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"BRUBEG" in context

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I. Introduction: Banking supervision between stability and relief

Since the financial crisis of 2007/2008, banking supervision has been characterised by a steady increase in material requirements, procedural obligations and reporting regimes. This development has significantly increased the stability of the financial system, but at the same time has created a complex, administratively burdensome and highly Europeanised supervisory regime. Against this backdrop, the political and regulatory discourse has shifted noticeably in recent years: the guiding principle has become not deregulation, but relief through proportionality, simplification and more efficient enforcement.[1]

With the Banking Directive Implementation and Bureaucracy Relief Act (Bankenrichtlinienumsetzungs - und Bürokratieentlastungsgesetz, BRUBEG)[2], the German legislature is taking up this line of discourse. The Act primarily serves to implement CRD VI[3] and at the same time explicitly pursues the goal of limiting the administrative burden on credit institutions and supervisory authorities.

This article argues that the BRUBEG can only deliver this relief to a limited extent. It functions less as a genuine deregulatory instrument and more as an example of how a "promise of relief" in a highly Europeanised supervisory regime can turn into new, sometimes difficult-to-recognise, control and burden mechanisms. The regulation shifts obligations – from quantitative Pillar 1 requirements to governance, reporting and planning instruments – without their proportional implementation being fully secured legally or institutionally.

This tension is particularly evident in three areas of regulation: the reorganisation of access for third-country institutions via branches (Third Country Branches – TCBs), the expansion of governance and enforcement powers, and the integration of ESG risks into the risk management of institutions. Regarding these areas, this article examines whether and to what extent the BRUBEG makes an independent contribution to proportionality or whether it perpetuates existing problems of complexity and coherence in European banking supervisory law.

1. Starting point for banking supervision

The current banking supervision regime is the result of a far-reaching reform process following the 2007/2008 financial crisis.[4] The post-crisis reforms were primarily aimed at increasing resilience and earlier risk mitigation.[5] This resulted in a supervisory regime with a considerable density of regulations, the complexity of which increasingly raised questions of administrative burden, supervisory efficiency and proportionality.[6]

Against this backdrop, the fundamental question arises as to whether the post-crisis regulatory framework is still proportionate to the heterogeneous risk profiles of institutions or whether it tends towards structural overregulation. This discussion is inextricably linked to the multi-level architecture of European banking supervision, in which the ECB, EBA and national authorities follow different control logics, thereby further increasing the requirements for coherent regulation.

In this context, BRUBEG should be understood less as an isolated reform measure and more as an attempt to fit EU-law-based requirements into an already highly integrated supervisory system while at the same time providing relief. Whether this dual objective can be achieved or whether it will merely lead to a transformation of existing control mechanisms is the starting point for the following analysis.[7]

2. The BRUBEG in its political approach

As the implementing law[8] for CRD VI, BRUBEG is structurally shaped by EU law requirements and embedded in a largely harmonised European regulatory framework.[9] Since the directive only sets

minimum standards[10] in key areas, Member States still have some leeway. However, regulatory control is increasingly shifting to the level of implementation techniques. Where material deviations are hardly possible, systematisation, interfaces and administrative procedures determine the level of burden and supervisory efficiency.

Against this background, the explicitly sought-after "1-to-1 implementation" appears less as an expression of restraint on the part of the supervisory law legislator and more as a conscious decision in favour of integration and coherence objectives within the European supervisory structure.[11]

II. Regulatory background in the EEA – focus on "proportionality"

The content, scope and structure of the BRUBEG are thus significantly influenced by the European regulatory framework, which structurally defines the scope for national action and at the same time forms the reference point for proportionality and relief considerations. With the establishment of the Single Supervisory Mechanism and the ongoing consolidation of CRR[12] and CRD, banking supervision has evolved from coordinated cooperation to an integrated control system, which has changed the nature of regulatory control. Implementing legislation such as the BRUBEG must therefore be measured against whether it coherently fits in with European requirements, limits complexity and at the same time enables enforcement that remains administratively manageable.

Against this backdrop, the proportionality discourse should not be understood as a political relief programme, but rather as an attempt to ensure the functionality of a highly consolidated supervisory system. However, it remains striking that the legal reference point of the discourse is undefined. For example, the EBA does not understand proportionality as an autonomous principle of proportionality under EU law that could be derived from Article 5 (4) TEU or the case-law of the Court of Justice of the European Union (CJEU). Rather, it understands proportionality as an interpretation and application methodology established in secondary law, which requires differentiated, risk-based implementation within the regulatory concept harmonised under EU law, without legitimising national deviations from the system.[13] In a clear reference to the Gauweiler ruling of the ECJ[14], the EBA thus understands proportionality not as an autonomous principle of weighing up interests, but as a method of application established in the regulatory system of EU law, which operates within a harmonised framework. Proportionality thus functions less as a justiciable standard and more as a principle of governance.

III. The BRUBEG in the multi-level system

With the BRUBEG, the legislator is pursuing a multidimensional objective. In addition to the formal implementation of CRD VI and further implementation of the Basel standards[15], the law aims to take greater account of proportionality requirements while limiting existing regulatory burdens.[16] This aspiration is particularly evident in the greater integration of ESG risks[17] and in the reorganisation of the supervision of TCBs.

At the same time, the law is characterised by a tension: the desired harmonisation of nationally divergent supervisory regimes, the safeguarding of competitive framework conditions and the political commitment to a low-bureaucracy regulatory model cannot be easily reconciled.

The programmatic reference to proportionality and relief refers not only to a reduction in regulatory density, but also to an attempt to rebalance control effects. Whether this will result in lower burdens or merely a shift in regulatory requirements is a key question in the following analysis.

IV. Key areas of regulatory oversight

The most extensive adjustments made by BRUBEG concern the German Banking Act (Kreditwesengesetz, KWG), which is being modified in specific areas and supplemented by numerous new regulatory complexes as part of BRUBEG. Among other things, the new regime for TCBs (Sections 53c ff. KWG) stands out as it is not only a technical implementation of EU law requirements but also reorganises the structure of market access to the EEA.

