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The draft bill for the German Risk Reduction Act

Essential innovations for the implementation of CRD V and BRRD II in Germany

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On April 22, 2020, the German Federal Ministry of Finance (**BMF**) presented its proposal for the implementation of the European "Banking Package"[1] (**EU Banking Package**) in Germany in the form of the draft bill of the Risk Reduction Act (**RiG**) [2]. The European Central Bank (**ECB**), which pursuant to the Treaty on the Functioning of the European Union is mandated to provide legal opinions on the conformity of national legislative instruments such as the RiG with EU law, has as of the date of this Client Alert not yet issued its assessment of this proposed German legislative act transposing the EU Banking Package. It is important to note that the ECB, acting in its Banking Union supervisory capacity, would also act using the RiG in the context of German-domiciled institutions that it directly or indirectly supervises. This Client Alert assesses the contents of the RiG, its impact on banks and other financial institutions engaging in business in or through Germany or through branches of financial institutions and banks domiciled in Germany.

The EU Banking Package represents the second generation of the European Union's (**EU**) implementation of the reforms agreed in the Basel Committee of Banking Supervisors (**Basel III Framework**). The first generation of these rules, which incorporated the first parts of the Basel III framework into the Capital Requirements Regulation (**CRR**)[3] and the Capital Requirements Directive (**CRD IV**)[4] respectively into European law as early as 2013, was supplemented in 2019 by further amendments to these rules in the form of **CRR II**[5] and **CRD V**[6] respectively.

The most important aspects that are now to be transposed into national law under Germany's RiG relate to additional capital and capital buffer requirements, including the new leverage ratio buffer. In addition, the EU Banking Package provides for relief for small, non-complex institutions[7] and (multilateral-) development banks and the strengthening of the "principle of proportionality".[8]" i.e. that regulatory rulemaking and supervisory engagement should take a tailored approach to supervised institutions, their business model, risk factors, their complexity and the market sectors plus jurisdictions they engage in.

1 The EU Banking Package is a comprehensive reform package aimed at promoting the resilience of the EU banking sector. Our publication on the EU Banking Package is available **here.**

2 The draft of a law on the reduction of risks and the strengthening of proportionality in the banking sector (Risk Reduction Act - RiG), is available **here** (as of 29.04.2020).

3 Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, OJ L 231, 30.12.2013, p. 1. (EU) L 17; references to the CRR in the following are, unless otherwise stated, references to the CRR in its current version by CRR II.

4 Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC,.

5 Regulation (EU) 2019/876 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements, and Regulation (EU) No 648/2012.

6 Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures.

7 These banks may however may still be categorized for Banking Union Single Supervisory Mechanism (SSM) purposes as Significant Credit Institutions and thus subject to direct ECB-SSM supervision.

8 Draft bill of the RiG, p. 2.

A further component of the EU Banking Package is the second generation of bank-specific recovery and resolution rules, some of which are provided for in the CRR II[9], but most of which are contained in the amended directive on bank recovery and resolution (**BRRD II**)[10]. In addition to the introduction of the international **TLAC**[11] standards developed by the Financial Stability Board (**FSB**) for globally systemically important institutions, this includes the amendments of the **MREL-requirements**[12] and the strengthening of group recovery and resolution powers.

It is envisaged that the RIG's amendments to the German Banking Act (*Gesetz über das Kreditwesen* - **KWG**), which is the primary legislation transposing core elements of the EU's CRR II/CRD V and BRRD II regime in German law, will be phased in over the next two years.[13] The changes RiG makes to other German laws are set to enter into force uniformly on June 28, 2020[14]. The MREL provisions are an exception to this, as they are not to become fully effective until 2024. The following table provides an overview of the current anticipated indicative timetable for the major changes introduced by the RiG. In any event certain banks and affected financial institutions may want to preparatory action. The timeline may be further impacted due to regulatory reliefs that were agreed at international (BCBS) and EU level in response to the spring 2020 lockdown.

Timeline	
December 28/29, 2020	Entry into force of the amendments to the KWG, which are subject to mandatory implementation in accordance with the EU Banking Package (Article 17 (1), (2) RiG)
June 28, 2021	Entry into force of further detailed amendments to the KWG, entry into force of amendments to other laws (Article 17 (3) RiG)[15] End of the transitional period for the authorization process for a financial holding company according to Section 2f of the proposed KWG as amended by the RiG (**KWG-E**) (Section 64a KWG-E)
January 1, 2022	Entry into force of the Leverage Ratio Buffer (**LR-Buffer**) in Section 10j KWG-E and corresponding references to Section 10j KWG in statutory orders (Article 17 (4) RiG) Application of the interim targets for Sections 49e, 49f of the Reorganization and Settlement Act (**SAG**) SAG-E (see Section 54 (2) SAG-E of the proposed SAG as amended by the RiG (**SAG-E**)) Implementation deadline for Section 49b (4), (5) and (7) SAG-E (Section 54 (2) SAG-E) Application of MREL amendments under Section 49c (5), (6) SAG-E (see Section 54 (3) SAG-E)
December 30, 2023	End of the transition period before the requirement to implement EU intermediate holding companies in accordance with Section 2g KWG-E (Section 64a KWG-E)
January 1, 2024	Full application of Sections 49e and 49f SAG-E (Section 54 (1) SAG-E)

9 For example, the reservation of permission for the repurchase of eligible liabilities (Art. 78a read in conjunction with Art. 77 (2) CRR) or the provisions on the settlement of G-SRIs.

10 Directive (EU) 2019/879 of the European Parliament and of the Council of 20 May 2019 amending Directive 2014/59/EU as regards the loss-absorbing and recapitalization capacity of credit institutions and investment firms and Directive 98/26/EC.

11 *Total Loss Absorbency Capacity* (see below on p. 9)

12 *Minimum Requirement for Own Funds and Eligible Liabilities* (see below on p. 9)

13 See the various amendments in Art. 1 read in conjunction with Art. 17 (1), (2) RiG (entry into force of the amendments on 28/29.12.2020), Art. 2 read in conjunction with Art. 17 (3) RiG (entry into force of the amendments on 28.06.2021) and Art. 3 read in conjunction with Art. 17 para. 4 RiG (entry into force of the amendments on 01.01.2022). Insofar as the amendments enter into force in phases and as such change their reference, reference is made to the final version in the following text, and the footnote refers to the interim versions.

