



Overview

On 22 August 2025, the German legislator published the “**German Draft Implementation Act**” ([BRUBEG](#)) of the Banking Directive (EU) 2024/1619 (“**CRD6**”).

This marks an important, substantial step towards a new harmonized and more restrictive regime for branches of non-EU/EEA firms, e.g., from the US, UK and Asia, which provide “core banking services” of deposit-taking, lending, and providing guarantees and commitments to German clients, so-called third-country branches (“**TCB**”) under Art. 21c CRD6. The new regime will have a significant impact on business models, including new requirements on governance, booking, risk management and reporting.

This briefing summarizes the key provisions of the German Draft Implementation Act and their implications for non-EU/EEA firms. For a general overview of the TCB regime, see our Client Briefing [The New EU Third Country Branch Framework: What Firms Need to Know](#) published in November 2024.



7 Key takeaways

1 New TCB regime

In Germany, non-EEA firms conducting banking business (not limited to core banking services) physically in a branch are already subject to strict local requirements. These non-EEA branches in Germany are in principle subject to the same rules as credit institutions (Section 53 KWG). In other EU Member States, the existing legal framework applying to third country branches is considerably more relaxed, for example by way of concluding intergovernmental agreements between a Member State and a non-EEA country, such as regarding the treatment of the capital and liquidity waivers.

In the future, it is expected that these varying approaches in Member States will no longer exist due to the EU-wide harmonized TCB framework.

Specifically, the German Draft Implementation Act now introduces a standalone chapter regulating TCBs (draft Sections 53c and 53cc KWG), largely reflecting the structure and substance of the EU wide applicable CRD6.

In-scope non-EEA firms are (i) any entity providing deposit-taking business as well as (ii) banks (i.e., undertakings that, if established in the EU, would qualify as CRR credit institutions) and certain large investment firms providing lending, factoring and guarantee business (considered core banking services). It is noteworthy that existing branches of non-EEA firms carrying out *non-core* banking services (e.g., principal brokerage) will still be captured by the existing German regime, leading to a complex bifurcated legal framework for non-EEA firms.

EU Member States which do not yet provide for any third country branch framework are facing a completely new regime under CRD6, while the regulatory change will also be significant for Member States with existing regimes such as in Germany. Even long-established third country branches with banking-like licences will generally need to become authorised again if they want to keep offering core banking services under the TCB regime. There is a discretion for the national competent authorities to grandfather existing authorisations that have been granted 12 months or more before the application of CRD6. For many TCBs, this will apply if they are already subject to equivalent (or even stricter) requirements.

Categories: TCBs will be categorized into **two classes** based on their size with differing capital, liquidity and reporting obligations applying to each class.

A **large** TCB will be classified as **Class 1 (large)** if: (i) it has EUR 5 billion or more in assets booked or originated in Germany; or (ii) it accepts deposits or repayable funds from retail customers, and either these deposits make up 5% or more of its total liabilities, or the total amount exceeds EUR 50 million; or (iii) it is **not a qualifying TCB** (*qualifizierte CRD-Drittstaatenweigniederlassung*) – meaning its head office is not subject to CRD-equivalent regulation because it is not established in a jurisdiction classified as “equivalent” to EU standards, is overseen by regulators without EU equivalent confidentiality standards, or is located in a country considered high-risk for AML/CTF. The equivalence assessment is unilateral, being initiated by the European Commission. Meeting just one of these above conditions (i) – (iii) is sufficient to be classified as Class 1 TCB.

All other TCBs fall under **Class 2 (small)**. These are typically less significant branches that are not considered to pose major risks. Importantly, qualifying TCBs are always Class 2.

2 Subsidiarization

National competent authorities, for example in Germany the Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht* – “**BaFin**”), have the power to require TCBs in their Member State to “subsidiarize”. This means that BaFin may require a TCB to become a subsidiary with the need for a full banking license (which would come with the advantage of EU passporting rights) in the following circumstances:

- (i) It classifies as systemically important and posing significant risks to the financial stability in the EU or in the Member State where the TCB is established;
- (ii) Where the total amount of assets of a third-country group within the EU is at least EUR 40 billion;
- (iii) The amount of assets of the TCB is at least EUR 10 billion; or
- (iv) It has been engaging in prohibited cross-border services.

