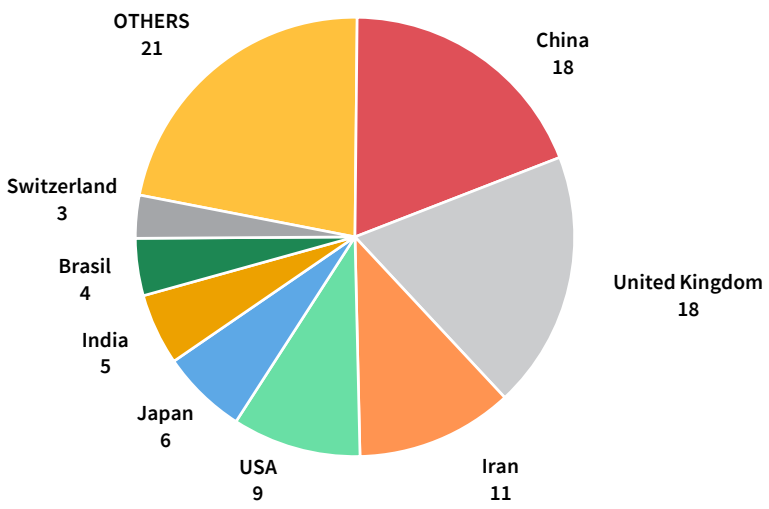
What Changes for Third-Country Branches in Practice

For international banks, the consequences are substantial. As part of the national authorisation process, their TCBs will need to evidence sufficient substance and appropriate governance arrangements. They will also need to ensure that their TCBs receive enough capital relative to their liabilities and provide sufficient liquidity to cover 30 days' worth of liquidity outflows, with limited reliance on group funding.

In addition, TCBs will need to maintain a registry book tracking all assets and liabilities booked to the specific branch, limiting banks' ability to centralise their risks and rely on group resources. While intragroup services are exempt from the authorisation requirement (see below), any intragroup transactions will still need to be included in this registry book. This makes 'back-to-back' trade booking less attractive. Regulators are expected to apply particular scrutiny on sufficient remaining substance in the TCBs where they outsource functions to the international part of their banking group. This will likely result in a measured approach to outsourcing and move desk mapping and booking arrangements back into the regulatory focus.

As TCBs have no EU passport, these new organisational and operating requirements for a single TCB multiply where several TCBs need to be set up in different member states, making this branch-by-branch approach very cost and resource intensive. Certain international banks may therefore conclude that a consolidated EU banking subsidiary is preferable. In fact, regulators can, in prescribed circumstances, require an institution to subsidiarise its TCB.

NUMBER OF THIRD COUNTRY BRANCHES FROM NON-EEA JURISDICTIONS



Source: EBA Credit Institutions Register as at 18.11.2025

Exemptions and Carve-Outs from the Branch Requirement

Exemptions and carve-outs from this regime are important but narrow. Interbank business (including with systemic investment firms) and intragroup business do not require a TCB. Similarly, legacy contracts from before 11 July 2026 will not require the establishment of a TCB.

For other businesses with EU clients, CRD VI introduces specific exemptions. However, international banks should use these exemptions with caution:

- **Reverse solicitation:** Where a client (retail, professional, or eligible counterparty client) initiated the relationship at its own exclusive initiative, no TCB is necessary. This extends to subsequent services and products that are closely related to the originally unsolicited service and product. The now harmonised understanding of reverse solicitation appears to be narrower than some existing national exemptions: relationships which are brokered by an entity or person acting on behalf of the non-EU institution are not considered unsolicited. When investigating how prospects were approached, regulators may also request other entities licensed in the same member state to present their records. In general, evidencing the sole initiative of a customer will be difficult and regulators will not consider mere contractual provisions as sufficient.

- **Investment services:** Core banking services accommodating investment services on an ancillary basis do not require a TCB. For example, taking deposits or extending credit as part of portfolio management, execution of client orders, or custody services – typical private banking activities – would be exempt. How national regulators will apply this exemption is uncertain at this stage.

Key Takeaways

Many international banking groups will be strongly affected by the TCB regime. They have started to undertake scoping exercises of their existing model of service provision, including licences, branches, desks, and booking arrangements. However, they can only determine the exact extent of the regime's impact, and their course of action, once member states have finalised the national transposition of CRD VI, scheduled for 10 January 2026. With the TCB regime applying from 11 January 2027, international banks will have exactly one year to act. This timeframe is short and may become even shorter as many existing national regimes are developed by regulators and it cannot be excluded that the same regulators will add granular regulatory guidance under the new legal framework.

Given what is at stake, banks are advised to act with caution and flexibility.

NATIONAL BOXES

FRANCE

Under the current French regime, non-EU banks may set up subsidiaries or branches to offer banking or investment services in France. For branches, the authorisation process is conducted by the French Prudential Supervision and Resolution Authority (ACPR) and largely mirrors the process for French banks, but without ECB involvement and without the possibility of obtaining an EU passport.

On an ongoing basis, TCBs are subject to a framework broadly aligned with that for non-significant French banks, taking into account, however, the lack of separate legal personality of a branch and the supervision of the parent institution in its home state. The ACPR requires the head office to assume responsibilities towards the branch equivalent to those exercised by a board of directors, supervisory board, or comparable oversight body, as well as by the general meeting. Where such branches are deemed "significant", they must establish (either within the branch or at the head office level) a risk committee and a remuneration committee, or implement mechanisms that achieve equivalent outcomes.

CRD VI will involve a revision of this framework, as it confers additional powers to regulators (including the ability to require that the branch be converted into a subsidiary) and imposes further obligations on the branches, especially on those considered the largest and riskiest.

GERMANY

Non-EU banks – especially those from the US and Switzerland – currently benefit from an exemption regime, allowing the provision of core banking business (deposit, lending, and guarantee business) without a licence and without a subsidiary or branch in Germany. The draft German CRD VI implementation act proposes to maintain this exemption regime for core banking business if it is (i) ancillary to MiFID II services, (ii) based on reverse solicitation, or (iii) provided to a CRR bank or an entity within the same group. Existing exemptions are expected to be partially revoked by January 2027, when the CRD VI TCB regime starts applying. However, German lawmakers plan to use the CRD grandfathering option so contracts in place by July 2026 would remain exempt. The German exemption regime also remains relevant for non-core banking business.