14 For comparison purposes, the requirements under CRR II will also take effect in phases between 2019 and 2023.

15 The following is a summary of the amendments to the SAG, KAGB, ZAG, VAGs, RStruktFG, StFG, AnlEntG and EinSiG (see below). In addition, there are consequential changes in legal regulations (Regulation on the exemption of branches of credit institutions domiciled in Japan, the USA, Australia, etc.) that are not part of this Client Alert.

Implementation of the CRD V into German law

A substantial part of the RiG focuses on the implementation of CRD V into German law. The implementation period of the CRD V ends on December 28, 2020.[16] Significant changes are introduced in connection with the provisions on regulatory consolidation, regulatory capital requirements and the determination and reconciliation of capital buffers, which are summarized in the following paragraphs.

Regulatory consolidation

CRD V's implementation introduces significant changes on how groups are supervised both in the context of the CRR, and for smaller non-CRR institutions in Germany the KWG. In particular, the new law introduces licensing requirements for financial holding companies and the obligation to establish intermediate holding companies (**IHCs**) for third-country headquartered groups (**TCE**s).

Since financial holding companies or mixed financial holding companies (**financial holding companies**) are at the head of a corporate group and since these may be responsible for fulfilling supervisory obligations on a consolidated basis, Article 21a CRD IV, as amended by CRD V[17], introduces a requirement to obtain authorization by the competent supervisory authority (i.e. either the ECB-SSM or the BaFin and the Bundesbank) responsible for the supervision of the group, which is now to be implemented in Section 2f KWG-E. According to the explanatory memorandum of the RiG, this authorization requirement is meant to avoid additional supervisory burdens on an individual basis.[18] In addition to the requirements for authorization, Section 2f KWG-E provides for an exception from the authorization requirement for certain financial holding companies that among other requirements are limited to the holding of shares.

The transitional provision of Section 64a (1) KWG-E sets a deadline for financial holding companies that already existed on June 27, 2019, to apply for authorization in accordance with Section 2f KWG-E until June 28, 2021. Even before this transitional period has elapsed, the competent supervisory authority holds full supervisory powers *vis-à-vis* financial holding companies regardless of whether the financial holding company has already obtained its authorization. The competent supervisory authority may take measures pursuant to Section 2f (6) KWG-E, however, only once this period has expired. The fact that the draft bill version of the RiG refers to Section 2f (5) KWG-E in this respect is probably an editorial error of the BMF drafting team.[19]

The second major change with regard to regulatory consolidation under the RiG is the implementation of Art. 21b CRD IV as amended by CRD V, and its requirements to establish an EU intermediate holding company. Such an intermediate holding company is required under Section 2g KWG-E if the total value of the assets of a third-country headquartered group operating within the EEA reaches or exceeds a threshold of €40 billion. In principle, the required EU holding company must be a CRR credit institution or a (mixed) financial holding company authorized under Section 1f KWG-E. According to Section 64a (2) KWG-E, CRR institutions that surpassed the threshold by June 27, 2019, shall meet the requirements of Section 2g KWG by December 20, 2023.

16 Art. 2(1) CRD V.

17 Our publication on changes introduced by CRD V is available **here.**

18 Draft bill p. 145.

19 See draft bill of the RiG, p. 56.

Capital requirements

Furthermore, the RiG implements the tightened capital adequacy requirements provided for in CRD V that supplement the capital requirements framework of the CRR as set out in Art. 92 et seqq. CRR. Among the major changes are the newly established competences for the competent supervisory authority to order and/or recommend additional capital resources, which are outlined in the following.

Additional own fund requirements

The newly created Section 6c KWG-E serves to implement Art. 104a CRD IV as amended by CRD V. Under this provision, the competent supervisory authority may order a supervised entity to hold additional own funds over and what is already demanded of it by virtue of the CRR capital requirements framework, provided that a supervisory review, assessment procedure, or the ongoing review of the permission to use internal model approaches reveals that the institution-specific risk or individual risk elements would not be sufficiently covered by the CRR capital requirements alone. Pursuant to Section 6c (1) KWG-E, the risk is not sufficiently covered in the following cases:

- the risk-bearing capacity is not guaranteed;
- the requirements on the diversification of large exposures are not complied with;
- the valuation adjustments under Art. 105 CRR are not sufficient to ensure the provision of sufficient liquidity in stress scenarios;
- the entity fails to meet the set requirements for approved internal model approaches (the so-called IRB approach) which is likely to result in insufficient capital resources;
- the capital adequacy recommendations in accordance with Section 6d KWG-E were not met on a repeating basis; or
- other institution-specific situations give rise to material supervisory concerns.

In making its decision, the competent supervisory authority takes into account institution-specific risks or risk elements that were excluded from the CRR or that were probably underestimated, as well as material interest rate risks from positions in the banking book (Section 6c (2) KWG-E).

The capital adequacy requirements must be met with at least at ¾ core capital, ¾ of which in turn must consist of CET 1 eligible capital instruments. The competent supervisory authority may require institutions to meet higher ratios (Section 6c (5) KWG-E).

Guidance on own funds

Based on the results of relevant stress testing and in accordance with the newly introduced Section 6d KWG-E, the competent supervisory authority may issue guidance or recommendations (*Empfehlung*), which are to be fulfilled by CET 1 eligible capital instruments. This is intended to generate additional capital reserves to promote the institutions' ability to cover their losses in stress phases without falling below the regulatory

minimum capital.[20] Importantly, risks that are already fully covered by additional own fund requirements may not form the basis of a recommendation. In keeping with the nature of the recommendation, falling below the threshold of Section 6d KWG-E does not in itself lead to restrictions on distributions as long as the actual capital buffers are met and the additional capital requirements are met. However, repeated disregard of capital adequacy recommendations may lead to the ordering of additional capital (see above).

Capital buffers

The capital buffers are laid down in Chapter 4 of the CRD IV (in particular Articles 128-142 CRD IV) as amended by the CRD V and transposed into German law in Sections 10b et seq. KWG-E.

The special feature of capital buffers lies in the legal consequences of falling below the prescribed threshold, in that falling below the (combined) capital buffers (only) leads to restrictions on distributions (Articles 140, 141 CRD IV as amended by CRD V; implemented in Sections 10i, 10j KWG-E[21]) but not a violation of the minimum regulatory minimum capital.