3 Revocation of waivers

Regarding the existing provision of cross-border services in Germany, BaFin occasionally granted so-called waivers (*Freistellungen*): This means that BaFin has determined that certain regulatory license requirements do not apply in individual cases, where the home state supervisory regime in the non-EEA country is considered sufficient. Now, the new German Draft Implementation Act includes that BaFin must **revoke such cross-border licensing waivers** to the extent they conflict with the strict new TCB requirements. However, certain local waivers may remain in place to the extent the business activities are not captured by the new TCB regime. This means that **existing waivers for non-core banking and MiFID services are expected to continue to apply**, e.g., those relating to custody services.

4 MiFID Exemption

Under the German Draft Implementation Act, the so-called MiFID exemption would allow non-EU/EEA firms to offer **investment services** listed under Annex I Section A of MiFID II, such as the execution of orders on behalf of clients, “**or ancillary services such as related acceptance of deposits or the granting of credits or loans for the purposes of providing services within the scope of MiFID**”. The use of the terms “or ancillary services” under draft Section 53c (1) subs. 2 KWG **indicates that the German legislator also considers standalone ancillary MiFID services (e.g., custody, cash management) to be covered by the MiFID exemption**, i.e., excludes these from the TCB regime, similar to the approach taken in the draft implementation acts of the Netherlands and Sweden. There still remains a level of uncertainty regarding the exact scope of the MiFID exemption, also with the EBA indicating a stricter interpretation of the exemption in its July 2025 [report](#), which would have potentially significant implications for existing global custody business and related cash management chains.

5 Reverse Solicitation

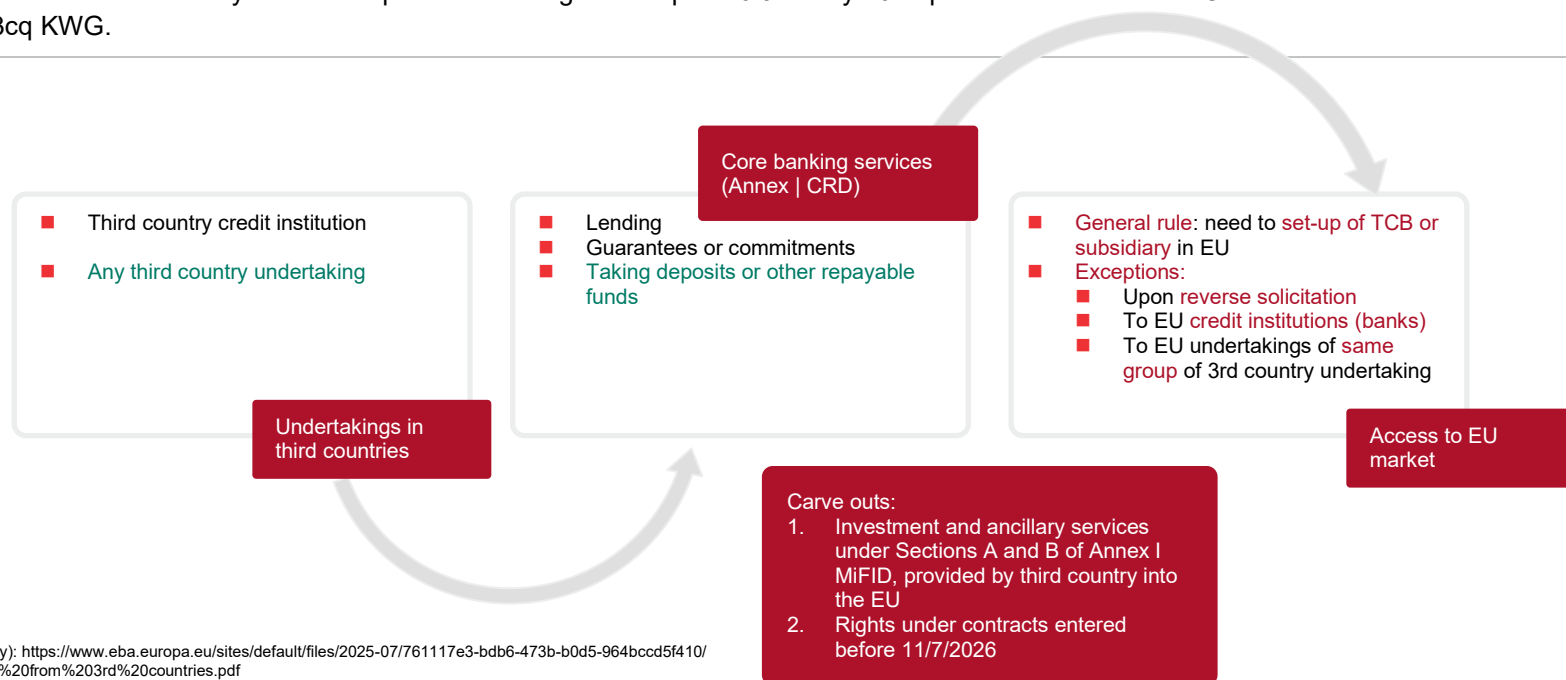
Although the detailed provisions of **reverse solicitation** under CRD6 are not (yet) reflected in the German Draft Implementation Act, it is explicitly mentioned by the German legislator in the explanatory text (p. 272) and is also a **long-standing concept** in the EU and has been confirmed by BaFin in its administrative practice for decades. In a limited way, the German Draft Implementation Act explicitly stipulates an reverse solicitation exemption with respect to licensed TCB which are accordingly permitted to provide cross-border services into other countries provided the TCB has been approached by EU clients on their own exclusive initiative, cf. draft Section 53cc s. 2 (5) no. 2 KWG. Although the German Draft Implementation Act is not (yet) as detailed as the CRD6 on reverser solicitation provisions, and even appears to miss out the clear EU provisions in the CRD6 in this respect, we still expect that the reverse solicitation exemption will be available for non-EEA firms which have been approached by EU clients on their own exclusive initiative. This is an exemption clearly mandated by CRD6 to be implemented accordingly by Member States.