The exemption under CRD VI for core banking business ancillary to MiFID services is particularly relevant for non-EU banks offering private banking services such as portfolio management and investment advice in Germany. These offerings are often paired with deposit-taking (for example, savings accounts) and lending (notably Lombard credit, and occasionally real estate or consumer loans) or guarantee business (especially in connection with credit cards). Neither CRD VI nor the draft implementation act defines when a core banking service is ancillary to a MiFID II service. Accordingly, non-EU banks should closely monitor how BaFin interprets and applies the exemption.

ITALY

The current Italian regulatory framework requires non-EU banks to obtain prior authorisation from the Bank of Italy either for the establishment of a branch (after liaising with the Ministry of Foreign Affairs) or for operating on a cross-border basis. The criteria for granting this TCB authorisation are substantially the same as those relevant when applying for the banking licence of an EU subsidiary. Due to the non-EU angle, Italian rules also require that reciprocity is granted under the rules of the non-EU country.

Under Legislative Decree No. 208/2025, this existing framework will be adjusted to offer the exemptions and carve-outs, but also to incorporate the limitations as set forth under CRD VI.

NETHERLANDS

The Netherlands already operates a licensing regime for TCBs under the FSA. The bill implementing CRD VI rephrases the existing Dutch framework to align with the harmonised TCB regime under CRD VI.

The bill requires non-EU-banks that intend to provide core banking services in the Netherlands to establish a local branch and obtain a branch license from DNB. This requirement applies to the taking of deposits or other repayable funds, the granting of credit and the provision of guarantees, subject only to the limited exemptions recognised under CRD VI.

The Dutch legislator has further clarified that the prohibition on providing the core banking service of taking deposits or other repayable funds without a licensed TCB applies irrespective of whether such funds are obtained from retail clients or professional market participants. This clarification closes existing interpretative uncertainty and ensures that third-country institutions raising repayable funds in the Netherlands fall within the scope of the CRD VI TCB regime, regardless of whether they raise such funds from the public or professional market parties.

The draft implementing decree further specifies the requirements for TCBs, including minimum own funds, solvency and liquidity requirements, governance arrangements, internal control functions, and outsourcing arrangements, including through dynamic referencing of CRD VI provisions. Most requirements are already applicable to TCBs in the Netherlands under the FSA.

PORTUGAL

TCBs are rare in Portugal. Under existing Portuguese law, non-EU banks need to obtain authorisation from Banco de Portugal if they wish to establish a TCB; a passport to provide services into another member state is not available. Where investment services are also provided, Banco de Portugal needs to coordinate with the Portuguese Securities Market Commission (CMVM). The authorisation broadly mirrors the standards applied to smaller domestic banks, adjusted to the character of a dependent branch. Depending on the nature, scale, and complexity of the activities of the TCB, special capital and own funds requirements may apply.

The transposition of CRD VI is expected to strengthen the powers of Banco de Portugal and make larger and riskier TCBs subject to additional obligations by amending the Portuguese banking law and secondary rules.

SPAIN

There are currently only three TCBs in Spain which operate under a national authorisation regime. It is more common for non-EU banks to establish a representative office in Spain to support brand awareness under a light-touch establishment and regulatory regime. We expect this trend to continue in the future, once the stricter rules under CRD VI are transposed, which is expected to result in substantial changes to the current TCB regime.

UNITED KINGDOM

Unlike the EU, the UK does not expressly prohibit the provision of banking services into the UK from a third country. This is because, in summary, 'accepting deposits' is an activity for which authorisation from the PRA is required only where it is carried out in the UK. In turn, while there is a degree of doubt in this regard, the market view on the meaning of "in the UK" is that the deposit must be accepted in the UK – *i.e.*, the deposit is received in the UK (*e.g.*, where the depositor sends the deposit to the UK) or the contractual liability to repay the money received by way of deposit is undertaken from the UK. It should be noted, however, that although the taking of deposits outside the UK would not require the deposit-taker to become a UK regulated bank, other banking services provided from outside the UK to UK resident individuals or businesses may well come within financial regulation (*e.g.*, the provision of consumer credit).

Where the third-country bank does actively carry out banking services in the UK (*e.g.*, "accept deposits"), it would need to establish an authorised UK branch. Both the PRA and the FCA have set out their approach to regulating such branches and the criteria which may determine whether it would be more appropriate for an international bank to operate in the UK through an authorised subsidiary rather than a branch. In summary, the key factor is the amount of retail deposits that the UK branch holds. The PRA has been consulting on this over the past year, which, amongst other things, will require a review of the booking arrangements of third-country branches.

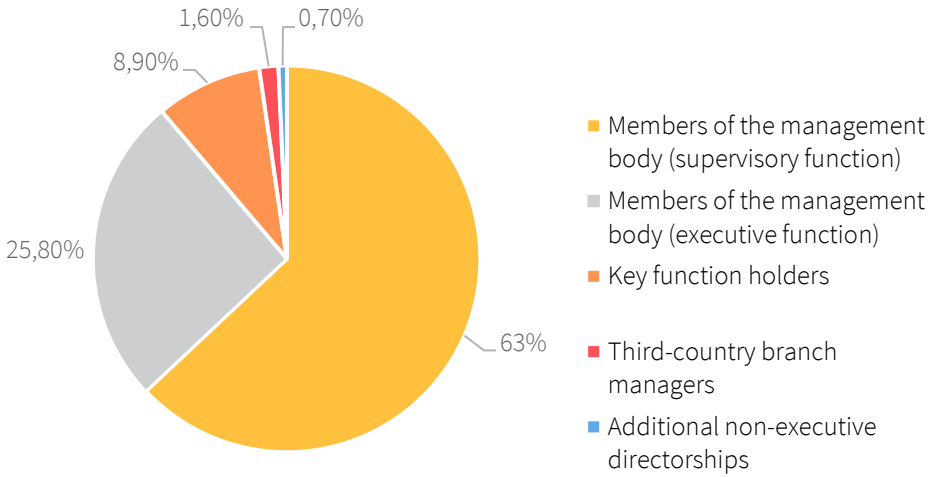
BREDIN PRAT

CHAPTER 4 - GOVERNANCE – INDIVIDUALS (REVISED FIT AND PROPER ASSESSMENT)

Background

CRD VI introduces changes to the EU's suitability assessment framework for individuals in governance roles within institutions and (mixed) financial holding companies approved in accordance with Article 21a(1) of CRD VI (together referred to as entities). This reform aims to harmonise national practices, strengthen supervisory convergence across the EU, and enhance the supervisory tools that regulators have at their disposal. As the CRD previously lacked detail on certain aspects of suitability assessments, material divergences have persisted across member states despite the 2017 EBA and ESMA guidelines, as well as the 2018 Single Supervisory Mechanism (SSM) guide.