Key guidelines in the context of the CRD amendment include clarifications with regard to the delineation and separation of institution-specific supervisory measures and macro-prudential capital buffers. In the future, capital add-ons resulting from supervisory reviews and assessment procedures will no longer contain components that serve solely to cover systemic risks[22]. By contrast, if capital buffers for systemically relevant institutions (**SRI**s)[23] coincide with the capital buffer for systemic risks pursuant to Section 10e KWG-E, the revised version of the CRD IV as implemented into German law requires both capital buffers to be applied cumulatively.[24] If the cumulative value exceeds 5%, the German Federal Financial Supervisory Authority (**BaFin**) may, subject to the approval of the European Commission, order a threshold of more than 5%.[25]

In addition, the requirements determining capital add-ons have given further details in order to promote greater convergence of supervisory practice in the member states[26]. In particular, Art. 128 CRD now sets out a general principle, [27] that institutions may not use CET 1 capital instruments that are prescribed elsewhere for regulatory purposes for the fulfilment of the capital buffer requirements under CRD IV as implemented in Sections 10c to 10g KWG-E.

The following aims to provide an overview of main changes with regard to the respective capital buffers:

- **Capital maintenance buffer** (Section 10c KWG-E): The amendments are of an editorial nature.
- **Countercyclical capital buffer** (Section 10d KWG-E): The amendments are of an editorial nature. For clarification purposes, the competent supervisory authority is empowered to be able to adjust the ratio.
- **Capital buffer for systemic risks** (Section 10e KWG-E): The capital buffer for systemic risks is revised. The German legislator had already made use of the possibility to provide for a further capital buffer in addition to the capital maintenance buffer and the countercyclical buffer and beyond the mandatory capital adequacy requirements when implementing Art. 133, 134 in the version of CRD IV, in order to reduce or avoid long-term, non-cyclical, systemic or macro-prudential risks that could endanger the system.[28]

  According to the explanatory memorandum, the new version of Section 10e KWG-E as part of the CRD V implementation serves to avoid double or non-uniform application of the CRR and the KWG. [29] The main differences between the two versions of Section 10e KWG are the deletion of the minimum threshold of 1 percent of the total exposure or total risk amount based on the risk-weighted exposure values of the

20 Draft bill of the RiG p. 146.

21 Section 10j KWG-E in the version applicable from 2022 ("Requirements for the buffer of the debt [here leverage] ratio")

22 Draft bill of the RiG, p. 146.

23 This refers to both the capital buffers for G-SRIs and those for A-SRIs (see below).

24 cf. Section 10h (2) sentence 1 KWG-E

25 cf. Section 10h (2) sentence 2 KWG E as read in conjunction with Section 10g (1a) KWG E

26 Draft bill of the RiG, p. 146.

27 Draft bill of the RiG, p. 172.

28 Justification of the government draft for the CRD-IV-UmsG (BT-Drucks. 17/10974 p. 79).

29 Draft bill of the RiG, p. 173.

respective risk positions (Article 92 (3) CRR) and the changes to the official procedural and reporting requirements specified in CRD V. Under the new law, capital buffers for systemic risks can be arranged in steps of 0.5 percentage points (Section 10e (1) sentence 3 KWG-E) for risk positions in Germany, EEA countries and "third countries" i.e. non-EEA countries.

- **Capital buffers for globally systemically important institutions** (Section 10f KWG-E) (**G-SRI capital buffer**): The changes in Section 10f KWG-E implement changes in Article 131 CRD IV as amended by CRD V. What is new is the additional annual quantitative analysis of institutions, EU parent institutions, EU parent financial holding companies and mixed EU parent financial holding companies domiciled in Germany on an aggregated basis. The criteria for this are the size of the group, its interconnectedness with the financial system, substitutability with regard to services offered and financial infrastructure facilities and the complexity and extent of the group's cross-border activities. Institutions are obliged to report the required data to BaFin on an annual basis.
- **Capital buffers for otherwise systemically important institutions** (Section 10g KWG-E) (**A-SRI capital buffers**): The amendments to Section 10g KWG-E also implement changes to Article 131 CRD IV as amended by CRD V. In terms of content, the revised version allows BaFin to order an A-SRI capital buffer of up to 3% (instead of the previous 2%) and – subject to compliance with the submission procedure – even beyond that. In the latter case, BaFin must notify the (re)determination to the European Systemic Risk Board (**ESRB**) three months prior to the decision. The upper limits for A-SRIs that are also subsidiaries of G-SRIs have also been revised.
- **Requirements for the leverage ratio buffer** (Section 10j KWG-E[30]): The newly created Section 10j KWG-E concerns globally systemically important institutions (**G-SRI**) and subjects them to the leverage ratio (**LR**) of 3%[31] and the LR buffer provided for in Art. 92 (1a) CRR, as applicable throughout the EU from January 1, 2022. According to this provision, G-SRIs must have an additional buffer in the form of core capital in the amount of the product of the 50 percent risk-based capital buffer ratio with the overall risk position measure (the numerator of the LR). The requirements for a payout as well as the restrictions on payouts and the obligation to prepare a capital maintenance plan in the event of a breach of the leverage ratio correspond in content to the combined capital buffer. A separate standardization in Section 10j KWG was necessary because Section 10j KWG refers to core capital, while 10i KWG refers exclusively to CET 1 capital instruments.[32]
- **Potentially systemically important institutions** (Section 10k KWG[33]): The newly created Section 10k KWG-E introduces the definition of potentially systemically important institutions (**PSI**) into the KWG and thus replaces the definition of potentially systemically dangerous institutions previously contained in Section 20 (1) sentence 3 of the SAG. The legislator justifies this with the aim of continuing to include promotional banks in the population for determining systemic relevance even after their exclusion from the scope of application of the CRR due to their considerable importance for the financial sector.[34] The annual identification of potentially systemically important institutions as an umbrella term for G-SRIs, A-SRIs and institutions that are potentially systemically important for other reasons serves the macro-prudential analysis of all institutions in Germany and has repercussions for the individual institutions, for example with regard to the regulation of remuneration and mandates. In this respect, the procedures and interpretation criteria developed for the SAG continue to apply in the KWG.

30 Section 10j KWG-E in the version applicable from 2022 ("Requirements for the buffer of the debt [here: leverage] ratio ").

