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Relicensing under CRD VI

BaFin clarifies the transition for third-country branches and expectations for escrow accounts

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On 18 November 2026, the German Federal Financial Supervisory Authority (BaFin) published Supervisory Notice 10/2026 (BA) (*Aufsichtsmitteilung*), providing important guidance on the transition to Germany's new Sixth Capital Requirements Directive (CRD VI) regime for third-country branches, which will become fully applicable on 11 January 2027.

The supervisory notice addresses two issues likely to be of immediate relevance to the affected institutions. First, it explains how branches licensed under the current regime will transition into the new authorization framework. Second, it outlines BaFin's expectations regarding the escrow account (*Abwicklungskonto*) that must be established under the new rules. Given the impending implementation date, the guidance provides valuable certainty for institutions that are still preparing for relicensing.

Background: The new supervisory framework

CRD VI (Directive (EU) 2024/1619) introduced, for the first time, a harmonized European framework governing branches of credit institutions established in third countries. Germany implemented these requirements through the Banking Directive Implementation and Bureaucracy Relief Act (*Bankenrichtlinienumsetzungs- und Bürokratieentlastungsgesetz* – BRUBEG), which came into force on 1 April 2026.

The resulting provisions, now contained in Sections 53c et seq. German Banking Act (*Kreditwesengesetz* – KWG), establish a dedicated supervisory regime for Capital Requirements Directive (CRD) defined third-country branches. Although the statutory framework has already been enacted, it will apply in practice from 11 January 2027, pursuant to Section 64c (5) KWG.

Note: The supervisory notice applies to any third-country branch that, as of 10 January 2027, holds a license under Section 53 in conjunction with Section 32 KWG and intends to continue carrying out activities falling within the scope of Section 53c (1) sentence 1 KWG thereafter.

No automatic conversion of existing licenses

Perhaps the most significant clarification concerns the interpretation of Section 53cc (6) KWG. BaFin argues that the provision does not provide for an automatic transition from the existing licensing regime to the new CRD VI framework. The existing licenses granted under Section 53 KWG neither expire automatically on 10 January 2027, nor convert by operation of law into a license under Section 53cc (1) KWG. Therefore, each branch must receive an individual administrative decision for the licensing. Where the branch satisfies the new statutory requirements, BaFin will revoke the existing authorization and grant the new authorization within a single administrative procedure. This approach is intended to ensure continuity of authorization, while preserving the formal licensing process required under the new regime.

Note: From a practical perspective, institutions should not assume that their current regulatory status will simply continue after January 2027. A specific relicensing decision remains necessary.

The self-assessment questionnaire serves as the application

BaFin has also provided welcome clarification regarding the self-assessment questionnaires that many institutions have already submitted. According to the supervisory notice, a previously submitted questionnaire will be treated as an application for a decision on continuation under the new regime. Institutions that have completed this process therefore do not need to submit a separate relicensing application.

For institutions that have not yet filed either a questionnaire or an application, the message is straightforward: immediate action is advisable.

Note: The availability of transitional protection depends upon an application having been lodged before the new regime takes effect.

Transitional protection pending BaFin's decision

In anticipation that not all applications can be processed before 11 January 2027, BaFin has confirmed an important transitional safeguard. Where an institution has submitted its application, but BaFin has not yet reached a decision by the end of 10 January 2027, the branch will generally be deemed authorized to continue conducting business within its existing scope until the relicensing proceedings have been completed. This clarification substantially reduces the risk that processing delays could disrupt ongoing business activities. However, the protection is not without limits. It only applies to activities that are already covered by the existing authorization, and therefore does not permit a branch to expand its business model during the interim period. Furthermore, the safeguard is unavailable where BaFin has already initiated proceedings aimed at revoking the branch's current license.

Note: Institutions that are subject to such proceedings should carefully assess their position and should not assume that transitional protection will be available.

Escrow accounts under the new regime

The supervisory notice also provides guidance on the escrow account requirement introduced by the new framework. Under Section 53ce (3) sentence 1 KWG, a CRD third-country branch must maintain an escrow account either with a Capital Requirements Regulation (CRR) credit institution or, subject to the Bundesbank's discretion, with the Deutsche Bundesbank itself.