ECB FIT AND PROPER DECISIONS



Source: ECB Annual Report on supervisory activities 2024

While the core suitability criteria for members of the management body remain broadly unchanged, the CRD now imposes both more prescriptive organisational and procedural requirements on entities, while also expressly covering regulated holdings.

Members of the Management Body: Principles and Ongoing Obligations

Responsibilities remain allocated in the same way as before. Entities will retain primary responsibility for ensuring that members of the management or supervisory body meet suitability standards, with competent authorities verifying compliance. Article 91 of CRD VI formalises the requirement that assessments occur both before appointment and periodically afterwards, thereby codifying an ongoing assessment regime which was already mandated by EU regulators' guidelines. If they become aware of any new facts or circumstances that could affect the assessment, entities will be required to reassess and promptly notify the regulator.

Where individuals stop meeting suitability criteria, entities must act by preventing them from taking up the position, removing them "in a timely manner," or implementing remedial measures to restore suitability. Competent authorities are given symmetrical powers, including the ability to block or remove individuals ex ante or ex post, or to mandate remedial actions. The practical implications of the new measures remain uncertain, especially considering national rules (such as the presumption of innocence and employment law protection), as well as regulatory guidance that broadly construes suitability criteria and identifies scenarios that raise doubt about suitability. These are issues that already posed challenges under the current regime.

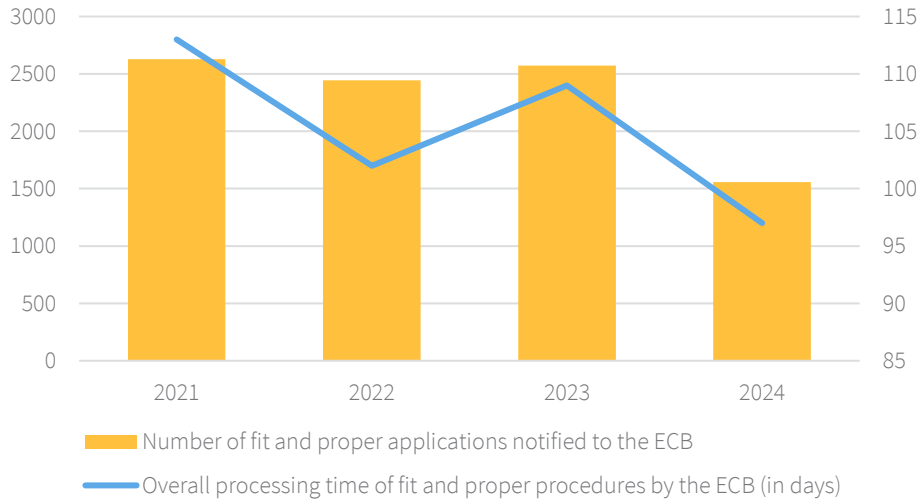
Large Institutions

CRD VI establishes an assessment process by regulators prior to appointments for "large institutions", including globally systemically important banks (G-SIBs) and other systemically important entities. This mechanism applies to appointments to the management body in its management function and to the chair of the supervisory function. While seeking prior endorsement for a candidate from the regulators was already a good practice adopted by several large banking groups (particularly for the most senior governance positions), the ex ante test now becomes compulsory for all such groups. Large institutions must submit a comprehensive application as soon as it is clear they intend to make an appointment, and no later than 30 working days before the start date.

In addition to this mandatory application, regulators may request more information, conduct interviews or hearings (a power which the ECB often uses in practice), and prevent the appointment while they wait for the information requested. Where concerns arise, an "enhanced dialogue", to be further specified by EBA guidelines, may take place between the institution and regulator before the appointment goes ahead. This underscores the need for early preparation, robust documentation, and clear governance planning to mitigate timing and continuity risks. Indeed, as under the current regime, the procedure is not of a purely formal nature, and some candidates do not pass the screening test.

Recent experiences give rise to concerns about whether regulators are able to carry out all assessments within the proposed 30-day timeline, particularly as appointments may be prevented before completion of the assessment. Submission of the application ahead of the 30-day deadline may help in these instances and prevent an appointment from needing to be postponed. Since CRD VI provides no specific exemption for emergencies and governance crises that require an even quicker turnaround, it remains to be seen how regulators will apply these rules in such cases.

ECB FIT AND PROPER PROCESS



Source: ECB Annual Reports on supervisory activities 2024, 2023, 2022 and 2021

Key Function Holders: Scope and Standards

Article 91a of CRD VI introduces a harmonised definition of key function holders (KFHs). These include individuals with significant influence over an institution's direction who are not members of the management body. This category expressly includes the heads of internal control functions (defined as risk management, compliance, and internal audit) as well as the chief financial officer, where these individuals are not in the management body.

A dedicated suitability framework for KFHs is created, which mirrors that for members of the management body. Entities must ensure, both at the time of appointment and on an ongoing basis, that KFHs are of good repute, act with honesty and integrity, and possess the requisite knowledge, skills, and experience. Similarly, regulators conduct ongoing monitoring and may block appointments, order removal from a role, or require remedial measures when criteria are not met. Ongoing review, reassessment, and supervisory reporting must also take place where changes affect an individual's initial assessment.

Individual Statements and Mapping of Duties

CRD VI amends the current internal governance regime by mandating institutions to prepare, maintain, and update "individual statements" of roles and responsibilities alongside a "mapping of duties", which covers all members of the management body in its management function, all senior management, and KFHs. These new requirements are labelled as "new tools" to support the work of regulators when carrying out a suitability assessment and reviewing the governance arrangements of institutions as part of the supervisory review and evaluation process.

More precisely, the "individual statements" will require each member of the management body and each KFH to hold a documented record of their role, duties, time commitment, and accountability, notwithstanding the overall collective responsibility of the management body as discussed in Chapter 5. The statement should be concise but sufficiently detailed to be operationally meaningful, and it should be consistent with the institution's mapping of duties. Statements must be updated promptly following changes to governance or organisation. The EBA's draft guidelines on internal governance, published for consultation on 7 August 2025, set out its current expectations to ensure statements are clear, operationally sound, and reflective of actual practice. They indicate that this can notably be achieved by: reviewing job descriptions, delegation frameworks, and committee mandates; consulting first-, second-, and third-line functions; and identifying and addressing overlaps or gaps prior to finalisation.