31 Article 92(1)(d) CRR.

32 Draft bill of the RiG, p. 194.

33 Section 10k KWG-E in the version applicable from 2022 ("potentially systemically important institutions").

34 Draft bill of the RiG, p. 174 et seqq.

Special rules for development banks

Since the amendments of CRD IV as set out by CRD V entered into force on June 27, 2019, German development banks (**Development Banks**) (*Förderbanken*) fall outside the scope of the CRD VI/CRR II framework pursuant to Article 2 (5) lit. 5 CRD VI as amended by CRD IV. As a consequence, Development Banks are no longer CRR credit institutions as defined by German law pursuant to Section 1 (3d) KWG. They continue to fall under the broader definition of an institution under Section 1 (1b) KWG, which is an umbrella concept for CRR credit institutions, national credit institutions (now including Development Banks irrespective of their size) and financial service providers. As a result, numerous banking supervisory regulations no longer apply to Development Banks, including the requirements of Regulation (EU) No 1024/2013 on the transfer of special tasks in connection with the supervision of credit institutions to the European Central Bank (**SSM-Regulation**), the BRRD II, as implemented by the SAG (thus in particular the obligation to draw up reorganization and winding-up plans[35]) the provisions of the Law on the Establishment of a Restructuring Fund for Credit Institutions (**RStruktFG**), including the obligation to make contributions to the Banking Union's Single Resolution Fund and Germany's transposition of the EU's Depositor Guarantee Schemes Directive in the form of the Deposit Protection Act (**EinSiG**).

With regard to Development Banks, the purpose of the RiG is to ensure that the level of supervision of Development Banks at national level is comparable to that under European law.[36] To this end, Section 1a KWG-E maintains the obligation to report regulatory financial information (**FINREP**) in accordance with ECB Regulation (EU) 2013/534, since FINREP is the basis for the risk profiling according to SREP that is also used by Development Banks. Equally in this context, the definition of "significant institution" has been introduced into Section 1 (3c) KWG-E. Significant institutions refer to CRR credit institutions as well as, subject to further specification, institutions with balance sheets exceeding €15 billion on average over the last four fiscal years.

Supervisory practice

The implementation of CRD V leads to changes, some of which are clarifying, in terms of supervision and cooperation between supervisory as well as other bodies. In particular, the CRD IV as amended by CRD V provides further reference to the principle of proportionality in supervisory practice.[37] Section 8b KWG-E establishes the new responsibility for supervision on a consolidated basis for groups within the meaning of Section 10a KWG-E with reference to third countries. Implementing changes to Art. 111 of the CRD IV Section 8c KWG-E allows the BaFin to transfer supervisory responsibility for supervision on a consolidated basis to another competent supervisory authority within the EEA and to release the parent company from supervision under the KWG in this respect. Implementing Art. 47 CRD IV as amended by CRD V Section 8g KWG-E contains new provisions on cooperation in the supervision of branches and credit institutions belonging to the same third-country headquartered group and Section 8h KWG-E contains additional reporting obligations in the context of cooperation with resolution authorities.

35 An exception applies if the Development Bank is the parent company of a group. In this case, it does fall within the scope of application of the SAG via Section 10a KWG.

36 See also Section 2 lit. f on p. 15 for the adaptation of Section 1 no. 3 proposed ZAG as amended by the RiG (ZAG-E).

37 Section 6b (4) sentence 3 KWG-E as well as adjustments to the methods of risk assessment for institutions with similar risk profiles

In addition, the RiG amends the German law provision on regulatory interventions as set out in Section 45 KWG-E, putting stronger focus on early stage measures.[38] In particular, Section 45 (1) KWG-E now clarifies that appropriate measures may be taken not only on the basis of an actual infringement but as early as an impeding infringement. Negative trends may give rise to violations of the minimum regulatory requirements in the long run, which may already trigger regulatory interventions. In turn, the forward looking test previously provided for in Section 45 (1) sentence 2 of the KWG (old version) no longer applies. Furthermore, the catalogue of eligible regulatory requirements for regulatory interventions has been further extended to include the combined capital buffer requirements under Section 10i KWG-E, the leverage ratio and the MREL requirements. In addition, the Section 45 KWG-E as amended contains further specifications with regard to the restructuring plan, clarifications as to regulatory interventions on a consolidated basis and the possibility of reducing or eliminating variable remuneration components, which must now be referenced explicitly in the contractual documentation.

Section 44c (1) sentence 3 KWG-E introduces a right of instruction whereby BaFin may issue instructions to companies, their board members, their employees and other companies involved in the settlement of transactions to secure customer funds, data and assets. This is intended to further combat the "black capital market"[39]. The aim is to better protect customer funds, data and assets and to make resolution powers more effective.[40] The BaFin should therefore be given corresponding powers already at the investigation stage, if facts justify the assumption of unauthorized transactions. In this context, the explanatory memorandum to the RiG cites examples of instructions to credit institutions that manage the company's accounts or to companies that provide the operator with the necessary technical infrastructure.

Overview of other changes to the KWG

In addition, the RiG contains various editorial or clarifying amendments to the KWG, which mainly concern questions of detail and are not directly based on CRD V, but on other legal sources, which are not discussed in detail here. The following overview of such "other amendments" is therefore not intended to be exhaustive:

- **Simplification of the treatment of management and supervisory mandates** by combining management and supervisory or administrative board mandates as a single mandate (Sections 25c (2) sentence 4, 25d (3) sentence 4 of the Introduction Act of the German Banking Act (KWG-E)): Whereas previously, performance and supervisory mandates were "counted" separately, in future mandates as managers on the one hand and mandates as members of the administrative and supervisory bodies will now count together as one management mandate. Section 25c (2) sentence 6 HS 2 KWG-E, 25d (3) sentence 6 HS. 2 KWG-E also clarifies that an additional mandate may only be accepted after approval by the competent supervisory authority.
- **Extension of the concept of material risk takers,** which now necessarily includes managers and members of the administrative or supervisory body (Section 1 (21) KWG-E): In addition to managers and members of the administrative or supervisory body, Section 25a KWG-E also defines as material risk takers, for CRR credit institutions and major credit institutions, employees of the downstream management level, employees with management responsibility for control functions or major business areas and, in principle, employees who receive remuneration of more than €500,000 as material risk takers.
- **Supplementing the notification obligations and order options in the context of the ownership control procedure**: Anyone who unintentionally acquires or increases a significant equity interest in an institution and exceeds thresholds must notify BaFin and the Bundesbank immediately upon becoming aware of this (Section 2c (1) sentence 7 KWG-E). BaFin may not only prohibit the acquisition but may also issue orders to prevent an illegal acquisition (Section 2c (1b) p. 3 KWG-E).