The other changes range from governance and reporting requirements to extended supervisory powers and are primarily intended to implement CRD VI. Taken as a whole, these measures can be understood more as an expression of a changed regulatory control logic and less as additive individual adjustments: Isolated material tightening is steadily giving way to more nuanced organisational, informational and intervention measures.

The following regulatory areas are therefore considered not only in terms of their respective normative content, but also and especially in terms of their systemic impact.

1. Relief for CRR credit institutions in the management of crypto-asset registers

Section 32 (1f) KWG makes it easier for CRR credit institutions to maintain crypto securities registers for investment shares by eliminating the additional authorisation requirement that was previously necessary. A parallel regulation applies to EEA credit institutions with a German branch. The provision is an example of selective procedural relief without significantly changing the structural basis of supervision.[18]

2. Changes for EU parent companies, Section 2g KWG

Art. 1 BRUBEG significantly expands the information and data exchange obligations for CRR credit and securities institutions that are part of a third-country group. In future, comprehensive data must be provided to determine group-wide assets, accompanied by regular reports to the competent supervisory authorities and a forward-looking assessment of whether thresholds could be reached in future.

This expansion points to a further shift in supervisory control: supervision is no longer based solely on existing structures, but increasingly on expected developments.[19] The regulation thus strengthens a data-based, preventive supervisory approach that is intended to make group-wide risks visible at an earlier stage, but at the same time will increase the administrative burden on the institutions concerned.

3. Extended powers of intervention and enforcement for supervisory authorities

The BRUBEG significantly expands the intervention and enforcement powers of BaFin and the Bundesbank, thereby strengthening the operational capacity of the supervisory authority. In future, supervisory authorities will be able to enter business premises under expanded statutory conditions, carry out judicially authorised searches and secure and seize evidence.[20] The measures also extend to holders of significant shareholdings and thus go well beyond the previous limited obligation of holders and prospective buyers to cooperate.

This expansion reflects an increasing emphasis on enforcement in banking supervision. The reform reinforces the supervisory authorities' already apparent focus on enforcement.[21]

This development is accompanied by expanded options for action under Section 45 KWG and the introduction of periodic penalty payments under Section 50 KWG, which for the first time can also

be imposed on responsible natural persons. Additional grounds for fines reinforce this trend. This represents a visible shift in the supervisory toolkit towards more effective enforcement of regulatory requirements – a finding that also raises the question of how this intensification can be reconciled with the political model of proportional and burdensome regulation.

4. Extended governance requirements

The BRUBEG also tightens the regulatory requirements for the governance of credit institutions and expands the regulations on the professional suitability and reliability of managers and holders of key functions. While key requirements were already enshrined in existing law, the new regulations are primarily aimed at identifying deficiencies in suitability at an earlier stage and expanding the supervisory authority's powers of notification and intervention.[22]

This development can be understood as increasing internalisation of supervisory control. The ability to prohibit appointments, enforce dismissals and extend information obligations increases the direct reach of supervisory authorities into governance processes.

This is accompanied by a strengthened position for internal control functions, whose independence is now institutionally guaranteed. At the same time, Section 25e KWG establishes a separate supervisory regime for holders of key functions, thereby expanding the circle of personally responsible functionaries.[23]

Overall, this results in a development in which governance structures are increasingly becoming the subject of preventive supervision – an approach that can improve the effectiveness of risk management, but at the same time will further increase regulatory consolidation within institutions.

5. Greater integration of ESG risks

Section 26c KWG explicitly specifies for the first time the integration of ESG risks into banking supervisory risk management and incorporates them into the existing organisational obligations under Section 25a KWG. While the provision largely mirrors the EU requirements and provides for selective relief for less complex institutions, it also expands the requirements for governance, remuneration systems and organisational resources of institutions. ESG risks are thus brought closer to the previously relevant financial and non-financial risks in regulatory terms.

The obligation to draw up a long-term ESG risk plan in accordance with Section 26d KWG is particularly far-reaching. The required multi-year perspective – at least ten years – signals a significant extension of the regulatory time horizon: supervision is no longer focused exclusively on current risk situations, but increasingly on structural transformation risks.

This points to a progressive shift towards preventive banking supervision. Institutions are required to model potential risk developments at a very early stage, anchor them strategically and integrate them with other sustainability regimes. This can strengthen resilience to shocks, but it also increases planning, documentation and reporting requirements, thereby exacerbating the tension between regulatory control intensity and the political goal of reducing administrative burdens.

6. Acquisition of a significant shareholding

Section 2h KWG implements Article 27a CRD VI on the control of acquisitions of significant holdings. According to Section 1 (9b) KWG, a significant holding is one that reaches 15% or more of the acquiring institution's eligible own funds. The provision is based on Section 2c KWG but does not include a prohibition on enforcement.[24] Section 2c (5) KWG and Section 2h (5) KWG clarify that both provisions continue to apply in parallel; the longer review period applies in each case.

According to Section 24 (1f) Sextiffffffce 4 KWG, disposals of significant holdings must be notified in advance. It remains unclear to what extent the new notification requirement interacts with the large exposure regulations and potentially leads to double supervision.

7. Mergers and demergers

With Section 2i KWG, BRUBEG establishes for the first time an explicit supervisory ex ante control for mergers and divisions of CRR credit institutions and financial holding companies. Planned structural measures must be notified at an early stage and are subject to regulatory assessment before they are implemented. However, according to Section 2i (1) sentences 5-6 KWG, the scope of the information to be disclosed should be appropriate to the significance of the structural measure.

The provision thus extends supervisory access to the institutions' strategic transformation decisions. Whereas structural changes were previously primarily governed by company law, they are now more closely embedded in preventive banking supervision. The substantive review is clearly based on the owner control procedure and underlines the increasing tendency to address potential stability risks at the supervisory level in advance of organisational restructuring.