The "mapping of duties" will set out duties, reporting lines, and lines of responsibility, helping to identify gaps or overlaps across roles and activities and supporting effective internal governance. These documents will have to be made available to regulators on request.

For many institutions, this would amount to formalising existing arrangements rather than creating new structures. Nevertheless, the material interplay of the ECB's usual supervisory interactions with governance bodies and the disclosures already provided in the annual report are uncertain at this stage.

Key Takeaways

CRD VI introduces integrated suitability frameworks that combine rigorous pre-appointment due diligence with periodic reviews, clear documentation, and timely remediation. The directive also creates supervisory tools, signalling that adherence to governance requirements will be subject to heightened scrutiny. Early engagement, complete submissions, readiness for interviews, and succession planning will be key to avoiding delays and governance disruptions.

The new framework will require an internal review of current policies, procedures, and processes, with the extent depending on national practices and the forthcoming EBA guidelines. Large institutions should calibrate appointment and succession planning to the prior-assessment timetable and potential enhanced supervisory dialogue.

The preparation of the statements of responsibility and duty mapping should be anticipated, particularly taking into consideration the draft internal governance guidelines proposed by the EBA in August 2025.

NATIONAL BOXES

FRANCE

Under existing French regulatory law, institutions must conduct an ex ante suitability assessment of management body members. This is followed by an ex post review by the ACPR, which can be preceded by an optional ex ante, non-binding opinion. In practice, several institutions have already used the option of an ex ante opinion to validate governance changes before they take effect.

For key function holders (KFHs), the ACPR is not legally obliged to perform a suitability assessment. Nonetheless, the regulator typically conducts one in practice. The assessment is informal and indirect, generally requesting information on appointees in the course of their supervisory work.

Currently, the ACPR applies the EBA/ESMA guidelines (with certain exceptions) to matters such as the presence of independent members on supervisory bodies, the assessment of independence criteria, and the assessment of KFHs. The effect of CRD VI on this approach remains unclear.

GERMANY

Today, under German law, fit an proper assessments of management board members are performed ex ante, while fit and proper assessments of supervisory board members are only performed ex post. Making ex ante assessments mandatory for supervisory board members at certain significant institutions is, therefore, a major change.

In practice, significant institutions have often cleared the appointment of the chair and sometimes other key supervisory board members informally with the ECB or BaFin to avoid issues at the ex post review stage.

It is worth noting that BaFin has recently updated its circular on members of management and supervisory boards under the German Banking Act. The revised circular will apply from 1 January 2026 and does not yet fully reflect certain CRD VI requirements. Deviations persist regarding the pre-screening of supervisory board members and the documents to be submitted. Although BaFin will need to update the circular after CRD VI is implemented, the current version is still useful: it pulls together requirements from multiple guidelines and gives institutions a practical sense of supervisory expectations and BaFin's direction of travel.

ITALY

Under the pre-CRD VI Italian framework, the fit and proper assessment for members of the board of directors (including both the management and supervisory functions) takes place after the appointment (if made by the shareholders' meeting) and on an ongoing basis, with mandatory notifications of new circumstances. The assessment, however, must be an ex ante one, irrespective of the bank's size, where a member is appointed directly by the board (*cooptazione*) and their appointment cannot be effective without the authority's green light. In any case, the board already has to make an ex ante suitability assessment followed by an ex post review.

In line with CRD VI, Legislative Decree No. 208/2025 introduces a more prescriptive and risk-sensitive approach. The new rules extend accountability rules beyond board members to include heads of key functions. Independence of judgement is now a formal criterion. Generally, all members of the board of directors or the board of statutory auditors and key function holders are subject to an ex ante assessment. Only where the mandate of the majority or more of the members of the board of directors or the board of statutory auditors is renewed, does the assessment remain ex post.

The revised fit and proper regime will be applicable and enforceable after the relevant implementing provisions have been published.

NETHERLANDS

Under the current framework, DNB must assess the suitability and integrity of the members of the management and supervisory boards and the "second echelon" before their appointment and reassess this where new circumstances arise. The second echelon refers to individuals who hold a managerial position directly below the level of policy makers (usually the board) and are responsible for those natural persons whose activities can significantly affect the bank's risk profile. This definition is not entirely clear and questions with respect to the scope of this requirement have frequently been raised with DNB.

The implementing bill replaces the "second echelon" with KFHs as a category. The group of KFHs is different from the existing one of second echelon. As a result, some individuals currently not qualifying as second echelon are expected to become subject to fit and proper requirements and related assessment processes at the moment the CRD VI implementing act takes effect. With the exception of the three heads of the internal control functions and the financial director (CFO), provided the latter is not part of the management body, this will only be an internal assessment by the bank. Where DNB is in charge for the external assessments, the legislator has already indicated that DNB is expected to apply a risk-based approach.

For the purpose of the reliability assessment of KFHs assessed by DNB, the draft implementing decree grants DNB permission to use data retrieved from AMLA's central AML/CFT database.

PORTUGAL

The regime currently in force in Portugal partially anticipates the changes introduced by CRD VI. Particularly, Banco de Portugal Public Consultation No. 2/2025 has addressed reappointments in less significant institutions. This current framework continues to pose material operational and procedural constraints. The transposition of CRD VI should prioritise proportionality, legal certainty, and efficiency by strengthening transparency and defence rights, rationalising the sequencing and content of information requests, and enhancing the predictability of supervisory milestones and outcomes.

SPAIN

The national framework in Spain has traditionally imposed strict and detailed suitability requirements for members of the management body and other executives of banks, not only those leading the internal control function or the chief financial officer. Suitability requirements are assessed ex ante by the Spanish authorities, and if those requirements cease to be met after the appointment, the relevant manager or executive will need to be removed, or remedial actions will need to be put in place to ensure that suitability requirements are still met.

Key positions in the organisation already need to be mapped under the applicable rules. The transposition of CRD VI will result in a holistic reform of this existing framework.

UNITED KINGDOM

The UK regime that imposes obligations regarding the fitness and propriety of individuals working in the banking sector is the Senior Managers and Certification Regime (SMCR). The SMCR, introduced in part at least in response to the 2008 financial crisis (albeit somewhat belatedly), seeks to create individual accountability for actions, establish clear lines of responsibility, improve standards of conduct and, importantly, facilitate effective enforcement action to be taken against individuals engaging in misconduct. The regime comprises three distinct aspects: (i) the Senior Managers Regime – under which regulatory pre-approval is required to perform specified functions and where relevant individuals are subject to a statutory duty of responsibility; (ii) the Certification Regime – applies to other individuals whose roles could pose significant harm to the firm and/or its customers, and in respect of which the firm itself must annually certify those in scope as 'fit and proper' (but no pre-approval requirement applies); and (iii) the Conduct Rules – a suite of individual conduct rules which apply to most staff members of UK banks.