38 Draft bill of the RiG, p. 185 et seqq.

39 Draft bill of the RiG, p. 185 et seq.

40 Draft bill of the RiG, op. cit.

- **Extension of the notification obligations with regard to managing directors, administrative and supervisory bodies**, in that the result of the internal assessment of reliability as well as facts that have become known subsequently must now also be notified (Section 24 (1) no. 15 KWG-E): Currently, only the intention to appoint a managing director and the appointment of a managing director and a member of the administrative or supervisory body must be notified, in each case stating the facts necessary for assessing their reliability, expertise and sufficient time availability. In addition, financial holding companies are also subject to corresponding disclosure obligations (Section 24 (3a) nos. 1 and 4 KWG-E).
- **Introduction of the principle of gender-neutral remuneration** (Section 25d (5) sentence 2 KWG-E, Section 24 (1a) no. 7 KWG-E): obligation to provide information on any gender pay gap.
- **Possibility of interviews to assess the reliability, professional competence and sufficient time availability of persons** (Section 24 (3e) KWG-E): Whereas the procedure previously took place exclusively in writing, the law now expressly provides for the possibility of a personal interview.
- **Change of reference for loss reports:** Loss reports are required under the revised version for a loss of 5% of CET 1 capital instruments (Section 24 (1) No. 4 KWG-E): Previously, a loss report was linked to a loss of 25% of the eligible capital under Art. 72 CRR.
- **Removal of obsolete notification requirements** in line with the SAFE Report on the Evaluation of the Effects of European Financial Market Regulation: This report commissioned by the German Federal Ministry of Finance and prepared by the Research Centre "Sustainable Architecture for Finance in Europe" (**SAFE**) has examined the effects of European regulation on the banking sector since the financial crisis.[41]
- **Strengthening internal bank governance** by introducing mandatory risk, audit, nomination and remuneration control committees in the administrative or supervisory bodies of major institutions: The chairman of the risk committee should neither be the chairman of the administrative or supervisory body nor the chairman of other committees (Section 25d (7) and (8) KWG-E).
- **Increased transparency requirements for the auditor**: Upon request by BaFin or the Bundesbank, the auditor must now explain the nature and scope of its audit and report any facts that speak against the proper conduct of the institution's business. If this obligation is violated, BaFin can demand the appointment of another auditor (Sections 28, 29 KWG-E).
- **Definition of participants in a system within the meaning of the KWG:** Central counterparties, system operators, clearing members, settlement agents or clearing houses entitled to participate are considered to be such participants.

41 The SAFE report is available **here** (as of 13.05.2020).

Implementation of BRRD II into German Law

The RiG transposes the requirements of BRRD II into German law. The main focus of the BRRD II concerns the strengthening of the run-off capacity of financial holding groups in particular. Together with the CRR II, it also serves to incorporate the FSB's TLAC standards into the EU's MREL requirements.

In contrast to the implementation of the CRD V, the German legislator has in the draft bill of the RiG opted for a largely word-identical implementation of the BRRD II. As a result, the newly included provisions show a high degree of detail. This is not least due to the fact that technical specifications for the definition of MREL requirements previously contained in the delegated regulation on MREL[42] have been incorporated into the BRRD and are now implemented by the RiG. In addition, the legislator has in many places refrained from referring to the transposition acts of the respective European directives and instead referred only to the directives themselves. This is likely to make the practical application of the law more difficult in the future. The implementation of the BRRD II is mainly carried out in the SAG. The amendments relating to the retail investor are implemented in the German Securities Trading Act (**WpHG**).

Calibration of MREL, TLAC and TLOF

The BRRD II is part of the implementation of the TLAC standards in EU law and as such should be read in close connection with the CRR II. In addition, the EU legislator has taken the revision of the BRRD as an opportunity to transfer the existing provisions for the definition of the MREL requirements into a Level 1 act.

The TLAC8 or "total loss absorbing capacity" is the international standard for determining a minimum volume of loss-absorbing liabilities for globally systemically important institutions. In 2016, the EU Commission committed itself to implementing the TLAC standards in the EU. With the introductions of

42 Commission Delegated Regulation (EU) 2016/1450 of 23 May 2016 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the criteria relating to the methodology for setting the minimum requirement for own funds and eligible liabilities.

Art. 92a CRR and Art. 92b CRR and the amendment of the BRRD the staggered process for the gradual introduction of the TLAC standards integrated into the MREL system9 until 2024 has begun. MREL is the existing minimum requirements for own funds and eligible liabilities. In its new form it goes beyond the mere implementation of the TLAC standards of the FSB in regard to two essential points. Firstly, the requirements are not only applicable to G-SRIs, but also to a newly introduced category of so-called "top tier" banks (see below). Secondly, the introduction of an additional minimum amount for *Total Liabilities and Own Funds* (**TLOF**) creates further indirect capital requirements for institutions in Europe. The background to the introduction of the TLOF standard is that the recourse to funds of the Banking Union's Single Resolution Fund (**SRF**) requires a basic loss sharing of at least 8% by owners and creditors, which is to be ensured by the TLOF.

The centerpiece of this new system of the MREL requirements is set out in Section 49 SAG-E. Pursuant to Section 49 (1) SAG-E, institutions and group companies are obliged to meet the MREL requirements pursuant to Sections 49a-51 SAG-E upon request of the competent resolution authority[43]. The MREL requirements result from the sum of the loss absorption amount and the recapitalization amount, which are calibrated on the basis of **risk-weighted** assets (**RWA basis**) and on the basis of the leverage ratio exposure (**LRE basis**) and thus take into account risk-weighted and non-risk weighted elements. The criteria according to which the competent resolution authority determines the bank-specific MREL requirements can be found after the new regulation in Section 49c SAG-E.

Within the framework of the determination of the institution-specific MREL requirements, the new version differentiates between the settlement function (i.e. whether the entity is a Resolution Entity) on the one hand and the significance of the institution or company on the other. In this way, the TLAC standards are incorporated into the existing system as a minimum MREL and supplement the principle of the institution-specific determination of the MREL.

In simple terms, the highest of the following amounts applies to G-SRIs:

- 16% RWA (from 2022 18% RWA) (Art. 92a CRR);
- 6% LRE (from 2022 6.75% LRE) (Art 92a CRR);
- institution-specific fixed requirements (these are only ordered according to Section 49d SAG-E if the above fixed requirements are not sufficient to fulfil the conditions specified in Section 49c SAG-E); and
- 8% TLOF (from 2024).