The regulation thus fits into a supervisory model that no longer merely reacts to ongoing business activities, but also increasingly focuses on institutional reorganisation processes.

8. Harmonisation of cross-border access to the EEA and the rules for branches of credit institutions from third countries

The harmonisation of the supervision of TCBs occupies a prominent position within the BRUBEG. [25] With the CRD VI requirements for dealing with TCBs, market access for institutions from third countries is being regulated more systematically across the EU for the first time and embedded in the European supervisory framework.

The implementation in Sections 53c et seq. KWG is therefore less a technical addition than a thorough supervisory reorganisation of third-country access. The aim is to reduce existing national divergences, limit regulatory arbitrage and enable more consistent supervision of cross-border banking activities. Given their scope and structural significance, these provisions are a key focus of BRUBEG.

a. The harmonisation objectives

The harmonisation of cross-border access in the EEA is a central component of CRD VI. Article 21c (1) establishes a general prohibition on providing core banking activities from third countries directly into the EEA from 2027 onwards. Institutions from third countries are thus structurally referred to institutionalised forms of market entry.

This regulation marks a transition from the previously highly fragmented access system to a more controlled market entry. [26]

There are exceptions, such as for interbank transactions, intragroup transactions and reverse solicitation constellations. However, if these do not apply, third-country institutions are generally left with only two options: setting up a TCB or – at greater expense – establishing a credit institution authorised in the EEA. [27] The reform thus effectively shifts the cost and organisational structure of market access while at the same time strengthening the supervisory integration of international banking activities into the European regulatory framework.

b. Harmonisation of the rules for TCBs

The harmonisation of supervision of TCBs aims to overcome the fragmentation of ongoing supervision in the EEA that has been evident to date.[28] While branches from Member States have long been integrated into an integrated supervisory system via the European passport, TCBs have

so far been subject exclusively to the respective national supervision of the host country. The resulting inconsistencies opened scope for regulatory arbitrage and encouraged competition between supervisory regimes. [29]

CRD VI and BRUBEG respond to this with a double harmonisation: access via TCBs is positively harmonised across the EU, while cross-border activities are negatively harmonised by a general prohibition. In regulatory terms, this combination is less like a mere alignment of technical standards and more like a step towards a more integrated European market order in which national supervisory differences become less significant.

Brexit was one of the main drivers behind this realignment.[30] With the United Kingdom becoming a third country, the risk of structurally underregulated market presence of international banking groups came more sharply into focus for European supervisory authorities. [31]

c. Future purpose of Section 53 KWG

While implementing CRD VI through the BRUBEG, the wording of Section 53 KWG remained largely unchanged.[32] At first glance, this finding could be read as an indication of regulatory continuity. Such an interpretation, however, would be incompatible with the objective of the legislative amendment. The BRUBEG does not merely adjust individual elements of the law; rather, it recalibrates the overall structure governing third country access.[33] Within a supervisory framework heavily shaped by EU law, the scope of individual provisions is determined less by their historical national understanding and more by their function within the EU-law starting point of the reform, in this case CRD VI.

Against this backdrop, the new reading of Section 53 KWG can be described as a “silent transformation”. It represents a shift in the meaning of a provision. Its wording formally remains unchanged, resulting from a structural realignment of its immediate statutory context. This transformation occurs without an explicit legislative instruction and without recognition in the explanatory memorandum; it nevertheless follows from the EU law driven systematics of the new TCB regime. From a doctrinal and methodological perspective, this is not a case of judicial law making, but of systematic and teleological interpretation within the possible meaning of the wording while observing the principle of EU law conform interpretation - a conclusion also suggested by the wording of Section 53c (1) KWG.[34]

For Section 53 KWG, this means that its former function as the German general norm for TCBs ceases to apply.[35] With the introduction of an autonomous and EU wide harmonised regime for CRD-TCBs (Sections 53c et seq. KWG), market access for core banking activities conducted via TCBs is now governed exclusively and conclusively by the BRUBEG. All other activities - that is, non core banking activities or financial services within the meaning of Section 1 (1) sentence 2 or Section 1a (1) sentence 2 KWG - carried out or provided by TCBs in Germany do not fall under Sections 53c et seq. KWG and therefore continue to fall within the scope of Section 53 KWG. Exceptions apply where Section 53 KWG is itself displaced by specific statutory TCB regimes for certain business types, such as Section 42 of the Payment Services Supervision Act (ZAG) for payment services.[36]

This results in a shift in the function of Section 53 KWG towards a general catch all norm for all non core banking activities and financial services. While the content of Section 53 KWG remains essentially unchanged - apart from editorial adjustments - it recedes in systematic terms, and with regard to core banking activities, behind the new special provision of Section 53c KWG. This leads to the problematic outcome that the partially stricter requirements of Section 53 KWG, for example concerning capital requirements, continue to apply to non core banking activities. This “silent transformation” of Section 53 KWG illustrates the EU law driven reorganisation of third country access and simultaneously ensures that its interpretation remains aligned with the harmonisation objectives of CRD VI.

It is, however, doubtful whether this result corresponds to the legislative intention. In practice, the regulation would lead to the unusual consequence that core banking activities are subject to lower capital requirements than non core banking activities — an issue not addressed in the explanatory memorandum. A different, intention conforming outcome cannot be achieved through inherent

judicial law making methods such as teleological reduction or analogy. Accordingly, a renewed legislative clarification may at least need to be considered.

d. Regulatory content for CRD-TCBs

The future regulations for CRD-TCBs break away from the institutional fiction that has prevailed to date and establish an independent supervisory regime for TCBs. This shifts the regulatory logic: formal equality is replaced by a more risk-based management of international market presence.

This is reflected in the introduction of two risk classes, which are subject to different levels of risk management and reporting requirements. At the same time, the assessment of home jurisdictions will become more Europeanised, with corresponding qualifications being made at EBA level in future and national preferences taking a back seat.

