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FINANCIAL REGULATION ADVISORY

CRD VI third country branch regime

– implications for non-EU lenders and EU borrowers

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From **11 January 2027**, key regulatory changes will apply to cross-border lending and other banking activities entered with EU borrowers and customers. These result from amendments made, in July 2024, to the EU's Capital Requirements Directive (Directive 2013/36/EU) (**CRD IV**) by Directive (EU) 2024/1619 (**CRD VI**).

The amendments include the insertion of new Article 21c and a substantially revised and replaced Title VI. Together, Article 21c and revised Title VI introduce, for the first time, a harmonised regulatory regime for third country (i.e. non-EU) entities carrying out 'core banking activities' in an EU Member State through a licensed branch establishment.

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Once the third country branch regime is fully in force, non-EU credit institutions and large non-EU investment firms (together, called "**non-EU institutions**" in this insight) will no longer be able to lend to EU borrowers in the same way as they do now. Formal exemptions will, for example, become important in Irish B2B bank lending where they have never previously been required. Further, transitional arrangements in respect of loan agreements that were in place on or before 11 July 2026 will also impact the way amendments to those loans are made. The regime will impact how non-EU institutions structure their financings to EU borrowers (including Irish borrowers). This will have knock on effects on Irish and other EU customers who benefit from, for example, US, Asian, UK and Swiss bank lending.

This insight examines the key features of the third country branch regime, the exemptions and exclusions that may be available, and the practical implications for non-EU institutions and their banking counterparties. Although the third country branch regime applies to lending, guarantees, commitments and deposit-taking by certain entities, the commentary in this insight focuses on credit activities, and not on deposit-taking.

Transposing legislation

The legislation to transpose CRD VI into Irish law was signed on 10 July 2026 and published on 14 July 2026 (see our recent client insight). The European Union (Capital Requirements) (Amendment) Regulations 2026 (S.I. No. 326/2026) (**2026 Regulations**) amend Part 3 of the European Union (Capital Requirements) Regulations 2014 (S.I. No. 158/2014) to insert new Chapter 1C, which contains provisions to implement the new third country branch regime in Ireland. Chapter 1C will apply from **11 January 2027**, save for Regulations 9X and 9Y (relating to reporting of regulatory and financial information by third country branches), which are now in force along with all other provisions of the 2026 Regulations.

The 2026 Regulations take a copy-out approach with no gold-plating of CRD VI requirements. In the context of the third country branch regime, the copy-out approach means that the text of the requirements and the specific exemptions and exclusions exactly follow the text as set out in Article 21c. While the copy-out approach may disappoint many market participants, particularly in terms of the exemptions/exclusions, it provides consistency and means that analysis already undertaken on the basis of CRD VI should carry across to the 2026 Regulations, without needing to consider different text or alternative interpretations. On the other hand, key areas of uncertainty for non-EU institutions and EU borrowers and intermediaries that arise from the drafting of CRD VI remain unresolved. At the time of writing, no guidance has been published to accompany Chapter 1C of the 2026 Regulations, so participants in the Irish market have little to rely on beyond interpretation of the legislative text.

Branch licensing requirement

Under the current CRD IV framework (until the third country branch regime comes into effect on **11 January 2027**), the provision of banking activities into the EU by non-EU entities is largely a matter of national law, and there is no EU-wide restriction. In Ireland, while lending to individuals (including sole traders, common law partnerships and unincorporated associations) is a licensable activity, lending to corporates is not. Although certain specific regulatory requirements may apply, including credit reporting and AML/CFT compliance and registration), Ireland is one of the more permissive EU jurisdictions for commercial lending, in contrast to some of the larger continental jurisdictions that treat commercial lending as a licensable activity.

CRD VI, as transposed by the 2026 Regulations, introduces a harmonised third country branch regime that will require, from 11 January 2027, non-EU institutions to set up and establish a licensed (i.e. authorised) branch in **each** EU Member State where they carry out 'core banking activities'. This means that the provision of any 'core banking activity' into Ireland or another EU Member State by a non-EU institution will be licensable unless an exemption or exclusion applies (see below for details on the exemptions and exclusions). A non-EU institution will be required to establish a licensed branch in each EU Member State where it conducts core banking activities because CRD VI does not afford EU passporting rights to third country branches.

Once established and authorised, third country branches will be subject to a new prudential framework, which imposes requirements relating to booking arrangements, capital endowment, liquidity, internal governance and reporting.

In practice, relatively few non-EU institutions are likely to use an EU branch for core banking activities due to the restrictions on cross-border activity within the EU and the absence of EU passporting rights. Instead, most non-EU institutions wishing to use an EU banking presence will focus on setting up an EU bank subsidiary (which has EU passporting rights) or the use of an existing group EU bank subsidiary. Other options include reliance on an available exemption/exclusion, allowing the non-EU institution to continue carrying out core banking activities with EU customers without establishing a licensed EU branch. In this context, the regime may have a greater impact on smaller and/or regional banking groups that do not have an established EU bank subsidiary, or larger banks that may not want to book loans in the EU for capital or other commercial reasons.