The situation is similar for the new category of so-called "top-tier" banks. Top-tier banks are non-G-SRIs with total assets of more than €100 billion pursuant to SAG-E (Article 49c (5) SAG-E), as well as institutions in respect of which the competent resolution authority has made use of the so-called Fishing Option pursuant to SAG-E (Article 49c (6) SAG-E). Accordingly, the competent supervisory authority may order the application of the stricter requirements for a resolution entity (**Resolution Entity**) (*Abwicklungseinheit*) which are part of a resolution group (**Resolution Group**) (*Abwicklungsgruppe*) whose total value of assets is below the threshold of €100 billion if, in the opinion of the competent resolution authority, their default would constitute a systemic risk. In the first implementation phase of the BRRD II until 2022, the principle of free institution-specific calibration will still apply to such groups, and from 2022 a reduced fixed MREL minimum of 13.5% RWA or 5% LRE will apply if higher requirements are not imposed at the institution-specific level (Section 49c para (5) and (6) SAG-E) and, in addition, from 2024 the limit of 8% TLOF, which will be capped by 27% of the RWA.

In simple terms, this means that the highest of the following amounts applies to top tier banks:

- 13.5% RWA (Section 49c para. 5 and para. 6 SAGE);
- 5% LRE (Section 49c par. 5 and par. 6 SAG-E);
- institution-specific fixed requirements (these are only ordered according to Section 49d SAGE if the above fixed requirements are not sufficient to meet the conditions specified in Section 49c SAG-E); and
- 8% TLOF, capped at 27% RWA (from 2024).

43 Pursuant to Section 49a SAG-E, certain mortgage credit institutions are subject to the requirements of Section 49 ff. SAG-E.

Other institutions that are neither G-SRIs nor top-tier banks but are subject to recovery and resolution have to satisfy the institution-specific requirements and, starting from 2024, the TLOF of 8%, the application of the latter, however, being left in the discretion of the competent resolution authority. With respect to institutions that are neither of the above and subject to regular insolvency proceedings due to a lack of public interest (Section 46b (2) KWG-E), the competent resolution authority will determine the MREL requirements in the amount of the loss absorption amount (*Verlustabsorbungsbetrag*), in other words the regulatory minimum capital.

The subordination criterion obtained in the TLAC standards will continue to apply only to G-SRIs and top-tier banks. These must generally meet the MREL requirements with subordinated instruments. For other institutions and corporates, on the other hand, the competent resolution authority decides to what extent the MREL requirements must be met by subordinated instruments.

Terminologically, the term "bail-in eligible liabilities" replaces the previous term "eligible liabilities" (Section 2 (3) no. 10a SAG-E in conjunction with Section 91 (1) SAG-E). In addition, the term "*eligible liabilities*" is defined in Section 2 para. 3 no. 10b SAG-E, which in addition to the term "bail-in eligible *liabilities*" also includes *eligible liabilities items* pursuant to Art. 72a CRR.

MREL-related reporting and disclosure obligations and supervisory powers

Pursuant to Section 51 SAG-E, there are generally annual or semi-annual reporting obligations for own funds and other liabilities eligible for bail-in, including their composition, ranking and, where applicable, their relation to third countries. In addition, an annual disclosure will be made from January 1, 2024, onwards. In addition, the reporting requirements pursuant to Art. 99 para. 1 CRR read in conjunction with COREP and the corresponding implementing technical standards, as well as the reporting requirements pursuant to Art. 433a CRR apply to G-SRIs.

Failure to comply with the MREL requirements could result in a catalogue of supervisory measures (Section 53 SAG-E). These include:

- Order of early intervention measures (Section 36 SAG-E);
- Assessment of the ability of groups to be wound up (Section 58 SAG-E);
- Prohibition of certain distributions (Section 58a SAG-E);
- Ordering measures to reduce and remove obstacles to the settlement of institutions (Section 59 SAG-E) or groups (Section 60 SAG-E);
- Fines (Section 172 SAG-E);
- Temporary ban on activities (Section 172 SAG-E);
- *Naming and shaming* (Section 174 SAG-E);
- Order of additional capital requirements (Art. 104 CRD V); and
- Assessment of whether the prerequisites for liquidation are met (Section 62-64, 77 VI SAG-E).

Section 54 of SAG-E contains transitional provisions according to which, in order to meet the MREL requirements, the competent resolution authority initially provides for interim targets which the institutions or undertakings must have achieved by 2022 until the full requirements finally apply from 2024.

Bail-in changes to expand the resolution capacity of groups

One focus of BRRD II is the expansion of the resolution framework for groups. Following the TLAC standard of the FSB, both single and multiple points of entry resolution strategies will continue to be permitted. Under the former, only one company in the group – usually the parent company – is wound up, while the other group companies transfer their losses and recapitalization requirements to the company being put in resolution. With the multiple resolution strategy, several companies in a group are wound up.

In order to precisely define the enterprise to be resolved and the subsidiaries belonging to it, BRRD II introduces the terms "Resolution Entity" and "Resolution Group" .While the former refers to the entity to be wound up, the latter is broader and refers to the company to be wound up including its subsidiaries. The definitions will be implemented in Section 2 (3) no. 3a and no. 3b SAG-E. In practice, this means the competent resolution authority may divide the regulatory group of consolidated companies into several Resolution Groups. Each of these will be headed by its own Resolution Entity,

the subsidiaries of which can in turn be divided into those with critical functions and those with insolvency capacity.[44]

Whereas under current law the MREL requirements pursuant to Section 49 (5) SAG-E are to be maintained on an individual institution basis and possibly supplemented by an additional minimum amount on a consolidated basis, the new legal situation requires a differentiation according to Resolution Entities: Resolution Entities must now comply with the MREL requirements pursuant to Section 49e SAG-E on a consolidated basis at the level of the Resolution Group. Companies that are not themselves Resolution Entities must comply with the MREL requirements pursuant to Section 49f SAG-E on an individual basis. The competent resolution authority may provide for exceptions for central organizations and CRR credit institutions which are permanently assigned to such organizations.