Finally, the possibility for supervisory authorities to require the conversion of a TCB into a credit institution authorised in the host country under certain conditions is particularly far-reaching. This conversion instrument effectively acts as a subsidiarisation mechanism: the growth of TCBs can thus be transformed into a more capitalised and directly supervised market presence.

aa) Classification into risk classes

In future, CRD-TCBs will be classified into regulatory risk classes in accordance with Section 53ca KWG, to which graduated capital and liquidity requirements are linked. The decisive factors here are the size of the assets recorded or initiated in the host country and the type of business conducted.

Regulatory, this classification establishes scaled supervision: as market presence grows, so do the regulatory requirements. The previously rather binary distinction is replaced by a graduated control model that aligns the intensity of supervision more closely with the potential systemic relevance of the TCB.

The thresholds not only differentiate between risks but also influence behaviour. They can provide incentives to keep growth below regulatory tipping points or – if these are exceeded – to accept a more institutionalised market presence.

bb) Qualified TCBs

A TCB is considered qualified under the conditions of Section 53cb KWG if the country of origin has a supervisory regime comparable to the CRR, the competent authorities are subject to equivalent confidentiality obligations and there are no increased money laundering risks.

From a regulatory point of view, this qualification establishes a differentiated trust model: supervisory relief is granted where third-country supervision is considered functionally equivalent. The classification thus functions as an instrument of geopolitical risk differentiation and helps to align regulatory dependencies more closely with the quality of external supervisory systems. An equivalence approach can be seen here.[37]

The fact that the qualification is a prerequisite for the more favourable risk class 2 and can even lead to relief within the stricter category underlines its steering function. The regulation rewards supervisory convergence and at the same time increases the pressure on third countries to align their regimes with European standards.

cc) Conversion requirement

Under Section 53ci KWG, the national supervisory authority may order the establishment of a subsidiary authorised in the host country instead of a TCB. This subsidiarisation instrument is particularly effective in the case of large or high-risk market players, for example if a TCB is classified as systemically important or holds significant assets in Germany. In addition, conversion may be required in any case if less severe measures are not sufficient to address significant supervisory concerns.

From a regulatory perspective, this power gives the supervisory authority a far-reaching structural control instrument. Market access is no longer simply permitted or prohibited but is linked to an

institutional presence that enables more intensive supervision. Subsidiarisation thus effectively acts as a mechanism for enforcing the supervisory visibility of international banking activities.

The discussion focuses on the threshold of €10 billion, which is considered to have a strong incentive effect. Like previous size indicators, it shifts strategic growth decisions and may cause institutions to either remain below regulatory tipping points or accept a more capitalised market structure.

dd) Capital and liquidity
The capital and liquidity requirements under Sections 53ce and 53cf KWG oblige TCBs to meet their own capital and liquidity requirements but fall short of the institution-specific treatment practised in Germany to date. Whereas TCBs were previously regulated largely as independent credit institutions, the new regime places greater emphasis on risk-based differentiation and trust in the supervision of the home country.

This readjustment increases the proportionality of the supervisory framework, but at the same time raises the question of whether it could be accompanied by a lower local loss absorption capacity. In regulatory terms, this shifts the balance between market integration and stability-oriented capital commitment.

The minimum requirements therefore not only limit risk but also steer structure: local capital and liquidity requirements increase the supervisory transparency of international banking activities and can significantly influence strategic decisions on the scope and organisation of market presence.

ee) Reporting requirements
Reports pursuant to Section 53ck KWG must be submitted at least every six months by CRD-TCBs in risk group 1 and at least once a year by those in risk group 2. They include financial information, on recorded and initiated assets, compliance with KWG requirements and conditions, ad hoc information on deposit guarantee schemes, and information on parent companies (companies based in third countries that have established CRD-TCBs in Germany, as well as all intermediate parent companies). In addition, there is an extensive catalogue of reporting requirements, regulated in Sections 24 (1)(1a) and (1d) KWG.

The reporting requirements under Section 53ck KWG thus oblige TCBs to disclose their financial situation and their organisational integration into international group structures on a regular and structured basis. The scope and frequency of reporting increase with the respective risk class.

From a regulatory perspective, this consolidation of reporting requirements strengthens the information base for supervision and reduces structural transparency deficits vis-à-vis third-country banks. The regulation thus fits into a supervisory model that not only institutionally restricts international market activities but also records them on a data-driven basis.

Extended reporting obligations accompany this approach and help to identify potentially risk-relevant developments at an early stage.

ff) Risk management
Regarding risk management, Section 53cg KWG continues to require TCBs to have an appropriate and effective control system, but at the same time partially detaches this from what were previously central elements of the banking supervisory risk architecture. In particular, the obligation to carry out comprehensive risk-bearing capacity analyses, including corresponding stress tests, no longer applies.

From a regulatory perspective, this points to a functional simplification of local risk management. TCBs are no longer integrated in the same way into the model-based overall bank control paradigm but are instead secured more strongly through structural requirements and the stability of the parent institution.

The supervisory authority is thus shifting its focus from a primarily forward-looking risk projection to a more balance sheet-oriented approach. This increases the proportionality of the regime, but at

the same time raises the question of whether local risk developments can be captured less granularly as a result.

e. Reverse solicitation

It is striking that the question of reverse solicitation[38] is not expressly addressed in BRUBEG. Reverse solicitation arises where a client approaches a third-country institution exclusively on the client's own initiative, and the institution has not undertaken any active steps to obtain access to the market.

From a German perspective, this legislative restraint initially appears coherent, as existing supervisory practice[39] concerning reverse solicitation already corresponds in large measure with the requirements of EU law. That said, significant latitude remains in its practical application.

The interpretation of the concept is therefore of particular importance from a supervisory standpoint. An unduly expansive construction triggers risks eroding the harmonised market-access framework and creating fresh avenues for regulatory arbitrage. It is thus arguable that consistent implementation across the Union — for example, through guidance issued by the European Banking Authority — will be necessary to safeguard the long-term integrity of the access regime.