The 'core banking activities' that trigger the branch licensing requirement

The new third country branch licensing requirement will apply to the following 'core banking activities':

a. lending, guarantees and commitments **provided by non-EU institutions**
b. deposit-taking by **any** non-EU entity/undertaking

As indicated at limb (a) above, the third country branch licensing requirement will **not** apply to lending, guarantees and commitments provided by **unauthorised / unregulated** non-EU lenders who are not, in broad terms, banks or large investment firms (such as broker-dealers).

Primary lending clearly falls within the scope of the branch licensing requirement. This would include, for example, commitment letters, entering into facility documents and draw downs (subject to applicable exclusions/exemptions). However, there is less certainty around secondary lending and sub-participations where advice should be obtained.

Impact on non-EU institutions

Where a non-EU institution is subject to the new licensing requirement and no exclusion or exemption applies, there are limited practical options available to it.

Firstly, it is possible to establish and authorise a branch in the EU Member State in which the non-EU institution intends to conduct (or continue to conduct) core banking activities. However, setting up a third country branch is a significant task requiring substance, resources and regulatory capital, and the branch will not have cross-border passporting rights within the EU. Therefore, careful thought would be required on whether it would be more beneficial to establish and license a 'full' EU bank subsidiary to avail of full EU market access through the EU's cross-border passporting regime. However, we acknowledge that third country branches could be used for monoline businesses where it makes commercial sense to operate in one domestic EU jurisdiction only.

Secondly, an alternative option would be to migrate or run the impacted business line through an appropriately authorised EU group subsidiary (where possible), which will have cross-border passporting rights within the EU. This option would involve moving relevant contracts (assets, liabilities and service contracts) to the EU group subsidiary and other operational considerations. In addition to operational considerations, there would likely be an impact for the EU group subsidiary regarding large exposures, regulatory capital and liquidity requirements, risk management and governance to account for the extra business. In recent years, the Central Bank of Ireland has become more open to new banks establishing in Ireland, including high-profile entrants such as Monzo, with others expected to follow. Therefore, a bank authorisation in Ireland is now a realistic practical alternative.

Finally, a non-EU institution may choose to restructure its lending activities to originate loans from a non-bank group entity. As the CRD VI third country branch regime only applies to non-EU banks and large non-EU investment firms, non-bank lenders should not be directly impacted.

Please also see our section on 'Potential longer-term impacts for EU borrowers' below.

Exemptions

CRD VI contains five key exemptions or exclusions from the application of the branch licensing requirement.

Legacy contracts ('grandfathering')

Although not a formal exemption as such, contracts for core banking activities that were entered into **before 11 July 2026** are not subject to the branch licensing requirement and in practical terms are grandfathered.

It is unclear how this cut-off date will operate in practice, particularly when contractual amendments are made or lifecycle events occur that could impact on the grandfathered status of contracts. For example, it is unclear how the exemption applies to contracts entered into prior to 11 July 2026 but which are amended, renewed, extended, restated, assigned or novated after that date (in particular, if any amendments are made to core terms). In this regard, variation of contracts that were entered into before 11 July 2026 may risk the creation of a new contract such that grandfathering would not apply.

A starting point is that the transitional provision is intended to preserve the **acquired rights** of customers who entered into loan agreements before 11 July 2026. Therefore, items such as an increase of credit through raised limits or new facilities and a maturity extension risk creating a new contract superseding the existing grandfathered contract, particularly where the amended terms were not sufficiently contemplated by the parties at the outset. On the other hand, drawdowns made under pre-existing commitments are more likely to be permissible, although such situations, together with more technical amendments, will need to be assessed on a case-by-case basis.

Inter-bank services

Lending and provision of guarantees and commitments by a non-EU institution to an EU bank are excluded from the branch licensing requirement. This would include, for example, interbank lending and correspondent banking arrangements.

Intra-group services

Lending and provision of guarantees and commitments between entities within the same group are excluded from the branch licensing requirement. This would include, for example, treasury and liquidity arrangements and other intra-group funding arrangements with EU entities.

Reverse solicitation

There is a reverse solicitation exemption available in circumstances where borrowers and other counterparties approach a non-EU institution at their own exclusive initiative for the provision of a core banking activity.

The exemption is carefully restricted. Non-EU institutions cannot rely on the exemption to market other categories of products or services than those that the client or counterparty had initially solicited. In addition, the exemption cannot be relied on where a non-EU institution solicits a client or counterparty through an entity acting on its own behalf or having close links with the non-EU institution or through any other person acting on its behalf. It is not yet clear what the effect of intermediaries in the chain of sourcing finance (such as arrangers or other borrower group entities) will have on the interpretation and use of this exemption.