Retail investor protection for bail-in liabilities

According to Article 44a BRRD, as amended by BRRD II, the acquisition of bonds with bail-in risk by retail investors should be restricted. In this respect, the BRRD II grants the member states an option. They can either prescribe a minimum denomination of at least €50,000 or an extended suitability test. The latter means that retail investors may invest a maximum of 10% of their portfolio in such bonds and must invest at least €10,000 for each investment.

Section 65b WpHG as amended by the proposed RiG (**WpHG-E**) provides for the first-mentioned alternative and its implementation.[45] For reasons of consistency, this provision should not only apply to subordinated MREL bonds, but also to other subordinated bonds with bail-in risk in order to strengthen investor protection.[46]

Changes with regard to the resolvability/resolution

The definition of eligibility for resolution in Sections 57 (2), 58 (2) SAG-E has remained unchanged. Accordingly, institutions or groups are in principle eligible for resolution if the competent resolution authority considers it possible to open and conduct insolvency proceedings on their respective assets or to wind up the institution or group by using winding-up instruments and powers. What is new, however, is that the competent resolution authority may prohibit certain distributions as set out in Section 58a SAG-E.

In addition, the RiG implements the settlement moratorium (Section 66a SAG; Art 33a BRRD) (**Settlement Moratorium**). This moratorium is separate from the moratorium set out in Section 46 (1) sentence 1 no. 4 KWG. The Settlement Moratorium suspends payment or delivery obligations prior to the resolution measure. It may be ordered by the competent resolution authority for a period of up to two days in order to prepare for possible resolution. Prerequisites for ordering a Settlement Moratorium include but are not limited to a threat to the continued existence of the company. In this context, the draft bill in Section 66a (4) SAG-E exempts compensable deposits from the suspension of payment and delivery obligations, a possibility provided for in the directive.

Under the new version, the expert auditor within the meaning of Section 70 SAG-E is ultimately no longer appointed by the court but by the competent resolution authority, which is bound by the independence criteria set out in Article 37 et seq. of the delegated Regulation (EU) 2016/1075 when making its selection.[47]

44 Accordingly, there will be changes to the group settlement plans drawn up by the authorities. Pursuant to Section 46 (2) sentence 4 SAG-E, these plans determine the Resolution Entities and Resolution Groups for each group and follow the revised requirements of Section 46 para. 3 SAG-E in terms of content.

45 Draft bill of the RiG, p. 146, 209.

46 Draft bill of the RiG, p. 209.

47 Commission Delegated Regulation (EU) 2016/1075 of 23 March 2016 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the content of recovery plans, resolution plans and group resolution plans, the minimum criteria that the competent authority is to assess as regards recovery plans and group recovery plans, the conditions for group financial support, the requirements for independent valuers, the contractual recognition of write-down and conversion powers, the procedures and contents of notification requirements and of notice of suspension and the operational functioning of the resolution college Abl. (EU) L 184/1.

Other changes introduced by the RiG

In addition to the implementation of the EU Banking Package (CRD V and BRRD II), the RiG includes further supervisory aspects in the factual context of the above-mentioned directives, which are dealt with in the following overview. This concerns changes in Germany's Insurance Supervision Act (**VAG**), the EinSiG, the RStruktFG, the Stabilization Fund Act (**StFG**), the German Capital Investment Code (**KAGB**) transposing AIFMD and Germany's Payment Services Supervision Act (**ZAG**)[48] transposing the PSD II.

Changes to the German Insurance Supervision Act (VAG)

The core changes in German insurance supervisory law relate to the security funds (*Sicherungsfonds*). In addition, the clarifications on marginal aspects of the ownership control procedure and on supervisory powers are particularly noteworthy.

The German legislator has set up two security funds[49] for the area of personal insurance (life and health insurance), which aims to protect the insured in the event that an insolvency of an insurance company could not be prevented despite all state supervisory measures to a certain extent set out in the Section 221 et seqq. VAG. The innovations with regard to the security fund initially concern the end of compulsory membership. In this respect, Section 221 (1) Sentence 2 VAG as amended by the proposed RiG (**VAG-E**) now clarifies that membership does not end with the revocation of the license to conduct business, but only when all own insurance contracts from the security fund have been fully resolved. At the same time, the security fund is only liable for liabilities which arose before the expiry of the license. These principles apply to pension funds only insofar as they are voluntarily members of a security fund.[50] No regulation was necessary for pension equalization funds, since their (compulsory) membership is established by law[51] and can therefore only be terminated by law.

Furthermore, Section 222 VAG on the maintenance of insurance contracts was revised. In this respect, Section 222 (2) VAG-E first of all clarifies that the transfer of portfolios of direct insurance contracts is in addition to the reduction of benefits according to Section 314 (2) VAG. Further clarification is provided by the now explicit order and concretization of the double separation requirement in Section 222 (4) VAG-E. This states that the security fund must manage each insurance portfolio and the insurance contracts assumed separately from its remaining assets. According to Section 228 (5) VAG-E, the security fund itself will in future have the possibility of entering into passive reinsurance contracts of the companies whose insurance portfolio was transferred to it according to Section 222 Paragraph 2 VAG. This is intended to strengthen the restructuring possibilities of the security fund and thus serve to protect the insured persons.

48 The amendments to the Financial Services Supervision Act (**FinDAG**) and the Payment Accounts Act (**ZKG**) as well as the Act on the Reorganization of Credit Institutions (**KredReorgG**) are of an editorial nature only and will therefore not be discussed further below.

49 protector for life and health insurance, medicator for health insurance.

50 Section 221 (2) Sentence 3 VAG-E

51 Section 3(4) of the Act on Pension Equalization Funds (**VersAusglKAssG**).

Further changes to German insurance supervisory law relate to the alignment of the VAG with the KWG: For this purpose, a balance is created between Section 303(1) sentence 1 VAG-E and Section 36(2) KWG. Managing directors can thus also be warned for their own violations under the VAG. In addition, Section 303, (2) VAG-E clarifies that a subjective element is only required for the prohibition of performance of the activity. Pursuant to Section 303 (4) VAG-E, the possibility is further created to prohibit managers from exercising their activity if they have previously been warned accordingly. The principle of overall responsibility applies here. By explicitly excluding the application of Section 199 (3) VAG-E in Section 304 Paragraph 6 Sentence 2 VAG E-, the legislature has now also answered the controversial question of the expiry of membership in the event of revocation of permission in the negative. Finally, the scope of action of the competent supervisory authority is expanded by extending the exclusion of the suspensive effect of objection and action for rescission in Section 310 (2) VAG to other measures of the competent supervisory authority in parallel with the KWG.