However, any interpretation of reverse solicitation under Article 21c (1) CRD VI is confined to core banking activities, i.e. credit business and deposit-taking business, since the provision expressly limits the scope of the exception to such activities. Reverse solicitation in relation to other categories of banking or financial services accordingly falls to be assessed under the sector-specific regime applicable to the service concerned, such as Article 42 MiFID II. In the absence of a sector-specific framework, the matter remains governed by the relevant national approach to reverse solicitation.

f. Exemptions under Section 2 (5) KWG

The new regime also represents a fundamental change for third-country institutions that were previously exempt from the requirements of the KWG. In future, it will no longer be possible to be exempted from the authorisation requirement for core banking in particular; existing exemptions must be reviewed in accordance with Section 2 (5) KWG and revoked if necessary.

In supervisory terms, this leads to a further consolidation of the market access framework. Historically established access corridors are being closed and participation in the European banking market is consistently linked to regulatory approval. Market access is thus becoming entirely permission-based.

Insofar as exemptions outside core banking activities can continue to exist, this does not alter the structural finding: in the future, third-country banking activities will generally have to be carried out within clearly supervisable institutional forms.

V. Supervisory assessment

1. Relief effect of the BRUBEG

The extent to which BRUBEG leads to relief is particularly evident in the regulatory areas of TCBs, governance requirements and ESG requirements. It is precisely in these areas that the structural changes to the supervisory framework are becoming more pronounced.

Although the law contains selective relief measures, it also establishes new obligations and control instruments that are likely to increase the administrative and organisational burden on institutions. The reform approach seems less like deregulation and more like a readjustment of regulatory intensity – a point that is also being critically discussed among experts. [40]

a. Selective relief

One of the few measures that clearly provides relief is the raising of the de minimis limits in the lending business. For example, the threshold for corporate organ loans is doubled and, at the same time, a corresponding limit for personal organ transactions is introduced. The disclosure threshold is also significantly raised.

These adjustments are a clear response to inflation- and volume-related changes in the lending business and primarily reduce administrative review and documentation requirements. [41] In regulatory terms, however, this is less a structural deregulation than a fine-tuning of existing requirements.

In contrast to the simultaneous expansion of supervisory control instruments, these measures underscore that the relief effects associated with BRUBEG remain predominantly technical in nature.

Furthermore, the legislator has responded to criticism from the business community [42] and refrained from introducing a new provision in Section 2b (1) KWG that would exclude institutions requiring authorisation under Section 32 (1) KWG from operating in the legal forms of oHG, KG or KGaA. This means that there will be no further institutional harmonisation in the banking sector and thus no displacement of potentially unstable capital structures from the market. However, this legislative initiative is already a sign that limited liability models could well become the regulatory model. The ban on operating as a sole trader remains in place.

b. Impact of the BRUBEG on third-country branches

There are some elements of relief in the regulation of TCBs. Key requirements of the CRR regime, including comprehensive capital requirements, large exposure limits and the obligation to perform a risk-bearing capacity calculation in accordance with MaRisk, no longer apply.

In regulatory terms, however, this is less a withdrawal of supervision than a shift in its control logic. Model-based in-depth requirements are increasingly being replaced by structural requirements, for example on capital commitment, institutional anchoring and transparency vis-à-vis the supervisory authority.

The relief thus primarily has an operational effect, while the structural depth of intervention of the supervisory regime tends to increase. Interestingly, supervisory authority for the TCBs remains entirely with the national authorities, meaning that no supervisory powers are transferred to the ECB.

aa) Impact on German TCBs

In Germany, TCBs can be divided into two regulatory categories: those under Section 53 KWG, which were largely treated as independent credit institutions due to the institutional fiction, and those under Section 53c KWG, which were like intra-European branches. The new regime affects these groups differently, thereby shifting the regulatory burden structure.

While the abolition of the institutional fiction brings considerable relief for TCBs under Section 53 KWG, as central capital, liquidity and governance requirements no longer apply, branches under Section 53c KWG, which were previously privileged, are now faced with significantly higher

requirements. The reform thus has a clear redistributive effect within the group of third-country banks.

This has structural implications for large TCBs with total assets of over €10 billion, for which conversion into a subsidiary may be considered. Such a conversion is not without consequences for the group architecture: it may require the establishment of an additional credit institution in the EU, trigger an obligation to set up an intermediate parent undertaking and, if the relevant thresholds are exceeded, justify direct ECB supervision for the first time.

The conversion thus has the potential to trigger a regulatory cascade that extends beyond the individual TCB into the structure of international banking groups. In addition, there are considerable practical implementation requirements, as neither German nor European conversion law currently provides a clear mechanism for a comprehensive transfer of assets.

bb) Impact on non-German TCBs
As each Member State has had its own national supervisory regime for TCBs to date, a complete assessment of the impact of CRD VI could only be carried out based on case-by-case analyses. However, this would go beyond the scope of this article, so the following section will focus on general trends.

According to a survey by the EBA[43] two ideal-typical regulatory approaches can be distinguished within the Member States: an institution-oriented "subsidiary-like approach" and a more branch-oriented "branch-specific approach". These reflect different understandings of supervision – from structurally consolidated to more restrained regulation of international banking presence. While Germany and France, for example, have so far predominantly followed the stricter model, other Member States have relied more heavily on a branch-specific regime.

In general terms, this points to a converging trend: TCBs, which have been subject to a particularly strict supervisory framework to date, could see their burden eased in future, while the level of requirements for locations that have been subject to liberal regulation to date will increase significantly. In this respect, harmonisation not only has a standardising effect, but also reduces the scope for regulatory location arbitrage.