However, it is helpful that the exemption clarifies that there is no requirement to establish a third country branch in relation to any services, activities or products "*necessary for, or closely related to the provision of the service, product or activity originally solicited by the client or counterparty, including where such closely related services, activities or products are provided*

subsequently to those originally solicited". The caveat for products and services "*necessary for, or closely related to*" those initially solicited, potentially allows for a broad interpretation and application by individual EU Member States. However, as Ireland has taken a copy-out approach to transposition, the text of the reverse solicitation exemption in the 2026 Regulations is unchanged from that in CRD VI. There is also no domestic or EU guidance on the meaning of "*necessary for, or closely related to*", so there remains uncertainty as to how broadly this caveat will be interpreted in practice. Non-EU institutions will, therefore, need to assess transactions/arrangements on a case-by-case basis having regard to the nature of the originally solicited activity and the connection between that activity and any related services or products provided concurrently or subsequently.

We anticipate that the reverse solicitation will be widely relied on in the market, but it will be important to assess the application of the exemption to transactions and arrangements on a case-by-case basis, as mentioned.

MiFID exemption

There is a specific exemption for the provision of activities and services listed in Section A of Annex I to MiFID II (Directive 2014/65/EU) and "*any accommodating ancillary services*" (such as related deposit taking or the granting of credit or loans) the purpose of which is to provide services under MiFID II.

There have been discussions at domestic, EU and industry levels regarding the interpretation/scope and practical impact of this exemption in relation to banking activities that are ancillary to standalone custody services. CRD VI and the 2026 Regulations are unhelpful because the MiFID exemption only expressly refers to Section A of Annex I to MiFID II, and not to Section B of Annex I, which lists ancillary investment services such as custody, foreign exchange services and services related to underwriting. There is Irish market debate on whether banking activities ancillary to standalone custody and transaction settlement are covered, with the Central Bank of Ireland yet to make its position clear.

Characteristic performance

Following the application of a 'place of characteristic performance' test in Luxembourg's CRD VI transposing legislation, there has been industry debate as to whether a similar approach could be adopted in Ireland. The characteristic performance test (an analysis based on where the service is characteristically performed, rather than where the customer/delivery of the service is based) has historically been applied in Luxembourg (and Germany) for determining whether a licence or authorisation is required to provide certain regulated financial services within the jurisdiction.

The characteristic performance test is not provided for in CRD VI or in the 2026 Regulations, and the European Commission has not issued guidance or a statement on its potential relevance or application to the third country branch regime. It remains to be seen whether arguments as to why the characteristic performance test could be available in Ireland in certain situations gain currency in the market and are accepted by the Central Bank of Ireland.

Potential longer-term impacts for EU borrowers

CRD VI will impact the approach taken by non-EU institutions to lending and finance arrangements offered in the EU, potentially resulting in the following key impacts for EU borrowers (including Irish borrowers):

- Borrowers may see changes in their relationships with non-EU institutions, including in relation to their distribution and origination channels (in particular, borrowers may see more credit originated from EU entities). While the majority of any changes will arise on the lender's side, borrowers may see changes to documentation and new or additional legal and tax issues arising as a result of any lender entity changes.
- Borrowers may also see an increase in lending from or through non-regulated EU entities who are not subject to CRD VI/CRD IV. While such entities are already very active in the EU, such non-regulated entities will not be required to restructure their lending and origination arrangements in the same manner as regulated banks and large investment firms.
- For existing loans and relationships, borrowers may see migrations and/or transfers of loans and contracts with non-EU institutions to EU entities (and may be required to give consents or sign other documentation in relation to any such transactions). It is also possible that some non-EU institutions may decide to terminate or sell off certain lending business lines or use bank-to-bank arrangements to access the EU market.
- Depending on how CRD VI is implemented in other EU Member States, some non-EU institutions may begin to insist that borrowers structure their borrower entities through jurisdictions which are consistent with the lender's CRD VI structure. Borrowers will need to consider very carefully whether to agree to such changes to their borrower entities, in particular having regard to existing carefully structured capital and borrower arrangements which address both legal and tax consequences.
- Lending documentation and structures may also need to be revisited and structured.

Conclusion

The CRD VI third country branch regime represents a shift in the regulatory treatment of non-EU institutions providing core banking activities into the EU. With the 11 January 2027 application date approaching, non-EU institutions will be reviewing their EU lending models, booking arrangements and reliance on exemptions under the new regime. They should also determine whether restructuring and/or additional documentation may be required for certain lending arrangements.

EU borrowers should be alert to potential changes in lender entities, transaction structures and documentation as non-EU institutions adapt to the new regime. Early engagement will be important to manage legal, regulatory, tax and operational implications, particularly where existing financing arrangements may be amended, extended or transferred.

For further information on the CRD VI third country branch regime (or on any of the points raised above) and how we can assist your firm, please contact the Financial Regulation Advisory team.

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