Also in addition to the amendment of the KWG, adjustments are being made to the owner control procedure under insurance law, which are in line with the above comments (see p. 8).

Changes to the German Deposit Guarantee Act (EinSiG)

The changes in the content of the EinSiG are a consequence of the fact that (multilateral) Development Banks are no longer considered CRR credit institutions within the meaning of the German Banking Act after the implementation of CRD V. The RiG aims to change the prior two-fold system of a statutory deposit guarantee schemes for private banks (**Guarantee Scheme for Private Banks**) *vis-a.vis a* guarantee scheme for public sector banks (**Guarantee Scheme for Public Banks**) in favor of a single statutory deposit guarantee scheme.[52] The reason for this is that with the amendment as set out in CRD V, (multilateral) Development Banks will fall outside the deposit guarantee scheme and as a result only five of the previously 17 institutions will remain in the Guarantee Scheme for Public Banks. In order to discontinuing the Guarantee Scheme for Public Banks, the RiG sets out the legal framework to the withdrawal public authority (*Beleihung*) in the Section 25a EinSiG as amended by the proposed RiG (**EinSiG-E**). In addition, Section 145 EinSiG-E now provides for the possibility of requiring special payments for the settlement of liability claims. Sections 27 et seqq. EinSiG will be applicable for the purposes of a resolution under the SAG and thus extends the possibilities of levying contributions.

Changes to the German Restructuring Fund Law (RStruktFG)

The changes in RStruktFG are mainly of an editorial nature. They affect the regulations on the preservation of the resources of the Special Fund. In this respect, it is worth mentioning Article 12 (4) sentence 1 RStruktFG-E, which, in view of the continuing phase of low interest rates, clarifies that, in the words of the Act, in addition to "the greatest possible security and sufficient liquidity", the "capital preservation of the invested funds" should now also be the aim when selecting investments.

Changes to the German Stabilization Fund Act (StFG)

Section 8a (5) StFG as amended by the proposed RiG (**StFG-E**) exempts deconsolidated resolution entities that no longer engage in banking business or provide financial services due to the composition of their portfolio and the progress made in the deconsolidation process from the application of the KWG in whole or in part to the extent that the application of the KWG is no longer necessary in the opinion of BaFin and in addition, the credit authorizations of Section 9 StFG-E are adjusted. The aim is to further promote the partial refinancing of deconsolidated environments at federal refinancing conditions on the basis of Section 9 (5) StFG.[53] The corresponding loan authorization is therefore increased by €30 billion to a total of €60 billion. At the same time, the credit authorization in Section 9(1) StFG-E is reduced by the same amount to €30 billion.

52 Draft bill of the RiG, p. 143 also on the following.

53 Draft bill of the RiG, p. 221 et seq.

Changes to the German Investment Code (KAGB)

The core of the amendments to the KAGB is the strengthening of supervision through the introduction of a right to issue instructions to safeguard client funds, data and assets in Section 16 (1) KAGB-E in parallel to Section 44c KWG-E and the possibility of informing the public in the event of suspicion of illegal investment business in Section 16 (8) KAGB-E.

Changes to the German Payment Services Supervision Act (ZAG)

In the context of the amendments to the ZAG, Section 1 no. 3 ZAG-E first clarifies that all Development Banks fall within the scope of the ZAG. In addition, further amendments clarify account information services and hybrid institutions, i.e. companies that are institutions within the meaning of the ZAG and at the same time hold a license under Section 32 (1) KWG. For example, the amendment for account information services in Section 2 (6) ZAG-E clarifies that they are not only exempt from capital adequacy requirements but also from solvency supervision. In addition, the obligation to notify BaFin in the event of insolvency also applies to them, as only BaFin can file an application to open insolvency proceedings. For hybrid institutions, Section 2 (7) ZAG-E clarifies that the ZAG does not apply to the extent that the KWG contains provisions with the same content. Finally, the ZAG also introduces a corresponding right of instruction to secure customer funds, data and assets in Section 44c KWG-E in Section 8 (1) sentence 3 ZAG-E.

Changes to the German Investor Compensation Act

As part of the amendment to the German Investor Compensation Act, terminology will be adapted and (multilateral) Development Banks will be excluded from the scope of that law.

Conclusion and outlook

The implementation of the EU's banking package in Germany brings with it a variety of legal innovations for market participants and a need to perhaps revisit policies and procedures, systems and controls along with internal models. In addition to changes in the form of the new capital requirements, including revision to parts of the leverage ratio and the leverage ratio buffer, the core elements of the changes in banking supervisory law as applicable to banks and financial institutions operating in or through Germany are the newly created authorization requirement for financial holding companies and the obligation for TCEs above a certain size to introduce an EU IHC. These main aspects alone show the enormous scope of the draft bill of the RiG which, while introducing EU law, also carry some aspects that are specific to Germany.

The draft bill of the RiG also provides clarity on the regulation and treatment of (multilateral) Development Banks, which are now excluded from the scope of EU banking regulation due to the special features of their business model. Due to the size of some of these Development Banks in Germany it makes sense to subject these institutions to the stricter framework designed for CRR credit institutions under national banking regulation. This is all the more important as such (multilateral) Development Banks have an important role to play in supporting and stabilizing the economy in the context of the COVID-19 pandemic[54] and it is to be expected that their importance in the EU's banking system will thus increase further.

Among the primary goals of the resolution-specific amendments is the operationalization of the institution-specific MREL requirements. In view of the strong EU legal determinants, we do not expect significant changes to the Draft RiG in the legislative process. It remains to be seen to what extent the ECB, for its part, will provide interpretative guidance and even opinions that may have to be taken into account during or after the legislative process.

Institutions should already take the publication of this draft bill of the RiG as an opportunity to further advance the implementation compliance with these new provisions. Numerous implementation projects of firms can now enter the next phase due to the detailed specifications of the RiG. On the refinancing side in particular, many tasks remain for affected firms to build up the additional own funds and eligible liabilities needed to meet the MREL requirements within the not too generous transitional periods.

Our Eurozone Hub continues to monitor developments at national and EU level, as well as communications from other key European regulators. If you would like to receive further analysis on other topics addressed here, please feel free to contact one of our contacts. If you would like to receive further analyses on the above-mentioned topics or on the implementation of the EU banking package, please contact one of our Eurozone Hub contacts.

54 See page 1 of the draft bill of the RiG.

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