Under the so-called Leeds Reforms proposed in July 2025, and with a view to reducing regulatory burdens, the UK government proposes that the Certification Regime will be removed from primary legislation and become regulator-led, whilst the Senior Managers regime will see a reduction in the number of senior management functions which require pre-approval.

DE BRAUW BLACKSTONE WESTBROEK

CHAPTER 5 - GOVERNANCE – COLLECTIVE (CORPORATE GOVERNANCE AND RISK CULTURE)

Background

In recent years, failures of some of the major banks in Europe and the United States – most notably the collapse of Credit Suisse – have illustrated how weaknesses in governance, risk management practices, and culture can undermine an institution's resilience and threaten the stability of the financial sector. These topics remain a focus area for supervisors and legislators in the European Union. It is therefore no surprise that the governance-related amendments introduced by CRD VI aim to promote robust frameworks which set out roles, duties, and reporting and escalation lines.

Institutions will be required to prepare individual statements of the roles and responsibilities involved, as well as a mapping of duties. Besides the relevance of these tools for individuals as described in Chapter 4, they will also be instrumental in ensuring an effective and sound collective governance set-up. These instruments give effect to the requirement to maintain robust governance arrangements, including a clear organisational structure and effective risk management processes.

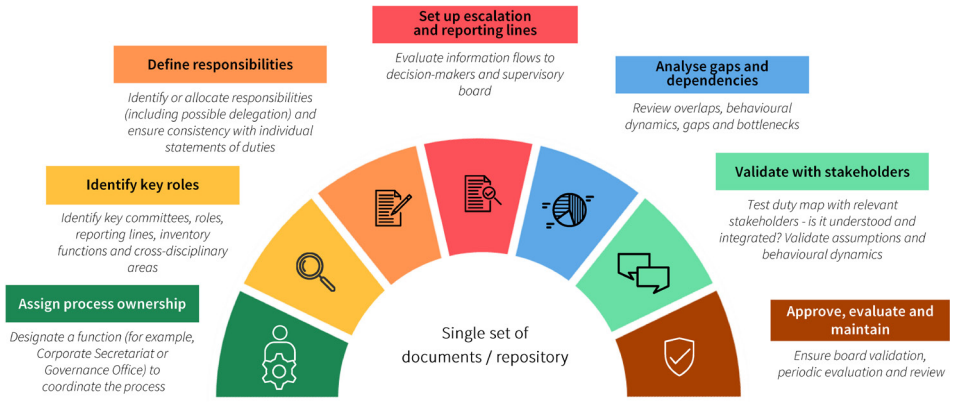
In addition, Article 76 CRD VI requires institutions to set up a more robust and sophisticated system for the treatment of risks. The independence and distinct responsibility of internal control functions, although already largely required in practice, become more clearly embedded in the legislative framework.

Strong Collective Governance through Mapping of Duties and Responsibilities

As described in Chapter 4, the purpose of providing individual statements of roles and duties is to document who is responsible for what, while the mapping of duties should provide a single, comprehensive overview of roles and responsibilities, reporting lines, and the people to whom these are allocated to within the institution. Both tools aim to promote sound and prudent management practices at institutions. The management body bears the overall collective responsibility for the allocation of duties and functions to both senior management and key function holders (KFHs), even if the duties are drafted at a lower level in practice.

The mapping exercise should consider the group as a whole. It must exist for each entity within a group and, where relevant, at consolidated and/or sub-consolidated level, accounting for the prudential scope of consolidation. The mapping should consider the governance of subsidiaries. For example, if the subsidiary's independence is secured through its own independent supervisory board members, a hierarchical reporting line between parent and subsidiary may hamper the ability of the subsidiary's independent directors to fulfil their responsibilities.

DUTY MAPPING AND REVIEW CYCLE – PROCESS



Enhanced Treatment of Risks through Appropriate Governance Arrangements
From a risk management perspective, the mapping of duties should also make visible how the three lines of defence interact and escalate issues within the institution. Importantly, the three lines of defence are not hierarchical. Each line has distinct responsibilities and should operate with sufficient independence to ensure objective oversight and effective challenge, while maintaining open communication to prevent silos.

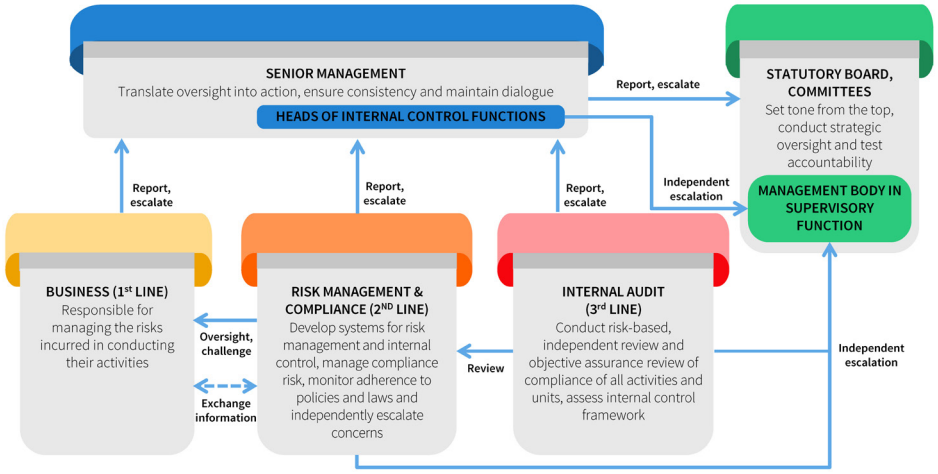
In practice, this means the heads of internal control functions (risk management, compliance, and internal audit) should have access to, report, and escalate directly to the management body in its supervisory function. These escalation lines should be included in the mapping. The above requirements were already part of the CRD for the risk management function but have now been extended to the compliance and internal audit function.

The newly inserted Paragraph 6 in Article 76 of CRD VI makes clear that the heads of the internal control functions should be independent senior managers with distinct responsibilities. Only the risk management and compliance function can be combined in a single person, provided no conflict of interest occurs and the senior person meets the suitability requirement and has sufficient time for the function. The internal audit function cannot be combined with other functions.