Note: BaFin's guidance focuses on the first alternative and confirms that the concept of an escrow account is broad enough to encompass securities custody accounts established for the same purpose.

BaFin favors a principles-based approach

Rather than setting out a detailed catalogue of requirements, BaFin has opted for a principles-based approach. The decisive criterion is whether the assets maintained in the account remain available for the branch's liquidation and, where applicable, for resolution purposes under Section 171 SAG. BaFin deliberately refrains from prescribing specific contractual structures or operational arrangements. While this affords institutions considerable flexibility, it also creates a greater responsibility to demonstrate compliance. In the absence of detailed regulatory criteria, branches will need to justify why their chosen account arrangements effectively achieve the statutory objective.

Note: The adequacy of the escrow arrangement is likely to depend not only on the nature of the account itself but also on the contractual framework governing access, control and availability of the deposited assets.



Management responsibility and governance requirements

The supervisory notice places primary responsibility for compliance on branch management.

According to BaFin, individuals deemed managing directors pursuant to Section 53cg(1) KWG must ensure that a suitable escrow account is selected, and that the contractual arrangements adequately guarantee the availability of the assets deposited in both liquidation and resolution scenarios. BaFin further expects access to the account to be limited to the branch's management and to employees specifically authorized by management.

Note: Institutions should carefully document both the selection process and the rationale supporting the suitability of the chosen arrangement.

Legal opinions as evidence of suitability

To demonstrate compliance with the escrow account requirement, BaFin indicates that institutions may submit a legal opinion confirming the suitability of the account structure.

Such a legal opinion may facilitate the relicensing process and provide useful support for management's assessment. However, BaFin expressly notes that a legal opinion does not bind either the institution's statutory auditor or BaFin itself.

Note: A favorable legal opinion should be viewed as evidentiary support rather than regulatory protection. Institutions remain responsible for ensuring that the arrangement satisfies the statutory requirements on an ongoing basis.

Ongoing reporting obligations

In addition to establishing the escrow arrangement, branches must ensure that they can provide up-to-date information regarding both their capital endowment and the assets deposited in the account whenever requested by BaFin. This requirement will necessitate appropriate internal reporting processes and close coordination with the relevant account provider.

Note: Institutions should therefore consider operational readiness as part of their broader transition planning.

Duration of the supervisory notice

The supervisory notice came into effect on 18 November 2026. BaFin intends to remain applicable until all pending relicensing procedures have been completed. The escrow account guidance will remain effective until 31 December 2027. The notice also suggests that aspects of BaFin's administrative practice may eventually be incorporated into a formal circular (*Rundschreiben*). Institutions should therefore expect supervisory expectations regarding escrow accounts to continue evolving as practical experience develops.

Key takeaways for affected institutions

Institutions preparing for the January 2027 transition should consider prioritizing the following actions:

- Confirm that a self-assessment questionnaire or relicensing application has been submitted to BaFin
- Verify whether any supervisory proceedings concerning revocation of the existing license are pending
- Avoid expanding business activities beyond the scope of the current authorization pending relicensing
- Establish the required escrow account as early as possible and ensure that the contractual arrangements support availability of assets in both liquidation and resolution scenarios
- Document management's decision-making process and the basis on which the account structure was determined to be suitable
- Obtain a legal opinion addressing the account's compliance with Section 53ce KWG requirements
- Implement procedures capable of providing immediate information on capital endowment and depositing assets if requested by BaFin

The supervisory notice provides clarity on several practical questions that remained open during the implementation phase of CRD VI. Nevertheless, the guidance also demonstrates that BaFin expects institutions to take active responsibility for their transition planning, governance framework and escrow account arrangements.

With implementation only weeks away, third-country branches should ensure that relicensing preparations are substantially complete and that any remaining issues are addressed without delay.

We regularly advise third-country institutions on licensing and supervisory matters and would be happy to support you with the relicensing procedure and the requested legal opinion.

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