6 Interbank and Intragroup exemptions

Although CRD6 provides for exemptions regarding **interbank** transactions (i.e., the EU client is itself a credit institution) and **intragroup** dealings (i.e., the non-EU/EEA firm and the EU client belong to the same group), these exemptions are also not (yet) explicitly incorporated in the German Draft Implementation Act. However, the explanatory text of the German Draft Implementation Act refers to the interbank exemption (on two occasions, p. 200, 273) and the intragroup exemption (p. 273). This indicates that these exemptions will be available either by BaFin administrative practice (as this is already the case regarding deposit taking and lending) or – ideally – will be added in the final legislation.

7 Grandfathering

Generally, it must be differentiated between existing contracts and local third country branch licenses. With regard to existing **contracts**, the German Draft Implementation Act currently lacks a formal grandfathering provision as required by CRD6 which stipulates that **"in order to preserve clients' acquired rights under existing contracts, the [TCB] requirement shall be without prejudice to existing contracts that were entered into before 11 July 2026."** However, the German legislator mentioned it in the explanatory text referring to "July 2026" (p. 200). With a view to existing third country branch licenses, the draft provision of Section 53cc (6) KWG stipulates that BaFin may decide to uphold licenses granted up to 10 January 2027 provided the relevant TCBs meet the conditions set out in Sections 53ca to 53cq KWG.





Implications for Non-EU/EEA firms

The German Draft Implementation Act confirms the EU's **shift toward a more restrictive regime** for cross-border banking services. In addition, non-EEA firms currently relying on national waivers or exemptions must reassess their operating business models.