Risk in Culture and Behaviour
Article 88 of CRD VI reaffirms that the management body retains collective responsibility for the institution's overall governance and risk management. This safeguard is essential, as the formalisation of roles and duties could otherwise result in a narrow perception of accountability among employees and discourage ownership-taking. The new documentation requirements should aim to clarify roles and duties by identifying the primary "owner" without detracting from the collective's responsibility or the internal control functions' independence.

Weaknesses may arise where mandates overlap, escalation triggers are unclear, or behavioural blind spots prevent effective challenge. Institutions can mitigate these risks by keeping the mapping concise, practical, and subject to regular review. Institutions should think about ways to collect input from all parts of the organisation, so that every business line or function recognises their description, making the mapping a truly collective exercise.

INTERNAL REPORTING AND ESCALATION LINES - *THREE LINES OF DEFENCE*



The organisational culture is an important starting point to encourage the right behaviour among senior management and employees. Institutions should consider how they can promote behavioural expectations, for example through workshops or other collective sessions. They may also consider engaging external experts to gain independent insight into cultural dynamics and support long-term behavioural change. Finally, senior management should be aware of how it can be perceived externally as valuing compliance and risk management, such as in relation to commercial gains. The right "tone from the top" goes a long way in stimulating a healthy risk culture.

Key Takeaways

Supervisors are expected to increasingly shift their attention from documentation to application. The key question will not be whether duty maps exist, but whether they are actively used. Boards and managers may be asked how these maps inform evaluations and demonstrate an understanding of interdependencies across functions. Ultimately, assigning specific roles and duties does not diminish the management body's collective responsibility and should reinforce a culture of shared accountability and prudent decision-making.

NATIONAL BOXES

FRANCE

Although French supervisors have published materials clarifying expectations on collective competence and risk culture for supervised entities, the volume of guidance has been limited compared to some other member states. Upcoming changes under CRD VI, alongside anticipated supervisory guidance, will tighten and reinforce the standards that apply to French banks in these areas.

In practice, many of the new expectations under CRD VI on collective competence, corporate governance, and risk culture are already applied in France through existing supervisory practice and soft law, and are likely to be formally codified when implemented into French law. More significant developments are likely to relate to risk culture, particularly regarding the enhanced identification and management of specific risks, including emerging climate, ESG, and crypto-asset risks.

GERMANY

In recent discussions on deregulation and simplification, BaFin has increasingly emphasised the principle of proportionality, particularly regarding the application of risk management requirements such as the “Minimum Requirements for Risk Management” (MaRisk). This reflects a broader European trend to align expectations with an institution’s size, complexity, and risk profile. BaFin’s recent communications and updates signal that it aims to apply MaRisk effectively but proportionately, reducing unnecessary burdens for smaller or less complex entities. Relatedly, the traditional MaRisk framework for banks has been complemented by versions tailored to investment firms and payment institutions.

The detailed provisions on responsibility mapping, which will also feed into the suitability assessment, seem to cut against this general trend of simplification. It remains to be seen how strictly these provisions will be applied and whether they will also permeate other areas of regulation.

ITALY

The existing Italian regulatory framework already enforces robust governance, often exceeding the previous baseline EU requirements. Organisational clarity, collective governance and competence, strong control independence, and direct escalation channels are among the already existing pillars.

The implementation of CRD VI (and the relevant draft guidelines published by the EBA) by the Bank of Italy will therefore need to focus primarily on formalising individual accountability and mapping of duties to promote a healthy risk culture.

Such implementation, however, will have to be consistent with the national legal framework (especially in terms of liability for directors) and avoid overly prescriptive and detailed provisions that create formalistic compliance exercises rather than fostering effective governance.

NETHERLANDS

In the Netherlands, the governance requirements introduced by CRD VI build on the existing framework of 'sound and controlled business operations' in the FSA. The new requirements on the mapping of duties and treatment of risks further articulate existing principles of transparent, consistent, and effective governance. In practice, DNB already expects institutions to demonstrate who is responsible for what within their governance structure and to guarantee the independence of the internal control functions. The new tools now give supervisors a more explicit basis to request and review documentation, including mapping but also policy frameworks and function descriptions. This enables regulators to assess governance effectiveness and accountability in a more structured way.

DNB already actively supervises compliance with governance and compliance standards (and is expected to continue doing so) and considers an institution's risk culture as an integral part of this assessment. DNB expects banks to actively investigate how governance and behaviour drive supervisory findings in other areas, for example those relating to internal models or data quality.

PORTUGAL

In Portugal, sectoral governance rules applicable to members of management and supervisory bodies are already embedded in a detailed framework. Banco de Portugal Notice 3/2020 (as amended) requires the management body to design, approve, and implement the institution's organisational structure, including its committees, on the basis of a clear, objective, and coherent delineation of lines of authority and reporting, responsibilities and competencies of governing bodies, structural units and functions, and the degree of cooperation among them. The Notice further mandates that the organisational structure—including the allocation of responsibilities and competencies across bodies, delineation of functional boundaries, information flows, and modalities of cooperation and interaction—be communicated by the management body to all employees in a timely, appropriate, and sufficiently detailed manner, and be kept continuously fit for purpose and up to date in light of the institution's specific circumstances.

Since the Portuguese sectoral regime already provides a comprehensive and sophisticated set of governance and internal control requirements calibrated to the banking sector, it does not seem convincing to introduce a separate statutory rule at the level of the Portuguese banking law.

SPAIN

Although the implementation of CRD VI is still in draft form in Spain, the reasonable expectation is that this specific CRD VI requirement will be inserted, in its literal terms, into the provisions that regulate the corporate governance and internal control requirements of banks in Law 10/2014, of 26 June, on the organisation, supervision, and solvency of credit institutions and developing regulations.

The existing framework already requires the establishment of well-defined lines of responsibility within the organisation of Spanish banks, which are also subject to similar requirements when providing investment services.

Compliance with the existing provisions already requires the mapping of obligations and responsible persons, so these new requirements should not entail a completely new obligation per se. However, we would expect these exercises to be more structured, detailed, and formal, and be subject to regular updates and practical application.

UNITED KINGDOM

In line with the SMCR's clear allocation of responsibilities and descriptions of senior management functions, in the UK collective governance focuses on the correct division of tasks and competences. The board and senior management are collectively responsible for defining and overseeing the corporate strategy and setting the risk culture and risk appetite. Directors of UK financial institutions must have a range of skills and experiences that allow them to collectively understand and manage the institution's activities and risks. On risk culture specifically, the FCA and PRA expect institutions to have a well-articulated and measurable statement of risk appetite, expressed in terms that can be readily understood by employees throughout the business.