The reorganisation poses a particular challenge for banking groups that have previously structured their presence specifically around national supervisory differences. In future, these institutions will increasingly need to make strategic decisions about how to structure their institutional anchoring in the EEA.

c. Impact of the new ESG regulations

It is to be expected that the new requirements on ESG risks and governance will result in significant additional burdens for many institutions. In particular, the ESG risk plan is considered by some experts to be disproportionate, as its preparation requires extensive data collection and ties up considerable organisational resources. [44]

At the last minute, legislators decided to ease the burden on smaller and less complex institutions. Unlike larger institutions, smaller institutions can describe their ESG objectives and procedures on a purely qualitative basis, based on their institution-specific risk profile. It remains to be seen whether the resulting relief for smaller institutions will have a significant impact on them. This is especially true since the legislator is largely adopting the EU requirements in the ESG area without changes, and is only making cautious use of the existing scope for implementation. [45] Additional reporting and documentation requirements reinforce this finding and indicate that the goal of reducing administrative burdens is at odds with the expansion of sustainability-related control instruments.

In some cases, there is also discussion as to whether individual national additions go beyond the minimum requirements of EU law. Overall, this suggests that a few selective simplifications are offset by a structural consolidation of obligations, particularly in the area of long-term risk monitoring.[46]

2. Systemic classification

The systemic significance of the BRUBEG lies not primarily in the content of individual standards, but in its steering effect in the multi-level system: it clarifies the interfaces between national law, the supervisory programme determined by EU law and European supervisory practice.

Political objectives – in this case, in particular, the reduction of bureaucracy and proportionality – can still be pursued, but they can only take effect within the supervisory architecture pre-structured by European law.

At the same time, a systemic tension emerges while the political impetus is towards a reduction in administrative obligations, the supervisory regime shaped by EU law remains structurally geared towards information gathering and intervention.

a. Contribution to proportionality

BRUBEG aligns with the longstanding proportionality discourse in the European supervisory framework, where proportionality functions less as a political promise of relief and more as a regulatory principle linking supervisory intensity to risk profile, business model complexity and systemic relevance. As a corrective to broad-brush regulatory approaches, BRUBEG can contribute to greater precision, particularly where information and procedural duties are better tailored or duplications eliminated, with plausible relief arising when institution-specific requirements are removed or notification regimes streamlined without lowering substantive standards.

Yet the law's proportionality effect remains ambivalent, notably in ESG and governance,. Ultimately, proportionality hinges less on formal rules than on supervisory practice, audit intensity and institutions' ability to implement processes that are both robust and lean. In its self-description, BRUBEG ties in with the proportionality discourse that has been gaining importance within the European supervisory network for years.

BRUBEG can make a contribution to this, particularly where information and procedural obligations are tailored more precisely or duplicate structures are avoided. Relief effects appear particularly plausible when previous institution-specific requirements are eliminated, or notification and approval regimes are made more routine and enforceable without lowering material standards.

At the same time, the proportionality contribution of the law remains ambivalent. In the areas of ESG and governance in particular, it is clear that a formal 1:1 implementation of EU legal requirements does not necessarily have a proportional effect. If additional reporting, documentation and planning instruments are established, these can place a disproportionate burden on smaller institutions, despite their intended risk adequacy.

The decisive factor is therefore not so much the standard formula as the level of enforcement: whether proportionality is achieved is largely determined by supervisory practice, the intensity of audits and the ability of institutions to implement processes that are both robust and lean.

b. Risks to consistency and legal clarity

The risks to consistency, legal clarity and uniform enforcement seem more significant than any isolated relief effects, as BRUBEG operates within a densely layered EU supervisory framework where complexity stems less from new substantive rules than from intricate interdependencies across regulations, directives, technical standards, guidelines and supervisory practice. National legislation can unintentionally add friction — not necessarily through classic gold-plating, but through divergent terminology, parallel reporting channels, mismatched deadlines or unclear boundaries between national norms and EU interpretations — especially where EU instruments introduce new categories or thresholds without clear implementation guidance. The example of reverse solicitation illustrates how inconsistent interpretations risk re-creating the very regulatory competition CRD VI aimed to eliminate, revealing negative harmonisation's reliance on coherent

enforcement. At the same time, reducing formal requirements may simply shift burdens if supervisors and auditors raise expectations for data, audit depth or internal documentation, leading to lower formal density without a corresponding reduction in actual compliance effort.

VI. Outlook

1. Limits of national debureaucratisation

a. European determination

BRUBEG shows that national debureaucratisation in banking supervisory law is structurally limited. The central material and organisational requirements are derived from the European regulatory framework, while the EBA and SSM are increasingly shaping supervisory practice through guidelines, methodologies and common expectations. The focus of political control is thus shifting noticeably: it is not the national legislator who decides on the substance of essential obligations, but primarily on how they are to be integrated into a European pre-structured supervisory system.

This is precisely why implementation technology is gaining independent regulatory significance. In a harmonised structure, bureaucracy can realistically be reduced primarily through clarity, systematic approaches, the avoidance of duplicate obligations and digital enforceability. Traditional material relief measures, on the other hand, run the risk of being limited by European law or neutralised by compensatory measures in supervisory practice. Relief appears less as a political dismantling of regulation and more as a task of shaping administrative architecture.

b. National governance deficits

In addition to Europeanisation, a second structural governance deficit is emerging: even if national legislators intend to provide relief, they can only guarantee its actual effect to a limited extent, as the regulatory burden arises primarily from the interaction between supervision, auditing and institution-specific implementation practices. Even minor shifts in interpretation, audit programmes or expectations can significantly alter compliance costs. Debureaucratisation is proving to be less of a normative project and more of a governance-related one.

Added to this is a political asymmetry: new obligations can regularly be legitimised as enhancing financial stability and are widely accepted, especially in crisis contexts, while relief is always subject to the proviso that it does not create new risks. This results in a structural preference for regulatory consolidation. Relief is typically only accepted where it appears to be a technical optimisation – not a substantial reduction in regulatory requirements.

For BRUBEG, this means that the political narrative of bureaucratic relief encounters a systemic logic that primarily ensures stability through access to information and the ability to intervene.

2. Perspectives on banking supervision

a. Consolidation of the existing regime

In the short and medium term, there are many indications that banking supervision is entering a phase of consolidation rather than deregulation. After years of intensive reform, the focus is less on new material obligations and more on how the existing regime can be implemented efficiently and developed coherently. Current developments thus point to a transition from regulatory expansion to enhanced governance and coordination of enforcement.