Key considerations include:

- **Authorization requirements:** In the event TCBs engage in core banking services, they must prepare for the new governance, booking and reporting requirements ensuring their activities are covered by home jurisdiction authorizations and that supervisory cooperation is feasible.
- **No passporting for TCBs:** If a non-EEA firm wishes to operate in multiple Member States including Germany, it will need to establish multiple TCBs in each relevant Member State since TCBs cannot operate cross-border within the EU, or consider a licensed subsidiary (and full banking authorization) in order to leverage the EU passport.
- **Exemption strategy:** Non-EEA firms should evaluate the relevance and availability of the MiFID exemption, the intragroup exemption, the interbank exemptions and reverse solicitation in the event that they intend to provide core banking services, i.e., lending, deposit-taking or the issuance of guarantees in the EU and Germany.
- **Operational restructuring:** Non-bank entities with a focus on lending may consider restructuring to fall outside the TCB framework, relying instead on national exclusions.
- **Compliance and reporting:** In scope TCBs must implement robust governance, booking arrangements, and reporting systems set out in draft Section 53ca to 53cq to meet supervisory requirements.



Next steps

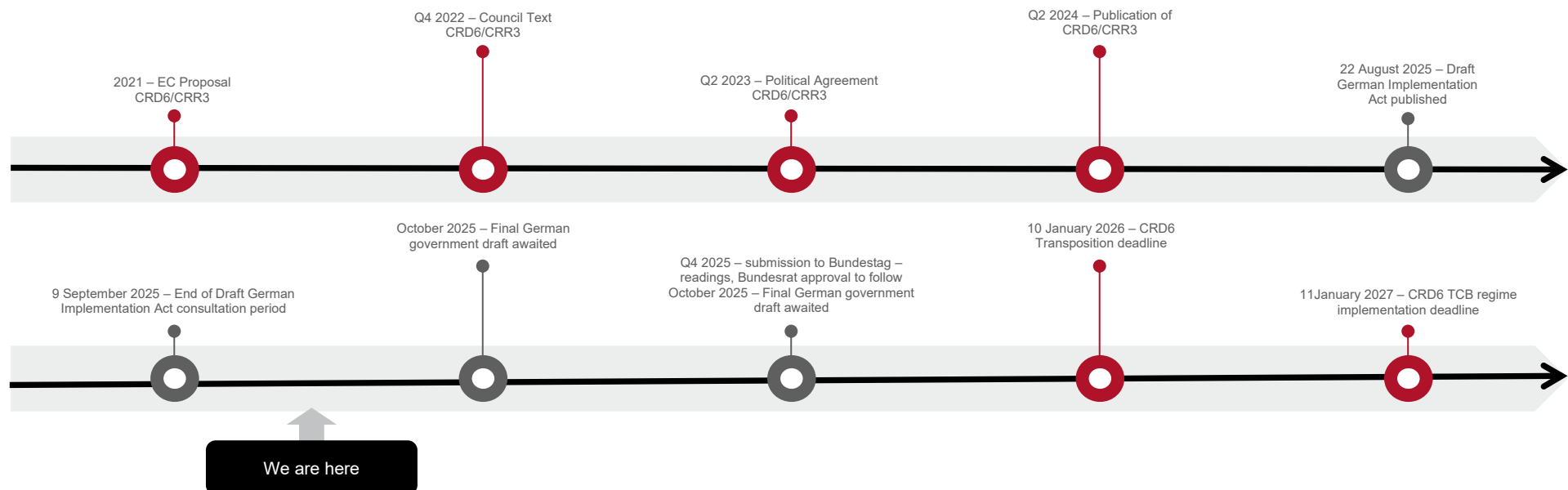
Third-country firms should start **assessing the impact of the German Draft Implementation Act** and the broader CRD6 framework on their EU operations (Gap Analysis, CRD6 Strategy including exemptions). Early engagement with BaFin and legal advisors is highly recommended to navigate licensing, exemption eligibility, and compliance obligations.

Since the consultation period ended on 9 September 2025, the government draft (*Regierungsentwurf*) is to be expected within the next weeks. The draft will need to be discussed in both chambers of German parliament. The final German Draft Implementation Act will need to be published by 10 January 2026 in order to comply with the deadline stipulated by the CRD6. The full **TCB regime will apply no later than 11 January 2027**.

We will continue to **monitor** legislative developments and provide updates as the draft progresses.



Timeline





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