Whilst UK government's announced the Leeds Reforms do not currently contain any intent to change the principles underlying the FCA and PRA approach to collective governance and risk culture, the shift towards a more principles-based regulatory framework may make the approach more pragmatic and institution-specific.

URÍA MENÉNDEZ

CHAPTER 6 - DEVELOPING SUPERVISORY POWERS: SANCTIONS AND FINES

Background

CRD VI catalyses important reforms to the way banks are supervised, and supervisory actions are enforced:

First, we look at the extended cooperation between competent authorities, including new coordination mechanisms in cross-border operations, supervision of TCBs, and information sharing with tax authorities.

Second, we examine new administrative measures and periodic penalty payments that should ensure greater effectiveness and proportionality in combatting infringements in the banking sector by establishing clear criteria for determining the type and level of sanctions.

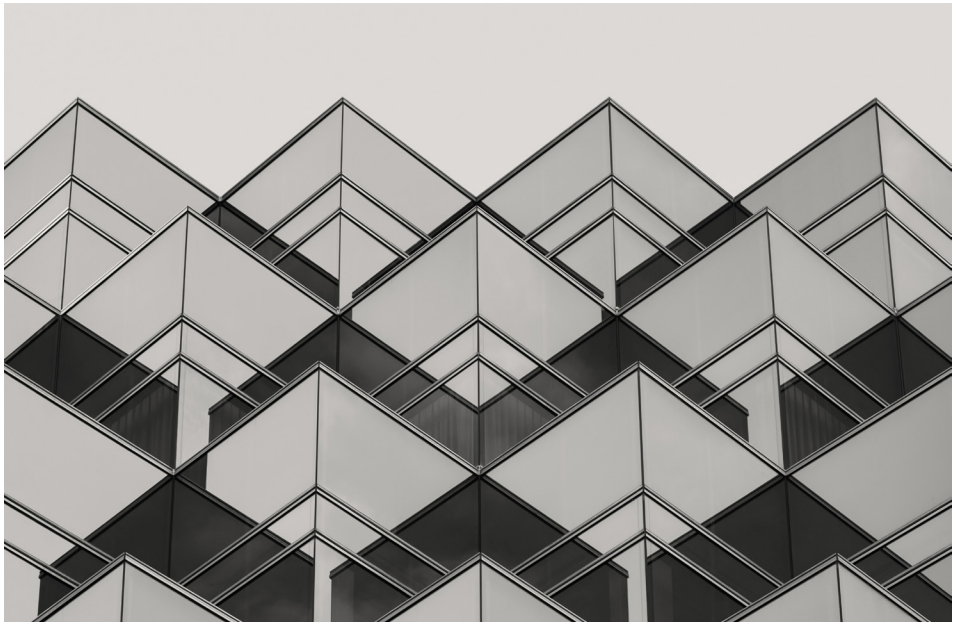
Last, we discuss centralised supervision mechanisms, with a particular emphasis on the role of the Authority for Anti-Money Laundering and Countering the Financing of Terrorism (AMLA), and its interaction with national authorities in preventing and detecting illicit activities.

Greater Cooperation between Competent Authorities

CRD VI extends cooperation between national banking supervisors, particularly in cross-border operations, supervision of TCBs, and information-sharing with tax authorities.

If entities from several member states are involved in certain transactions, supervisors must now engage in structured cooperation through coordination in assessment, cross-border notifications, and exchange of information. This regime applies to acquisitions of significant shareholdings, transfers of assets and liabilities, and mergers and demergers, which require prior approval by the competent authorities. The necessary cooperation mechanisms should be specified by the EBA in guidelines and technical standards.

CRD VI facilitates the exchange of information between competent authorities and tax authorities, which must take place in accordance with national legislation. When implementing CRD VI, it is important for member states to both clearly specify the purposes for which information can be shared and also add the option of exchanging information with tax authorities in other member states to the national legal banking framework.



Administrative Measures and Periodic Penalty Payments

To ensure a level playing field for sanctioning powers, member states must provide for administrative sanctions, periodic penalty payments, and other administrative measures. Although it is possible to allow administrative sanctions in addition to criminal sanctions, competent administrative authorities must consider previous criminal sanctions that have been imposed on the individual or entity for the same offence.

Fines are subject to a maximum of 10% of total net annual turnover for legal entities and up to EUR 5 million for individuals. In both cases, the fines can go up to the amount of the profits made or losses avoided through the offence, in situations where it is possible to determine this amount. In determining the type and level of sanctions, authorities should consider factors such as the financial capacity of the responsible party, the size of the profits made or losses avoided, the level of collaboration in the offence, previous offences committed by the same party, potential systemic consequences of the offence, and criminal penalties previously imposed on the party for the same offence.

The list of infringements has been extended and now includes not only acting without authorisation, but also not complying with the rules for the acquisition or disposal of significant shareholdings, mergers and divisions, or transfers of assets and liabilities.

As to the new regime of periodic penalty payments, these sanctions of a coercive nature intend to bring persistent infringements to an end, while preferably being calculated on a daily basis and not preventing subsequent administrative sanctions from being imposed for the same infringement. Authorities must consider the impact the sanction will have on the financial situation of the responsible party, avoiding situations of serious financial difficulty or even cases of insolvency. To that end, maximum limits are established. While for legal persons the sanctions may amount to 5% of average daily net turnover for each day of infringement over a maximum period of six months, in the case of natural persons, the limit is EUR 50,000 per day over the same six-month period.

The EBA will submit a report to the Commission on cooperation between competent authorities in the context of the application of administrative sanctions and periodic penalty payments.

Member states could take this opportunity to set up an independent and autonomous review committee consisting of independent members, whose role would be to issue opinions that, although non-binding, impose a duty on the supervisor to duly explain its sanction decisions. That committee would deal with matters of great legal and economic importance, including assessments of good repute, decisions on periodic penalty payments, and administrative offence proceedings.

Further Centralised Supervision, including through AMLA

CRD VI also provides for a new, important centralised supervision mechanism, with an emphasis on the role of AMLA (created by an EU regulation). The EBA will cooperate with ESMA and AMLA in drafting guidelines and criteria for deciding if there are reasonable grounds to suspect money laundering or terrorist financing, and it must carry out continuous risk verification.