This is also in line with the proportionality discourse: the aim is not to lower the level of stability, but rather to allocate obligations in line with risk and streamline procedures. In practice, it will be crucial whether European players – in particular the EBA and SSM – actively support this consolidation, for example through standardised reporting requirements, the reduction of redundant processes and clearer criteria for exemptions and simplifications. Where consistent guidelines are developed across the EU, this can strengthen legal clarity and uniformity of enforcement while reducing administrative costs.

At the same time, the new TCB regime raises unresolved follow-up questions, for example in the area of statutory and private deposit protection. The fact that these are omitted from the explanatory memorandum to the law underscores that the real challenges lie less in enacting new standards than in the coherent further development of an already highly integrated supervisory system.

b. Expected reform dynamics

Nevertheless, there are many indications that the reform momentum will not come to a standstill, but will unfold in the future along fewer, but more structurally significant lines of development.

Firstly, the new TCB regime is likely to bring about a lasting reorganisation of the location and structural decisions of international banking groups in the EEA. This may result in subsequent adjustments in supervisory practice and, where necessary, follow-up measures under EU law – particularly with regard to the interaction between core banking activities, exemptions and conversion instruments.

Secondly, there are many indications that ESG regulation will not reach a stable end state, but will continue to be refined through data standards, disclosure requirements and increasingly stringent audit expectations.

Thirdly, the ongoing digitalisation of supervision (RegTech/SupTech) will change the very concept of bureaucracy: the burden will be reduced less by the elimination of obligations than by their automatability and by more harmonised data models.

VII. Conclusion

The BRUBEG confirms a key finding of current banking supervision: national debureaucratisation is reaching its structural limits in a largely harmonised European supervisory regime. The relevant material and organisational requirements are derived from EU law; national legislators primarily have scope for manoeuvre in terms of implementation techniques, systematisation and interface management.

Against this background, BRUBEG's contribution to proportionality is ambivalent. Where institution-specific requirements – for example, for certain TCBs – are eliminated or notification and approval regimes are clarified, actual relief effects are plausible. At the same time, new governance, notification and planning instruments, particularly in the ESG area, lead to additional burdens, the risk-adequate application of which is not normatively secured but largely shifted to enforcement. Proportionality is designed less as a legally enforceable criterion and more as an expectation of supervisory practice and auditing.

This creates an area of tension: a supervisory regime that ensures stability primarily through information, planning and powers of intervention can only achieve limited relief without at the same time creating new control instruments. Debureaucratisation can thus shift burdens – from standardised quantitative requirements to less formal but more audit- and liability-intensive governance obligations. Whether the BRUBEG can serve as a step towards greater proportionality in this sense will therefore depend less on its normative text than on supervisory practice. In this respect, the BRUBEG does not mark the end of the reform, but rather an intermediate stage in the ongoing balancing of stability, harmonisation and administrative burden in European banking supervisory law.

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[1] See EBA, Discussion Paper on Proportionality Assessment Methodology, 2021, p. 3 et seq; also fundamental Krimphove, BKR 2017, 353 et seq.

[2] Government draft of 3 December 2025, Bundestag printed paper no. 21/3058.

[3] Directive (EU) 2024/1619 of the European Parliament and of the Council of 31 May 2024 amending Directive 2013/36/EU with regard to supervisory powers, sanctions, third-country branches and environmental, social and governance risks.

[4] For a contemporary reception of the new regulatory approaches, see Hellwig NJW-Beil. 2010, 94 ff.; for a more critical view, see e.g. Assmann/Schütze/Buck-Heeb KapAnlR-HdB/Assmann/Buck-Heeb, 6th ed. 2024, § 1 marginal nos. 55-58.

[5] Basel III and "IV" (officially: Basel III: Finalising post-crisis reforms) can be seen as a direct response to the crisis, see Ellenberger/Bunte BankR-HdB/Haug, 6th ed. 2022, § 119. marginal nos. 1-7, and for Europe, the establishment of the ESFS and the new tripartite supervisory structure of ESMA, EBA and EIOPA in preparation for the planned banking union, see Ellenberger/Bunte BankR-HdB/Zagouras, 6th ed. 2022, § 109. marginal nos. 1-3.

[6] For a detailed description of the significance and development of the principle of proportionality, see Klöhn ZBB 2025, 313 et seq.; also fundamental Arrigoni/Restelli ECFR 2023, 936 et seq.

[7] For a discussion of the implications of the new CRD TCB regime for transfer pricing, see: Heuer/Linn IWB 2025, 834.

[8] For regulatory techniques, see Federal Ministry of Justice, Handbook of Legal Formality (*Handbuch der Rechtsförmlichkeit*), 4th ed. 2024, margin no. 586 et seq., referred to there as "framework law" (*Mantelgesetz*).

[9] Bundestag printed paper no. 21/3058, 2.

[10] See BT-Drs. 21/3058, 3, no "gold plating" intended.

[11] On the relationship between minimum and full harmonisation in the context of the European internal banking market, see Ellenberger/Bunte BankR-HdB/Welter/Brian, 6th ed. 2022, § 7. marginal nos. 15-19.

[12] Regulation (EU) 2024/1623 of the European Parliament and of the Council of 31 May 2024 amending Regulation (EU) No 575/2013 with regard to provisions on credit risk, credit valuation adjustment risk, operational risk, market risk and the output floor ('*CRR III*'); together with CRD VI, referred to as the 'banking package'.

[13] EBA, Discussion Paper on proportionality assessment methodology, EBA/DP/2021/03, 22 July 2021, p. 6 et seq.

[14] Judgment of the ECJ of 16 June 2015, Case C-62/14 (Peter Gauweiler et al.) = EuzW 2015, 599; comment on this by Classen EuR 2015, 477 et seq.