CRD VI strengthens the integration of anti-money laundering criteria in corporate transactions. In acquisitions of significant shareholdings, competent authorities must now assess if there are reasonable grounds for suspecting that acts of money laundering are being or have been committed in connection with the proposed acquisition, or if the transaction may increase that risk. The same test applies to merger and demerger transactions.

For TCBs, CRD VI establishes mandatory tripartite cooperation between the competent authority, the financial intelligence unit, and the anti-money laundering supervisory authority, with the EBA mitigating any disagreements.

Key Takeaways

CRD VI's sharper tools carry some risks, most notably the possibility of overreach, as supervisory and tax authorities share more data across borders, and a broader list of infringements and tougher periodic penalties reshape compliance expectations. Yet these same features create a powerful opportunity to harmonise supervision, deter misconduct with clearer and more proportionate sanctions, and enable faster, better-coordinated responses to emerging risks, including those linked to anti-money laundering/counter-terrorist financing (AML/CTF) and complex cross-border transactions. If implemented with clear safeguards, purpose-limited information flows, and calibrated enforcement, the reforms can deliver a more resilient, fair, and trustworthy financial system for consumers and markets alike.

NATIONAL BOXES

FRANCE

The ACPR, together with the ECB under the SSM framework, is responsible for the supervision of French banks. The ACPR oversees licensing and management suitability, can impose additional capital and liquidity requirements, and supervises via off-site monitoring, on-site inspections, and thematic reviews. Its enforcement tools include warnings, injunctions, fines (with penalty payments), remediation mandates, activity restrictions, and licence withdrawals.

The scope of the ACPR's supervisory and sanctions powers may evolve with the implementation of CRD VI, although how far this will go remains to be seen. A strict transposition would broaden its remit to cover individuals and situations not currently subject to sanctions procedures or supervisory intervention.

GERMANY

BaFin has become more enforcement-focused in recent years, most visibly in anti-money laundering. Fines have reached tens of millions of euros. While the regulator's 'naming and shaming' strategy was once a strong deterrent, its impact appears to be fading as sanctions and fines are published more frequently, which reduces each item's reputational effect.

At the same time, BaFin's enforcement toolbox continues to expand. The introduction of periodic penalty payments fits with BaFin's broader shift toward more assertive, sustained supervision. The periodic penalty payments introduced under CRD VI are also new under German law. It remains to be seen how BaFin will use these additional powers in practice, but the overall direction clearly points to stronger enforcement.

ITALY

The current Italian regulatory framework already grants the Bank of Italy extensive powers for supervision, sanctions, and AML/CTF compliance.

In this context, Legislative Decree No. 208/2025 further strengthens this framework by introducing several key amendments for harmonisation and enforcement. In addition to the extended supervisory cross-border cooperation and the sharing of banking information with tax and judicial authorities for greater transparency, the Bank of Italy may now impose periodic penalty payments as a new enforcement tool, among others, to banks, (mixed) financial holding companies, qualifying shareholders of banks and/or (mixed) financial holding companies to address persistent infringements.

NETHERLANDS

The bill implementing CRD VI largely maintains the existing supervisory and enforcement framework under the existing FSA. The proposed amendments primarily concern the alignment and clarification of existing powers rather than an expansion of these powers. Enforcement instruments such as instructions, administrative fines, and periodic penalty payments are already embedded in Dutch law. In practice, DNB has indicated that it will continue applying these instruments from 2026 onwards in line with a risk-based and proportionate enforcement strategy. Similarly, the draft implementing decree updates the administrative sanctions framework to reflect amendments to the FSA by adding new enforceable offences with designated penalty categories, maintaining consistency with existing penalty categories for comparable infringements.

More significant legislative adjustments relate to enhanced cooperation and information-sharing mechanisms between competent authorities. The implementing bill introduces an explicit legal basis for DNB to establish or participate in supervisory colleges for the oversight of class 1 branches of third-country institutions. DNB must ensure appropriate coordination and information exchange, particularly where it acts as the supervisor of a TCB.

Finally, cross-border prudential assessments will be strengthened by requiring DNB to consult with relevant foreign supervisors before granting a declaration of no objection for proposed acquisitions, mergers, or divisions involving cross-border financial institutions. This formalises practices that were previously based on supervisory coordination within the SSM.

PORTUGAL

Banco de Portugal's existing supervisory techniques combine off-site monitoring, on-site inspections, and thematic reviews. Enforcement relies on Portugal's administrative offences regime (*contra-ordenações*), enabling warnings, injunctions, public censure, temporary prohibitions on managers, and significant administrative fines, with publication of final decisions subject to statutory criteria and rights of defence.

While the powers of Banco de Portugal are broad, they are bound by the allocation of competences within the SSM (with the ECB retaining key decision-making for significant institutions), statutory maximum fines and limitation periods, due process requirements, and the principle of proportionality guiding supervisory intervention and sanctions. Decisions are subject to judicial review.

The forthcoming implementation of CRD VI should be perceived by Portuguese lawmakers as an opportunity to implement a material refinement of the existing penalty, sanctions, and information-sharing mechanisms.

SPAIN

The Bank of Spain has wide powers to identify infringements and impose sanctions on banks and their directors, executives, and significant shareholders. The implementation of CRD VI will result in certain changes to these powers. For example, sanctions are already capped at levels similar to those set forth in CRD VI. In contrast, periodic penalty payments are not part of the Spanish legal framework for banks and therefore, changes in the law will be required.

Finally, the stronger cooperation under CRD VI between national authorities will require adaptation of the Spanish framework, which conceives the sanctioning regime as a purely national framework. It remains to be seen how the existing enforcement authorities (including the Spanish anti-money-laundering authority) will interact with other national supervisors and the new supranational authorities in this field.

UNITED KINGDOM

Since Brexit, the UK has expressed the ambition to move from the EU's perceived rules-based approach to supervision and enforcement to a more principles-based approach. Whilst this has been the position for some time, part of this approach is that the UK intends to set the standards for effective but less prescriptive supervision and enforce accordingly. This is evidenced in the changes proposed by the Leeds Reforms. Under these reforms, the goal is to rationalise the many "have regards" principles enshrined in regulation for the PRA and the FCA to consider when exercising their powers. This aims to reduce regulatory complexity. Regulators are also expected to publish clear long-term strategies for setting their top priorities and resource allocation. Much like the EU, the focus is on improving competitiveness through more effective regulation and less targeted enforcement. Where enforcement does occur, the intention is to act as a deterrent.

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