[15] See Mazzocchi/Spitzer, Simplification, not deregulation? Unpacking the debate on simplification and regulatory burden for European banks, European Parliament In-Depth Analysis, PE 764.389, September 2025, p. 5 et seq.; idem, The implementation of Basel III: progress, divergence and policy challenges, European Parliament In-Depth Analysis, PE 773.694, September 2025; Arrigoni/Restelli ECFR 2023, 936 et seq.

[16] See Bundestag printed paper no. 21/3058, 2.

[17] "The objective of the comprehensive revision of the Basel standards is to adjust supervisory requirements in a more targeted and risk-adequate manner, particularly with regard to the calculation basis for capital requirements," and "[...] changes to improve the way banks deal with Environmental risks, in particular climate risks, and risks relating to social issues and corporate governance [...] (ESG risks) [...] within the framework of general risk management [...]." – Bundestag printed paper no. 21/3058, 1. ESG issues affect all three pillars of the Basel framework; see Simanovski BKR 2023, 855 et seq; Litten BKR 2023, 569 (572 f.); for detailed information on the contents of Basel IV, see Fischer/Schulte-Mattler KWG, CRR-VO/H. Schulte-Mattler, 6th ed. 2023, Regulation (EU) 575/2013 before Art. 1 margin nos. 35-42.

[18] See Bundestag printed paper no. 21/3058, 225.

[19] Bundestag printed paper no. 21/3058, 190.

[20] Bundestag printed paper no. 21/3058, 229 f.

[21] Bundestag printed paper no. 21/3058, 229 f.

[22] Bundestag printed paper no. 21/3058, 251.

[23] For BaFin's administrative practice to date, see: BaFin, Circular 11/2025 on members of the management board and administrative and supervisory bodies dated 22 October 2025, p. 44.

[24] Commercial Law Committee of the German Bar Association NZG 2025, 1371 (1373).

[25] Bundestag printed paper no. 21/3058, 2.

[26] On supervisory arbitrage, see Report to the European Parliament, the Council and the Commission on the Treatment of Incoming Third Country Branches under the National Law of Member States, in Accordance with Article 21b (10) of Directive 2013/36/EU, EBA/REP/2021/20 - 23 June 2021; in particular Chapter 5.1, p. 53 et seq.

[27] On the procedure, see, for example, Hanten BB 2019, 2769 et seq.

[28] For early criticism of the legal situation, see Binder EBOR 2023, 99 ff. and Grasshoff/Pfuhler/Gittffried/Saelens/Kühne, in: Grieser/Heemann, Europäisches Bankaufsichtsrecht, 1st edition 2016, p. 1 et seq.

[29] See Report to the European Parliament, the Council and the Commission on the Treatment of Incoming Third Country Branches under the National Law of Member States, in Accordance with Article 21b (10) of Directive 2013/36/EU, EBA/REP/2021/20 - 23 June 2021; in particular Chapter 5.1, p. 53 et seq.

[30] See, for example, Hanten/Sacarcelik, European Banking Institute Working Paper Series 2018 – no. 22, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3142173 (last accessed on 27 January 2026).

[31] See Hanten/Dengl EuZW 2025, 977 (978); also Ellenberger/Bunte BankR-HdB/Kolassa, 6th ed. 2022, Section 121. margin nos. 54 et seq.

[32] The only amendment to Section 53 KWG following BRUBEG stems from an editorial shift of the former Section 53c (1) sentence 1 and (2) KWG into the new Section 53 (7) and (8) KWG; BT-Drs. 21/3058, 260.

[33] See Dietrich WM 2026, 373 (377)

[34] See also BT-Drs. 21/3058, 260.

[35] Dietrich WM 2026, 373 (373-374).

[36] On the — absent — Union-law classification of the provision, see Bracht/Forstmann in: Schäfer/Omlor/Mimberg, ZAG, 2021, Section 42, paras. 4 et. seq.

[37] For a detailed explanation of the principle, see ESRB, Recommendation of 15 December 2015 on the assessment of cross-border effects and mutual recognition on a voluntary basis in relation to macroprudential measures (ESRB/2015/2), OJ C 2016 No. 97; see also MüKoBGB/Lehmann, 9th ed. 2025, International Economic Law Part 10. margin nos. 146-149.

[38] On the term, see, for example, Ammann, European Market Access for Swiss Banks, 2020, margin nos. 48 et seq.

[39] On the administrative practice of BaFin, see: BaFin, Information sheet on the licensing requirement for cross-border transactions (*Merkblatt zur Erlaubnispflicht von grenzüberschreitend betriebenen Geschäften*) dated 1 April 2005, amended on 11 March 2019; see also Hanten in: Baudenbacher (ed.), Aktuelle Entwicklungen des Europäischen und Internationalen Wirtschaftsrechts, vol. 7, 2005, pp. 153-191 (pp. 160 et seq.).

[40] Federal Association of German Banks, statement on the government draft BRUBEG dated 6 November 2025, p. 17.

[41] See Bundestag printed paper no. 21/3058, 213 f.

[42] Association of German Banks, Supplementary statement by the Association of German Banks on the statement by the German Banking Industry Committee on the draft Banking Directive Implementation and Bureaucracy Relief Act (BRUBEG) dated 9 January 2026, p. 2.

[43] Report to the European Parliament, the Council and the Commission on the Treatment of Incoming Third Country Branches under the National Law of Member States, in Accordance with Article 21b (10) of Directive 2013/36/EU, EBA/REP/2021/20 - 23 June 2021.

[44] Federal Association of German Banks, statement on the government draft BRUBEG dated 6 November 2025, p. 17.

[45] See Sleegers, More bureaucracy for regional institutions, Börsen-Zeitung dated 19 January 2026, p. 22; Association of German Banks, statement on the government draft BRUBEG dated 6 November 2025, p. 17.

[46] Association of German Banks, statement on the government draft BRUBEG dated 6 November 2025, p. 17; Commercial Law Committee of the German Bar Association NZG 2025, 1371 (1374).

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